
General Terms and Conditions

These general terms and conditions (hereafter: “Terms”) apply to all proposals presented by Future Diagnostic Solutions B.V. (“Future”) and its “Affiliates” which is defined as any entity that is controlled by, controls, or is under common control with Future, towards the entity (“Client”) requesting a proposal as well as to all services (“Services”) rendered by Future pursuant to a “Statement of Work” (“SOW”; as defined in the Terms) towards Client, unless Future and Client regarding such services, have entered into a Master Services Agreement (MSA). The description “Parties” used in the Terms, refers to Future and its Affiliates on the one hand and Client on the other hand.

Future Obligations

1.1 Future will provide Client the Services as specified in a written agreement signed by Parties (“Service Agreement” or “SOW”). If the terms of any SOW conflict with the Terms, then the SOW governs unless specifically otherwise stated in the SOW. If Client requests any changes to the Services, Future will inform Client of the cost and impact of such changes and will not implement any change without a fully executed amendment or change order to the relevant SOW. Prior to commencement of Services under any SOW, Client shall either submit a written purchase order or include a purchase order in the SOW, and such purchase order or purchase order number will be valid for all invoicing under such SOW.

1.2 For assay development Services, Future will provide the results of its performance of the Services to Client, including but not limited to data, assays, reports and other deliverables as set forth in each SOW (“Deliverables”) considering the specifics of Client’s requirements, Materials and Equipment. Future shall use its best efforts to develop and deliver the Deliverables in accordance with the timetable established in such SOW. Client acknowledges that, due to the nature of the Services, Future cannot guarantee that any Deliverable will be developed or delivered. Future shall keep Client informed of Future’s progress in developing and delivering Deliverables on a regular basis, as set forth in the relevant SOW, provide Client a reasonable opportunity to review and comment on interim draft reports, and take account of any such comments with respect to such Deliverables.

1.3 Future shall, in performing Services, maintain internal quality processes, including without limitation design control, that are (i) International Standards Organization (ISO) 13485 registered; and (ii) in compliance with the In Vitro Diagnostics Directive (IVDD) or In Vitro Diagnostics Regulation (IVDR) and the FDA’s Quality System Regulation (QSR) for medical devices or substantially similar registration or regulation. Future shall document all steps and results accordingly to facilitate and facilitate the technical registration with authorized bodies. Upon request, Future shall provide Client a copy of Future’s internal guidelines for testing, quality control, documentation, record-keeping and standard operating procedures used in connection with the Services, and shall share with Client the results of any inspection by a government agency that may affect the Services.

1.4 When performing its obligations under each SOW or proposal, you agree that Future will process data among which personal data as defined within the General Data Protection Regulation (GDPR). Future aims to be compliant with the rules of the GDPR. In principle, personal data can be stored until the owner of the personal data requests to remove the data. More specific information on this topic can be found on Future's website.

Client Obligations

Client acknowledges that its timely provision of, and Future's access to, all relevant Client assistance, cooperation, and complete and accurate information and data and materials is essential to the performance of the Services, and that Future shall not be liable for any deficiency or delay in performing the Services if such deficiency or delay results from Client's failure to provide any information, data or material as agreed in the SOW and, if applicable, from time to time during the performance of Services. Client shall provide Future with all information available to Client regarding known or potential hazards associated with the use of any materials supplied to Future by Client.

Client represents and warrants to Future that Client has the right to provide the specifications and the materials to Future regarding the Services. Client will indemnify, defend and hold harmless Future and its Affiliates from and against any and all losses relating from any action brought against Future or its Affiliates to the extent such losses are caused by Client's breach of the express warranty made by Client.

Non-exclusivity

Client acknowledges that all Services are provided on a non-exclusive basis, and Future reserves all rights for itself and its Affiliates to provide third parties with deliverables that are identical or similar to Deliverables, including results or work product generated using materials that are similar or identical to materials delivered by Client, unless explicitly agreed upon otherwise in the SOW.

Payment

4.1 Client will compensate Future for its performance of the Services in accordance with the terms set forth in each SOW. This compensation is based on elements like supplier tariffs, wages, excise duties, taxes, transport costs and other surcharges known to Future on the Effective Date. Future is entitled to adjust this compensation annually on the beginning of a calendar year due to changes on said elements and charge the adjusted compensation towards Client.

4.2 Client will also reimburse Future for reasonable, necessary and documented expenses directly incurred in connection with the Services to the extent they were not foreseeable at the time of the respective SOW. Future will inform Client about such expenses as soon as possible, after which said expenses will be due and payable by Client.

4.3 If any payment due hereunder is not made when due, then, without limiting Future's other available remedies, (a) Future may suspend performance of Services until all past due amounts are received and/or (b) the underpayment shall accrue interest from the date due at four (4) percent per annum unless the payment was withheld by Client for cause.

Intellectual Property

5.1 Each party will retain all right, title and interest in all technology that is controlled by it prior to the moment that a SOW has been agreed upon and no license grant or assignment is implied (by estoppel or otherwise) with regard thereto. Client shall not, unless explicitly agreed upon otherwise within the SOW, by virtue of these Terms, SOW, or either party's performance thereof obtain any intellectual property or other ownership rights in any methods or processes used or developed by or for Future in or for the provision of Services, or any documentation, records, raw data, materials, specimens, work product, concepts, information, inventions, improvements, designs, programs, formulas, know-how, or writings related thereto ("Future Technology").

5.2 Client grants to Future a limited, non-transferable, non-sub licensable, nonexclusive royalty-free, fully paid up license to use Client technology, specifications and materials solely to perform the Services in accordance with the relevant SOW.

5.3 Subject to Client's fulfilment of its payment obligations pursuant to the relevant SOW and compliance with the Terms, Future hereby grants to Client a worldwide, limited, non-transferable, sub licensable, nonexclusive license under Future's right, title and interest to use Future Technology solely to the extent reasonably necessary to practice and commercialize the Deliverables in furtherance of the purpose set out in the SOW, provided that Client is strictly prohibited from any sublicensing of Future Technology and/or Deliverables to any party that is a competitor of Future. Client agrees its breach of this Section will result in irreparable and continuing damage to Future for which there will be no adequate remedy at law; therefore, in the event of a breach or threatened breach of any provision of this Section, and without limiting its other available remedies, Future shall be entitled to equitable relief, whether preliminary or permanent, and specific performance, without posting a bond or other security and without proving damages, and Client shall not oppose the granting of such relief.

Limitation of Liability

6.1 The total liability of Future due to an attributable failure to perform the Services or due to any other reason, explicitly including any failure to comply with a guarantee obligation agreed with the Client, shall be limited to compensation of the direct damage or loss not exceeding the sum stipulated in the SOW. The total liability of Future for direct damage or loss, regardless the legal basis, shall under no circumstances exceed € 250.000,- (two hundred and fifty thousand euro).

6.2 The liability of Future for indirect damage or loss, resulting loss, loss of profit, loss of savings, reduced goodwill, loss due to business interruption, loss as a result of claims from the Client's customers, loss in connection with the use of items or materials prescribed by Client, are excluded.

Term and Termination

7.1 The SOW will commence on the date mentioned in the SOW and continue in effect until terminated in accordance with this section 7 or by delivery of written notice of termination by either party to the other, or after completion of performance of the SOW.

7.2 Future or Client may terminate any SOW, immediately upon written notice if the other party: (i) becomes insolvent; (ii) becomes the subject of a petition in bankruptcy which is not withdrawn or dismissed within 120 days thereafter; (iii) makes an assignment for the benefit of creditors; or (iv) breaches any material obligation under the Terms (including but not limited to payment obligations) and fails to cure such breach within thirty (30) days after delivery of notice thereof.

7.3 Client may terminate any SOW for any reason upon ninety (90) days written notice to Future.

7.4 If Future, in its reasonable discretion, applying analytical methods reasonably selected by it and accompanied by documentation, determines that continuing performance of the Services in accordance with the SOW is not likely to result in delivery of any given Deliverable or achievement of any given milestone, then Future shall so notify Client, and Future's obligation to perform Services under such SOW shall be suspended. Client shall notify Future within ten (10) business days whether or not Client agrees with Future's position. If Future terminates a SOW pursuant to this section and if the SOW included milestone payments, the Parties shall cooperate in good faith to allocate fees payable to Future in respect of the next-occurring milestone, which fees shall be reasonable and prorated, taking into account the work actually performed by Future in efforts to achieve the next-occurring milestone, and Client shall pay such fees in response to Future's invoice therefor.

7.5 Upon termination of any SOW, Client will pay Future all fees and expenses due and incurred through the effective date of termination unless the termination was affected by Client pursuant to section 7.2. In case the terminated SOW included milestone payments, then Client will pay Future the amount due for the next-occurring milestone.

Force Majeure

Except with respect to payment obligations, and to the extent consistent with the laws of the Netherlands, if either Party is delayed or prevented from fulfilling its respective obligations under this agreement by any cause beyond its reasonable control, then such performance shall be excused to the extent of the delay or failure, and that Party will not be liable under this agreement for that delay or failure. The Parties hereby acknowledge and agree that any delay or failure caused by (the effects of- or any government measures resulting from) an epidemic or (global) pandemic such as (but not limited to) the Corona-virus, whether foreseeable or not, is deemed a 'force majeure'-situation as meant in this section, notwithstanding the fact that the Parties will use their best efforts to not let any delay or failure occur, minimize the negative consequences of any delay or failure and take whatever reasonable steps are necessary to relieve the effect of such cause as rapidly as reasonably possible.

Governing Law

These Terms and any SOW concluded between Future and Client shall be governed by, and construed in accordance with the laws of The Netherlands. In case any dispute arises out of a SOW or the Terms, the Parties hereto shall endeavor to settle such dispute amicably. In the event of any disputes, claims or controversies between the Parties arising out of, or in relation to, any SOW (a “Dispute”), including any question regarding its validity, construction or performance, the Parties shall, for a period of ninety (90) days following the commencement of the Dispute, use good faith efforts to reach an amicable settlement of the Dispute. In the event the Parties fail to reach an amicable settlement, (i) the Parties waive all rights to trial by jury and (ii) the Parties agree that the exclusive venue of any action in respect of this SOW shall be the Netherlands in the event legal action is initiated by Client or in [] in the event legal action is initiated by Future. The Parties consent to the above exclusive jurisdiction and waive any right they have or may have to challenge such venue and forum.

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