**General Terms and Conditions**

**1.** **Definitions**

“**Assignment**”: the whole of Services and Materials that VITO is offering, as described in the Tender.

“**Background**”: the information, know-how, technologies, methods, techniques, skills, algorithms, methodologies, materials and Intellectual Property Rights pertaining to the same or related areas as those applicable to the Assignment, held by and/or in the possession of or controlled by VITO prior to the Commencement Date including all developments, improvements and/or additions to these that VITO generates and/or that are made outside the scope of the Assignment.

“**Client**”: the party named in the Contract as the party that shall benefit from the Services or Materials to be provided.

“**Commencement Date**”: the date on which the Contract is validly concluded according to Article 5.2 of these General Terms and Conditions.

“**Contract**”: the documents that regulate the contractual relationship between VITO and the Client, consisting of the Tender, these General Terms and Conditions and any Special Conditions that VITO and the Client have agreed on in writing.

“**Day**”: a day (other than a Saturday or Sunday) on which the banks in Belgium are open for business.

“**Data**”: research data that was measured, collected, analyzed during the Assignment and recorded on a specific medium, such that this data can be exchanged and stored for a longer period of time.

“**Export Laws**”: the laws and regulations applicable to the regulation of the export and import of military goods, dual-use goods (also referred to together as ‘strategic goods’) and chemical substances.

“**Force majeure**”: an unforeseeable and unavoidable event that is independent of the will of a Party and which constitutes an insurmountable obstacle to the fulfillment of one or more of its obligations, including but not limited to: technical malfunctions, entry, exit and/or transit bans, business, traffic and/or transport disruptions, changed government measures, epidemic and pandemic, extreme weather conditions and fire.

“**Foreground**”: the Intellectual Property Rights, Know-How, Data, Materials, methodologies, processes, technologies, skills and information developed by VITO during and in the context of the execution of the Assignment(s).

“**Intellectual Property Rights**”: all industrial, literary and artistic property rights, whether those rights are registered or not and whether they have been exercised or not, such as, but not limited to, patents, plant breeders' rights, drawings and models, trademarks, trade and company names, domain names, copyrights and neighboring rights, computer chip topographies and all other rights similar or analogous to any of the foregoing rights arising or granted in any jurisdiction.

“**Know-How**”: all unpatented practical information resulting from experience and research that (i) is secret, that is, not generally known or readily available; and (ii) is material, that is, important and useful for commercial purposes; and (iii) determined, that is, described in such a way that it can be verified whether such information meets the criteria of secrecy and materiality.

“**Location**”: the place where VITO shall perform the Services, if this location is a location other than the premises of VITO.

“**Materials**”: all goods that are used, made available or supplied as basic raw material, components, models, prototypes or any other tools or equipment in the context of the Assignment.

“**Party**”: the Client or VITO.

“**Parties**”: the Client and VITO.

“**Results**”: the Data and Materials, including reports, drawings, databases, technical specifications, manuals, estimations, memo’s and calculations, that are delivered to the Client at the end of the Assignment, according to the provisions of the Contract.

“**Services**”: the services that VITO is to provide to the Client as detailed in the Contract.

“**Special Conditions**”: all possible additional terms and conditions and/or derogations from the present General Terms and Conditions, as agreed on in writing by the Parties.

“**Third Parties**”: any person or entity other than the Client or VITO, as the context requires.

“**Tender**”: the document and any appendices to the said document that describes the Services and Materials which VITO is offering to the Client, including the financial and other conditions thereto.

“**VITO**”: Vlaamse Instelling voor Technologisch Onderzoek, limited liability company with its registered office at Boeretang 200, 2400 Mol, Belgium, CBE 0244.195.916 (RPR Turnhout).

**2.** **Scope of application**

**2.1** The following General Terms and Conditions for VITO shall apply to all Services and/or Materials that VITO supplies to the Client. In the event the Client presents its own general terms and conditions when concluding the Contract or having done so, the general terms and conditions of the Client shall not apply, unless VITO has explicit agreed to this.

**2.2** No derogations from these General Terms and Conditions shall be accepted, unless explicitly agreed on in the Special Conditions or in the Tender. Derogations shall only apply to the specific Tender and Services for which the Parties have explicitly agreed on the derogation.

**3. Contractual documents**

**3.1** The Contract shall consist of the following documents, listed in decreasing order of precedence:

* the Special Conditions;
* the Tender and its appendices; and
* the present General Terms and Conditions.

**4. Nature of the Services**

**4.1** VITO shall perform the Assignment to its best knowledge and ability, with the degree of skill and care which would reasonably and ordinarily be expected of a professional service provider in similar circumstances; in accordance with the rules and legislation, regulations, instructions and technical standards applicable on the date on which the Contract is concluded. It is agreed that VITO shall enter into an obligation of means with regard to the Results envisaged.

**5. Term and termination**

**5.1** Unless specified otherwise in the Tender, VITO shall be bound by its Tender for a period of ninety (90) calendar days, as from its date of signature.

**5.2** The Contract shall be deemed to be concluded on the earliest of the following dates:

* the date of signing the Contract;
* when the Client returns the Tender duly signed for acceptance;
* VITO commences the performance of the Services with the knowledge of the Client.

**5.3** The Contract shall commence on the Commencement Date and end on the date on which the final report or final invoice is sent to the Client as described hereinafter.

**5.4** When the Assignment has been completed, VITO shall submit a final report or final invoice to the Client. The Client shall submit any reservations it has on performance of the Assignment in writing to VITO within a period of fifteen (15) Days. In absence of any reservations within this period, the final report and, where appropriate, the final invoice shall be deemed to have been accepted. Acceptance of the final report or the final invoice shall also imply acknowledgement by the Client of the proper performance of the Assignment in accordance with the provisions of the Contract.

**6. Performance**

**6.1** The Client shall in due provide VITO with all information, documentation and/or Materials necessary for the proper performance of the Services. VITO shall not be held liable for incompleteness, mistakes and/or errors that are the direct or indirect result of incomplete and/or inaccurate information and/or documents provided by the Client or its employees, nor for any delay to performance of the Assignment that is attributable to the late availability of the aforementioned information and/or Materials.

**6.2** In the event that the Assignment is to be performed by VITO (in whole or in part) on any other location than the premises of VITO, the Client undertakes to:

* take all necessary measures to enable VITO to perform the Assignment during normal VITO working hours;
* organize the Location such that it is in compliance with all applicable legal (safety) regulations, as well as all practical arrangements agreed upon between VITO and the Client;
* dispose without any delay of necessary (export) permits and permissions for the performance of the Assignment;
* ensure that all activities and services to be performed by the Client and/or Third Parties on behalf of the Client are performed in due time and correctly and all items (samples, materials, equipment and/or tools) are made available in due time so that the performance of the Assignment by VITO will not be delayed;
* ensure that the Location is at all times available and attainable by VITO in order to perform the Assignment;
* The Client ensures that the material, equipment and tools of VITO present at the Location and needed for the performance of the Assignment are, at Client’s costs and expenses, stored and preserved under good circumstances. VITO shall be entitled to re-collect its material, equipment and tools that are no longer needed for the performance of the Assignment.

**6.3** Except where explicitly agreed otherwise in the Contract, the time schedule specified by VITO shall be considered as indicative. VITO shall keep the Client promptly informed about any and all circumstances and events that might affect the timely performance of the Services according to this time schedule. If the time schedule is not met, VITO and the Client shall decide on any action to be taken. The Client shall not be entitled to terminate the Assignment for any delay, nor to any liquidated damages.

**6.4** VITO is not liable for any default or delay in the performance of the Assignment if the default or delay is due to Force Majeure. In the event of Force Majeure, the execution of the relevant part or parts of the Agreement will be suspended as long as the case of Force Majeure continues, whereby VITO will not be liable to the Client for any resulting damage.

**7.** **Payments**

**7.1** Unless stated otherwise in the Tender, all amounts mentioned are exclusive of VAT at the applicable rates.

**7.2** Payments shall be due according to the agreed invoice schedule. In the absence of a payment schedule in the Tender or Agreement, the amount due is invoiced by VITO as follows:

* 20 % in advance within fourteen (14) calendar days of the Commencement Date,
* 30 % halfway the anticipated duration of the Assignment,
* 50 % upon completion of the Assignment (final invoice).

**7.3** The Client shall be obliged to pay invoices without any deduction, withholding or discount within thirty (30) calendar days of the invoice date. Any claim relating to an invoice, other than the claim provided in article 5.1, must be sent to VITO by registered mail within five (5) Days of its receipt. After this period, no further claim shall be taken into account. A claim may in no circumstances justify suspension of payment.

**7.4** If payment of any amount due by the Client to VITO is not effected as agreed upon, the Client shall be legally in default without any notice and VITO shall be entitled to charge, without any prior notice required, interest on any overdue amount in accordance with the provisions of the law of August 2, 2002. In addition, VITO shall be entitled to a compensation equal to 10% of the amount due, subject to a minimum of EUR 50.00, without prejudice to its right to claim reasonable compensation for all legal recovery costs incurred as a result of the Client’s late payment.

**7.5** All payments to be credited to VITO shall first be set-off against costs, then against outstanding interest and finally against the principal claim. In the event of several outstanding debts, the payments received shall first be set off against the oldest claim in the same manner.

**8.** **Confidentiality**

**8.1** All information, whether scientific, technical, financial, commercial or otherwise, in written, electronic or any other material or intangible form exchanged in the context of the project will be considered confidential if communicated in writing and be marked as "confidential" or, if otherwise disclosed, be marked as "confidential" at the time of disclosure and confirmed as such in writing within thirty (30) days thereafter. Notwithstanding the foregoing, any information will be considered confidential if a reasonable person in a similar situation would reasonably believe that the information in question is confidential information.

**8.2** For two (2) years after the date of delivery of the final report or invoice, VITO will keep the content of the final report confidential, with the exception of the following:

a) Background of VITO;

b) Foreground of VITO relating to an unintended Result of the Assignment;

c) the methods and techniques used and/or developed by VITO for achieving the Result.

**8.3** The Party that receives the confidential information shall undertake to maintain its confidentiality, not to disclose the said information to Third Parties without the prior written permission of the other Party, to treat it with the same care and protect it as it would its own confidential information and to do so with a reasonable degree of care at the very least, which it shall do throughout the term of the Assignment and for a period of five (5) years from the date of the final invoicing for the Assignment.

**9.** **Intellectual property - Licenses**

**9.1** **Background**. Executing the Assignment by VITO shall not imply the transfer of Intellectual Property Rights from VITO to the Client or Third Parties in any way or at any time whatsoever. All rights to the Background that the Client owns or acquires remain with the Client; all rights to the Background that VITO owns or acquires remain with VITO. Each Party may at all times continue to use its Background itself or by Third Parties or for the benefit of Third Parties.

**9.2** **Foreground**. Foreground generated by or on behalf of VITO or any methods and techniques used and/or generated by VITO for the execution of the Assignment, regardless of whether this is mentioned in the Results, belong to VITO. The copyright with regard to a provisional, interim and final report always belong to VITO in full.

**9.3** **Licenses.** In the event that the Client needs VITO's Background for the development, creation, production and marketing of products or processes, or for the creation and performance of services, the Parties shall negotiate the terms and conditions for such use in a separate agreement.

As from the date of delivery by VITO of the Result to the Client and full payment of the agreed price, the Client acquires the right to use VITO's Foreground within the scope of the Assignment. For one (1) year from the date of delivery of the Result, this right of use is exclusive, with the exception of any Background of VITO incorporated herein and/or required, for which the Parties will then agree on a separate license.

VITO may at all times use the Foreground itself and, after the expiry of the exclusivity period as referred to in section 9.3, also have this Foreground used by Third Parties.

A final report, as well as a (possible) preliminary or interim report or later elucidation thereof, will not be used by the Client for the purpose of making claims or conducting legal proceedings or using it or having it used in whole or in part for advertising or anti-advertising purposes without the prior written consent of VITO.

**10.** **Liability**

**10.1** VITO makes no representation or extends any warranty of any kind either expressed or implied regarding the originality or fitness for any purpose of the Results.

**10.2** The Client assumes full liability for the use, misuse or fitness for any purpose of the Results and shall indemnify and hold VITO harmless against claims submitted by Third Parties to this end.

**10.3** To the extent permitted by law and except for wilful misconduct and gross negligence, VITO can only be held liable for direct damages which the Client suffers as a result of an incorrect performance of the Assignment by VITO, the maximum amount being the remuneration (excluding any taxes and duties) which is due by the Client for the performance of the Assignment.

**10.4** Under no circumstances whatsoever shall VITO be liable for indirect or consequential damages or losses such as, but not limited to, the loss of income, claims from third parties, the loss of clients, the loss of data, the impossibility of implementing a business operation that has been planned, nor for any other damage, loss or defects that are attributable to the use of the Results by the Client.

**11.** **Termination**

**11.1** In the event of circumstances beyond its control, VITO shall be entitled to suspend its obligations as long as these circumstances exist, whereby VITO is not due any damages.

**11.2** If the Client fails to fulfil any of its contractual obligations, VITO will notify the Client accordingly in writing. If the Client does not remedy his breach within fifteen (15) Days after receipt of the aforementioned notification, his rights under the Contract will lapse, and VITO can terminate the Contract with immediate effect, whereby VITO will no longer be bound to fulfil any obligation arising from the Contract.

**11.3** VITO can terminate the Contract with immediate effect through written notification to the Client in the event of suspension of the activities of the Client, in the event of liquidation or insolvency of the Client, in the event of an application for a composition or of the filing of a bankruptcy petition by or for the Client, in the event of a similar measure, or in the event of the whole transfer of title to the Client’s enterprise for the benefit of creditors.

**11.4** In the event of the application of Articles 12.2 or 12.3 or if the Client cancels or terminates the Assignment without any reason for doing so, the Client shall be required to pay a fixed compensation equal to 20% of the remuneration agreed on for execution of the Assignment.

**11.5** Articles 7, 8, 9, 10, 11, 115, 12 and 13.4 shall continue to apply even after the expiration or termination of the Assignment.

**12.** **Applicable law and disputes**

**12.1** The Contract shall be governed by Belgian law, excluding the conflict of law provisions.

**12.2** Any dispute arising from the Contract, unless resolved by amicable negotiations, shall be finally settled by the competent courts of Antwerp (Belgium).

**13.** **Miscellaneous**

**13.1** The Parties shall not assign or transfer the Contract to Third Parties without the prior written consent of the other Party, which shall not be unreasonably withheld. In the absence of such consent, the other Party shall be entitled to cancel the Contract unilaterally by registered letter, without the Party who has assigned the Contract without consent, entitled to any compensation.

**13.2** The Contract shall constitute the only agreement between the Parties regarding the Assignment. Amendments or addenda to the Contract must be made in writing and signed by the Parties.

**13.3** If the Client is subject to the public procurement legislation, VITO declares, by submitting its Tender, that it will explicitly waive any of its General Terms and Conditions that are in conflict to any essential provisions in the specifications or in the request for proposals.

**13.4** By accepting the Tender or by entering into the Contract, the Client guarantees VITO that it shall refrain from using the Results in any manner that would result in the violation of Export Laws. The Client indemnifies VITO against claims by Third Parties based on non-compliance with Export laws and regulations when using the Results. At first request, the Client will provide VITO with a statement regarding the end use and end-user of the Results.

**13.5** Whenever VITO delivers an item to the Client, this is done 'Ex Works' (EXW) from the applicable VITO location. 'Ex Works' is to be understood in accordance with the ICC (International Chamber of Commerce) Incoterms 2020.

**13.6** Subject to VITO's prior written consent, the Client is not permitted to use the name of VITO, its employees, employees and/or the brands or the logo in external communication, whether this is for commercial or other purposes.

**13.7** If personal data is exchanged between Parties, as defined in the General Data Protection Regulation (EU 2016/679) of April 27, 2016 and the law of July 30, 2018 on the protection of natural persons with regard to the processing of personal data, Parties will always act in accordance with the aforementioned legislation, whereby the rights of the data subjects will be protected and Parties will cooperate to enable each other to comply with the legal obligations arising from the aforementioned legislation. In particular Parties will, as far as it is necessary, conclude a separate agreement, with the necessary contractual provisions.

Within the framework of this Assignment, personal data may be shared of persons involved in this, Assignment such as: name, business telephone number, address and e-mail address. Each party may store and process this business contact information. The parties agree that this business contact information will be processed for administrative purposes only, to the limited extent necessary for the performance of this Assignment.

13.8 Parties agree that the execution of the Tender or Agreement by industry standard electronic signature software (e.g. via DocuSign) and/or delivery of the executed Tender or Agreement by e-mail shall have the same legal force and effect as the exchange of original signatures or a hard copy of the Tender or Agreement, and that in any proceedings arising under or relating to the Tender or Agreement, the Parties waive any right to raise any defence or waiver based upon execution of the Tender or Agreement by means of such electronic signatures or maintenance of the executed Tender or Agreement electronically.