

## Model Quotation (full integral costs)





## Appendix I General Terms and Conditions


**From:** University of Twente  
7522 NB Enschede  
The Netherlands

### Definitions:

**Agreement:** these general terms and conditions and the Quotation between the UT and the Client.

**Background:** all information, techniques, Know-how, software and materials (regardless of the form or medium in which they are disclosed or stored) as well as any IPR pertaining thereto, which is in the possession of a Party prior to commencement of the Research, or is generated by a Party before or outside the Research and which is necessary to carry out the Research and which a Party contributes to the Research.

**Client:** the client for which the UT executes the Research.



**Confidential Information:** all information of whatever nature or in whatever form which is disclosed by a Party ("the Disclosing Party") to the other Party ("the Receiving Party") in connection with the Research, and which:

- a) if disclosed in tangible form, was marked as "confidential" at the time of such disclosure; or
- b) if disclosed orally, was stated to be confidential at the time of such disclosure and confirmed as "confidential" in writing and/or via email within thirty (30) calendar days upon disclosure.

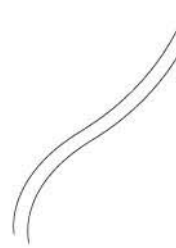
**IPR:** intellectual property rights, including without limitation, patents and patent applications, copyrights, database rights, design rights, and any similar forms of statutory protection, arising or available anywhere in the world.


**Know-how:** all non-tangible knowledge, information, processes, procedures, instructions, not covered by IPR.

**New Know-how:** all Know-how generated within the Research by or on behalf of a Party.

**Part(y)(ies):** a party or the parties to the Agreement.

**Quotation:** the quotation forwarded by the UT to the Client to which these general terms and conditions apply integrally.





**Research:** the research as specified in the Quotation.

**Results:** all inventions, results, materials, methods, processes, products, programmes, software, findings or discoveries generated within the Research by or on behalf of a Party, and the IPR relating thereto, excluding New Know-how.


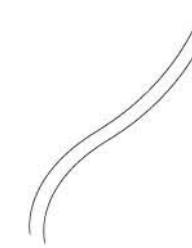
### **Article 1 Applicability of these terms and conditions**


These general terms and conditions apply to every offer, agreement and Quotation, between the UT and the Client, to which the UT has declared that these terms apply, in so far as UT and Client have not expressly diverged from these terms.

### **Article 2 Offers**

Offers made by the UT remain valid for thirty (30) days, unless otherwise stated. The UT can only be held to these offers, if the UT confirms acceptance thereof by the Client by written notice within fourteen (14) days upon the date of the relevant acceptance. The prices stated in the offer are ex VAT, unless otherwise stated.

### **Article 3 Execution of the Agreement**


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1. The UT shall carry out the Agreement and the Research to the best of its ability and insight and in accordance with the demands of good workmanship. UT cannot guarantee that the expected results will be achieved and therefore the agreement will be a best effort obligation (“inspanningsverplichting”) and shall not constitute an obligation to perform or a guarantee commitment (“resultaatsverplichting”).
  2. The UT has the right to have certain activities carried out by third parties, if and in so far as a proper execution of the Agreement and/or Research so requires.
  3. The Client will see to it that all information of which the UT indicates that it is necessary for the execution of the Agreement and/or Research or whereof the Client in good faith can be expected to understand that it is necessary, will be provided to the UT on time. If the information necessary for the execution of the Agreement and/or Research is not provided to the UT on time, then the UT shall be entitled to suspend the execution of the Agreement and/or Research and/or to charge the extra cost, resulting from the delay, to the Client in accordance with the usual rates.
  4. The UT cannot be held liable for damages of whatever nature, which have arisen due to the fact that the UT has based itself on incorrect and/or incomplete data supplied by the Client, unless the incorrectness or incompleteness should have been obvious to the UT.
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5. If it has been agreed that the Agreement shall be executed in stages, then the UT can suspend execution of those parts that belong to a following stage until the Client has approved of the results of the previous stage in writing.

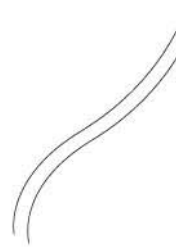
#### **Article 4 Term of the Agreement; time-limit of execution**


A term agreed for the execution is not a deadline, unless otherwise expressly agreed in writing. When the time limit for the execution has been exceeded the Client should therefore give a written notice of default to the UT.

#### **Article 5 Alteration of the Agreement**

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1. If during the course of the Agreement it appears necessary to alter or complement the activities to be carried out in order to ensure adequate performance, then parties will adapt the Agreement accordingly in writing, in due time and after mutual consultation.
  2. If parties were to agree that the Agreement is changed or adapted, then the date the execution is completed may be influenced on that account. The UT shall inform Client thereof as soon as possible.
  3. If the alteration or adaptation of the Agreement were to have financial and/or qualitative consequences, then the UT will inform the Client thereof beforehand. If a fixed fee has been agreed on, the UT will indicate to what extent the alteration or adaptation of the Agreement will result in an adaptation of the fee.
  4. Contrary to the provisions in paragraph 3 of this article, the UT will not be able to charge additional costs if the alteration or adaptation results from circumstances that can be attributed to UT.

#### **Article 6 Results and Background**

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1. Subject to article 7.1 of these general terms and conditions, Results generated by UT within the Research shall be owned by Client.
  2. New Know-how shall be owned by the Party generating such New Know-how.
  3. This Agreement does not affect the ownership of any Background.
  4. Each Party grants the other Party a royalty-free, non-exclusive license to use its Background, Results and New Know-how only for the purpose of carrying out the Research, but for no other purpose. Neither Party may grant any sub-license to use the other Party's Background, Results and New Know-how.
  5. UT retains at all times a royalty-free, non-exclusive, worldwide, perpetual, irrevocable license (without the right to sublicense) on the Results and New

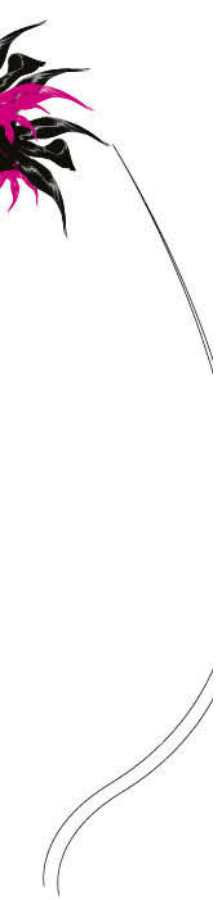



Know-how of Client for educational use and research, including but not limited to research in national and European projects executed with public funding.

6. If the use of Background of UT is needed for Client to practice any of Client's Results and/or New Know-how, UT shall grant, unless prohibited by an agreement in effect on or before the Effective Date, to the Company a non-exclusive, non-transferable, non-sublicensable, world-wide, perpetual, irrevocable license under its Background to practice Client's own Results and/or New Know-how under fair and reasonable conditions to be agreed upon in advance, in writing. A request for access rights pursuant to this Article 6.6, may be made up to twelve (12) months after the end of the Agreement.

*Patentable inventions*

7. Should one of the Parties be of the opinion that any of the Results include one or more patentable inventions, that Party shall notify the other Party. The UT shall thereafter submit an invention disclosure form (IDF) to the Client.
8. Within three (3) months after the date of delivery of the IDF to the Client, the Client shall inform the UT in writing if they wish a patent application to be filed on the invention and, if so:
  - (a) the first patent application shall be filed in the joint names of the Client and the UT on the Results concerned ("Joint Patent");
  - (b) the Client shall have the right to control the preparation and prosecution of the Joint Patent application through counsel of its own choice, and shall pay all costs related to such Joint Patent application (e.g. the patent application preparation and filing fees, prosecution costs and maintenance fees), and determine in which countries to file counterpart applications;
  - (c) the UT and its employees and consultants shall cooperate with the Client, as reasonably requested by the Client, in the preparation and prosecution of the Joint Patent application, without charge; and
  - (d) the UT will assist and co-operate in the transfer of the Joint Patent (application) into the name of Client only. The Client will not cancel the UT as co-applicant from the patent register before first publication of the Joint Patent on the Results concerned in the patent register.

9. If the Client believes that a third party is infringing the Joint Patent, Client shall have the right to file suit against the infringer(s) to the extent required by applicable law, subject to the following conditions:
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- (a) counsel for Client shall represent the interests of both Parties in the suit, at the expense of Client;
  - (b) the UT shall make its employees available as reasonably requested by Client to participate as advisors or witnesses, subject only to reimbursement of reasonable (i) out-of-pocket expenses and (ii) compensation for the man-hours spent; and
  - (c) Client shall pay all other reasonable out-of-pocket expenses incurred by the UT in the suit.

10. For the avoidance of doubt, there will be no obligation for the UT to file any patent application relating to the Results at its own costs.
11. Without detriment to the provisions of this Article 6, the UT hereby grants the Client an option to a royalty-free, non-exclusive, non-sublicensable right to use and exploit the New Know-how of UT. A request for access rights pursuant to this Article 6.11, may be made up to twelve (12) months after the end of the Agreement.




#### **Article 7 Report and publication**

1. The UT, or each employee of the UT, reserves the rights to which it is entitled pursuant to the Copyright Act, as far as it concerns scientific publications.
2. UT shall be entitled to publish the Results and/or New Know-how, provided that prior written permission from Client is received. UT shall propose the manuscript to Client in writing (electronic shall be equivalent to written) at least fourteen (14) calendar days before the intended publication to Client. In the absence of any objection within fourteen (14) calendar days following the request for permission, it is deemed that Client agrees to the proposed publication. Permission shall not unreasonably be withheld by Client. In the event that an objection is raised by Client, UT and Client shall seek in good faith to agree a solution on a timely basis (maximum thirty (30) calendar days after the request for permission) whereby such objection is resolved but the scientific quality of the publication will be maintained.
3. UT shall notify Client timely, if it makes an invention within the scope of the Research. In order to enable Client to apply for a patent UT shall, on Client's request, keep such invention secret for a period of three (3) months at the most upon the date of its notification to Client.



#### **Article 8 Confidentiality**

1. Subject to Article 7, neither Party will, either during the Research or five (5) years after the termination and/or expiration of the Agreement, disclose to any

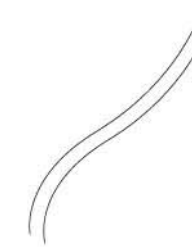



third party, nor use for any purpose except carrying out the Research, any of the other Party's Confidential Information.

2. Neither Party will be in breach of any obligation to keep any Confidential Information confidential or not to disclose it to any third party to the extent that it:
  - 8.2.1 is part of the public domain without violation of this Agreement;
  - 8.2.2 is known and on record at the Receiving Party prior to disclosure by the Disclosing Party;
  - 8.2.3 is lawfully obtained by the Receiving Party from a third Party who is not bound by similar confidentiality obligations;
  - 8.2.4 is developed by the Receiving Party completely independently of any such disclosure by the Disclosing Party;
  - 8.2.5 is ascertainable from a commercially available product; or
  - 8.2.6 is disclosed pursuant to administrative or judicial action, provided that the Receiving Party shall use its best efforts to maintain the confidentiality of the Confidential Information.



#### **Article 9 Premature termination, payment obligations**

1. Client may not terminate this Agreement prematurely, unless Article 9.2 applies. However, if Client terminates this Agreement prematurely, Client shall compensate UT fully for all of its non-cancellable costs and commitments, including but not limited to the (fixed) fee agreed upon within the Quotation.
  2. If a Party is in breach of any provision of the Agreement and (if it is capable of remedy) the breach has not been remedied within thirty (30) days after receipt of written notice specifying the breach and requiring its remedy, then the other party may (partially) terminate this Agreement with immediate effect by giving notice to the defaulting party. Such (partially) termination shall not affect the performance of obligations by the defaulting party or the rights of the other party which are due or exist before the date of (partially) termination.
  3. The claims which the UT has on the Client are immediately payable in the following cases:
    - circumstances which have become known to the UT after concluding the Agreement, provide sufficient grounds for the UT to fear that the Client will be unable to meet his obligations;
    - if the UT has asked the Client to provide surety in respect of the performance and this surety is not provided or insufficiently so;
    - In the said cases the UT will be entitled to suspend further execution of the Agreement or to proceed to (partially) terminate the
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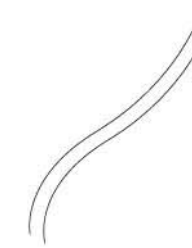
Agreement, this without prejudice to the right of the UT to claim damages.

4. If circumstances were to arise with regard to persons and/or materials of which the UT avails itself for the execution of the Agreement or is used to avail itself, and which are of such a nature that execution of the Agreement becomes impossible or so difficult and/or disproportionately expensive that observance of the Agreement can no longer be reasonably expected, then the UT is entitled to (partially) terminate the Agreement.


#### **Article 10 Defects; terms of complaint**

1. Complaints about the activities carried out should be reported by the Client to the UT in writing, within ten (10) calendar days after discovery, but at the latest within sixty (60) calendar days after completion of the activities in question.
2. If a complaint is justified, the UT will carry out the activities as agreed, unless this has meanwhile become useless. If this is the case, the Client should make it known in writing. If the carrying out of the agreed service is no longer possible or has lost its purpose, the UT can only be held liable within the limits of article 14 of these terms.
3. Even when the Client lodges a complaint on time, his obligation to pay shall remain.


#### **Article 11 Fees**

1. Paragraphs 2, 6 and 7 of this article apply to those offers, Quotations and Agreements that mention a fixed fee or in which a fixed fee is agreed upon. If no agreement has been reached on a fixed fee, the paragraphs 3 up to and including 7 of this article shall apply.
  2. Parties may agree on a fixed fee when the Agreement is concluded. The fixed fee is exclusive of VAT.
  3. If no agreement has been reached on a fixed fee, then the fee shall be determined on time-spent basis. The fee is then calculated according to the usual hour rates of the UT, current when the activities were carried out, unless a different hourly rate has been agreed on.
  4. Possible cost assessments are exclusive of VAT.
  5. For assignments with a duration of over sixty (60) calendar days the cost due shall be charged periodically.
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6. If the UT and the Client have agreed to a fixed fee then the UT shall nevertheless be entitled to raise this fee or those rates: the UT may pass on increases in the wages of its staff members, as well as cost of materials and travelling expenses. Such a raise can only be charged to the Client if he has been informed thereof before the date of commencement.

### **Article 12 Payments**

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1. Payments must be made within thirty (30) calendar days of receipt of the relevant invoice. The Client shall pay the costs concerned by the method of payment to be specified by UT. Upon expiration of said period of thirty (30) calendar days, the Client shall be in default and will be obliged to pay an interest of one percent (1%) per month on the amount due, as from the first day the Client was in default.
  2. In case of a winding-up, bankruptcy or a moratorium of the Client, the Client's obligations shall be due on demand.
  3. Payments made by the Client shall always serve to settle firstly all interest and costs due, secondly the invoices due and payable that have been outstanding longest, even when the Client states that the payment relates to an invoice of a later date.
  4. Payments shall be effected without discounts or settlement.


### **Article 13 Collection charges**

1. If the Client is in default with the fulfilment of one or more of his obligations, then all reasonable expenses incurred in order to receive payment outside the court will be for the account of the Client. The Client will at least be charged:

- over the first € 6,500.-	15%
- over the remaining amount up to € 13,000.-	10%
- over the remaining amount up to € 32,500.-	8%
- over the remaining amount up to € 130,000.-	5%
- over the remaining amount	3%

If the UT can prove that it has incurred higher costs which were necessary in all fairness, then these will also be considered for compensation.

2. The Client owes the UT the legal cost incurred by the UT in all courts, except when the Client can prove that these are unreasonably high. This applies only if the UT and the Client are engaged in legal procedures with regard to an Agreement to which these general terms and conditions apply and a court decision becomes final and conclusive whereby the Client is put fully or to a great extent in the wrong.



## Article 14 Liability

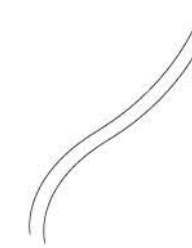
1. Neither Party shall be responsible to the other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts. For any remaining contractual liability, a Party's aggregate liability towards the other Party shall be limited to once the (fixed) fee specified in the Quotation provided such damage was not caused by a wilful act.


The terms of this Agreement shall not be construed to amend or limit any Party's statutory liability.

2. In respect of any information or materials (e.g. Results, New Know-how and Background) supplied by a Party to the other Party under the Research, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties. Therefore, the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials and no Party granting access rights shall be liable in case of infringement of proprietary rights of a third party resulting from the other Party exercising its access rights.
3. Each Party shall be solely liable for any loss, damage or injury to third parties resulting from the performance of the said Party's obligations by it or on its behalf under this Agreement or from its use of Results or Background.




## Article 15 Force Majeure

1. Force majeure shall mean: circumstances which prevent fulfilment of the obligation and for which the UT can not be held responsible. These will include, if and in so far as these circumstances have made fulfilment of the obligation impossible or if they make it unreasonably difficult to do so: strikes in organisations other than the UT, wildcat strikes or political strikes in the organisation of the UT, a general lack of the necessary raw materials and other matters or services required for the realisation of the agreed performance; unforeseen delays at the suppliers or other third parties on which the UT depends and general transport problems.
  2. During force majeure the obligations of the UT shall be suspended. If the period in which fulfilment of the obligations is impossible for the UT due to force majeure, lasts longer than sixty (60) calendar days, then each party shall be entitled to terminate the Agreement without an obligation to pay damages in that case.
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3. If the UT already has fulfilled part of its obligations when the force majeure arises, or if it can only partly meet its obligations, then the UT shall be entitled to invoice the part which has already been carried out or, as the case may be, the part which can be carried out. The Client is obliged to settle this invoice as if it were a separate Agreement. However, this does not apply when that part, which has already been carried out or, as the case may be, can be carried out, does not have an independent value.

#### **Article 16 Settling of disputes; applicable law**

1. Contrary to the legal stipulations as regards the competence of the civil court, any dispute between the Client and the UT with regard to intellectual property rights shall be settled by the District Court in The Hague, provided the court is competent. All other disputes between the Client and the UT shall be settled by the District Court in Overijssel, provided the court is competent.
  2. Any agreement between the UT and the Client shall be governed by and construed in accordance with the laws of the Netherlands.
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