

GENERAL TERMS AND CONDITIONS OF NOVACROPCONTROL

Applicability

1. These General Terms and Conditions apply to all orders, including any follow-up orders and additional activities, that are carried out by NovaCropControl (hereinafter: "NovaCropControl"), having its registered seat in (5061 KL) Oisterwijk, the Netherlands, registered with the Chamber of Commerce under number 17231414. These General Terms and Conditions have also been drafted for the legal successor(s) to NovaCropControl and/or for companies and/or partnerships affiliated with NovaCropControl.
2. The term "other party" is used in these General Terms and Conditions to refer to any legal person and/or natural person that has entered into an order with NovaCropControl or that has received an offer to do so.
3. The term "order" is used in these General Terms and Conditions to refer to all agreements that NovaCropControl has entered into with the other party, including, without limitation, the order defining the scope of the service provision by NovaCropControl, these General Terms and Conditions, and all other supplementary agreements made between the other party and NovaCropControl.
4. The term "leaf sample or other sample" is used in these General Terms and Conditions to refer to the material made available by the other party, such as, without limitation, some soil and/or a leaf and/or crop fragment, in order to have NovaCropControl analyse this for the presence of nutrients.
5. The term "bundle" is used in these General Terms and Conditions to refer to a number of measurements purchased by the other party in advance.
6. The term "report" is used in these General Terms and Conditions to refer to the report drawn up by NovaCropControl and that presents the research results in respect of the measurements.

Quotations

7. All quotations by NovaCropControl are valid for thirty (30) days and can be revoked by NovaCropControl, even after having been accepted by the other party, provided that they are revoked by NovaCropControl immediately upon such acceptance.
8. NovaCropControl cannot be held to comply with its quotations and/or offers if the other party should reasonably be expected to understand that the quotations and/or offers, or a part thereof, contain an apparent mistake or written error.
9. A compounded quotation does not obligate NovaCropControl to perform part of the order for a pro rata part of the price stated. Offers or quotations do not apply to future orders.

Term/termination/change and ending of the order

10. Unless the parties agree otherwise, the order will be entered into for an indefinite period of time and it can be terminated at all times, duly observing one month's notice. NovaCropControl will then invoice the other party for all the activities that have been carried out, but that have not been invoiced yet.
11. Any change and/or amendment to the order shall only take effect if agreed in writing by NovaCropControl.
12. The parties can terminate the order in writing, duly observing the other provisions of these General Terms and Conditions. If the other party is entitled to full or partial reimbursement of any bundles already purchased, NovaCropControl will refund the amount that is to be paid back to the other party in accordance with the fees that apply at such time.
13. NovaCropControl reserves the right to perform and invoice the order in separate parts, duly observing the principles of reasonableness and fairness.
14. NovaCropControl makes use of bundles for the performance of its activities. Once purchased, bundles are valid for one year from the date of purchase. If the other party still wishes to make use of any unused part of a bundle that was purchased more than one year ago, NovaCropControl shall have the right to invoice the other party for any increases in price that may then apply.

Performance of the order

15. The other party shall inform NovaCropControl as fully as possible and keep it informed as fully as possible, also during the performance of the order. If, due to an incomplete file and/or incomplete information provision, NovaCropControl has to carry out extra activities, it will be entitled to invoice the other party for such activities.
16. NovaCropControl reserves the right to have certain activities carried out by third parties. The applicability of sections 7:404, 7:407(2) and 7:409 of the Dutch Civil Code is explicitly waived.
17. If NovaCropControl states a period in which it will perform the order, such period shall only serve as a general indication.

18. The other party shall be at liberty to address NovaCropControl through any means of communication of its own choice, such as, without limitation, the telephone, the internet, post.nl or a courier service. NovaCropControl can in no way be held liable if a means of communication does not work properly. If a dispute ensues, the other party shall have to prove that the message it sent has reached NovaCropControl.
19. If NovaCropControl carries out the order in a location to be designated by the other party, the resting time and working hours of NovaCropControl shall be the same as the working hours and times that are customary at the other party, unless agreed differently in writing between NovaCropControl and the other party.
20. If NovaCropControl has to carry out more work and/or work overtime, NovaCropControl shall have the right to charge the other party for such activities, based on the fee previously agreed with the other party, excluding value added tax (VAT). If no hourly fee has been agreed, NovaCropControl will invoice the other party at NovaCropControl's discretion, duly observing the principles of reasonableness and fairness.
21. The other party shall be under the obligation to provide NovaCropControl access to the workplace designated by the other party and provide NovaCropControl with all the materials it reasonably needs in order to perform the order. Any consequences of any failure to comply with such obligation(s) shall be at the other party's expense and risk.
22. NovaCropControl shall determine the manner in which the order is performed, considering any wishes expressed by the other party and to the extent possible.
23. Prior to entering into the order, the other party shall inform NovaCropControl about any mandatory or other business closure(s) and any mandatory days off. If an additional business closure becomes known during the term of the order, the other party shall immediately inform NovaCropControl accordingly. NovaCropControl shall have the right to charge the cost of a business closure as referred to in this provision to the other party.
24. NovaCropControl reserves the right to take holidays and other leave days. NovaCropControl will inform the other party as soon as possible about such leave days, but in any event at least 24 hours in advance. When planning holidays and other leave days, NovaCropControl shall consider the other party's wishes as much as possible, but it shall not be bound by them.
25. The other party is aware that any leaf samples or other samples must be taken before 9 a.m. Leaf samples or other samples taken after 9 a.m. are less accurate. If any disputes about this ensue between NovaCropControl and the other party, the other party will have to prove that the leaf sample or other sample was taken before 9 a.m. and that, furthermore, all guidelines issued by NovaCropControl as regards taking leaf samples or other samples have been observed. These guidelines include, without limitation, the following instructions:
 - the crop to be studied must be dry;
 - young and old leaves have to be sampled separately;
 - for most crops, a representative sample consists of 30 leaves;
 - the website of NovaCropControl (<http://www.novacropcontrol.nl/>) features the most up to date manuals with instructions as to how to take leaf samples or other samples.

Prices & Payment

26. All prices are binding and are exclusive of VAT.
27. Invoices shall be paid to NovaCropControl within fourteen days of the invoice date, without applying any set-offs or deductions.
28. If the other party fails to comply with its payment obligation(s) in respect of NovaCropControl, the other party shall forfeit a contractual penalty of 15% of the unpaid invoice amount, with a minimum of EUR 40, without prejudice to the statutory interest rate that is owed.
29. If the other party, after having been sent a reminder, still fails to pay the unpaid amount to NovaCropControl, the latter shall have the right to suspend its activities until the other party has paid the full amount, including interest and debt collection charges, to NovaCropControl.
30. The payments received will first be used to pay the interest and debt collection charges owed. If any amount then remains, this will go towards the oldest unpaid invoice(s).
31. NovaCropControl is entitled at all times to demand an advance payment before carrying out an order.
32. If the other party fails to pay the unpaid amount(s) due to it being declared bankrupt or insolvent, applying for and/or being granted a moratorium on payment, the Dutch Debt Rescheduling (Natural Persons) Act (*Wet schuldsanering natuurlijke personen, WSNP*) being applied to it, an administrator being appointed over its property, it being placed in receivership, its death, all or part of its assets being seized or attached, or its company being wound up, any unpaid amounts will be immediately due and payable, without prejudice to NovaCropControl's right to recover any further or higher damage or loss from the other party.

33. The other party shall not be entitled to set off any amounts it owes NovaCropControl against any amounts owed to it by NovaCropControl.
34. NovaCropControl reserves the right to suspend the surrender of all documents it has received on behalf of the other party for carrying out the order until such moment when all unpaid amounts (including interest and cash collection charges) have been paid to NovaCropControl.
35. NovaCropControl shall specifically reserve the right to not make reports available to the other party until all amounts owed to NovaCropControl have been paid.

Liability

36. Except for in the event of a deliberate act and/or gross negligence on the part of NovaCropControl or its managing subordinates, NovaCropControl's liability shall be limited to the amount paid by the insurance it has taken out. If the liability is not covered by an insurance policy taken out by NovaCropControl, the liability shall be limited to the amount that NovaCropControl charged to the other party in the twelve (12) months preceding the imputable failure. If the liability comprises of a series of imputable failures, such series will be considered as one (1) imputable failure. NovaCropControl's liability shall only concern direct damage or loss. Direct damage or loss shall exclusively be taken to mean:
 - the reasonable costs of establishing the cause and the extent of the damage or loss, to the extent that establishing this concerns damage or loss within the meaning of these General Terms and Conditions;
 - any reasonable costs incurred to have NovaCropControl's faulty performance comply with the agreement unless such costs cannot be imputed to NovaCropControl;
 - any reasonable costs incurred to prevent or contain damage or loss, to the extent that the other party proves that such costs have resulted in direct damage or loss as referred to in these General Terms and Conditions being contained.
37. NovaCropControl shall never be obliged to compensate any damage or loss caused by the application of products and/or methods advised by it. Damage or loss caused to crops, as well as damage or loss due to the deterioration of the soil and damage or loss due to a certain cultivation result not being achieved, shall never be considered as damage or loss.
38. NovaCropControl shall not be liable for any loss of profits and/or other consequential damage or loss and/or loss of savings and/or damage or loss due to business interruptions caused as a result of the reports provided by NovaCropControl and/or any activities carried out by it.
39. NovaCropControl shall not be liable for the consequences of the date by when the order shall have been carried out being exceeded. If a period or date is exceeded, the other party shall send NovaCropControl written notice of default. NovaCropControl shall then be offered a reasonable period to as yet perform the order.
40. NovaCropControl shall not be liable if it makes mistakes due to information, including incorrect and/or incomplete information, it has received from the other party, including any information made available to NovaCropControl by third parties on the instructions of the other party.
41. NovaCropControl may make use of third parties for the performance of the order. NovaCropControl shall not be liable for any mistakes made by such third parties.
42. NovaCropControl shall carry out the activities to the best of its abilities. However, NovaCropControl can never guarantee that an envisaged result is actually achieved.
43. NovaCropControl can never be held liable by any parties, other than the 'other party' within the meaning of these General Terms and Conditions. The other party shall hold NovaCropControl harmless against all third-party claims. The other party shall compensate NovaCropControl for the costs it has incurred or will incur in connection with defending itself against such third-party claims in connection with or resulting from any activities carried out by NovaCropControl pursuant to the order(s) entered into with the other party.
44. The other party shall be under the obligation to contractually exclude NovaCropControl's liability in its relationships with its customers and other third parties to the extent possible and to take out insurance against this if reasonably possible.
45. For the proper performance of the order, NovaCropControl virtually always depends on a properly working internet connection and properly working hardware and software. NovaCropControl shall never be liable for any resulting damage or loss if such hardware and software and/or internet connection do not work sufficiently or at all.
46. NovaCropControl will only deliver a report. It is up to the other party, and/or a third party engaged by the other party, to analyse and/or interpret the details in the report and to assess, based thereon, whether the application of nutrients should be changed. If any damage or loss is caused by an incorrect analysis and/or interpretation of the reports made available by NovaCropControl in the context of the order, NovaCropControl shall never be liable for such damage or loss.
47. If NovaCropControl does give detailed advice, further to a report drawn up by it, NovaCropControl's liability will be limited to the contents of these General Terms and Conditions.

Claims

48. Without prejudice to the provisions of section 6:89 of the Dutch Civil Code, a claim for damages will always lapse after one (1) year has elapsed since the other party became aware of the damage or loss and of the fact that NovaCropControl might possibly be the liable party.

49. Claims shall be submitted to NovaCropControl in writing by means of a registered letter. Claims regarding the amount of the invoice shall be submitted within seven (7) days of the date of the invoice.

Delivery

50. Leaf samples or other samples are to be submitted by the other party by a carrier to be designated by the other party, such as, without limitation, post.nl or a courier service. NovaCropControl shall not be liable for anything that happens to the leaf samples or other samples while they are being transported. If the leaf sample or other sample arrives at the address stated by NovaCropControl in a damaged state, NovaCropControl will inform the other party accordingly. NovaCropControl shall never be liable for any delays during transportation.

NovaCropControl shall actively endeavour to make the research results available at the address stated by the other party on the first working day following the working day when the leaf samples or other samples are received.

51. In principle, the research results shall be supplied to the mail or email address stated by the other party, unless otherwise agreed between the parties.

52. Any delivery periods stated by NovaCropControl only serve as a general indication. Delivery periods are based on the facts and circumstances known when entering into the order. NovaCropControl shall not be liable if any delivery period is exceeded and/or this shall not give the other party the right to dissolve the agreement, unless this is caused by a deliberate act and/or gross negligence on the part of NovaCropControl.

Force majeure

53. If force majeure prevents NovaCropControl from properly complying with its obligations in respect of another party, or from complying with such obligations at all, such obligations will be suspended for the period that the force majeure lasts.

54. In these General Terms and Conditions, "force majeure" shall be taken to refer to everything provided for in this respect in statute law and in case law as well as any external causes, regardless of whether they have been foreseen or that are beyond NovaCropControl's control, but that prevent NovaCropControl from complying with its obligations in respect of the other party. For example, but without limitation, NovaCropControl is prevented from complying with its obligations in respect of the other party in the event of sickness of itself and/or its personnel and/or its direct family consisting of its partner and its children as well as its family members to the first degree, any stagnation affecting its company or in any company engaged by NovaCropControl for performing the order, natural disasters, technical failures, work strikes, etc.

Confidentiality

55. Without NovaCropControl's prior consent in writing, the other party shall not be allowed to provide any reports made available by NovaCropControl in the context of the order to third parties other than the direct customer of the other party. If this does happen, the other party will forfeit an immediately due and payable penalty of EUR 7,500 to NovaCropControl, which penalty shall not be open to any reduction or set-off, and without prejudice to NovaCropControl's right to recover any further or higher damage or loss from the other party. If the documents referred to in this provision need to be handed over to a third party engaged by the other party in the context of performing the order, the other party will impose its obligations resulting from these General Terms and Conditions on such third party it has engaged.

Intellectual property rights

56. NovaCropControl reserves all intellectual property rights, in the broadest sense. The intellectual property right shall also extend to all the on-line and other reports issued in the context of performing the order. The other party recognises that these rights are vested in NovaCropControl.

57. The other party shall be authorised to use the materials made available by NovaCropControl in the context of the order, such as, without limitation, the reports, for its own use. The reports and the other materials made available in the context of the order may not be copied and/or made available to third parties by the other party, until NovaCropControl has explicitly given its permission. The other party shall be under the obligation to immediately report any breaches of this provision to NovaCropControl.

58. If the other party fails to comply with its obligation pursuant to this provision, the other party will forfeit an immediately due and payable penalty of EUR 10,000 to NovaCropControl, which penalty shall not be open to any reduction or set-off, without prejudice to NovaCropControl's right to recover any further or higher damage or loss from the other party.

59. NovaCropControl will be allowed to use any knowledge gathered in the context of the order with the other party at its own discretion, provided that the identity of the other party cannot be identified.

Retention of title

60. NovaCropControl reserves title to all products delivered, and to be delivered by it, until the full purchase price has been paid.

61. For as long as title to the product that has been delivered has not, or not entirely, transferred to the other party, the other party shall not be permitted to transfer the product to third parties, to pledge it, or to surrender it to third parties so that they can use it.

62. The other party shall carefully keep NovaCropControl's property as the identifiable property of NovaCropControl.

63. The other party shall be under the obligation to inform NovaCropControl if its title is claimed by a third party.

64. The other party shall grant NovaCropControl access at all times to the room(s) where the product that has been delivered subject to the retention of title is stored.

Creditor's default

65. If the other party fails to take possession of the reports on the agreed date of delivery, e.g. because it has failed to comply with its obligations in respect of NovaCropControl and NovaCropControl therefore fails to make the reports available to the other party, NovaCropControl will store the reports. During such a creditor's default, the consequence of any deterioration, such as, without limitation, the details in the stored report no longer being up to date, shall be at the expense and risk of the other party. The other party can only resolve such a default by fully complying with its obligations in respect of NovaCropControl.

Training courses

NovaCropControl provides training courses and training programmes. Provisions 66 to 75 of these General Terms and Conditions are specifically intended for training courses and training programmes that are organised by NovaCropControl or a person assigned by it. If any provision regarding a training course and/or training programme contradicts a provision from the rest of these General Terms and Conditions, the stipulations of provisions 66 to 75 shall prevail in the event of a training course and/or training programme.

66. Without NovaCropControl's permission, the other party shall not be permitted to make public and/or change the material that is made available for the purpose of the training course.

67. The other party shall not be permitted to use the material that is made available for the purpose of a training course taught by NovaCropControl for a training course and/or training programme to be taught by the other party or to use it to develop a similar training course and/or training programme.

68. NovaCropControl can set a requirement for a minimum number of participants for a training course. If the minimum number of participants has not been reached three (3) weeks before the planned start of the course, NovaCropControl can cancel the training course and/or training programme free of charge. Any course fees already paid will then be refunded to the other party.

69. NovaCropControl can cancel a course up to three (3) weeks before the planned start of the course free of charge if one or more teachers unexpectedly become unavailable.

70. NovaCropControl can cancel a course up to three (3) weeks before the planned start of the course free of charge if the envisaged course venue is, unexpectedly, not available.

71. If a course is cancelled three (3) weeks before the planned start of the course, NovaCropControl's liability will be limited to the amount it charges the other party for attending the course. The other party cannot claim a higher amount.

72. The other party can cancel a training course up to four (4) weeks before the date when the course starts. In such event, the other party will owe NovaCropControl €40 as a registration fee. If the other party cancels a training course and/or training programme within four (4) weeks before it is planned to start, it will owe the full course fees to NovaCropControl. Cancelling participation in a training course that has already started is not possible.

73. If a participant cannot attend themselves, the other party may send someone else as a replacement free of charge.

74. NovaCropControl's liability shall be restricted to the relevant provisions of these General Terms and Conditions.

75. Besides the further provisions in the General Terms and Conditions, NovaCropControl will not be liable if the other party autonomously gives advice. If the other party gives advice to third parties, this shall be at its own expense and risk. NovaCropControl shall in no way be liable if a third party incurs damage or loss due to the advice given by a former or current participant in a training course or training programme. The other party shall hold NovaCropControl harmless against any claims in relation to this provision.

Competent court & choice of law

76. The orders between NovaCropControl and the other party shall be governed exclusively by Dutch law.

77. Any disputes between NovaCropControl and other parties will be adjudicated by the competent court in the court district of Zeeland-West-Brabant, unless NovaCropControl, for reasons of its own, chooses to bring the dispute before another court.

78. These General Terms and Conditions have been drawn up in the Dutch language. If the General Terms and Conditions are translated into another language, the Dutch version shall be considered to be the authentic version and the notions and terms used shall be read and interpreted in the context of the Dutch language and the Dutch legal system.