

1 Interpretation

- 1.1 In these Conditions:
“Goods” means the goods and/or services and/or assignments which the Seller is to supply in accordance with these Conditions;
“Buyer” means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller;
“Seller” means XYZTEC BV, resident J.F. Kennedylaan 14B, 5981XC Panningen, The Netherlands, Chamber of Commerce registry number 12040578;
“Conditions” means the standard terms and conditions of the sale set out in this document and includes any special terms and conditions agreed in writing between the Buyer and the Seller;
“Contract” means the contract for the purchase and sale of the Goods;
“Writing” includes telex cable facsimile, e-mail or paper copy transmission and comparable means of communication.

- 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
1.3 The headings in these Conditions are for convenience only and shall not affect their Interpretation.

2 Basis of the sale

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
2.3 The Seller’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3 Orders and specifications

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller’s authorised representative.
3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
3.3 Unless expressly included in the Seller’s quotation, investigations into the existence of third party patent rights or into patenting possibilities will not be part of any research assignment.
3.4 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller’s quotation (if accepted by the Buyer) or the Buyer’s order (if accepted by the Seller).
3.5 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller’s use of the Buyer’s specification.
3.6 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the goods are to be supplied to the Seller’s specification, which do not materially affect their quality or performance.
3.7 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labor and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4 Price of goods

- 4.1 The price of the Goods shall be the Seller’s quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price list in the Seller’s published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the

Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

- 4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an Ex Works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller’s premises, the Buyer shall be liable to pay the Seller’s charges for transport, packaging and insurance
4.4 The price is exclusive of any applicable value added tax, which the Buyer may be additionally liable to pay to the Seller.
4.5 The cost of returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

5 Terms of payment

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
5.2 The Buyer shall pay the price of the Goods within 30 days of the [date of the Seller’s invoice], and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
5.3.1 cancel the contract or suspend any further deliveries to the Buyer;
5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 3 months EURIBOR plus 7,5% from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6 Delivery

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods Ex-Works (Incoterms 2000) Seller’s shipping point.
6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
6.3 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer’s reasonable control or by reason of the Seller’s fault) then, without prejudice to any other right or remedy available to the seller, the Seller may charge delivery, handling and administrative costs up to a maximum of 50 per cent of the value of the Goods.
6.4 The Buyer shall provide all necessary manpower or equipment to safely off-load any delivery vehicle and shall be responsible for and shall indemnify the Seller from and against all damage and loss caused to any delivery vehicle the pallets and/or the Goods by virtue of the Buyer’s failure to comply with the condition of this sub-clause.
6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer’s reasonable control or by reason of the Seller’s fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
6.6 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

7 Risk and property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer Ex-Works (Incoterms 2000) Seller’s shipping point.

8 Warranties and liability

- 8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will at that time be free from defects in material and workmanship for a period of 24 months from the date of receipt by Buyer. Warranty for spare or service parts in new or repaired condition will be for a period of six (6) months from the date of receipt by Buyer.
8.2 The above warranty is given by the Seller subject to the following conditions:

8.2.1	the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;	9.7	If the Buyer or Seller exercises their rights from article 9.3 or 9.6, the applicant/holder of the patent will be deemed to have granted to other party a licence free of charge from which the parties can derive rights to which they are entitled by virtue of the provisions in this article. The other provisions of the assignment will apply by analogy to the granting of the licence. The applicant/holder may withdraw a patent application at any time, or let a granted patent lapse. If the Buyer or Seller has been granted a licence, they will have the first opportunity to transfer the application or the patent in their name.
8.2.2	the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence on the part of the Buyer or its servants, agents or employees abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the seller's approval;		
8.2.3	the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;	10	Indemnity
8.2.4	in the event of the Buyer at any time alleging or claiming that the Goods (when used in accordance with the supplier's instructions or recommendations and in normal operating conditions) produce or have at any time produced incorrect, faulty or misleading readings and/or results the onus of proof in respect of such allegation or claim shall be on the Buyer.	10.1	If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:
8.3	Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.	10.1.1	the Seller is given full control of any proceedings or negotiations in connection with any such claim;
8.4	Any claim by the Buyer which is based on any defect in the quality or condition of the goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.	10.1.2	the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
8.5	Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.	10.1.3	except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
8.6	Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (and whether caused by the negligence of the Seller its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.	10.1.4	the Buyer shall do nothing which would or might violate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
8.7	The Seller shall not be liable to indemnify the Buyer for any consequential loss claim (whether for loss of profit or otherwise), costs, expenses, or other claims for consequential compensation whatsoever made against the Buyer by any third party and arising out of or in connection with the use of the Goods for the production of technical calculations preliminary to, or in the course of the supply of materials or goods of any nature by the Buyer to such third party.	10.1.5	the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favor of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
8.8	The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:	10.1.6	without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.
8.8.1	Act of God, explosion, flood, tempest, epidemic, fire or accident;	11	Insolvency of Buyer
8.8.2	war or threat of war, sabotage, insurrection, civil disturbance, detention or requisition;	11.1	This clause applies if:
8.8.3	acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;	11.1.1	the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
8.8.4	import or export regulations or embargoes;	11.1.2	an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
8.8.5	strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);	11.1.3	the Buyer ceases, or threatens to cease, to carry on business; or
8.8.6	difficulties in obtaining raw materials, labor, fuel, parts or machinery; and	11.1.4	the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
8.8.7	power failure or breakdown in machinery.	11.2	If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
9	Rights to results and protection of knowledge	12	General
9.1	Within the scope of any research assignment, the Buyer will have the full and free right of use of the results of the assignment as provided by Seller to the Buyer. Seller will also have the right to use the results for third parties.	12.1	Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
9.2	Seller will have the right to use for itself and/or for third parties:	12.2	No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
9.2.1	the knowledge and experience inside and outside the scope of the assignment, obtained by carrying out the assignment;	12.3	Any general purchase conditions or other general terms and conditions used by the Buyer will not apply to the legal relationship between the Buyer and Seller, and are hereby expressly rejected.
9.2.2	calculation methods, software and experimental working methods resulting from carrying out the assignment.	12.4	If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected.
9.3	Insofar as any research assignment carried out by Seller will lead to patentable matter, Seller will have the right to apply for a patent in its own name and for its own account.	12.5	The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to these Conditions and the Contract promptly through negotiations between the respective senior executives of the parties who have authority to settle the same.
9.4	Buyer and Seller will report to each other:	12.6	If the matter is not resolved through negotiation, the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution (ADR) procedure as recommended to the parties by the Centre for Dispute Resolution.
9.4.1	their presumption that patentable matter has been found;	12.7	If the matter has not been resolved by an ADR procedure within 90 days of the initiation of such procedure, or if either party will not participate in an ADR procedure, the dispute shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Chartered Institute of Arbitrators in accordance with the Arbitration Rules of the said Institute or to litigation.
9.4.2	the fact that a patent application is filed;	12.8	The construction, performance and validity of these Conditions and the Contract shall in all respects be governed by the Laws of The Netherlands.
9.4.3	the content of such application.		
9.5	Buyer and Seller will render each other all required cooperation when filing patent applications.		
9.6	If Seller does not wish to make use of its rights as referred to in article 9.3, this right will pass on to the Buyer if and insofar as the patent application also concerns the results as referred to in article 9.1.		