

# GENERAL TERMS & CONDITIONS

**VLCI, SCIENCE PARK 408, 1098 XH AMSTERDAM**

## 1. DEFINITIONS

In these General Terms and Conditions, the following terms have the following specific meaning:

### Agreement:

The agreement between the Parties to carry out (research) activities as described in clause 3.3;

### Background:

In so far as relevant for the Commission, all IP Rights, as well as knowledge (including not publicly known know how and Trade Secrets), experience and other information to which a Party is entitled and which was not developed or created in the context of the Commission. Background includes objects mutually made available by the Parties within the scope of the Commission, including but not limited to auxiliary- and/or test materials, samples, prototypes, information carriers and/or computer software;

### Client:

The party that commissions the (research) activities to VLCI. For clause 4.4, clause 14.2 and clause 14.5 of the General Terms and Conditions, it also means auxiliary persons engaged by the Client;

### Commission:

The (research)activities to be carried out by VLCI as specified in the Agreement;

### Export Laws and Regulations:

The applicable rules and regulations with respect to sanctions and export and import control, including but not limited to export and import of military goods and dual-use goods which includes services and technology (jointly referred to as 'strategic goods') and chemical substances;

### Final Report:

The final report made by VLCI on the results of the Commission, which VLCI will make available to the Client in accordance with art. 4.2;

### **Foreground:**

All IP Rights, as well as knowledge (including not publicly known know how and Trade Secrets), experience and other information developed or created within the scope of the Commission. Foreground includes objects, including but not limited to auxiliary- and/or test materials, samples, prototypes, information carriers and/or computer software;

### **General Terms and Conditions:**

These terms and conditions for commissions to VLCI;

### **INCO Terms:**

The International Commercial Terms 2020, drawn up and published by the International Chamber of Commerce (ICC);

### **Interim Report:**

A report to be provided prior to the Final Report by VLCI during the execution of the Commission, insofar as agreed between the Parties;

### **IP Rights:**

All intellectual and industrial property rights, including but not limited to, copy-, database-, trade names-, plant breeders-, model-, trademark- and patents rights;

### **Parties:**

The Client and VLCI;

### **Party:**

The Client or VLCI;

### **Quotation:**

A document drawn up by VLCI that constitutes a specified offer for the (contemplated) performance of (research) activities, including any adaptations before the quotation is accepted in accordance with clause 3.2 of the General Terms and Conditions;

### **Scope of the Commission:**

The proposed area of application of the outcome of the Commission as specified in the Agreement;

### **Trade Secrets:**

Information that meets the conditions as described in clause 1 of the 'Trade Secrets Act'.

### **VLCI:**

The private limited liability company in accordance with Dutch law Van Loon Chemical Innovation B.V., abbreviated "VLCI", with its registered office in Amsterdam and registered with the Chamber of Commerce in Amsterdam under number 34315128; For clause 13.2, clause 14.1 (second sentence), clause 14.2 (with the exception of sub a), clause 14.4 and clause 14.5 of the General Terms and Conditions, this also includes auxiliary persons of VLCI;

## **2. APPLICABILITY**

### **2.1 Applicability of the General Terms and Conditions**

These General Terms and Conditions are applicable to all Quotations from VLCI and all Agreements between the Client and VLCI, unless otherwise agreed by the Parties in writing.

### **2.2. Exclusion of other terms and conditions**

General purchase—or other general conditions of the Client are not applicable to the legal relationship between the Parties and are hereby specifically excluded, unless otherwise agreed by the Parties in writing.

### **2.3. Changes, additions and/or expansions**

VLCI can only be bound by changes or additions to, an expansion of and/or deviation from the Quotation, the Agreement or the Commission or a deviation from the General Terms and Conditions if they are confirmed on behalf of VLCI in writing or by e-mail by a person who is officially authorised to represent VLCI.

### **2.4. Registration General Terms and Conditions**

VLCI has defined and filed these General Terms and Conditions with the Dutch Chamber of Commerce in Amsterdam. The General Terms and Conditions can also be obtained via website: <https://vlci.biz/general-terms/>. The General Terms and Conditions have come into force on 1<sup>st</sup> January 2021.

### **3. QUOTATION AND AGREEMENT**

#### **3.1. Quotation**

A Quotation is valid for one month, unless VLCI explicitly stipulates a different term in the Quotation. A Quotation is only binding on VLCI if it is confirmed on behalf of VLCI by a person who is officially authorised to represent VLCI. The Quotation describes the proposed Commission and the Scope of the Commission and the price in man hours, man hour rates, costs of equipment use and equipment rates and direct material costs. On acceptance of the Quotation, an Agreement is deemed to be concluded.

#### **3.2. Conclusion of the Agreement**

The Agreement is concluded when written consent, or consent by e-mail, to the Quotation including all annexes has been received in good time. If the Client requests to perform (any part of) the Commission, the Client thereby accepts the Quotation as issued by VLCI and this constitutes an Agreement.

#### **3.3. Agreement**

Once the Agreement including all annexes has been established as described above, it contains all arrangements made by VLCI and the Client regarding this Commission. Any arrangements and commitments not contained in the Agreement are cancelled as a result. Any modifications or additions to, or deviations from the Agreement is only binding if agreed upon in writing by both Parties, in accordance with clause 2.3.

#### **3.4. Use of the Quotation**

The Client shall use the Quotation (including any modifications, additions thereto or deviations therefrom) exclusively to determine if the Client will assign the Commission to VLCI. If no Agreement is concluded, VLCI solely retains all rights with respect to the content of the Quotation, with the exception of any processed information originating from the Client.

#### **3.5. Third party commissions**

VLCI may accept commissions from third parties within the Scope of the Commission during the performance of the Commission.

### **4. PERFORMANCE OF THE COMMISSION**

#### **4.1. Timeline of the Commission's outcome**

VLCI will perform the Commission within the agreed (estimated) term. If this term is likely to be exceeded, the Parties will consult each other in order to determine a new term. VLCI will be in default only after the Client has demanded VLCI in writing to perform one or more of its obligations under the Agreement within a reasonable term and that term has expired without VLCI having performed these obligations.

#### **4.2. Expectations of the outcome of the Commission**

VLCI only has a best efforts obligation when carrying out the Commission. The nature of research activities implies uncertainty regarding the outcome of the Commission. That is why VLCI solely undertakes to aim for a practicable outcome of the Commission when performing the Commission, which outcome VLCI will record in a Final Report that will be provided to the Client, unless the Client and VLCI agree otherwise. In addition, if VLCI and the Client have agreed that VLCI will provide the Client with a product, VLCI does not guarantee a result to be achieved with this product.

#### **4.3. Conditions of delivery**

VLCI delivers 'Ex Works'. 'Ex works' must be interpreted in accordance with the INCO Terms 2020.

#### **4.4. Export Laws and Regulations**

The Client shall not use any outcome of the Commission in a manner that may result in a violation of Export Laws and Regulations. The Client shall indemnify VLCI for claims of third parties resulting from non-compliance with Export Laws and Regulations by the Client. VLCI may suspend its obligations and suspend the rights of the Client until the required permit, under Export Laws and Regulations, has been granted. VLCI may terminate the Agreement if such permit is not granted or is not expected to be granted within a reasonable term, without having any obligations towards the Client.

#### **4.5. End-user statement**

Upon VLCI's request, the Client shall without delay deliver a statement to VLCI regarding the end use and the end-user of the outcome of the Commission.

#### **4.6. Auxiliary persons**

In consultation with the Client, VLCI is entitled to engage auxiliary persons in the performance of (parts of) the Commission.

### **5. GOODS AND INFORMATION REQUIRED FOR THE COMMISSION**

#### **5.1. Goods to be made available by the Client in respect of the Commission**

If the Commission concerns goods such as substances and materials to be provided to VLCI by the Client, the Client shall have the responsibility for the selection, representativeness, indication codes and trademarks or product names, identification, sampling date and other relevant (legal) information regarding the goods which will be examined, including affixing visible export control classification numbers and, if necessary provided with access instructions, storage instructions and user instructions. Dangerous substances and materials should be clearly identifiable as such.

### **5.2. Commencement Commission starts after receipt**

If VLCI has not received all the materials and information from the Client that are required for the performance of the Commission, VLCI is not obliged to commence the performance of the Commission. If VLCI receives these materials and information later than agreed, the (estimated) term for the performance of the Commission as stated in the Agreement shall be extended by at least the duration of this delay. If the Client has agreed with VLCI that VLCI, or a third party on behalf of VLCI, will purchase the necessary goods or materials, and VLCI has not received them within the agreed term, the (estimated) term for the execution of the Commission stated in the Agreement will be extended by the duration of this delay.

### **5.3. Collection of the goods made available**

If the Client has not collected the goods (or the remainder thereof) that were made available to VLCI within two months after the Final Report has been delivered, VLCI will be free to take appropriate measures, which could include destruction. Costs of storage, disposal and destruction of the goods shall be at the expense of the Client.

### **5.4. Changed insights or misunderstandings**

If there are any misunderstandings regarding the contents and/or the performance of the Agreement because VLCI did not receive information from the Client, or because that information was inaccurate or incomplete, not received in good time or in writing, this will be Client's risk. If unmistakable shortcomings in the research methods or other significant details related to the research are discovered during performance of the Commission, VLCI will inform you accordingly.

## **6. CONFIDENTIALITY**

### **6.1. VLCI Confidentiality regarding the Commission**

After delivery of the Final Report, VLCI will keep its contents confidential, with the exception of:

- a. VLCI Background;
- b. calculation methods, software or experimental working methods developed by VLCI, the development of which was not directly intended with the award of the Commission or which are used as standards within VLCI;
- c. methods and techniques used and/or developed by VLCI pertaining to any outcome of the Commission;
- d. the use of findings of VLCI in a form that cannot be traced back to the Client or the Commission.

The obligation of confidentiality shall continue for a period of five years after the delivery of the Final Report, unless explicitly agreed otherwise in writing with the Client.

### **6.2. Client's name**

VLCI will only observe confidentiality throughout the period stated in Clause 6.1 with regard to the Client's name and the fact that the Client's Commission has been performed if this was agreed when the Commission was awarded.

### **6.3. Confidentiality of information provided during the Commission**

Parties shall keep confidential (i) the information that is marked confidential by the Parties and (ii) Trade Secrets, made available for the performance of the Commission, except for:

- a. information already in the possession of the Parties, before Parties took notice of this information in the course of the performance of the Commission;
- b. information that is commonly known, or information that could become generally known for reasons that cannot be attributed to either of the Parties;
- c. information that the Parties validly obtained from a third party or through own research without having used confidential information of the Parties.

### **6.4. Term**

The confidentiality obligation (in accordance with clause 6.3) regarding the information that is marked confidential shall continue for a period of five (5) years after the expiry of the Agreement, unless otherwise agreed in the Agreement. The confidentiality obligation (in accordance with clause 6.3) regarding Trade Secrets shall apply in full after the expiry of the Agreement and is therefore not limited in time, unless otherwise agreed in the Agreement.

### **6.5. Circumstances lifting the confidentiality obligation**

VLCI is not obliged to observe confidentiality if and in so far as:

- a. disclosure is required to explain matters to third parties in the event of misunderstandings resulting from disclosure by the Client of the outcome of the Commission;
- b. VLCI discovers a serious danger to persons, the environment or goods;
- c. VLCI is required to provide information pursuant to a decision issued by a court of law or supervisory body incorporated under public law. If possible, VLCI will consult with the Client before providing any information in such a situation.

## **7. BACKGROUND**

### **7.1. Rights regarding Background**

All rights that the Client possesses or obtains with regard to Background of the Client remain vested with the Client. All rights that VLCI owns or obtains with respect to Background to VLCI remain vested with VLCI. VLCI may at any time, including during the exclusivity period mentioned in clause 10.1, use its Background itself, have it used by third parties or use on behalf of third parties.

### **7.2. Use of Client's Background**

VLCI is entitled to use the Background of the Client as far as necessary for the performance of the Commission.

### **7.3. Use of VLCI's Background**

Commercial use of Background owned by VLCI (also when it is part of any outcome of the Commission) is subject to prior and express written consent of VLCI. The latter may be subject to further terms and conditions.

## **8. FOREGROUND**

### **8.1. Rights regarding Foreground**

If VLCI has created (parts of) Foreground in the context of the Commission, the relevant IP Rights (or the exclusive right to vest them) will accrue to the Client, upon payment of the price mentioned in clause 12.1, within the term described in clause 12.5. The written documentation pertaining to the Commission is decisive for the scope of the IP Rights (or the exclusive right to vest them).

### **8.2. Rights regarding Foreground developed by VLCI (unintended), calculation methods, software and experimental working methods**

VLCI may at all times establish the exclusive IP rights on Foreground developed by VLCI that concerns an unintended outcome of the Commission, or on any for the outcome of the Commission used and / or developed calculation methods, software and experimental working methods, unless explicitly agreed otherwise in writing with the Client.

### **8.3. Copyrights with regard to an Interim or Final Report**

The copyrights with regard to a Final Report as well as with regard to any Interim Report or subsequent explanatory notes to the Final Report, always accrue in full to VLCI.

## **9. PROTECTION OF FOREGROUND**

### **9.1. Protection of Foreground**

It is up to the Client to ensure the protection of I.E. rights (or the exclusive right to vest them) on (a part of) Foreground created in the context of Commission, by performing a further action (e.g. patenting). VLCI will provide the cooperation reasonably required for the vesting of the right. Additional cooperation may be subject to further terms and conditions. VLCI will not investigate the possibility of protecting Foreground with IP rights.

### **9.2. Refraining of protecting (part of) Foreground**

If the Client has the right to protect (part of) Foreground and refrains from doing so, the Client shall inform VLCI and shall give VLCI the opportunity to protect (that part of) Foreground or to continue such protection, in which respect it is noted that all other reciprocal rights under the Agreement (including rights of use) shall remain unchanged.



### **9.3. (Alleged) infringement of IP Rights with regard to VLCI Foreground**

In the event the Client discovers an infringement of IP Rights with regard to VLCI Foreground, the Client must notify VLCI as quickly as possible, and VLCI and the Client will discuss the matter.

## **10. USE OF FOREGROUND**

### **10.1. Use of Foreground by the Client**

As from the date of delivery of the Final Report by VLCI, the Client acquires the right to use that part of Foreground vested in VLCI within the scope of application of the Commission, subject to the limitations laid down in clause 10. During two years from the date of delivery of the Final Report, this right of use is exclusive, except with respect to any incorporated and/or required Background of VLCI.

### **10.2. Use of unintended Foreground by VLCI**

VLCI is at any time entitled to use Foreground developed by VLCI, the development of which was not intended as an outcome of the Commission, or to use methods and techniques that were used and/or developed by VLCI with respect to any outcome(s) of the Commission itself, have it used by third parties or for the benefit of third parties.

### **10.3. Collection of samples**

If, two months after delivery of the Final Report, the Client has not collected any samples created by VLCI in the context of the Commission, VLCI will take appropriate measures, which might include their destruction. The costs of transport, storage, disposal or destruction will be for the Client's account.

## **11. USE OF FINAL REPORT**

### **11.1. Use of a (draft) Final Report or Interim Report**

A Final Report, as well as a (possible) draft Final Report or an Interim Report or any subsequent explanatory notes to the Final Report, is solely for the Client's own use.

Any other use requires VLCI's prior written consent, including for:

- a. reproduction or disclosure by means of print, photocopy, in electronic form or in any other way, or storage in a searchable information file;
- b. making available to anyone other than parties with an immediate interest, including use by or for the benefit of third parties;
- c. using or allowing the use, in whole or in part, for the purpose of lodging claims or to conduct legal proceedings;
- d. using or allowing the use, in whole or in part, for advertising or for adverse publicity purposes, including but not limited to publication in or any use by media, or for soliciting sales or services in a more general sense.

Such prior written consent of VLCI may be subject to further terms and conditions. In all cases, anyone to whom a Final Report is made available pursuant to clause 11, must be able to assess the Final Report in its entirety.

## **12. PRICE AND PAYMENT**

### **12.1. Price**

A 'price' listed in the Quotation or agreed to in the Agreement shall be the price for the Commission, excluding the expenses incurred by VLCI (in consultation with the Client).

If the scope of the Commission is changed or expanded — with approval of the Client —, or in case VLCI has to perform additional work because the Client did not inform VLCI fully and clearly about its wishes, demands or preconditions upon entering into the Agreement, VLCI will discuss the associated additional costs with the Client.

### **12.2. Go/No-Go milestones in respect of the Commission**

In the Agreement, VLCI and the Client can only explicitly and in writing determine specific milestones at which the Client may decide to terminate or suspend performance of the Commission, but only with regard to a Commission with a guide price in excess of EUR 20,000. VLCI may attach further conditions to the determination of (passing) specific milestones or the ensuing termination or suspension of the Commission. At request, VLCI and the Client may make arrangements in that context regarding summary Interim Reports. Such (preparation of a) summary interim report may be subject to further conditions as well.

### **12.3. Advance or interim payment**

VLCI may at all times require the Client to make advance or interim payment.

### **12.4. VAT**

All amounts quoted in the Quotation and/or in the Agreement are exclusive of VAT, unless explicitly stated otherwise.

### **12.5. Term of payment**

The Client shall pay a VLCI-invoice within fourteen (14) days of the invoice date, unless otherwise agreed. Any reliance on setoff is excluded, unless otherwise explicitly agreed in writing.

### **12.6. Exceeding of the payment term**

If the Client fails to pay the invoice in time, even after receiving a letter of formal notice, the commercial statutory interest rate is payable on the overdue amount, as well as all reasonable costs incurred by VLCI to obtain payment of its invoice. VLCI remains ownership of any goods delivered or to be delivered to the Client, until the relevant VLCI-invoice (and possible the commercial statutory interest rate and

cost incurred to obtain payment) has been paid in full. In deviation from clause 8.1 the Client will acquire IP Rights to the outcome of the Commission, or parts of it, on the condition precedent of full payment of the price for the Commission as referred to in clause 12.1, as well as the statutory interest due and cost incurred to obtain payment.

## **13. NON-PERFORMANCE**

### **13.1. Non-Performance**

If a non-performing Party, after a demand to perform his obligation(s) within a reasonable term, is still in default, then the other Party, subject to the conditions of clause 15.1, is no longer obliged to perform its (remaining) obligations under the Agreement and may terminate the Agreement.

### **13.2. Term of notification in case of non-performance**

The Client is obliged to file any claims against VLCI by means of a written and substantiated notice to VLCI as soon as possible, but in any case before the first annual anniversary of the date of delivery of the Final Report. Claims lodged after that date, will automatically lapse.

## **14. LIABILITY**

### **14.1. Liability of VLCI**

VLCI is only liable for direct damages which are the direct result of an attributable breach by VLCI to perform its obligations under the Agreement. The total aggregate liability of VLCI on any and all legal grounds, is (cumulatively) limited to the amount of the price that the Client has to pay under clause 12.1.

### **14.2. Limitation of VLCI's liability**

VLCI is furthermore not liable for any damages suffered by the Client:

- a. arising as a result of the application or use of any outcome of the Commission;
- b. arising as a result of the fact that any outcome of the Commission cannot be protected by means of one or more IP Rights or because application or use of any outcome of the Commission infringes third party rights;
- c. resulting from defects in goods supplied to VLCI, including software, and that are (re-)supplied by VLCI to the Client, unless and insofar as the initial supplier has fully compensated VLCI for such damages.

### **14.3. Wilful intent or gross negligence**

The limitations of liability as included in clause 14.1 and 14.2 shall not apply in the event of wilful intent or gross negligence of VLCI.

#### **14.4. Indemnity from third parties' claims**

The Client shall fully indemnify VLci against any claims of third parties for damages which result from application or use of any outcome of the Commission by the Client or by any third party to whom the Client has made such outcome of the Commission available, unless such outcome was the result of wilful intent or gross negligence of VLci.

#### **14.5. Limiting liability toward VLci**

VLci is not bound by any restrictions of the Client (resulting from the Agreement or otherwise) that serve to limit the liability of the Client wholly or partly.

### **15. TERM AND TERMINATION**

#### **15.1. Term and termination of the Agreement**

The Agreement shall continue for an indefinite period and terminates upon delivery of the Final Report and full payment of the price as described in clause 12. The Agreement shall terminate by operation of law and without an obligation for VLci to pay damages, if:

- a. the Client is declared bankrupt or the Client has filed a bankruptcy petition;
- b. the Client is granted (temporary) suspension of payment or the Client has applied for a suspension of payments;
- c. the Client's business is liquidated or wound up, or;
- d. prejudgment or executory attachment is levied on substantial part of the Client's tangible and/or intangible assets or other goods.

In case the Agreement is terminated pursuant to this clause 15.1 or clause 13.1 and the Final Report is not delivered, the date of termination of the Agreement shall be considered equal to the date of delivery of the Final Report.

#### **15.2. Premature termination**

The Client can terminate the Agreement prematurely. If the Agreement ends prematurely, VLci is entitled to a part of the price to be reasonably determined. VLci can only terminate the Agreement prematurely for serious reasons as referred to in art. 7: 408 paragraph 2 of the Dutch Civil Code.

#### **15.3. Consequences of premature termination**

If the Agreement is terminated prematurely, the Client is not entitled to use any preliminary or interim outcome of the Commission, neither by itself nor by third parties or for the benefit of third parties. If the Parties nevertheless agree in writing that the Client will acquire IP Rights with respect to any preliminary or interim outcome of the Commission, the acquisition of these IP Rights is subject to payment by the Client of the respective part of the price as described in clause 12. The latter shall be determined by VLci in all reasonableness.

## **16. FORCE MAJEURE**

### **16.1. No liability in case of Force Majeure**

VLCI shall not be liable for any omission or any delay in the performance of the Agreement if the omission or the delay is due to force majeure as defined in (i) clause 16.2 and/or (ii) the applicable law or case law. In case of such omission or delay, the performance of the relevant part or the relevant parts of the Agreement shall be suspended for as long as the omission in question continues, in which however no liability arises for VLCI towards the Client for any loss which the Client may suffer as a result.

### **16.2. Circumstances**

Force majeure includes circumstances beyond VLCI's control or action which are such that that according to criteria of reasonableness and fairness (further) compliance with the Agreement cannot be required. In this paragraph force majeure includes, but is not limited to, the following situations: (i) such absence of employees of VLCI due to sickness that the performance of the Agreement is severely hindered (ii) force majeure by third parties which are engaged by VLCI (iii) technical failures (iv) import-export- and/or transit prohibitions (v) operational failures, traffic- and or transport disruptions (vi) altered government measures (vii) epidemic and pandemic (viii) extreme weather conditions and (ix) fire.

### **16.3. Termination of the Agreement**

If a force majeure event continues during a period of three (3) consecutive months, VLCI shall have the right to terminate the Agreement in whole or in part, with no obligation to pay any compensation to the Client.

## **17. PERSONAL DATA**

### **17.1. GDPR**

If VLCI processes personal data in the context of the Agreement and determines the purposes and means in that respect, VLCI is bound by the provisions of the General Data Protection Regulation (EU) 2016/679 ("GDPR"). The privacy policy of VLCI contains an explanation of which personal data VLCI processes and for what purposes. This privacy policy can be found at the website of VLCI: <https://vlci.biz/privacy-policy/>.

## **18. DISPUTES, CHOICE OF FORUM AND GOVERNING LAW**

### **18.1. Governing Law**

All Quotations, Agreements and these General Terms and Conditions are exclusively governed by Dutch law, with the exception of rules of private international law.

## **18.2. Choice of Forum**

If a dispute arises in respect of the Quotation, the acceptance or the performance of the Agreement or any related agreements that the Parties cannot resolve in mutual consultation, such a dispute will exclusively be submitted - by the Client or by VLCI - to the competent court in Amsterdam, The Netherlands.

## **19. MISCELLANEOUS**

### **19.1. Applicability after ending of the Agreement**

In the event that the Agreement ends in any way, the provisions that are intended to continue to apply in full after the end of the Agreement – such as, but not limited to, provisions in respect of liability, rights of use, confidentiality, payment, choice of forum – will continue to apply in full.

## **DISCLAIMER**

The translation of these General Terms and Conditions into the English language was prepared with the utmost care. In all cases where the English version might divert from the original Dutch version, the Dutch version shall be decisive.