General Terms and Conditions of Kiwa Inspecta Nederland BV
for the performance of orders: 2017

Article 1. Definitions
1.1 Offer: the quotation and/or estimate submitted by the Contracted Party and/or the Client with respect to the provision of services by the Contracted Party.
1.2 Additional work: all work carried out by the Contracted Party during or after the performance of the Agreement in addition to the work explicitly agreed on.
1.3 Client: the party that enters into the Agreement with the Contracted Party.
1.4 Kiwa Inspecta Nederland BV: the party that enters into the Agreement with the Client.
1.5 Agreement: any agreement that is formed with respect to performance of work by the Contracted Party for the Client, any change to, or addition to, all juristic or other contracts in preparation and/or performance of that Agreement;
1.6 Results: the outcome of the performance of the order by the Contracted Party.

Article 2. Applicability
2.1 Unless explicitly agreed otherwise in writing, these General Terms and Conditions of Kiwa Inspecta Nederland BV (including any amendments or extensions of these General Terms and Conditions, and/or stipulations varying from these General Terms and Conditions, will only be binding on the Contracted Party if they have been agreed on between the parties explicitly in writing.
2.2 The applicability of any general or specific terms and conditions or stipulations of the Client is explicitly rejected by the Contracted Party, unless explicitly agreed otherwise in writing in advance.
2.3 A Client in respect of whom these General Terms and Conditions have been agreed to have been applied to the application of these General Terms and Conditions to subsequent Offers submitted by the Contracted Party, to subsequent Agreements concluded and to be concluded by the Contracted Party with the Client and to all other subsequent legal relationships between the Contracted Party and the Client.
2.4 If in the opinion of a competent court, any provision of these General Terms and Conditions does not apply or is in violation of public order or the law, only the provision in question will be disregarded and those General Terms and Conditions will remain in full force in all other respects. A provision that most approaches the parties' intentions will replace any invalid provision.
2.5 The Contracted Party is authorised to amend these General Terms and Conditions. Such amendments take effect at the time communicated by the Contracted Party.
2.6 The Client may not make any amendments to these General Terms and Conditions. A statement in writing by the Client: "I have read and understood the General Terms and Conditions of Kiwa Inspecta Nederland BV", is a sufficient proof of the General Terms and Conditions being for the Client.

Article 3. Offer, Order and formation of the Agreement
3.1 Unless stated otherwise, the Contracted Party's Offers will be subject to contract and can always be revoked by the Contracted Party. Offers will be valid for one month, unless agreed otherwise.
3.2 An Agreement is formed at the time that the Contracted Party receives the offer. Offer and quotation are subject to the Client's acceptance.
3.3 The offer is an invitation to the Client to make an offer to the Contracted Party. The offer contains an indication of the price or terms of delivery and shall be deemed null and void if it is not accepted by the Client within the prescribed period.
3.4 All images, drawings, statements about measurements and weights, calculations, statements concerning capacities, results and/or expected performance, etc. provided by the Client will not be binding on the Contracted Party and are only meant to give a general indication of the possibilities to be rendered by the Contracted Party.
3.5 If the Client provides the Contracted Party with documents, data, or other material for a quotation, the Contracted Party should be able to assume their correctness and will base its Offer thereon.

Article 4. Performance of the Agreement
4.1 The Contracted Party is not obliged to do more than perform the Agreement to the best of its ability, which must be performed without obligation. Further obligations only exist if and to the extent that such has been agreed on in writing.
4.2 The contract is not entered into for an indefinite period of time, unless otherwise agreed in writing.
4.3 The periods stated by the Contracted Party, including the periods for performance of the Agreement, are indicative and can never be considered strict deadlines.
4.4 If the Contracted Party and the Client agree that the Agreement has been extended, they will renegotiate the consequences for the price, quality and moment of completion, among other things. Changes to, additions to and/or extensions of the Agreement will only be binding if they have been agreed between the parties in writing or if the Agreement is performed by the Contracted Party in accordance with the amendments so agreed on.
4.5 The Contracted Party will not be obliged to perform work later than the Client has given a written confirmation of. In addition, the Client may not withdraw his or her offer within 10% of the price awarded to the Contracted Party. In the absence of specific arrangements in that respect, the work will be carried out by the Contracted Party at prices that are based on the rates that apply at the Contracted Party for such work.
4.6 Drawings, designs, specifications, locations, instructions, inspection regulations, etc. made available by the Contracted Party prior to formation of the Agreement, and the offer, unless the Client revokes the offer within 10% of the price awarded to the Contracted Party, are part of the Agreement, unless agreed otherwise in writing.
4.7 The Client will arrange that all data with respect to which the Contracted Party indicates that they are required or with respect to which the Client should reasonably understand that they are required, and/or with respect to which the performance of the Agreement are provided to the Contracted Party in good time. If any data required for the performance of the Agreement is not provided by the Client or if the data the Contracted Party good in time, the Contracted Party will be entitled not to start with the performance of the Agreement and/or to suspend performance of the Agreement and/or charge the additional costs ensuing from the delay to the Client at the usual rates.
4.8 The Client arranges that facilities are made available to the Contracted Party if they have been agreed on between the Client and the Contracted Party, and/or auxiliary plant and equipment, to enable the Contracted Party to carry out the work at the Client's site and/or to the Client's installations safely and the Client will point out any potential dangers and removal of plant and equipment in good time and courteously with directions given by or on behalf of the Client.
4.9 If auxiliary staff, auxiliary plant and equipment do not comply with the customary safety regulations, the Contracted Party reserves the right to suspend the performance of its work and/or not to perform the work. In that case, the Client will be obliged to compensate the Contracted Party for all expenses and costs (including travelling expenses and travelling time) and damage or loss.
4.10 During stays in the Contracted Party's buildings or at the Contracted Party's sites, the Client will provide all necessary information and/or instructions required by the Contracted Party.
4.11, or if it has been agreed that the Agreement will be performed in phases, the Contracted Party may suspend performance of such parts as pertain to a subsequent phase until the Client has approved the results of the preceding phase in writing.
4.12 If the Agreement contains a sample analysis, the Client is responsible for the selection, representativeness, designation of the products and/or samples, and for making the analysis samples available to the Contracted Party.
4.13 If the Contracted Party deems such desirable, for purposes of a correct or timely performance of the order, it is authorised to have the order performed by third parties. All provisions pertaining to the exclusion or limitation of liability or indemnification concerning the indemnification by the Client against third-party claims will apply to these third parties, their bodies and staff.
4.14 The Client must provide accredited and certified work to a third party that has the accreditation and/or certificates required for the work.
4.15 The Client is not authorised to fully or partially transfer the rights and obligations arising from the Agreement or the result of the Agreement to third parties.
4.16 The Client will not exert improper pressure on the Contracted Party during or after the performance of the order.
4.17 Any failure in the performance of this Agreement discovered by the Client must be reported to the Contracted Party immediately and in writing with a clear description, failing which the Contracted Party is entitled not to deal with this report. The Client cannot enforce any rights if the notification to the Contracted Party takes place more than five working days after the time when the Client could reasonably expect that the Contracted Party has been aware of the existence of the matter for which the Contracted Party's report is deemed well-founded and the notification was made within the stated period, the Contracted Party has the option, without being obliged to pay any further compensation, to either remedy the failure in its services or to issue a credit note for the services rendered up to the invoice amount at most.
4.18 The Client indemnifies the Contracted Party against all demands, claims, damages, expenses and costs that have been caused beyond the Contracted Party's control, not including costs with respect to work performed or deliveries made by third parties.
4.19 Claims to recover costs may be charged on in the prices and rates immediately. In addition, the prices and rates may be adjusted once each calendar year to the changes to the costs other costs that have been taken into account in the Agreement if the increase in the prices and rates amounts to more than 10%. In that case, termination must take place immediately after the Client learns of the increase.

Article 5. Prices and rates
5.1 All prices are in euros and, unless agreed otherwise in writing, always exclusive of VAT, travelling and any other expenses or costs caused beyond the Contracted Party's control, not including costs with respect to work performed or deliveries made by third parties.
5.2 Claims to recover costs may be charged on in the prices and rates immediately. In addition, the prices and rates may be adjusted once each calendar year to the changes to the costs other costs that have been taken into account in the Agreement if the increase in the prices and rates amounts to more than 10%. In that case, termination must take place immediately after the Client learns of the increase.

Article 6. Liability
6.1 The Client is only liable towards the Client for damage or loss if and to the extent provided in these General Terms and Conditions.
6.2 If the Contracted Party has been established, with due observance of the following articles, it will be limited to twice the amount due pursuant to the Agreement. In the case of continuing performance contracts, liability will be limited to twice the amount due pursuant to the Agreement. Liability will in no event exceed a sum of €250,000.
6.3 If the Contracted Party's liability is established, the Contracted Party will be obliged to compensate the direct damage or loss only. Direct damage or loss will not in any instance include: trading loss, loss of production, loss of turnover, indemnity payment for fire, damage etc. from the Client if they have been included in the performance costs had the order been carried out properly from the start.
6.4 The Contracted Party is only liable for the work that has been carried out by the Contracted Party or under its responsibility and the Contracted Party particularly does not accept liability for the performance of work that has been stated explicitly that these data were examined by the Contracted Party and found to be correct. However, if the Client, or a third party who acts as the Client's supplier, accepts recommendations, designs, sketches, drawings, models, specifications, etc. from the Contracted Party, whether or not after its own examination, the Contracted Party is no longer liable for any damage or loss caused by the application of such recommendations, designs, etc.
6.5 Any liability on the part of the Contracted Party expires after two years have passed, excluding liability for damage caused by the Client or by the Client's employees in the scope of their services or to issue a credit note for the services rendered up to the invoice amount at most.
6.6 The Client will indemnify the Contracted Party, with respect to any claims and/or costs and/or damage or loss caused by or as a direct consequence of the performance of the order, against claims from third parties in respect of damage caused by the Client. The Client cannot rely upon these terms and conditions. Within this scope, third parties also include the Client's staff and other persons employed by the Client in the performance of its work. The Client is only obliged to indemnify the Contracted Party if the Contracted Party can also rely on an exclusion or reduction of liability vis-à-vis the Client.
6.7 The Client indemnifies the Contracted Party against all third-party claims and claims for compensation with respect to requirements, recommendations, drawings, etc. from the Contracted Party if they have been made available to those third parties by the Client, whether or not with the Client's consent as the Client's supplier.
6.8 The Client is fully liable for damage or loss caused at the Contracted Party caused by contamination of the equipment provided or by improper packaging of
equipment to be delivered as well as for the resulting consequential damage or loss.

6.9 The Client will be able to react to the Contracted Party for infringements of third-party rights or statutory provisions that apply outside the Netherlands, unless those rights and provisions were communicated to the Contracted Party by the Client in writing prior to concluding the Agreement.

6.10 The Contracted Party is not liable for damage or loss of any nature whatsoever that was caused by the Contracted Party’s failure to return or dispose of data information provided by the Client and/or information not provided in sufficient time.

6.11 Costs or losses in the meaning of paragraph 1 of this article must be reported to the Contracted Party in writing as soon as possible, but at the latest within four weeks after discovery. Damage or loss not reported to the Contracted Party in writing within that period does not qualify for compensation, unless the Client demonstrates that it was unable to report the damage or loss at an earlier time.

6.12 The limitations of the Contracted Party’s liability included in these General Terms and Conditions do not apply if the damage or loss is caused by intent or gross negligence in the meaning of wilful recklessness) of the Contracted Party or its management.

Article 7. Non-disclosure

7.1 The Client will only use the quotation submitted by the Contracted Party and related knowledge and ideas of the Contracted Party in the agreed manner and in the agreed order. These provisions also apply to proposals for changes and additions to and/or extensions of the Agreement.

7.2 Either party will keep confidential information obtained from the other party or from another source in the course of the Agreement. Information will be deemed to be confidential if the disclosing party has communicated its confidential nature to the other party or if such confidentiality ensues from the nature of the information.

7.3 The Contracted Party will not make the Results obtained from the performance of the Agreement available to third parties.

7.4 The obligations to observe secrecy, referred to in paragraphs 2, 3 and 6 of this article, do not apply to data or documents:

a. are of a general nature, i.e. that do not specifically pertain to the Client’s own business operations and/or work;

b. were already in the Contracted Party’s possession;

c. are generally known and/or become generally known, without this being the result of any imputable acts or omissions of the Contracted Party or the Client.

d. the Contracted Party obtained from a third party in a lawful and lawful manner or from its own research, without using data or results that are not accessible to third parties;

7.5 The obligation to observe secrecy referred to in paragraphs 2.a to d of this article does not apply:

a. if and as a result of disclosure by the Client to third parties, the Contracted Party deems it necessary to provide an explanation to third parties;

b. if secrecy is in violation of statutory regulations;

c. if inspection is requested for internal or external audits to grant or extend accreditations of laboratory, inspection agencies or other management system certification schemes;

d. if there is a danger to people or objects. If possible, consultation about the above will take place with the Client in advance.

7.6 At the Client’s request, the Contracted Party will keep secret the Client’s name and the fact that the research has been performed in collaboration with the Client.

7.7 In the case of the application of Article 7.5.c, the Contracted Party stipulates that the auditors observe secrecy with respect to the Client. The auditors provided for inspection.

7.8 In the case of the application of the provisions of Article 4.13, third parties who are involved in the performance of the Agreement may be provided with data subject to secrecy. The Contracted Party stipulates that those third parties observe secrecy with respect to the data provided.

7.9 The Client will observe secrecy with respect to the Contracted Party’s know-how and intellectual property whose confidentiality is established or should reasonably be known to the Client. The Client also imposes the obligation to observe secrecy on the members of staff or third parties engaged by it.

Article 8. Results

8.1 Within the scope of the business operations of its own company and for the purpose to finance the Results provided to the Client by the Contracted Party.

8.2 The provisions of paragraph 1 of this article apply on the understanding that the intellectual and industrial property rights of the Results are at all times vested in the Contracted Party, except for third-party rights and with due observance of the provisions of Article 11.3.

8.3 The Contracted Party entitles the Client to cause the use of the Results of the Agreement at no cost for its business operations or for third parties, in which respect the provisions of Article 7 regarding secrecy will be observed.

8.4 The Contracted Party has the right to use, or allow others to use, the knowledge and experience obtained from the performance of the Agreement, calculation methods, software and experimental working methods resulting from the performance of the Agreement free of charge for its business operations or for the benefit of third parties, to the extent that the development thereof was not the purpose of the Order that was given.

8.5 The Contracted Party will keep items, such as samples made available to the Contracted Party in connection with the Agreement or remainders thereof, for two weeks after the date on which all Results were communicated to the Client, unless such is reasonably impossible or if other arrangements were made upon granting the Order. The associated costs will be deemed to be included in the sum stated in the Order. The Client has not made an arrangement in this respect or in which it appears that the items in question, the Contracted Party will be at liberty to destroy the items or the Contracted Party may take other measures, unless such is not in respect to the items in question. Costs involved in storage longer than described above will be payable by the Client.

Article 9. Ownership, disclosure and use of documents

9.1 Reports, recommendations, designs, sketches, drawings, models, photographs, readable and machine-readable documents and any other support material made available to the Client by the Contracted Party to or for the purpose of the Agreement and/or have been included in the recommendation or Request are and will remain the Contracted Party’s property.

9.2 Without the Contracted Party’s prior written consent, the Client will not be authorised, with respect to the Contracted Party’s documents, such as reports, recommendations, designs, sketches, drawings, models, etc.:

a. to disclose them or allow their inspection by third parties;

b. to use them or allow them to be used for instituting claims, conducting legal proceedings, or for recruitment purposes;

c. to use the Contracted Party’s name in any connection when disclosing part or parts of a document issued by the Contracted Party or for the purposes referred to in b. above.

9.3 The provisions of paragraphs 2.a and 2.c of this article do not apply to the disclosure of inspection reports. Disclosure of these reports is permitted, provided they are disclosed in full, without any additions or omissions and with the express permission of the Contracted Party or for the purposes referred to in b. above.

9.4 The Client will at all times be obliged to render all cooperation to the Contracted Party in order to give an explanation or provide comments, to third parties as well, if:

a. the Client discloses Results in a manner that may give rise to an incorrect representation of the facts, misunderstandings, etc.;

b. the Client refers to the standards and requirements applied by the Contracted Party, such as inspection requirements, or
c. the Client does something else in the spirit of this article.

Article 10. Patent

The Contracted Party is not obliged to research patent rights of third parties, and the Contracted Party is not obliged to research the possibility of patenting.

Article 11. Inventions and patents

11.1 The Client has no right to apply for a patent in respect of an invention, process or product in its name and at its expense.

11.2 The Client may only make a patent application contrary to the provisions of Article 11.1 after obtaining the prior written permission of the Contracted Party. In that case, the Client will grant the Contracted Party a licence for no consideration with respect to the use of the invention for its own purposes and those of third parties. The Client also reimburses the Contracted Party for the sum that the latter is obliged to pay the inventor pursuant to the law or employment conditions.

11.3 The Contracted Party and the Client will inform each other as soon as possible of results that are patentable in their opinion.

11.4 The Contracted Party and the Client will render each other all required cooperation, at a reasonable compensation of the costs, in the filing of patent applications in accordance with the provisions of this article.

Article 12. Force majeure

12.1 Force majeure on the Contracted Party’s part is understood to mean circumstances to which the Client or the Contracted Party cannot be blamed, regardless of whether those circumstances were foreseeable when the Agreement was concluded. The obligations of the Contracted Party will be suspended during the force of period.

12.2 The circumstances referred to in Article 12.1 include: war circumstances, fire and other destructions, business interruptions, strikes, government measures, a general lack of the items or services required to fulfill the agreed period, and non-foreseeable standstills at third parties on which the Contracted Party depends for the performance of the Agreement.

12.3 The Contracted Party is entitled to rely upon force majeure if the circumstances continue and continued performance takes effect after the date on which the Contracted Party should have fulfilled its obligations.

12.4 If a period in which the fulfillment of the Contracted Party’s obligation is impossible is longer than one month, both parties will be entitled to cancel the Agreement without any obligation to pay compensation.

12.5 If force majeure occurs at a time when the Contracted Party had already partially fulfilled its obligations or can only partially fulfill its obligations, if it will be entitled to separately invoice the part of the invoice that has already been performed or the part to be performed, and the Client is then obliged to pay this invoice or those invoices in full, unless it is agreed otherwise.

This does not apply, however, if the part that has already been performed or the part to be performed does not have an independent value.

Article 13. Payment, retention of title, collection charges

13.1 Payment must be made in euros, without deduction or set-off, within 30 days of the invoice date, unless otherwise agreed in writing. Any objections to the invoice, which must also be submitted in writing, must also be submitted within 30 days of the invoice date.

13.2 If the Client has not made payment within the stated period, the Client will be in default by operation of law i.e. without any demand or notice of default. From the time of default, the Client owes interest equivalent to the statutory commercial interest plus 2% on the amount that has not been paid, plus the preparatory costs.

13.3 In the case of the default, the Client is furthermore obliged to compensate the Contracted Party for all extrajudicial costs as well as for all judicial and/ or arbitral costs and for any demand or notice of default being required. From the time of default, the Client owes interest equivalent to the statutory commercial interest plus 2% on the amount that has not been paid, plus preparatory costs.

13.4 If the Client has instituted an action in legal proceedings, including arbitration proceedings or a binding opinion, the Client will be obliged to compensate the Contracted Party for the costs actually incurred in the proceedings in question. This includes the costs of lawyers, local counsels and representatives ad item as well as the fees due to arbitrators or third parties charged with giving a binding opinion and court fees, including if they exceed any order for costs pursuant to Section 237 et seq. of the Dutch Code of Civil Procedure.

13.5 In the absence of payment in due time of any invoice, all outstanding invoices, even invoices whose payment term has not yet expired, will become immediately due and payable.

13.6 The Contracted Party can at all times send interim invoices and/or require advance payments and/or that the Client provide appropriate security, at the Contracted Party’s discretion.

13.7 Payments made by the Client will only always be used to pay all outstanding interest and costs and secondly to pay invoices due and payable which have been outstanding for the longest period of time, even if the Client states that the payment concerns a later invoice.

13.8 With respect to payments and statements, the Contracted Party’s records will be binding at all times.

13.9 The Client will not be entitled to suspend any payment obligation vis-a-vis the Contracted Party.
Article 13.10 All items delivered and to be delivered will remain the Contracted Party's exclusive property until all claims that the Contracted Party has or may acquire against the Client, in any event including the claims referred to in Section 92 (2) of Book 3 of the Dutch Civil Code, have been paid in full. The Contracted Party is entitled to repossess the items that have remained its property if the Client fails to fulfill any obligation pursuant to the Agreement concluded with the Contracted Party, without prejudice to the Contracted Party's authority to demand termination or fulfillment of the Agreement. The Client is obliged to give the Contracted Party the opportunity to repossess the items. Notwithstanding the provisions of Article 18.2 of these General Terms and Conditions, the property-law consequences of the retention of title will be governed by the law of the country in whose territory the items are located at the time of delivery, unless it concerns items destined for export. In the case of items destined for export, the property-law consequences of this retention of title will be governed by the law of the country of destination if pursuant to that law the retention of title does not lose its effect until the full price has been paid.

Article 14. End of the Agreement
14.1 The date of the Contracted Party's final invoice is regarded as the date of termination of the Agreement, unless agreed otherwise.
14.2 If there is no such invoice, the Contracted Party will determine the date on which the Agreement can reasonably be deemed to have been terminated.

Article 15. Termination, interruption or extension of the order
15.1 The Client will compensate the Contracted Party for all costs and damage or loss resulting from the Client's termination, cancellation or interruption of an Agreement, without prejudice to the Contracted Party's right to take legal action.
15.2 If the order is cancelled, the Contracted Party will charge the Client cancellation costs if the cancellation:
   a. takes place less than two weeks but more than one week prior to the start of the performance of the Agreement: 60% of the Order Sum;
   b. takes place less than one week prior to the start of the performance of the Agreement: 90% of the Order Sum.
15.3 In any case, the Contracted Party will be entitled to terminate the Agreement if an interruption by the Client lasts longer than six months, without being obliged to pay the Client any compensation. The effective date of an interruption is the date of the letter from the Client or the Contracted Party in which the interruption is announced or, in the absence thereof, the date of the letter showing the interruption.
15.4 In the case of a delay or extension of the work involved in the Agreement, the Contracted Party may charge additional costs if the delay or extension cannot be attributed to the Contracted Party.

Article 16. Termination
16.1 Without prejudice to the provisions of the previous articles, the Client will be deemed to be in default by operation of law if it fails to fulfill, or fails to do so properly or in a timely fashion, any obligation that arises for it from the Agreement, as well as in the case of its insolvency, suspension of payments, winding-up or an administration or guardianship order. In that case and without any notice of default or judicial intervention being required, the Contracted Party will be entitled to suspend performance of the Agreement with immediate effect or to terminate the Agreement wholly or partially, at the Contracted Party's discretion, without the Contracted Party being obliged to pay any compensation, but without prejudice to its right to compensation of the damage or loss that results from the breach of contract and the suspension or termination. In those cases, every claim by the Contracted Party against the Client will be due and payable immediately and in one lump sum.
16.2 The provisions of paragraph 1 of this article do not apply with respect to the right to termination if, on account of the special nature or minor importance of the failure it does not justify termination and its consequences.

Article 17. Miscellaneous
17.1 At the Contracted Party's request and in the case of work associated with the order at the Client's site and/or installations, the Client will make the necessary facilities, such as auxiliary staff and auxiliary plant and equipment, available to the Contracted Party free of charge.
17.2 The Client is not authorised to fully or partially transfer the rights and obligations arising from the Agreement or resulting Agreements to third parties.
17.3 The party that, in spite of the recruitment ban, employs employees of the other party will be obliged to take over any obligations that the Contracted Party assumed for the benefit of the employee concerned.

Article 18. Disputes, applicable law
18.1 In derogation from the statutory rules that apply to the jurisdiction of the civil court, any dispute between the Client and the Contracted Party will be settled by the District Court of The Hague. However, the Contracted Party remains authorised to submit a dispute before the court that has jurisdiction according to the law or the applicable international treaty.
18.2 Dutch law applies exclusively to every agreement concluded with the Contracted Party, with the exception of the provisions of international conventions such as the United Nations Convention on Contracts for the International Sale of Goods, to the extent that they do not contain mandatory rules of law.

Article 19. Translations
In the case of any differences between these General Terms and Conditions and translations thereof, the Dutch text will prevail.

Article 20. Entry into force
These General Terms and Conditions enter into effect on 1st January 2017.