

## GENERAL TERMS AND CONDITIONS

General Terms and Conditions of **INTRON BV**, a private limited company under Dutch law, having its registered office and maintaining business premises at Dr. Nolenslaan No. 126 in (6136 GV) Sittard, the Netherlands, and at Venusstraat No. 2 in (4105 JH) Culemborg, the Netherlands

All work, offers, quotations and agreements between INTRON and its clients or their legal successors are governed by these General Terms and Conditions, which are filed at the registry of Maastricht District Court under number 20/2009 AL.

The client's General Terms and Conditions will not apply to the legal relationship between the client and INTRON, and are hereby expressly rejected.

### 1. Scope of the assignment, offer

- 1.1 The scope of the assignment will be determined by the description of the work contained in the offer, including any changes agreed subsequently. Parties agree that all electronic information with reference to the assignment, amendments in the General Conditions explicitly excluded, will be considered as binding. 1.2 The agreement relating to the completion of the assignment will enter into force when the offer issued by INTRON is confirmed by the client. Where the offer has not been confirmed in any way by the client and INTRON nevertheless makes a start on carrying out the assignment with the client's consent, the contents of the offer will be deemed to have been agreed. The agreement with all of its appendices contains all the matters agreed between the parties and supersedes all other arrangements, undertakings and agreements between the parties in this regard.
- 1.3 The offer will specify the form that the result of the work will take, i.e. written recommendation, report, model, software, certificate, etc.
- 1.4 Unless stated otherwise in the offer, INTRON will keep its offer open for one month after the offer date.
- 1.5 Any amendments, additions and/or supplements to the assignment, or departures from the General Terms and Conditions will only be binding if this has been agreed in writing between the parties and will only relate to the research assignment in respect of which they have been made.
- 1.6 The client will use the offer issued by INTRON and INTRON's knowledge and ideas contained therein solely to evaluate its interest in the placing of the assignment. These provisions also apply to proposals for amending, adding to and/or supplementing the assignment.
- 1.7 Unless expressly stated in the offer, the assignment will not include conducting enquiries to ascertain whether third-party patent rights exist or whether patenting is possible.

### 2. Completion of the assignment, outcome

- 2.1 The assignment will be completed within the (estimated) period stated in the offer and agreed with the client, unless this is found to be impossible. If it seems likely that this period will be exceeded, INTRON will be duty-bound to consult the client as quickly as possible. INTRON will not be in default due to the mere expiry of the period without being issued with a notice of default.
- 2.2 By accepting the assignment, INTRON solely undertakes to endeavour to obtain a usable outcome for the client by carrying out the assigned work alone. INTRON will perform the agreement to the best of its knowledge and ability and in accordance with the requirements of good workmanship. In the event and to the extent necessary for the performance of the agreement, INTRON will be entitled to engage third parties for certain work.
- 2.3 If the assignment (also) involves supplying a tangible object, no guarantee will be given by INTRON in respect of this tangible object other than that described in the offer.
- 2.4 If the assignment (also) relates to the testing of samples, the client alone will – except where it has been agreed that samples will be taken under INTRON's responsibility – bear responsibility for the selection, representativeness, identification by means of codes, brand name or product names and for supplying INTRON with the samples to be tested.
- 2.5 INTRON will not be obliged to start work on the assignment before all substances or objects which the client is to supply to INTRON have actually been supplied to INTRON in the agreed form and numbers. The period referred to in Article 2.1 will be extended automatically if this causes any delay.
- 2.6 The client will bear the risk of misunderstandings with regard to the contents and performance of the agreement, if these should reasonably be at the client's risk or are the result of INTRON not receiving specifications correctly, on time or at all or receiving incomplete specifications or other communications given orally or by a person appointed for this purpose by the client or transmitted by any technical means such as telephone, fax, e-mail and similar transmission media.
- 2.7 INTRON will inform the client of any definite shortcomings in the agreed research methods found in the course of the research and other peculiarities evident from the research which INTRON considers relevant to the client.

### 3. Confidentiality

- 3.1 If agreed at the time the assignment was placed, INTRON undertakes to keep secret the client's name and the fact that the research was conducted, for a period which in principle ends two years after the date of the final invoice for the assignment or two years after the date of the final report, if issued earlier. The foregoing is subject to obligations imposed on INTRON by law to make public the identity of the client and/or the fact that the assignment has been issued and its contents. Client agrees to keep confidential all technical, commercial, financial and/or other information, know-how en/or practice experienced about and/or through the enterprise of INTRON with reference to the assignment
- 3.2 If agreed at the time the assignment was placed, INTRON undertakes to keep secret the results of the assignment, as provided to the client by INTRON, except insofar as they relate to calculation methods, software and experimental working methods, the development of which was not the main intention of the assignment. In the case of tests, analyses, measurements or desk research, the obligation to maintain secrecy does not extend beyond the result of the test, analysis or measurement or research carried out. Models, technologies and instruments, including software, which have been used in the course of the assignment and are included in the recommendation or research result, are and remain the property of INTRON. Publication may not therefore take place until such time as INTRON's permission has been obtained. Unless agreed otherwise at the time the assignment was placed, INTRON's obligation to maintain secrecy will remain in force until two years after the date of the final invoice for the assignment or two years after the date of the final report, if issued earlier. If desired, INTRON will classify the results governed by an obligation to maintain secrecy in accordance with the provisions of this article in consultation with the client.
- 3.3 INTRON will be subject to an obligation to maintain secrecy in respect of any information belonging to the client of which INTRON gains knowledge in the course of the assignment and which the client has expressly characterised as secret. This obligation to maintain secrecy does not apply:



- to information already in INTRON's possession at the time when the information was communicated to INTRON;
- to information which is or has become generally known, without this being the result of any action or omission attributable to INTRON;
- to information legally obtained by INTRON from a third party or from INTRON's own research without the secret information having been used in any way.

In accordance with article 3.1 client's obligation to maintain secrecy does not apply:

- to information already in client's possession at the time when the information was communicated by INTRON;
- to information which is or has become generally known, without this being the result of any action or omission attributable to client;
- to information legally obtained by client from a third party or from client's own research without the secret information from INTRON having been used in any way.

- 3.4 Where, as a result of the client publishing the results of the research, circumstances arise in view of which INTRON considers it reasonable and/or necessary to provide third parties with information on the results, this releases INTRON from the obligation to maintain secrecy to the extent that it deems reasonable.
- 3.5 INTRON's duty to maintain secrecy will not apply where INTRON finds that there is serious danger to people or property. In this case, INTRON will report the danger to the competent authorities and/or to those whose person or property is in danger, but only after consulting the client if this is/was possible.
- 3.6 The client's permission to call in third parties to assist in the assignment is only required if and insofar as this constitutes a foreseeable risk in terms of maintaining secrecy.
- 3.7 INTRON will only be obliged to refrain from accepting assignments from third parties in the same field as that of the assignment if this has been agreed in writing on entering into the assignment.

#### 4. Rights to results

- 4.1 Within the scope of the assignment, the client has the full and free right to use the results of the assignment, as provided to the client by INTRON. The client will have this exclusive right during the period in which INTRON is obliged to maintain secrecy in accordance with Article 3.2, subject to the provisions of Articles 4.2 and 4.4.
- 4.2 During the period in which INTRON is obliged to maintain secrecy in accordance with Article 3.2, INTRON will have the right to use the results of the assignment as specified in Article 4.1 solely for its own purposes.
- 4.3 On expiry of the period in which INTRON is obliged to maintain secrecy in accordance with Article 3.2, INTRON will also have the right to use the results of the assignment as specified in Article 4.1 on behalf of third parties and allow third parties to use them.
- 4.4 INTRON will be entitled to use or may instruct the use for and/or by third parties of:
- a. the knowledge and experience possessed by INTRON when the assignment was accepted;
  - b. the knowledge and experience gained during the performance of the assignment;
  - c. calculation methods, software and experimental working methods, resulting from the performance of the assignment, insofar as the development of such was not the main intention of the assignment.
- 4.5 Reports, drawings and other tangible objects which are the result of the work assigned in accordance with Article 1.3 will – without prejudice to the provisions of Article 7.7 – accrue to or be the property of the client, subject to INTRON's copyright.
- 4.6 Without INTRON's written permission client is not entitled to pledge, cede and/or assign in any way any rights resulting from any agreement with INTRON.

#### 5. Publication

The client is not permitted, without INTRON's prior consent in writing:

- a. to copy and/or publish in whole or in part any report issued by INTRON by printing, photocopying, microfilming, in electronic form or by any other means or to store it in a retrieval system;
- b. to allow a report issued by INTRON to be inspected outside the group of people who, having regard to the scope of the assignment, are among the directly interested parties;
- c. to use or cause to be used in whole or in part a report issued by INTRON for the purpose of making claims, for conducting legal proceedings, for advertising or issuing (negative) statements or for the purpose of eliciting contracts in a more general sense;
- d. to use INTRON's name in any connection whatsoever in the publication of part or parts of a report issued by INTRON and/or for one or more of the purposes referred to in c. above.

#### 6. Knowledge protection

- 6.1 Insofar as the performance of the assignment by INTRON yields patentable subject-matter, INTRON will have the right to apply for a patent in its name and for its account. In doing so, INTRON will discharge its obligation to maintain secrecy arising from Article 3.
- 6.2 INTRON and the client will notify each other of:
- a. their suspicion that patentable subject-matter has been found;
  - b. the fact that a patent application has been filed;
  - c. the contents of this application.
- They will also provide each other with all assistance required in filing the patent applications.
- 6.3 If INTRON does not wish to exercise its right as specified in Article 6.1, this right will accrue to the client if and insofar as the patent application (also) relates to the results as specified in Article 4.1.
- 6.4 If INTRON or the client exercises its rights arising from Article 6.1 or 6.3, the applicant/holder of the patent will be deemed to have granted the other party a licence free of charge, on the basis of which the parties can derive rights which accrue to them by virtue of the provisions of Article 4. The other conditions of the assignment will apply *mutatis mutandis* to the granting of the licence.
- 6.5 The applicant/holder will at all times be at liberty to withdraw a patent application or allow a granted patent to lapse. If the client or INTRON is granted a licence, it will be the first to be given the opportunity to transfer the application or patent to its own name.

#### 7. Price and payment

- 7.1 If a "fixed price" is quoted in the offer, this price is deemed to be the agreed price excluding VAT and any charges. If a "guide price" is quoted in the offer, the amount quoted is merely an indication of a no-obligation estimate of the cost.
- 7.2 Where the parties have not agreed upon a fixed price for the whole assignment when concluding an agreement, the price will be set either on the basis of the hours actually spent or on the basis of the rates applicable to the individual pieces of work of which the assignment consists; hourly rates and rates for individual pieces of work will be taken from INTRON's price lists which apply from year to year.



- 7.3 INTRON is at all times entitled to decide that the client should pay an advance fee to be determined by INTRON before INTRON commences work on the assignment. INTRON is at all times entitled to send the client partial invoices in the course of the assignment. INTRON may at any time request payment in advance. In the event that the client is wound up, declared bankrupt or granted a suspension of payments, the client's obligations will become immediately due and payable.
- 7.4 The sum due must be transferred to the INTRON accounts stated on the invoice, quoting the invoice date and invoice number. The client is obliged to pay the accounts in the currency quoted in the offer without recourse to a discount or offsetting with thirty (30) days after the invoice date. When thirty (30) days have elapsed since the invoice date, the client will be legally in default and obliged to pay the invoice, statutory interest for commercial agreements and the cost of collection.
- 7.5 The payments made by the client will be used first to reduce any interest and costs due and then to settle the longest outstanding invoices payable, even if the client states that the payment relates to a more recent invoice.
- 7.6 In the event that the client is in breach of contract or default in the performance of one or more of its obligations arising from the agreement, all costs reasonably incurred in obtaining payment extra-judicially will be borne by the client. At all events, the client will owe the collection rate fixed by the Dutch Bar Association [*Nederlandse Orde van Advocaten*] (NOvA):
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|-----------------------------|-----|
| - on the first €3,000       | 15% |
| - on the rest up to €6,000  | 10% |
| - on the rest up to €15,000 | 8%  |
| - on the rest up to €59,000 | 5%  |
| - on the rest               | 3%  |
- If INTRON can show that it has incurred higher costs which were reasonably necessary, such costs will also qualify for reimbursement. The client will owe INTRON all the court costs payable in all instances incurred by INTRON, except insofar as the client can show that they are unreasonably high. This will apply solely in the event that INTRON and the client have conducted legal proceedings with respect to an agreement to which these General Terms and Conditions apply and a judicial decision pursuant to which the client is fully or substantially unsuccessful has become final and conclusive and the client has been ordered to pay the liquidated court fees specified in Section 57 of the Dutch Code of Civil Procedure.
- 7.7 INTRON will retain title in all items which INTRON has supplied to the client in the course of the assignment, including the tangible objects as specified in Article 4.5, until such time as the sum(s) due to INTRON by the client in connection with the assignment has (have) been settled in full, unless the client has provided sufficient security to cover these amounts.
- 8. Liability**
- 8.1 INTRON and/or persons employed or called in by INTRON in the course of the assignment will not be liable for any loss suffered by the client during the application or use of the outcome of INTRON's work, unless INTRON and/or persons employed or called in by INTRON in the course of the assignment are guilty of an intentional act or omission or gross negligence.
- 8.2 If INTRON is liable by virtue of the contractual liability referred to in the previous sentence or for another reason, INTRON will be liable solely for direct loss suffered by the client, i.e. the cost of amending research, study or report, cost of rectifying defects in research, study or report and loss caused directly by these defects (not including any costs agreed between the parties in accordance with Article 7.1 and such indirect loss as results from delay in the regular course of business in the client's organisation) up to not more than an amount equal to the price payable by the client under Article 7.1, subject to a maximum of, at the very most, the sum which is in this case covered by the liability insurance of INTRON.
- 8.3 If the award of the compensation referred to in the previous sections in the circumstances of the case, including the special technical aspects, the relative size of the assignment within the project as a whole, the nature and seriousness of the attributable failure and the capacity of the parties, results in evidently unacceptable consequences for INTRON, the courts may mitigate the amount of compensation. If the award of the compensation referred to in the previous sections in the specific case results in evidently unacceptable consequences for the client, the courts may determine increased compensation within the statutory limits, provided that INTRON's attributable failure is due to its own intentional act or omission or gross negligence and the client cannot recover this loss elsewhere.
- 8.4 Unless expressly stated otherwise in the assignment, INTRON is liable, in the case of assignments relating to the initiation of a project, solely for such losses as are not covered by traditional CAR insurance or similar types of insurance and only in accordance with Article 8 provisions 1, 2 and 3. This CAR insurance or similar type of insurance can be regarded as traditional insurance in view of the nature and scope of the project.
- 8.5 If INTRON is not awarded an assignment for a project or a part thereof, INTRON will not be liable for errors or defects in information which has been supplied by or on behalf of the client or likewise errors or attributable failures which arise from any processing, supplementing or amendment of information supplied by INTRON by or on behalf of the client.
- 8.6 The client's right to invoke an attributable failure due to an intentional act or omission or gross negligence by INTRON will lapse if the client does not within an appropriate time after it discovers or should reasonably have discovered the attributable failure, submit a protest to INTRON in writing and giving reasons. This right will lapse in any case if such protest is not made in the aforementioned manner within 1 year, at the latest, from the end of the assignment or, if the assignment relates to the initiation of a project, from the completion of the project. The foregoing will apply unless the client can show that it was impossible for it to perform its duty to report within the specified time. Any right to make a claim in this regard will lapse unless the legal action is brought with 2 years after this protest.
- 8.7 Client will indemnify INTRON for any liability and will compensate all costs related to (stated) breach of patent-, brand-, model-, intellectual property- or other rights on documentation or other objects supplied to INTRON by client within the scope of the assignment. Without prejudice to the provisions of the previous sections, INTRON is only liable to the client for breach of statutory regulations, infringement of rights or legally protected interests of third parties, provided that these regulations, rights or interests are generally known among the organisations working in the relevant sector such as INTRON, or where the client has expressly alerted INTRON to the existence of such regulations or rights. In this case, sections 2 and 3 of this article will apply *mutatis mutandis*. If third parties make claims against INTRON itself in respect of such loss or infringement as is specified herein, the client will likewise be obliged to indemnify INTRON and hold it harmless.
- 8.8 INTRON will not be liable for damage, of whatever nature, resulting from the fact that in the performance of the agreement INTRON has based its work on incorrect and/or incomplete data supplied by the client, unless it should have been aware of this incorrectness and/or incompleteness.
- 8.9 In the event that persons employed and/or called in by INTRON in connection with the assignment are present on the client's premises and/or the premises of third parties, INTRON and/or persons called in by INTRON in the course of the assignment will not be bound by information contained in access permits, etc., which limit in whole or in part the client's liability arising from the agreement.
- 8.10 INTRON accepts no liability for loss arising from the fact that the results of the work are not considered suitable for patenting or because application of the results would infringe third-party rights.
- 8.11 INTRON accepts no liability for loss resulting from defects in items supplied to INTRON, including software, which have been passed on to the client by INTRON, unless and insofar as INTRON can recover any loss from its supplier.



8.12 INTRON points out that it assumes that client is insured for liability and claims, not limited to but including claims as described above.

## **9. Storage and test samples**

Unless agreed otherwise at the time the assignment was placed, INTRON will if reasonably possible retain the items, including samples supplied to INTRON in connection with the assignment, or the remains thereof, for two weeks after the date on which the results of the research were communicated to the client. Any expenses thereby incurred will be deemed to have been included in the price quoted in the offer.

If within this period the client has not made arrangements for the return of these items, INTRON will be at liberty to take suitable measures. Any expenses incurred as a result, including expenses resulting from extended storage, will be borne by the client.

## **10. Miscellaneous**

10.1 If INTRON so requests in good time, the client will provide INTRON, free of charge, with staff and equipment to assist with work carried out on the client's premises in connection with the assignment.

10.2 When present in INTRON's buildings or on its premises, the client and/or its employees will be required to abide by the "house rules" that apply to users of the buildings or premises concerned. The client will ensure that its employees conduct themselves in accordance with the aforementioned rules.

10.3 Where either the client or INTRON fails to fulfil any essential obligation arising from the agreement, the other party will issue the defaulting party with a notice in writing to this effect and give the defaulting party a reasonable time within which to fulfil its obligations. In the event that the defaulting party still fails to fulfil its obligations within the specified time, its rights arising from the agreement will lapse and the other party will cease to be obliged to fulfil any of its obligations.

10.4 Neither party may in the course of the assignment and within one year after the end of the assignment employ staff from the other party or negotiate employment terms or any other form of collaboration with such staff, other than by agreement with the other party. If this does happen, the other party will be entitled to impose an immediately payable penalty equal to one year's gross annual salary of the employee concerned.

## **11. Defects: period for lodging complaints**

11.1 Complaints concerning the work carried out must be reported in writing to INTRON by the client within seven (7) days after discovery, but not later than within thirty (30) days after completion of the work concerned, by "registered letter with acknowledgement of receipt".

11.2 In the event that a complaint is well-founded, INTRON will carry out the work again as agreed, unless this has become pointless to the client by that time. If this is the case, the client must communicate this to INTRON. If performing the agreed work again is no longer possible or is pointless, INTRON will only be liable within the limits of Article 8 (Liability).

11.3 Even if the client has submitted a timely complaint, its obligation to pay will continue to apply.

## **12. Dissolution**

12.1 The sums due to INTRON by the client will be immediately payable in the following cases:

a) Circumstances of which INTRON becomes aware following the conclusion of the agreement that provide INTRON with reasonable grounds for fearing that the client will not fulfil its obligations.

b) Where INTRON asked the client to provide security for the fulfilment of its obligations when the agreement was concluded and this security is not forthcoming or is insufficient.

c) Where the client applies for suspension of payments, is declared bankrupt or initiates liquidation proceedings.

In the above cases, INTRON will be entitled to suspend further performance of the agreement or to initiate dissolution of the agreement, without prejudice to the INTRON's right to claim compensation in full.

12.2 If circumstances arise involving persons and/or materials to be used or which tend to be used by INTRON in the performance of the agreement who/which are of such a nature that performance of the agreement is impossible or inconvenient to such an extent and/or disproportionately expensive that compliance with the agreement may no longer be reasonably required, INTRON will be entitled to dissolve the agreement.

## **13. Force Majeure**

13.1 *Force majeure* will be understood to mean circumstances, whether foreseeable at the time of entering into the agreement or not, that impede the fulfilment of the obligation, and which cannot be attributed to INTRON. These circumstances will also be understood to include (if and insofar as they make fulfilment impossible or unreasonably difficult): wars, disasters, strikes in organisations other than INTRON's, wildcat strikes or political strikes in INTRON's organisation, a general shortage of necessary materials and equipment and other items or services required to achieve the agreed performance, delays at the premises of suppliers or other third parties on whom INTRON depends, general transport problems and the incapacity of the actual person(s) at INTRON who are carrying out the assignment.

13.2 During *force majeure*, INTRON's obligations will be suspended. If the period during which fulfilment by INTRON of its obligations is not possible as a result of *force majeure* continues for more than three (3) months, both parties will be entitled to dissolve the agreement, without this resulting in any obligation to pay compensation. If INTRON has already fulfilled part of its obligations when the *force majeure* takes effect, or is only able to fulfil part of its obligations, it will be entitled to invoice the fulfilled part or the part that can still be fulfilled separately and the client will be obliged to settle this invoice as if it related to a separate agreement. However, this does not apply if the fulfilled part or the part that can still be fulfilled has no value in itself.

## **14. Cancellation**

14.1 INTRON and/or the client may only cancel the agreement (prematurely) for serious reasons as defined in Section 7:408, provision 2 of the Dutch Civil Code.

14.2 In the event of premature cancellation for serious reasons, the client will be liable to pay reasonable part of the agreed price in accordance with the provisions of Section 7:411 of the Dutch Civil Code

## **15. Disputes**

15.1 Any disputes that may arise pursuant to the agreement or any further agreements arising there from will be submitted to the competent court in Maastricht, the Netherlands, for settlement, to the exclusion of all others.

15.2 The agreement as specified in Article 1.2 will be governed by the laws of the Netherlands.

