

Standard Conditions for commissions to Stichting Deltares

These Standard Conditions shall apply to all commissions awarded to *Stichting Deltares* (hereinafter referred to as Deltares) in Delft, the Netherlands, with the exception of commissions awarded to Deltares which solely concern the supply of standard software.

These Standard Conditions shall apply with the explicit exclusion of (standard) conditions of the principal. Deviations from these Standard Conditions shall be binding only if agreed upon in writing between Deltares and the principal.

These Standard Conditions have been determined by Deltares and have been filed with the Clerk's Office of the District Court of The Hague, the Netherlands and with the Chamber of Commerce for Haaglanden, the Netherlands. They may also be consulted at www.deltares.nl.

1 Definitions

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| 1.1 offer | the offer made by Deltares to the (potential) principal specifying the result(s) of the activities commissioned; | 3.4 If the commission (partly) concerns research on samples, then – except when it is agreed that sampling is to be done under the responsibility of Deltares – solely the principal shall be responsible for the selection, representativity, application of codes, trade mark(s) or product name(s) and for providing Deltares with the samples to be researched. |
| 1.2 Standard Conditions | these Standard Conditions applied by Deltares; | 3.5 The principal shall inform Deltares of properties of goods provided by the principal to Deltares in connection with the commission which might constitute a hazard and label such goods or their packaging clearly as being hazardous. |
| 1.3 Deltares | the foundation “Stichting Deltares”; | 3.6 The principal shall ensure that all data which Deltares requires or which the principal in all reasonableness ought to understand is required for performing the commission is provided to Deltares in a timely manner. If data required for the performance of the commission is not made available to Deltares in a timely manner, Deltares has the right to postpone its performance of the commission and/or to charge the principal the additional expenses resulting from that delay at the usual rates. Any delay caused herewith shall automatically extend the time period referred to in article 3.2. |
| 1.4 the commission | the agreement concluded between Deltares and the principal to conduct activities and/or the agreement to render services and/or supply goods; | 3.7 The principal shall bear the risk of misunderstandings in relation to the content and performance of the commission caused by not receiving from the principal by Deltares specifications and other data, not receiving them in a timely manner or not receiving them in full. |
| 1.5 standard software | software supplied by Deltares on the basis of a “standard Deltares license”. | 3.8 In connection with activities conducted for the commission on the site of the principal or on a site designated by the principal, the principal shall guarantee the safety of Deltares' personnel or others who are not Deltares' sub-ordinates used by Deltares for the performance of the commission. |

2 The content of the commission

- 2.1 The content of the commission shall be determined by the description of the activities laid down in the offer referred to in article 1.1, and all amendments to the offer effected afterwards in mutual consent.
- 2.2 Unless expressly included in the offer, conducting searches into the existence of patent rights held by third parties or reviewing patentability shall not be part of the commission.
- 2.3 Deviations from these Standard Conditions shall solely be binding after having been agreed in writing between the parties and shall solely apply to the commission for which they are made.

3 The performance of the commission

- 3.1 Parties shall not be entitled to transfer their rights and/or their obligations arising out of the commission to one or more third parties. Deltares may however make use of third parties in its performance of the commission.
- 3.2 The commission shall be performed within the estimated term referred to in the offer, unless this cannot reasonably be required given the circumstances. If the term appears to be exceeded, Deltares shall confer with the principal as soon as possible. Deltares shall not be in default solely due to the expiry of the term.
- 3.3 By accepting the commission, Deltares shall not be bound to do more than to conduct the activities commissioned and to endeavour to achieve a result useful to the principal. Deltares shall perform the commission using its best knowledge and skills, in accordance with the state of the art at the time of the performance of the commission and in accordance with all generally recognised standards and codes of practice of consultants within the same industry.
- 3.4 If the commission (partly) concerns research on samples, then – except when it is agreed that sampling is to be done under the responsibility of Deltares – solely the principal shall be responsible for the selection, representativity, application of codes, trade mark(s) or product name(s) and for providing Deltares with the samples to be researched.
- 3.5 The principal shall inform Deltares of properties of goods provided by the principal to Deltares in connection with the commission which might constitute a hazard and label such goods or their packaging clearly as being hazardous.
- 3.6 The principal shall ensure that all data which Deltares requires or which the principal in all reasonableness ought to understand is required for performing the commission is provided to Deltares in a timely manner. If data required for the performance of the commission is not made available to Deltares in a timely manner, Deltares has the right to postpone its performance of the commission and/or to charge the principal the additional expenses resulting from that delay at the usual rates. Any delay caused herewith shall automatically extend the time period referred to in article 3.2.
- 3.7 The principal shall bear the risk of misunderstandings in relation to the content and performance of the commission caused by not receiving from the principal by Deltares specifications and other data, not receiving them in a timely manner or not receiving them in full.
- 3.8 In connection with activities conducted for the commission on the site of the principal or on a site designated by the principal, the principal shall guarantee the safety of Deltares' personnel or others who are not Deltares' sub-ordinates used by Deltares for the performance of the commission.
- 3.9 Deltares reserves the right, at any and all times and solely at the discretion of the management of Deltares, to refrain from deploying its personnel and others used by Deltares who are not its sub-ordinates at any other location than at the offices of Deltares, should staff safety be in jeopardy at such other location. Deltares shall not be obligated to perform any obligation arising out of the commission to the extent any such performance of such an obligation would require personnel and the aforementioned others having to be deployed at a location where their safety would be in jeopardy.

4 Secrecy

- 4.1 Deltares shall solely be committed to keep secret the name of the principal and the fact activities are conducted if this has been agreed in writing upon the commission being awarded. The obligation to secrecy shall in any case expire two (2) years after the date of the final invoice or two (2) years after the date of the final report should this be provided sooner.

4.2 With the exception of a patent application made by Deltares as referred to in article 6.1, Deltares shall, for a period of two (2) years after the date of the final invoice or two (2) years after the final report should this be provided sooner, be obligated to keep secret the results of the commission as made available by Deltares to the principal. That secrecy shall not include the (experimental) working methods, (experimental) models, apparatus, calculation methods and computer programmes, the development of which was not directly envisaged with the commission. In case of testing, analyses, measurements or bibliographical research, only the results of such tests, analyses, measurements or bibliographic research shall be subject to secrecy.

4.3 Deltares shall be obligated to keep secret information received from the principal in connection with the performance of the commission which information has been explicitly labelled secret by the principal. This obligation to keep secret shall not apply to:

- a. information which was already known to Deltares at the time that information was disclosed by the principal to Deltares;
- b. information which either was or has become public knowledge, without this public knowledge being the result from any negligence on the part of Deltares;
- c. information which was obtained by Deltares from a third party which was entitled to disclose such information;
- d. information which resulted from Deltares' own research, without having used the information which was labelled secret.

4.4 Deltares' obligation to secrecy shall not apply if and to the extent it conflicts with the public interest or if Deltares is required to make such information public in legal proceedings or if Deltares is confronted with a serious danger or hazard to and for persons or goods. In the latter case, Deltares shall confer with the principal, if possible, prior to notifying the party whose person(s) or goods are being threatened and/or the competent authorities.

4.5 If misunderstandings arise as a result of the principal making known the results of the commission, this shall relieve Deltares from being bound to secrecy to the extent reasonably necessary for Deltares to provide third parties with information about those results.

4.6 Deltares reserves the right to inform third parties and/or publish as to the nature, the general content of the commission and the activities conducted in connection with the commission.

4.7 If Deltares uses third parties to perform (parts of) the commission in which secret information is used, it shall ensure that any such third party shall observe secrecy.

5 Right to results

5.1 The principal shall obtain the full and free right of use of the results of the commission made available to the principal by Deltares. This right of the principal shall be exclusive during the period of time during which Deltares is bound to secrecy pursuant to article 4.2, without prejudice to articles 5.2 and 5.4. Deltares shall not be obligated to indemnify the principal against any infringements made by third parties on the (exclusive) right of the principal to the results of the commission.

5.2 During the period in which Deltares is bound to secrecy pursuant to article 4.2, Deltares shall be entitled to use the results of the commission as referred to in article 5.1 exclusively for itself.

5.3 Upon the expiry of the period during which Deltares is bound to secrecy pursuant to article 4.2, Deltares shall have the right to also use the results as referred to in article 5.1 for third parties and to have those results used by third parties.

5.4 Deltares retains full intellectual property rights at any and all times, including, but not limited to copyrights, model rights and data-bank rights in relation to:

- a. the knowledge and experience available at Deltares at the time the commission was awarded (pre-existing knowledge and experience);
- b. new knowledge and experience resulting from the performance of the commission;
- c. the results which are obtained outside the scope of the commission as referred to in article 1.1;

d. the (experimental) working methods, (experimental) models, equipment, calculation methods and computer programmes produced as a result of the performance of the commission, whose development was not directly envisaged with the commission.

5.5 Without prejudice to article 5.4, Deltares shall at any and all times be entitled to use the information referred to above under 5.4a – 5.4d and/or have that information used for and/or by third parties.

5.6 Reports, drawings and other material objects which result from the commission, shall become the property of the principal without prejudice to that determined in article 7.7, with the exclusion of Deltares' copyright(s).

5.7 Without prior written consent from Deltares, the principal may not:

- a. reproduce and/or publish, either in whole or in part, any and all documents provided by Deltares, such as reports, advice, agreements, designs, sketches, drawings, software, etc. in print, photo-copy form, on microfilm, in electronic form or in any other manner, including storing them in a "retrieval system";
- b. permit persons outside the circle of those who, given the scope of the commission, are directly involved with the commission to peruse documents provided by Deltares;
- c. use documents provided by Deltares, in whole or in part, or have those documents used to institute claims, conduct legal proceedings, for advertising purposes or anti-advertising purposes, tests, and for acquisition and sales in general;
- d. use the name and/or the logo of Deltares, in any connection whatsoever in publishing a part or parts of documents issued by Deltares and/or for one or more of the purposes referred to in sub-section c;
- e. apply the name and/or the logo of Deltares or to otherwise connect these to goods tested by Deltares, checked by Deltares or commented on by Deltares, or which were manufactured by Deltares.

6 Protection of knowledge

6.1 Should the performance of the commission by Deltares lead to patentable results, the principal shall be entitled to apply for patents in its name and for its account, unless the invention is not a result that was envisaged with the commission.

If the principal applies for a patent, it shall compensate Deltares for which Deltares might become due to pay the inventor pursuant to article 12, section 6 of the Netherlands Patent Act (Rijksoctrooiwet).

If the principal failed to notify Deltares in writing within three (3) months after the notice as referred to in article 6.2 of its intention to exercise its right as referred to in article 6.1, or if no patent application is submitted within six (6) months after such notice, this right shall transfer to Deltares. Without prejudice to article 4, Deltares has in this case the right to publish, or otherwise make public the patentable material.

6.2 Deltares and the principal shall notify one another about:

- a. their supposition of patentable materials having been found;
- b. the fact that a patent application is or shall be submitted;
- c. the content of that application.

Moreover, they shall co-operate with one another in full when submitting patent applications.

6.3 If a party obtains a patent in respect of a result of the commission, it shall grant the other party a license to this, under terms and conditions to be mutually agreed, on the grounds of which parties may derive those rights they have pursuant to article 5. The license shall not be freely transferable.

6.4 The applicant/holder shall be at liberty, at any and all times, to withdraw a patent application or to allow a patent granted to expire. The other party (principal or Deltares) shall then have the right of first refusal to have the application or the patent granted transferred and registered in its name.

7 Price and payment

7.1 The price to be paid by the principal to Deltares shall be determined on the basis of actual costs, calculated in conformity with the rates agreed for the commission and including the amounts which Deltares shall be due to pay third parties in connection with the performance of the commission. Should no rates have been agreed in advance, they shall be determined on the grounds of the methods customarily applied by Deltares. Deltares reserves the right to adjust the rates annually.

7.2 If, contrary to article 7.1, the offer made includes a "fixed price" that price shall be the agreed price. If no "fixed price" is included in the offer, the amount quoted shall be no more than a non-obligatory estimation of the costs.

7.3 Unless agreed upon otherwise, all amounts in the offer shall not include Value Added Tax (VAT).

7.4 If requested by the principal, Deltares shall adhere to a limit amount. If Deltares is of the opinion that the performance of the commission requires an increase of the limit amount, it shall inform the principal thereof. Until further financial arrangements have been agreed, Deltares shall have the right to postpone its activities.

7.5 Deltares reserves the right to submit interim invoices and/or require advance payment.

7.6 The principal shall pay the invoices in the currency designated in the offer within thirty (30) days after the invoice date. If the principal exceeds the payment period, the principal shall pay both statutory commercial interest and collection costs without notice of default being required.

7.7 Deltares shall retain the ownership of all goods which Deltares provides to the principal in connection with the commission – including material objects as referred to in article 5.6 – until the time at which the amounts due to Deltares from the principal have been paid in full.

7.8 If Deltares has custody of any goods of the principal in connection with the performance of the commission, Deltares shall be entitled to retain such goods until all amounts due to it from the principal have been paid in full, unless the principal has provided sufficient security for payment of those amounts.

7.9 In the case of liquidation, (an application for) bankruptcy, official debt clearance on the part of the principal pursuant to the Netherlands Debt Clearance for Natural Persons Act (Wet Schuldsanering Natuurlijke Personen), attachment or (provisional) moratorium of payments on the part of the principal, the amounts due to Deltares from the principal shall become due immediately.

8 Liability

8.1 Deltares shall be liable solely for damages directly resulting from a shortcoming attributable to Deltares in the performance of its obligations. If Deltares is liable for damages incurred by the principal, Deltares shall solely be liable for direct damages incurred by the principal up to the amount to be paid by the principal for the performance of the commission in accordance with article 7.1. Remuneration paid by Deltares to third parties for the performance of the commission shall not be included in the aforementioned amount. This limitation of liability shall not apply if such damages are resulting from an intentional act or wilful recklessness of Deltares.

8.2 Deltares shall never be liable for indirect damages, including but not limited to consequential damages, loss of profit, missed savings and damages incurred due to production stagnation and/or business interruption.

8.3 Deltares, its personnel and others who are not its sub-ordinates used by Deltares in connection with the performance of the commission shall not be liable for damages incurred by the principal arising out of the application and/or use of (part of) the results of the commission, unless such damages are caused by an intentional act or wilful recklessness of Deltares, its personnel and/or the aforementioned others.

8.4 The principal shall indemnify Deltares, its personnel and others who are not its sub-ordinates used by Deltares in connection with the performance of the commission for any third party claim in respect of damages incurred by those third parties arising from the application

and/or the use of (a part of) the results of the commission by the principal and/or third parties provided with those results by the principal or (otherwise) informed thereof, unless such damages are caused by an intentional act or wilful recklessness of Deltares, its personnel and/or the aforementioned others.

8.5 The principal shall be liable for damages and/or injuries incurred by Deltares, its personnel and others who are not its sub-ordinates used by Deltares in connection with the performance of the commission and/or damage to goods of Deltares, or injuries sustained during a stay on a site in connection with the commission, in a vehicle and/or on technical installations of the principal. The same shall apply to sites, vehicles and installations of third parties. These stipulations override all differently formulated stipulations which were accepted by Deltares' personnel and/or the aforementioned others, i.e. when entering the site. This clause shall not apply if such damages or injuries have been caused by an intentional act or wilful recklessness of Deltares, its personnel and/or the aforementioned others.

8.6 Deltares, its personnel and others who are not its sub-ordinates used by Deltares in connection with the performance of the commission shall not be liable for damages and/or injuries incurred or sustained by the principal, its personnel and/or its goods, when on site, in a vehicle and/or on installations of Deltares, unless such damage and/or injury is caused by an intentional act or wilful recklessness of Deltares, its personnel and/or the aforementioned others.

8.7 Deltares shall not be liable for normal damages to the site and/or to planting and other natural growth resulting from driving on the site and performing the commission. The principal shall indemnify Deltares in connection with any claims which might be made by third parties for such damages.

8.8 Deltares, its personnel and others who are not its sub-ordinates used by Deltares in connection with the performance of the commission shall not be liable for damage to objects of the principal which Deltares has in its custody in connection with the performance of the commission, unless such damage was caused by an intentional act or wilful recklessness of Deltares, its personnel and/or the aforementioned others.

8.9 Deltares, its personnel and others who are not its sub-ordinates used by Deltares in connection with the performance of the commission shall not be liable for damage to, or loss of, goods provided by the principal to Deltares when the commission entails a risk of damage to or loss of such goods.

8.10 If the principal has not met its obligations arising out of article 3.5, the principal shall be liable to Deltares, its personnel and others who are not its sub-ordinates used by Deltares in connection with the performance of the commission, for all damages which result from any such non-disclosed properties of the goods in question. The principal shall indemnify Deltares for any claims which might be made by third parties concerning such damages. This shall not apply if the principal proves it did not know the properties in question and could not have known about them.

8.11 The principal shall indemnify Deltares for any claims made by third parties concerning intellectual property rights on goods or data provided by the principal, used for the performance of the commission and in connection with any claims made by third parties for damages incurred due to the use and/or application of (a part of) the results which infringe third party rights.

8.12 Deltares, its personnel and others who are not its sub-ordinates used by Deltares in the performance of the commission shall not be liable for damages resulting from the fact that the results of the commission do not qualify for patent application even if providing patentable results constitutes the subject of the commission.

8.13 Deltares, its personnel and others who are not its sub-ordinates used by Deltares in the performance of the commission shall not be liable for damages resulting from flaws in or untimely delivery of goods which are supplied to Deltares and which are passed on by Deltares to the principal, unless and to the extent Deltares is able to claim compensation for such damages from its supplier.

8.14 Claims from the principal made against Deltares arising out of or in connection with the performance of the commission by Deltares and/or persons used by Deltares in the performance of the commission shall expire in full if such claims have not been clearly instituted within two (2) years after the date of the final invoice, unless the principal proves that it could not possibly comply with the obligation to give notice of such claim within the time limit.

9 Custody

9.1 If reasonably possible, Deltares shall keep in custody goods, including samples (or the remains thereof) provided to Deltares in connection with the commission for a period of sixty (60) days after the date of the final invoice. Any costs incurred in this connection are deemed to be included in the price as quoted in the offer.

If within this period the principal has not made arrangements for the aforementioned goods to be returned or has not collected such goods, Deltares shall be at liberty to dispose of those goods as it sees fit and at its own discretion but shall do so at the principal's risk and expense. The costs of storage, shipping or destruction shall be for the account of the principal. Any revenue generated by the sale or rent of said goods may be set off by Deltares against amounts due to Deltares from the principal.

10 Disputes

10.1 All disputes arising from and/or connected to the commission or any agreements deriving from it shall be submitted to the competent judge in The Hague, the Netherlands.

10.2 The commission and agreements deriving from the commission shall be governed by the laws of the Netherlands, with the exclusion of the United Nations Treaty on International Purchase Agreements for Goods.

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