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# GENERAL CONDITIONS BIOTOP CONSULTANCY BV

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## ARTICLE 1. | (DEFINITIONS)

1. BioTop: BioTop Consultancy BV, the user of these general conditions, with registered office in Amstelveen, listed in the Trade Register under Chamber of Commerce number 57825556.
2. Client: the natural or legal person with whom BioTop has entered into or intends to enter into an Agreement.
3. Agreement: any agreement formed between BioTop and the Client, under which BioTop has undertaken to provide services or perform an Assignment.
4. Services/Assignment: all the activities to be performed by BioTop under the Agreement, including, but not limited to:
  - consultancy;
  - submitting a subsidy, credit, or other application in order to obtain an Allowance;
  - the drafting, editing and/or correcting of (scientific) papers or reports.
5. Allowance: any of the following provided by a public-law or private-law institution for the Client and/or third parties:
  - a grant towards the costs of a project or investment;
  - the granting of tax relief provisions;
  - credit.

This allowance may include a financial contribution as well as non-financial support.

6. Written: both traditional written communication and communication by e-mail.

## ARTICLE 2. | GENERAL PROVISIONS

1. These general conditions apply to any and all offers of BioTop and any Agreement formed.
2. These general conditions also apply to Agreements for the performance of which third parties need to be engaged by BioTop.
3. Unless explicitly deviated from, the applicability of the general conditions or other conditions of the Client is hereby explicitly excluded.
4. The provisions in these general conditions may only be deviated from in Writing. Where the provisions of a Written Agreement drawn up by the parties deviate from the provisions of these general conditions, the provisions of such Written Agreement shall apply.
5. Nullification or invalidity of one or more of these provisions shall not affect the validity of the remaining provisions. Where appropriate, the parties shall conduct mutual consultations to replace the affected provision. In this respect, the aim and spirit of the original provisions will be observed to the greatest extent possible.

## ARTICLE 3. | OFFER AND FORMATION OF THE AGREEMENT

1. Unless explicitly stated otherwise, offers of BioTop are without obligation.
2. Any information with regard to expected results or performance supplied through the offer of BioTop is indicative and not binding.
3. BioTop prepares the offer based on the information supplied by or on behalf of the Client. The Client cannot derive any rights from an offer that is based on incorrect or incomplete information supplied by or on behalf of the Client.
4. Obvious errors or mistakes in the offer are not binding for BioTop.
5. An offer does not automatically apply to future assignments.

6. The Agreement is concluded at the time when the Written Agreement made between the parties to that end has been signed by the Client and provided to BioTop. Notwithstanding the previous sentence, if it does not appear from the offer that signing is required for the formation of the Agreement, the Agreement shall be formed when the Assignment has been confirmed in Writing by BioTop.

#### **ARTICLE 4. | CONTENTS OF THE AGREEMENT**

1. BioTop is always authorised to leave the performance of the Agreement or part thereof to third parties, without prejudice to its liability for the proper performance of the Agreement.
2. BioTop will perform each Agreement to the best of its knowledge and ability. However, BioTop is only under a best efforts obligation. BioTop never guarantees the results the Client intends to achieve by giving the Assignment.
3. The applicability of articles 7:404 and 7:407(2) of the Dutch Civil Code is explicitly excluded.
4. Unless otherwise arising from the nature or scope of the Agreement, all the performance periods and/or time limits for the completion of the Assignment shall never be regarded as final deadlines. Before the Client is entitled to its rights by virtue of the law in this regard, the Client shall put BioTop into default by registered letter in the event that an agreed deadline is exceeded, in which BioTop is granted a reasonable term to still comply with the Agreement and the fulfilment has not taken place after the lapse of such term.

#### **ARTICLE 5. | DURATION AND TERMINATION OF THE AGREEMENT AND REJECTION OF AN APPLICATION**

1. Unless explicitly agreed otherwise, the Agreement will be terminated by the completion of the Assignment. If the Agreement relates to an application for an Allowance, the time when the application is submitted shall be regarded as the time when the Assignment has been completed.
2. After the Agreement has been formed, it cannot be cancelled prematurely by the Client. If the Client nevertheless terminates the Agreement prematurely, the Client must pay compensation for any and all damage suffered by BioTop as a consequence.
3. If the Client, an affiliate of the Client or a third party engaged by the Client, after a full or partially rejected application for an Allowance, submits a new, similar application to any institution for the same purpose within three years after such rejection, the Client shall still owe the agreed fee. In that case, BioTop will also be authorised to require that the application be submitted again and to charge any related additional costs to the Client.

#### **ARTICLE 6. | OBLIGATIONS OF THE CLIENT**

1. If and insofar as this is reasonably required for the proper design and performance of the Assignment, the Client, whether or not at the request of BioTop, is always required to provide all the information, including documents, data (files) and reports to BioTop or to have them provided to BioTop as soon as possible as is required for the performance of the Agreement. Furthermore, the Client shall always provide BioTop with all the cooperation required for the performance of the Agreement. The Client shall take all reasonable measures to promote the performance of the Agreement.
2. If the parties have agreed in Writing that the Client will provide the data and items referred to in the previous paragraph to BioTop by a specific date, the Client understands that this data and the items are required in good time to perform the Assignment accurately and the Client shall never exceed this limit, failing which BioTop reserves its rights under Article 9. BioTop shall never be liable for any damage to the Client of which it is plausible that it would not have arisen if the Client had provided the data and items referred to here to BioTop in good time.
3. Any additional costs incurred by BioTop as a result of the failure by or on behalf of the Client in the fulfilment of any obligations under this article, shall be for the account of the Client in accordance with the rates usually charged by BioTop.

## **ARTICLE 7. | AMENDMENT OF THE AGREEMENT**

1. If BioTop, at the request or with prior permission of the Client, has performed activities that fall outside the scope or the contents of the Agreement, these activities shall be reimbursed by the Client in accordance with the usual rates charged by BioTop. BioTop is never under an obligation to comply with a request such as referred to in the previous sentence. If BioTop complies with such a request, it may demand that a separate Written Agreement be concluded to that end.
2. The Client accepts that the agreed or expected time of completion of the Assignment and the mutual responsibilities of the Client and BioTop may be affected by the additional activities referred to in paragraph 1. The fact that additional work occurs during the performance of the Agreement shall never constitute a ground for the Client to dissolve the Agreement.
3. Insofar as no hourly rate has been agreed, BioTop shall inform the Client in Writing as much as possible regarding the financial consequences of the additional work referred to in paragraph 1.

## **ARTICLE 8. | COMPLAINTS**

1. Complaints with regard to the Assignment performed by BioTop shall be communicated to BioTop in Writing, stating reasons, within 48 hours after the defects have been detected, failing which BioTop is authorised to refuse to handle these complaints.
2. The Client may at any rate not submit a claim if the notification referred to in paragraph 1 is submitted more than seven days after the date on which the Client should reasonably have discovered the defect. All claims and defenses in this respect shall expire at any rate by the lapse of thirty days after the Assignment has been completed by BioTop.
3. Complaints regarding the amount of the invoice shall be communicated to BioTop in Writing, stating reasons, within thirty days, failing which BioTop is authorised to refuse to handle these complaints.
4. Complaints relating to the Assignment performed by BioTop or the amount of the invoice shall never suspend the payment obligations of the Client.

## **ARTICLE 9. | SUSPENSION AND TERMINATION**

1. If the circumstances warrant this, BioTop is authorised to suspend the performance of the Agreement or to terminate the Agreement with immediate effect if the Client fails to fulfil the obligations arising from the Agreement, or fails to fulfil them in good time or completely, or if, after the conclusion of the Agreement, circumstances that have come to the knowledge of BioTop give good reasons to fear that the Client will not fulfil its obligations.
2. If the Client is in liquidation, has filed for a moratorium, if its assets have been attached or in cases where the Client is otherwise unable to freely make use of its assets, BioTop is authorised to terminate the Agreement with immediate effect.
3. Furthermore, BioTop is authorised to terminate the Agreement if circumstances occur which are of such a nature that fulfilment of the Agreement is impossible or that it cannot reasonably be required to maintain the Agreement unaltered.
4. Any additional costs incurred in connection with the suspension or termination of the Agreement, as well as the damage suffered shall be borne by the Client, unless the circumstances that form the basis for the termination or suspension of the Agreement cannot be attributed to the Client or third parties on whose behalf the Client is acting.
5. The Client can never claim any form of compensation in connection with the suspension right and right of determination exercised by BioTop under this article.
6. If BioTop dissolves the Agreement pursuant to this Article, all the claims against the Client will be immediately due and payable.

## ARTICLE 10. | FORCE MAJEURE

1. BioTop is not required to fulfil any obligation under the Agreement if it is impeded by a circumstance that cannot be attributed to it under the law, a legal act or the generally accepted views in society.
2. In addition to what is included in that regard in legislation and case law, force majeure is taken to mean the circumstance that BioTop is unable to perform the Agreement (in good time) as a consequence of illness.
3. The obligations under the Agreement shall be suspended as long as the force majeure continues. If the force majeure lasts longer than three months, or the fulfilment of the Agreement is permanently impossible due to force majeure, the parties will be entitled to terminate the Agreement with immediate effect.
4. If BioTop, when the force majeure arises, has already partly fulfilled its obligations, or can only partly perform its obligations, it will be entitled to separately invoice the part already delivered or available for delivery and the Client will be required to pay this invoice as if it were a separate Agreement.
5. Damage as a consequence of force majeure shall never be eligible for compensation.

## ARTICLE 11. | FEE AND COSTS

1. The offer of BioTop states the most accurate indication of the price and cost factors, including the fee, any travel expenses possibly incurred by BioTop in the context of the Agreement, any possible VAT due and/or other government levies.
2. If an Assignment relating to the application of an Allowance has been entered into on a 'no-cure-no-pay' basis, the time at which the Client has received a positive decision from the provider of such Allowance shall constitute the time of the 'cure'. At that time, the Client shall owe the agreed success fee, even if the Client does not actually receive the Allowance for any reason. The foregoing also applies to Assignments other than an application for an Allowance if the result of which the "cure" has been made dependent, has been achieved.
3. BioTop is authorised to demand an advance payment of the agreed fee when the Assignment is given or during the performance of the Agreement. BioTop is authorised to suspend the performance of the Agreement until the advance payment referred to here has been paid in full.
4. If an hourly rate has been agreed and the Agreement has a duration of more than one month, BioTop will be authorised to invoice the activities performed on a monthly basis.
5. If the Agreement has a duration of more than one year, BioTop is authorised to adjust the agreed price to the applicable CBS indexation on an annual basis.
6. Furthermore, BioTop will be authorised to pass on any price increases of cost price determining factors to the Client after the formation of the Agreement, but before the Agreement has been terminated.
7. Payment shall be made within thirty days after the invoice date in a manner prescribed by BioTop.
8. Payment shall at all times be made without any discount or setoff.
9. If the circumstances give BioTop good reason to fear that the Client will not fulfil its obligations under the Agreement, or will not fulfil them (or have them fulfilled) in full, the Client shall, immediately at the request of BioTop provide sound security for the payment(s) owed.
10. In the event of liquidation, bankruptcy or suspension of payments of the Client the claims of the Client shall be immediately payable.
11. If the Client fails to fulfil its payment obligation in good time, the Client shall be in default by operation of law without any further notice of default being required. From the day on which the default occurs, the Client shall owe 1% interest per month, in which part of a month will be regarded as a full month.
12. Any (additional) judicial and enforcement costs incurred to collect the amounts owed by the Client shall be for its account. The extrajudicial collection costs are set at a minimum of 15% of the total amount due, with a minimum of € 115.- without prejudice to the right of BioTop to claim the extrajudicial collection costs actually incurred.
13. BioTop is authorised to retain the items, property rights, documents or data files it has received under the Agreement or generated by it until the Client has paid all the fees BioTop is entitled to.

## ARTICLE 12. | LIABILITY

1. The Client shall bear the damage caused by:
  - any inaccuracy or incompleteness in the information provided by it or on its behalf;
  - a delay in the delivery of the data provided by it or on its behalf;
  - any other failure in the performance of the obligations of the Client under the law or the Agreement;
  - a circumstance which cannot be attributed to BioTop otherwise.
2. Notwithstanding the provisions of this article and the remainder of these general conditions, liability of BioTop for shortcomings capable of complete remedy in the performance of the Agreement shall not exist before the Client has properly submitted a complaint to BioTop, in which the shortcoming is described in as much detail as possible and BioTop is given the opportunity to remedy the shortcoming within a reasonable period.
3. BioTop shall never be liable for any damage resulting from Assignments performed by it against its advice.
4. BioTop shall never be liable for any indirect damage, including lost profits, and damage due to the stagnation of business operations. If, despite the provisions in these general conditions, liability exists anyway, only direct damage will be eligible for reimbursement. The term direct damage shall only be taken to mean:
  - reasonable costs incurred to determine the cause and scope of the damage, insofar as the determination relates to damage as referred to in these terms and conditions;
  - any reasonable costs incurred to ensure that the defective performance of BioTop meets the requirements of the Agreement, insofar as these can be attributed to BioTop;
  - reasonable costs incurred to prevent or limit damage insofar as the Client proves that these costs have resulted in limitation of the direct damage as referred to in this paragraph.
5. Notwithstanding the provisions of the remainder of these conditions, the liability of BioTop is limited to not more than three times the invoice value of the Agreement, at least of the part of the Agreement to which the liability relates. If the Agreement has a duration of more than six months, the liability of BioTop shall not be more than three times the amount claimed in the last six months, without prejudice to the provisions of the remainder of these general conditions.
6. The liability of BioTop shall never exceed the amount reimbursed in each case based on the liability insurance taken out by BioTop.
7. Except where wilful misconduct or gross negligence of BioTop is concerned, the Client shall indemnify BioTop against all third party claims on any grounds whatsoever in respect of compensation for damages, costs or interest, directly or indirectly related to the performance of the Agreement.

## ARTICLE 13. | CONFIDENTIALITY

1. Unless the Client gives permission, or if the nature or scope of the Services opposes application, BioTop will observe secrecy with regard to any information directly related to the company or organisation of the Client.
2. The Client shall use all the knowledge, skills and documentation of BioTop exclusively for the purposes for which such knowledge, skills and documentation have been provided and otherwise observe secrecy.
3. The previous paragraphs shall not apply if a statutory provision or a court order requires one of the parties to provide the information referred to in this article to a third party.
4. The Parties shall impose their obligations pursuant to this article on third parties they engage.
5. BioTop reserves the right to use the knowledge acquired for the performance of the Agreement for other purposes, insofar as no confidential information of the business or organisation of the Client is communicated to any third parties.

## ARTICLE 14. | INTELLECTUAL PROPERTY RIGHTS

1. BioTop reserves all intellectual property rights to the documents and other information produced by it and supplied to the Client, such as reports, designs, ideas, advice, practices and other intellectual property of BioTop.

2. The Client shall not, without prior Written permission of BioTop disclose the matters referred to in paragraph 1 or otherwise make them available to third parties, unless otherwise arising from the nature or scope of the Agreement .

#### **ARTICLE 15. FINAL PROVISIONS**

1. Each Agreement is exclusively governed by Dutch law.
2. Before appealing to the court, the parties shall first do their utmost to settle a dispute in mutual consultation.
3. Only the competent court of the district where the registered office of BioTop is located is designated to take cognisance of disputes.
4. The Dutch version of these general conditions is always decisive for the interpretation thereof.