

NimaGen Terms and Conditions of Sale and Delivery

Issued by NimaGen B.V., Nijmegen, The Netherlands. The Sale and Delivery Terms and Conditions of NimaGen B.V. are filed with the Chamber of Commerce of Nijmegen under the number 51430991.

Valid effective January 2, 2024

Part A. General Terms and Conditions

Unless otherwise specified and agreed in writing, the purchase of NimaGen Products and Services is subject to the following Terms and Conditions:

DEFINITIONS

The following definitions apply to these Terms and Conditions:

“Terms and Conditions”: the NimaGen B.V. (“NIMAGEN”) Terms and Conditions of Sale in question and its elements.

“Product(s)”: tangible goods specified in the Purchase Order to be delivered on or before the delivery date.

“Service(s)”: the services (or: “Work”) that NIMAGEN is to perform for Customer specified in the Purchase Order.

“Offer”: any offer or proposal, such as a Quotation or a Price Agreement issued by or on behalf of NIMAGEN to the Customer.

“Quotation”: a document that NIMAGEN provides to a Customer to offer Products or Services at a stated price, under specified conditions.

“Price Agreement”: a legal document (or: contract) signed by authorized representatives of both NIMAGEN and Customer, that sets criteria of what Products or Services NIMAGEN will provide for a set price and time period, and for a definite or indefinite quantity, the price in principle not being subject to change.

“Written/in writing”: correspondence by email (with accompanying electronic documents) or regular post between Parties.

“Purchase Order”: a legal document Customer sends to NIMAGEN to authorize a purchase. Often referred to as PO. Becomes a binding contract once accepted by NIMAGEN.

“Standing Order”: a Purchase Order covering multiple deliveries of Service or individual shipments of specific Products with a fixed price, quantity and delivery schedule. Delivery will occur automatically once the Purchase Order is placed. Standing Orders are not to be used for capital equipment purchases.

“Party or Parties”: each natural person, partnership, legal entity or any other entity that enters or has entered into an agreement with NIMAGEN, or to whom an offer is or has been made by or on behalf of NIMAGEN, or for the benefit of whom service is or has been performed by or on behalf of NIMAGEN.



“Third Party”: an individual or entity involved in a situation besides Customer and NIMAGEN.

“Shipping Address”: an address provided by Customer where NIMAGEN will send the Products ordered.

“Billing Address”: an address connected to Customer's payment method.

“Web Shop”: website by means of which Products or Services may be purchased.

1. OFFER

1.1. An Offer describes a proposal in writing, such as a Quotation or a Price Agreement, issued by or on behalf of NIMAGEN to Customer.

1.2. An Offer is free of obligation unless it specifies a term of acceptance. Any Offer that is made free of obligation may be withdrawn by either Party without delay after having been accepted. No Agreement will be realized in that case.

2. AGREEMENT

2.1. These Terms and Conditions (“Terms”), an offer such as a Quotation or a Price Agreement (if any), and the Purchase Order comprise the agreement (“Agreement”) between Customer and NIMAGEN. This Agreement is the full and exclusive contract between Parties with respect to purchase of Products or Services (“Product”) by Customer.

2.2. Unless NIMAGEN and Customer have agreed to a separate written contract, which includes a Price Agreement, signed by authorized representatives of both Parties (“Contract”), Customer agrees to accept and is bound by the Agreement when ordering Product.

2.3. To the extent the Parties have executed a Contract, and there are any conflicts between these Terms and Conditions and those in the Contract, then the Contract shall prevail.

2.4. Any provisions contained in any Purchase Order, acknowledgement, acceptance or other document from Customer, which are inconsistent with a Quotation, Price Agreement, or these Terms and Conditions, will be rejected by NIMAGEN, until the conclusion and the content of the Agreement are confirmed in writing by means of a confirmation of the Purchase Order, unless Customer objects to this without delay in writing prior to shipment of Products or provision of Services by NIMAGEN.

2.5. In deviation of the provisions of Articles 2.1, 2.2, 2.3 or 2.4, an Agreement further to a Purchase Order via the NIMAGEN web shop will not be concluded until the moment that the web order is confirmed by Customer to NIMAGEN by means of an electronic confirmation of the order.

2.6. Any entire or partial amendment or cancellation of the Agreement can only be made with prior written agreement from NIMAGEN.

2.7. If amendment or cancellation has NIMAGEN's consent, Customer is obliged in each case to settle the costs of work already undertaken by NIMAGEN. In such event, NIMAGEN is permitted to invoice Customer for the associated costs and to reestablish the delivery and lead time in relation to commitments under the Agreement.

2.8. The Agreement takes effect when Customer receives email confirmation that NIMAGEN has accepted the Purchase Order. The Purchase Order shall only be realized and confirmed in writing, signed by an authorized representative of NIMAGEN, describing the commitments of both Parties arising from the Agreement.

2.9. The Agreement or Contract may be executed in two or more counterparts, each of which shall be deemed an original and all of which will together be deemed to constitute one Agreement. The Parties agree that the execution of the Agreement by exchanging pdf signatures, and/or by industry standard electronic signature software (e.g. DocuSign), shall have the same legal force and effect as the exchange of original signatures. In any proceeding arising under or relating to the Agreement, each Party hereby waives any right to raise any defense or waiver based upon execution of the Agreement by means of such electronic signatures or maintenance of the executed Agreement electronically.

3. PRICE

3.1. If no Price has been quoted or specified to Customer, the Price will be the Product Price on www.nimagen.com or listed in the official annual NIMAGEN Price List in effect at the time of Purchase Order reception.

3.2. NIMAGEN may change the Prices stated at any time with thirty (30) calendar days notice. Prices offered by means of a Quotation are valid for 30 days, unless otherwise stated in writing. Prices offered by means of a Price Agreement are valid until the last day of the running fiscal year (i.e. December 31), unless otherwise specified in writing.

3.3. If an offer is without obligation, the Prices, Taxes, Fees, or Duties contained therein shall also be without obligation.

3.4. Prices listed, quoted or invoiced can be in either Euro (€), US Dollar (\$) or Pound Sterling (£). NIMAGEN is entitled to adjust Prices if the official currency rate at the time of delivery differs by more than 4% from the currency rate on the date on which the Offer is made, whereby the latter rate is set at 100.

3.5. Prices are exclusive of Customs Duties, Withholding Taxes, Value Added Tax (VAT) and any Sales, Use, Excise, and other similar Taxes. Customer shall pay all such Fees, Duties, and Taxes in addition and in the manner and at the rate prescribed by the relevant authority. NIMAGEN products do not include any such charges, unless explicitly specified in writing or by virtue of law. If NIMAGEN pays these fees, NIMAGEN will add them to the Invoice.

3.6. Any exemption claimed relative to Taxes, Fees or Duties will only be accepted under provision by Customer of a valid, signed certificate or letter of exemption for each respective jurisdiction.

3.7. Prices of NIMAGEN Products are exclusive of the costs of Insurance, Shipping, Dry Ice conditioning and Packing & Handling charges, which include loading, unloading and administrative work relative to Purchase Order processing, as well as the costs for removal, if applicable. NIMAGEN products do not include any such charges, unless explicitly stated. If NIMAGEN pays these charges, they will be added to the Invoice accordingly.

4. PURCHASE ORDERS

4.1. Customer shall place orders for NIMAGEN Products using Purchase Orders consistent with these Terms and Conditions. All Purchase Orders shall include the minimum following information:

- Shipping and Billing Address
- Product Reference Code
- Products Description
- Unit Price
- Quantity Required per Product Code
- Total Amount (Euro, US Dollar, or Pound Sterling currency)
- When available: NIMAGEN Account Number assigned to Customer
- VAT number
- When applicable: NimaGen Quotation or Price Agreement Reference

4.2. Customer will provide appropriate shipping instructions regarding Shipping and Billing Address and, when applicable, shipping account in accordance with the provisions in Article 8.7. Relative to export shipments to a country outside the EU, Customer will ensure all documents required for export will be available to NIMAGEN.

4.3. Customer will complete a Purchase Order for the provision of Product by NIMAGEN by using a mutually agreed Order Form, which shall be governed by the Terms and Conditions of the Agreement. In the case of Customer not being able to provide an Order Form, NIMAGEN will provide such document to Customer.

4.4. Unless an Order Form states otherwise, each Order Form is independent of each other Order Form, but each Order Form is a part of and integral to the Agreement.

4.5 NIMAGEN will use reasonable efforts to meet all Purchase Orders without unreasonable delay but shall not be in any way liable for failure to execute any order which has not been accepted in writing. NIMAGEN is not obliged to fulfil a Purchase Order or maintain pricing.

4.6. All Purchase Orders from Customer are binding upon Customer and may be accepted at NIMAGEN's option, either by sending a Purchase Order confirmation, or by delivering the Product to Customer.

5. STANDING ORDERS

5.1. Standing Orders are used when Customer and NIMAGEN have agreed upon a fixed price, quantity and regular delivery schedule of specific Product, over a specified period of time. A Standing Order is to be placed in accordance with the provisions in Article 4 ("Purchase Orders").

5.2. Delivery of Product by NIMAGEN will occur automatically once the Purchase Order is placed by Customer. Applicable discounts and pre-payments must be noted by Customer on the Purchase Order.

5.3. A Standing Order covers a maximum period of one fiscal year. A new Purchase Order will be generated at the end of each fiscal year if needed. Should unused quantity or currency amount remain on the existing Standing Order, it will still be fulfilled.

5.4. Any alteration requested by Customer relative to the Standing Order will only be accepted when confirmed in writing, signed by an authorized representative of NIMAGEN, describing the commitments of both Parties arising from the amended Standing Order.

5.5. All Standing Orders from Customer are binding upon Customer and may be accepted at NIMAGEN's option, either by sending a Purchase Order confirmation, or by delivering the Product to Customer.

5.6. Standing Orders are subject to Cancellation and Returns policies as defined in Articles 6 and 10.

6. CANCELLATION

6.1. If Customer wishes to cancel a Purchase Order issued, and NIMAGEN provides its written consent, Customer shall owe NIMAGEN for the costs of cancellation.

6.2. The cancellation costs are expressed as a percentage of the amount connected with the Agreement. This amount depends on the costs incurred by NIMAGEN up to the moment of cancellation, the nature or type of Products or Services involved, the work meanwhile undertaken by NIMAGEN to implement the Agreement, as well as restocking costs (Article 11) if applicable.

6.3. The minimum cancellation fee charged to Customer comprises the Packing & Handling fee plus 2% of the invoiced amount connected with the Products in the Agreement.

6.4. NIMAGEN is never obliged to reimburse any losses to Customer associated with the event of cancellation.

7. PAYMENT AND DEFAULT TERMS

7.1. NIMAGEN will invoice Customer for the Product Price and all other charges when applicable, such as Shipping, Packing & Handling, or Dry Ice surcharge, due when Products are shipped. Shipping, Packing & Handling fees shall be prepaid by NIMAGEN and added to the Invoice amount.

7.2. Customer shall make all payments in accordance with the terms of payment given in the Invoice, in the currency specified on the Invoice.

7.3. The full amount of each Invoice for Products and/or Services shall be paid within 30 days (net) from the date of the Invoice, unless agreed otherwise and stated on the Invoice. Customer is not entitled to offset or delay payment.

7.4. Payment terms are contingent upon credit worthiness of Customer. NIMAGEN reserves the right to require Customer to make full or partial payment in advance, or provide other security to NIMAGEN's satisfaction, if Customer's financial condition is unknown or, in good faith, is believed not to justify the payment terms specified.

7.5. Payment shall be conducted by bank transfer to the bank account number indicated by NIMAGEN. The date on NIMAGEN's bank statement, when the payment is recorded as received, applies as the date on which the payment has occurred.

7.6. Payment by credit card, or wire transfer will be effective only after these means of payment have cleared and been paid. Credit cards will be accepted at time of each order only for processing on Invoice date. Any discounts and expenses relative to payment by credit card or wire transfer shall be borne by Customer.

7.7. NIMAGEN reserves the right to set a maximum credit limit for Customer's active account balance. Whenever felt necessary by NIMAGEN to increase or decrease such a credit limit, it will be discussed and communicated to Customer with a reasonable notice period, in order, once the stipulated account balance limit is reached, to find a possible alternative for avoiding the delayed shipment of further Purchase Orders, and for keeping the balance owing under the specified limit. An interest of 1,5% per month is calculated on any outstanding credit.

7.8. NIMAGEN reserves the right to cancel or stop delivery of Product and withhold shipments in whole or in part, without liability to NIMAGEN, if Customer does not pay NIMAGEN when due, or if Customer does not perform its obligations in the Agreement.

7.9. If, following Reminder to pay, Warning or a Declaration of default, Customer still fails to fulfil its due payment obligations within in reasonable period, Customer shall by rights be in default. From that moment, NIMAGEN may pass the claim on for collection, may change any Terms of payment, suspend any credit previously extended to Customer, and pursue any other legal remedies available.

7.10. NIMAGEN reserves the right to set a late-payment charge equal to 1.5 percent (%) per month or, if lower, the maximum amount permitted by applicable law, on all amounts not paid when due, calculated on a daily basis beginning with the first day following the Invoice due date. The late-payment charge may also be supplemented by NIMAGEN's reasonable costs of collection (including extra-judicial and legal fees).

7.11. Any payment by Customer shall, if applicable, go in the first place towards settlement of any indebtedness owed by Customer, without prejudice to or the discharge of settlement of remaining due payments, in order of age, commencing with the oldest outstanding debt.

7.12. In the event of bankruptcy or insolvency of Customer, or in the event any proceeding is brought by or against Customer under any bankruptcy or insolvency laws or their equivalent, NIMAGEN may cancel any order then outstanding without liability to Customer.

8. DELIVERY AND PACKAGING

8.1. By agreeing with these Terms and Conditions, Customer (a) gives its consent for NIMAGEN to arrange for transport for all Products supplied hereunder on Customer's behalf and (b) waives its rights to arrange transport or give NIMAGEN any specific instructions regarding transportation.

8.2. NIMAGEN will ship and have Products delivered to the destination specified in the Purchase Order by Customer.

8.3. Shipping shall be executed (a) FCA NIMAGEN's logistic hub in Wayne (PA, USA) (Incoterms® 2020) if location of intended recipient is within North, Central and South America) (b) FCA NIMAGEN Nijmegen facility (Incoterms® 2020) if location of intended recipient is within the European Union, and in case of any cross-border transport from or to countries outside of the European Union, or any other location NIMAGEN may direct.

8.4. NIMAGEN determines the method of packaging, conditioning and shipment of Product.

8.5. NIMAGEN may change freight carriers without notice. If a shipment fails to be delivered as scheduled, Customer shall be responsible for pursuing a claim with the freight company and NIMAGEN shall provide reasonable cooperation with such endeavor by Customer.

8.6. If Customer has specific wishes in relation to packaging or transportation, and NIMAGEN agrees in writing to these wishes, Customer is obliged to settle the costs invoiced for this by NIMAGEN.

8.7. NIMAGEN allows Customer to handle Product shipments, billing shipping charges to its own carrier account, EXW Incoterms® 2020 Nijmegen shipping point. In this case, NIMAGEN will only add the Packing & Handling charge to the Invoice, and the Dry Ice surcharge when applicable. The Customer carrier account should enable Dry Ice shipments.

8.8. NIMAGEN is entitled to make partial shipments and to invoice each shipment separately. Customer is obliged to settle separate invoices in accordance with the provisions in Article 7. Partial delivery shall be permitted unless Customer has expressly stated in writing on the face of the NIMAGEN Quotation or Price Agreement, or on Customer's Purchase Order, that partial delivery will not be accepted.

8.9. NIMAGEN is obliged to observe the specified delivery time or delivery period as much as possible. However, lead times and delivery dates given to Customer are approximate only, and NIMAGEN will not be liable for any loss or damages resulting from any delay in delivery. If delivery of a Product to Customer is delayed due to any cause within Customer's control (Article 8.11), NIMAGEN may place the delayed Products in storage at Customer's risk and expense.

8.10. Exceeding a delivery time or delivery period does not give Customer the right to terminate or dissolve the Agreement or to refuse the purchase of the Products. Parties must consult each other in cases where a delivery time or period is exceeded excessively.

8.11. NIMAGEN shall not be liable for any delay in performance or non-performance as the result of an event of Force Majeure, being civil disobedience, hostilities, accidents, sabotage, terrorism, military actions, expropriation, nationalization or the escalation of any of the foregoing, any hurricane, flood, tornado, fire, earthquake or other natural disaster, delays in delivery, explosions, epidemic, plague, pandemic or any other outbreak of illness, any change in any law or regulation or any action taken by a government or public authority or any agency or commission thereof, including but not limited to an export or import restriction or other public health event in any country or any other event or circumstance outside of NIMAGEN's reasonable control.

9. PERMITS AND REGULATORY

9.1. Customer is responsible for ensuring that all permits, concessions, licenses, consents and so forth necessary for NIMAGEN to deliver the Product sold or fulfil its obligations, are obtained in time and in the correct format. Any costs associated with such documents are to be borne by Customer.

9.2. The absence of any permits, concessions, licenses, consents and so forth as indicated in Article 9.1 shall be considered as failure on the part of Customer and shall not exempt Customer from any of its commitments towards NIMAGEN, nor can it be a reason for the postponement of the fulfilment of any obligation Customer has towards NIMAGEN.

9.3. In addition to the provisions of Article 9.1, Customer (a) is solely responsible for ensuring that Product use is in compliance with applicable laws, regulations and governmental policies, (b) obtains all necessary approvals and permissions required, and (c) ensures that Product implementation is compliant with its intended use.

9.4 Customer is liable for all losses which directly or indirectly may be caused by the absence of any permits, concessions, licenses, consents and so forth as indicated in Article 9.1; Customer indemnifies NIMAGEN against claims and demands connected with such losses.

10. RISK AND TITLE

10.1. Where NIMAGEN delivers the Product from stock, the title of the Products to be delivered by NIMAGEN to Customer transfers to Customer from the moment they are set apart on behalf of Customer from the other stock products in the NIMAGEN warehouse.

10.2. The risk of Products shall pass to Customer at the time Products are loaded onto the commercial carrier at the NIMAGEN facility, for transport to the agreed place of delivery.

10.3. Reservation: without prejudice on the title, risk and its transfer, all Products supplied by or on behalf of NIMAGEN shall remain NIMAGEN's property up to the point at which Customer has fulfilled all due obligations towards NIMAGEN.

11. RETURNS AND SHORTAGES

11.1. All Product Returns must be authorized by NIMAGEN. Special orders, non-stocked Products, and discontinued Products may not be returned. Some Products may not be eligible for return due to regulatory or storage requirements.

11.2. NIMAGEN will deem any Product to be accepted if Customer does not contact NIMAGEN within a five (5) business day period.

11.3. NIMAGEN will approve return of any Product that is damaged or defective on receipt by Customer, provided Customer contacts NIMAGEN within five (5) business days after receiving the Product. And provided that damage has not been caused by any failure by Customer or carrier to handle or store Product, using reasonable care or as otherwise indicated on the labels of transport packaging or Product.

11.4. When NIMAGEN at its discretion authorizes the Product for return, then the Product must arrive at NIMAGEN facilities in its original packaging, remaining unopened and in a condition satisfactory for resale.

11.5. Any return of Product not due to error of NIMAGEN, is subject to a restocking charge of 25% of the invoiced sale Price.

11.6. Products ordered due to Customer ordering error are returnable within ten (10) business days after shipment was started by NIMAGEN, provided that Products being returned remain unopened and suitable for resale, as determined by NIMAGEN in its sole discretion. NIMAGEN will deem any Product to be accepted, if Customer exceeds the ten (10) business day period, unless otherwise stated in writing by NIMAGEN, provided Parties have consulted each other in cases where the return period is exceeded.

11.7. When returning a Product, Customer must pay for transportation to NIMAGEN's facility. NIMAGEN will not credit Shipping, Packing & Handling, or Dry Ice charges, and will not assume responsibility for packaging and transportation relative to the return of Product. For any transportation costs incurred by NIMAGEN, Customer is obliged to settle the costs invoiced for this by NIMAGEN.

11.8. Customer will not receive credit for any Product without NIMAGEN's prior consent.

12. WARRANTIES FOR CONSUMABLES AND REAGENTS

12.1. Customer shall handle and use Product in conformity with (a) Good Laboratory Practice, (b) all applicable laws and regulations, guidelines and decisions of judicial or regulatory bodies, (c) any patent and other proprietary rights of third Parties, or (d) its negotiated status or classification for each Product purchased.

12.2. NIMAGEN warrants that each Products, purchased directly from NIMAGEN, at the moment of shipment conforms to its specifications, and that Product will be free from defects or non-conformities, provided that Product is shipped and stored under the conditions recommended by NIMAGEN. This warranty is valid from the time NIMAGEN ships the Product until the earlier of (a) the Product's expiry date or (b) its specified number of uses.

12.3. Defects or non-conformities in any Product supplied by NIMAGEN which fall under the warranty will, exclusively at the discretion of NIMAGEN, be rectified or the Product will be replaced, without any cost to Customer, if the defects or non-conformities in the opinion of NIMAGEN are attributable to manufacturing faults or faults/failings of the materials used, as a result of which the Product is unusable by Customer for the purpose for which the Product can reasonably be thought of as intended.

12.4. Any Product found by NIMAGEN to be defective or non-conforming prior to its expiry date, provided that NIMAGEN is satisfied that the defect or non-conformity reported falls within the scope of the previously mentioned warranty, must be either returned to NIMAGEN (franco delivery, Article 11) or destroyed.

12.5. Customer can be asked to return defect or non-conforming Product to NIMAGEN, subject to QC upon reception. In such as case, Customer will abide to NIMAGEN recommendations relative to the method of packaging, conditioning and transport of Product.

12.6. If it appears that the Product offered to NIMAGEN for rectification exhibits no defects or non-conformities, then Customer is obliged to settle all costs incurred by NIMAGEN, provided Parties have consulted each other towards a resolution.

12.7. All warranty is deemed inapplicable if Customer makes changes to the Product supplied or allows them to be made, or if the Product supplied has not been or is not being used or treated exactly according to NIMAGEN's directives or instructions for use, or is being used or treated injudiciously in any other way, or if the Product supplied has been or is being used or applied for purposes other than for which it is intended, or if the Product supplied has been or is being used in a way which NIMAGEN could not reasonably have expected.

13. WARRANTIES FOR THIRD PARTY PRODUCTS

13.1. NIMAGEN does not support or make any warranties about Product manufactured or supplied by third Parties that Customer purchases through any of NIMAGEN's sales channels. NIMAGEN agrees, however, to assign to Customer any warranty rights NIMAGEN may receive from the original manufacturer or third-Party supplier, to the extent the original manufacturer or third Party supplier allows.

14. NO TRANSFER OF RESALE

14.1. Unless otherwise expressly agreed to in writing by a duly authorized representative of NIMAGEN, the purchase of NIMAGEN Product conveys to Customer only the non-transferable right for Customer to use the quantity of Products or components of Products purchased in compliance with the applicable intended use statement, limited use statement or limited label license. Customer shall not transfer or resell, exchange, or otherwise assign the Products or any portion of them, without first obtaining the prior written consent of NIMAGEN.

15. CUSTOM PRODUCTS AND SERVICES

15.1. Custom Products and/or Custom Services ("Work"), for the purpose of agreement, are non-standard Products or Services which have specific function unique to Customer. Purchase Orders for Work cannot be cancelled by Customer.

15.2. All Purchase Orders for Work must be approved in writing by NIMAGEN. Thereafter, NIMAGEN will promptly notify Customer of any circumstances which may affect that order and NIMAGEN will keep Customer informed of its progress in fulfilling such Order.

15.3. Following Customer's request and provision of specifications for Work, NIMAGEN may decline to design or manufacture at its discretion, and at any stage of the development or productions process, if the Work is commercially impractical to manufacture or is unsuitable. In such a case, Customer will be notified and will not be obligated to settle any costs incurred by NIMAGEN in connection with the cancelled Work. In the case of component or material failure, NIMAGEN may cancel or delay a customer Product or Services delivery without any liability to NIMAGEN.

15.4. In addition to the provisions in these Terms and Conditions regarding payment (Article 7), in the case of Work NIMAGEN is also entitled to demand payment in instalments as follows: (a) 30% of the agreed price when entering into the Agreement, and (b) 30% of the agreed price at the testing or inspection or shipment of the finished product or the most important components thereof, and (c) 40% within thirty (30) days of the day on which the second instalment of 30% has been paid.

15.5. Changes made to Work and Work Purchase Orders received by NIMAGEN within four (4) weeks of designated delivery date shall be subject to a surcharge of up to thirty (30) percent plus any additional fees or costs relative to Customer's requests for Product or Service redesign or modification. Changes to Work must be agreed by both Parties in writing.

15.6. In the event of a conflict of terms contained in the NIMAGEN Terms and Conditions of Sale and Delivery, the NIMAGEN Terms and Conditions for Custom Research Solutions (Part B) take precedence, and any written Contract signed by both Parties takes precedence over either.

16. INDEMNIFICATION

16.1. Customer agrees to indemnify, defend and hold NIMAGEN, its affiliates, directors, officers, and employees harmless from and against any and all any suits or other legal proceedings brought by third Parties against NIMAGEN, and all losses, damages, injuries, claims, demands, and expenses ("Liability") arising out of a claim against NIMAGEN for infringement of third Party intellectual property rights. Customer indemnity of NIMAGEN applies to (a) manufacture or sale of Product or Custom Product NIMAGEN makes under Customer's instructions, specifications or other directions, or using material Customer provides to NIMAGEN, (b) Customer's failure to comply with the Agreement, (c) Customer's failure to acquire any additional intellectual property rights related to the use of NIMAGEN Product, or (d) Customer's modification, use or resale of Product. The indemnities and assumptions of

liabilities and obligations herein provided for shall continue in full force and effect notwithstanding termination of the Agreement, whether by expiration of time, by operation of law, or otherwise.

16.2. NIMAGEN will defend and indemnify Customer against infringement damages finally awarded in any legal action brought by a third Party against Customer alleging infringement of any intellectual property rights owned by third Parties, arising directly and solely from a Product as manufactured and provided by NIMAGEN to Customer, but always excluding use and/or combination of such Product with other Products or components. This infringement indemnity does not apply to (a) claims that arose based on Customer's failure to comply with the Agreement, (b) claims that arose based on Customer's failure to acquire any applicable additional intellectual property right related to Customer's use of the Products, (c) Product that NIMAGEN manufactured, assembled or labeled in reliance upon Customer's instructions, specifications or directions, (d) Customer use or resale of Product, (e) modifications made by Customer or any third Party, or (f) Product originating from third Parties.

THIS INDEMNITY IS NIMAGEN'S ONLY LIABILITY TO CUSTOMER AND, SUBJECT TO ARTICLE 18.2 OF THESE TERMS AND CONDITIONS, CUSTOMER'S ONLY REMEDY, FOR ANY INFRINGEMENT OR CLAIMED INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHT BY OR IN CONNECTION WITH ANY PRODUCT.

16.3. As a condition to NIMAGEN indemnification obligations Customer must (a) notify NIMAGEN in writing in the case of any claim arising, (b) not admit any liability or take any action in connection with the claim that could have an effect on the defense, (c) allow NIMAGEN to solely control the defense or settlement of the claim, (d) give NIMAGEN information, co-operation and assistance, and (e) diligently take reasonable steps to mitigate losses incurred, including allowing NIMAGEN to exercise any and all options outlined in Article 18.2.

17. LIABILITY

17.1. NIMAGEN liability on account of a liable failing in the fulfilment of the Agreement or for any other reason, including any fulfilment of a Warranty undertaking agreed between Parties, is limited to the reimbursement of direct losses to a maximum sum of the Product or Services Price stipulated in the Agreement. If the Agreement is primarily a term Agreement with a term of more than one (1) year, the Price stated in the Agreement shall be deemed to be the total reimbursement for one (1) year. Any reimbursement will be exclusive of VAT.

17.2. In no case shall the total liability of NIMAGEN for direct losses, for whatsoever reason, amount to more than € 500,000 (five hundred thousand euros). NIMAGEN liability for losses for death, physical injury or material damage to items shall in total never amount to more than € 500,000 (five hundred thousand euros).

17.3. Regardless of the provisions under Articles 17.2 and 17.3, NIMAGEN liability is limited to the amount paid out or covered by its insurance.

18. INTELLECTUAL PROPERTY

18.1. As between Customer and NIMAGEN, all intellectual property rights relative to NIMAGEN Products and Services, are exclusively owned by NIMAGEN. Unless stated otherwise by NIMAGEN, sale of Product to Customer only grants Customer a limited, non-transferable right under intellectual property, to use the Product or Services purchase from NIMAGEN for Customer internal research purposes. No right to transfer, distribute or resell NIMAGEN Product or its components is granted explicitly or by implication. Unless permitted by NIMAGEN in writing, Customer will not modify,

change, remove, cover or otherwise conceal any of our brands or trademarks of NIMAGEN Product. Nothing in the Agreement limits NIMAGEN's ability to enforce its intellectual property rights.

18.2. In the event of a Product or Service that is believed to possibly be subject to a claim for intellectual property infringement, Customer must allow NIMAGEN at its discretion to either (a) secure the right for Customer to continue using the Product, (b) replace the Product with another suitable Product with similar functionality, or (c) refund the invoiced Price after Customer being requested to return the Product.

19. CONFIDENTIALITY

19.1. Each Party shall use information of a proprietary or sensitive nature that is not readily available through sources in the public domain ("Confidential Information") of the other Party only for purposes of the Agreement, including any commercial information (including Offers, Quotations or Price Agreements, without limitation), instructions, or Product or Service specifications (including, but not limited to gene or oligo sequences, reagents or any component used) provided by NIMAGEN to Customer. Otherwise, except as may be required by law, neither Party shall use, publish nor disclose, or cause anyone else to use, publish or disclose, any Confidential Information of the other Party.

19.2. The restrictions on disclosure and use hereunder shall not apply to any information which (a) is or becomes generally available to the public, other than as a result of disclosure by the Party receiving the Confidential Information pursuant to the Agreement, (b) was made available to other third persons on a non-confidential basis by the disclosing Party prior to the execution of this Agreement, (c) becomes available on a non-confidential basis from a third person, which third person was not itself under an obligation to maintain the confidentiality of such information, or (d) is required by law, regulations, including securities and other disclosure law, subpoena or court order to be disclosed.

19.3. The provisions of Article 19 shall survive the expiration or other termination of this Agreement regardless of the cause of termination.

20. UNCONTROLLABLE CIRCUMSTANCES ("FORCE MAJEURE")

20.1. The timely performance of either Party will be excused, except any obligations to pay any amounts then owed to the other Party hereunder, and shall not constitute a breach or grounds for termination or prejudice of any rights hereunder if the delay of the performance is the result of a Force Majeure event (Article 8.11); provided that such Party shall promptly provide written notice of such delay and the reason therefore to the other Party, shall use its reasonable efforts to limit or resolve the cause of the Force Majeure, and shall resume performance immediately after the cause of the delay is removed.

21. GOVERNING LAW AND ARBITRATION

21.1. The Agreement and Terms and Conditions shall be governed by and construed in accordance with Dutch law.

21.2. Disputes, claims or causes of action arising from an Agreement concluded between NIMAGEN and Customer shall be presented to the jurisdiction of the competent courts of The Netherlands. All claims under this Agreement which cannot be amicably settled shall be submitted to binding arbitration as set forth below.

21.3. Prior to arbitration, Parties shall seek informal resolution of disputes. The process shall be initiated with written notice of one Party to the other, describing the dispute with reasonable particularity. The other Party shall respond within ten (10) calendar days. Each Party shall promptly designate an executive with requisite authority to resolve the dispute, and the first meeting shall occur within 10 calendar days from the response described above. If the dispute is not resolved within 10 calendar days of the first meeting, either Party may proceed to arbitration as set forth below.

21.4. All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of The International Court of Arbitration, part of the International Chamber of Commerce (ICC), by one or more arbitrators appointed in accordance with the said Rules, except where those rules are intentionally varied by the Parties herein or pursuant to mutual agreement.

21.5. The Parties expressly agree that the arbitration shall be conducted in The Hague (Den Haag), The Netherlands, in the English language, and under Dutch law, unless Parties mutually agree otherwise or the arbitrator determines that under applicable law, the arbitration is to take place in a location other than The Hague or that the laws of a country other than The Netherlands governs.

21.6. To the extent permitted by applicable law, the prevailing Party shall be entitled to a reimbursement of all of its reasonable attorney fees and arbitration costs by the other Party.

22. TERMINATION FOR INSOLVENCY OR BANKRUPTCY

22.1. Either Party may, in addition to any other remedies available to it by law or in equity, terminate the Agreement by written notice to the other Party in the event the other Party shall become insolvent, make an assignment for the benefit of its creditors, or have any case or proceeding voluntarily initiated by or commenced against or other action taken by or against it in bankruptcy or seeking reorganization, liquidation, dissolution of winding-up or any other relief under any bankruptcy, insolvency, reorganization or other similar act or law of any jurisdiction now or hereafter in effect, and any such event shall have continued for sixty (60) days undismissed, unbonded and undischarged.

23. ELECTRONIC COMMERCE

23.1. This Agreement will govern Customer's purchases from NIMAGEN of Products made through electronic business to business solutions, including but not limited to electronic ordering systems (collectively "B2B" or "eProcurement"). The Parties will reasonably cooperate to establish B2B or eProcurement systems to facilitate direct shopping, sales and payment transactions between the Parties.

23.2. This Agreement will also govern Customer purchases through the NIMAGEN web shop ("Web Shop").

24. WAIVER

24.1. Any failure by NIMAGEN to exercise any rights under the Agreement is not a waiver of NIMAGEN's rights to damages for Customer breach of contract and is not a waiver of any subsequent breach. If any Article, provision or part of the Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, these will not affect any other provision of the Agreement. No other entity than Customer or NIMAGEN will have any rights under the Agreement.

25. NOTICES AND WRITINGS

25.1. Any notice or other means of communication required or permitted under the Terms and Conditions of this Agreement must be in writing and will be deemed received when either personally delivered (this includes, but is not limited to addressee's personal email account), or three (3) business days after being sent by certified postal mail to a Party's specified address.

25.2. No waiver, consent, modification, amendment or change to the Terms and Conditions of the Agreement will be binding unless in writing and signed by both duly authorized representatives of Customer and NIMAGEN, NIMAGEN failure to object to Terms and Conditions contained in any subsequent communication from Customer will not be a waiver or modification of the Agreement.

26. SEVERABILITY

26.1. Any provision of the Agreement which is prohibited or which is held to be unenforceable or to be void, without in any way affecting the remaining parts of this Agreement shall be reformed in a mutually agreeable manner so as to as most closely approximate, to the extent possible, the intent of both NIMAGEN and Customer hereto.

27. SURVIVAL

27.1. The provisions of this Agreement that may reasonably be interpreted or construed as surviving the expiration or termination of the Agreement (including, without limitation, confidentiality and governing law) shall so survive for the period specified, or if no such period, for the applicable statute of limitations.

Part B. Terms and Conditions for Custom Research Solutions

Unless otherwise specified and agreed in writing, the purchase of NimaGen custom Product and Service solutions is subject to the following Terms and Conditions:

DEFINITIONS

The following definitions apply to these Terms and Conditions:

"Terms and Conditions": the NimaGen B.V. ("NIMAGEN") Terms and Conditions of Custom Research Solutions in question and its elements.

"Product(s)": tangible goods specified in the Purchase Order to be delivered on or before the delivery date.

"Service(s)": the services (or: "Work") that NIMAGEN is to perform for Customer specified in the Purchase Order.

"Offer": any offer or proposal, such as a Quotation or a Price Agreement issued by or on behalf of NIMAGEN to the Customer.

"Quotation": a document that NIMAGEN provides to a Customer to offer Products or Services at a stated price, under specified conditions.

“Price Agreement”: a legal document (or: contract) signed by authorized representatives of both NIMAGEN and Customer, that sets criteria of what Products or Services NIMAGEN will provide for a set price and time period, and for a definite or indefinite quantity, the price in principle not being subject to change.

“Work”: non-standard, custom laboratory products and/or custom laboratory services provided by NIMAGEN, according to the detailed description agreed upon with Customer.

“Statement of Work”: a document that provides a description of a given project's requirements. It defines the scope of work being provided, project deliverables, timelines, work location, and payment terms and conditions. Referred to as SOW.

“Purchase Order”: a legal document Customer sends to NIMAGEN to authorize a purchase. Often referred to as PO. Becomes a binding contract once accepted by NIMAGEN.

“Limited Use Label License”: e.g. Research Use Only (RUO), the limited, non-transferable right conveyed to Customer by NIMAGEN to use the Product only to perform research, and not for any clinical diagnostic or therapeutic use in humans. Also referred to as LULL.

“Confidentiality Agreement”: a legal agreement that binds one or more Parties to non-disclosure of confidential or proprietary information.

1. OFFER

1.1. An Offer describes a proposal in writing, such as a Quotation or a Price Agreement, issued by or on behalf of NIMAGEN to Customer.

1.2. An Offer is free of obligation unless it specifies a term of acceptance. Any Offer that is made free of obligation may be withdrawn by either Party without delay after having been accepted. No Agreement will be realized in that case.

2. CUSTOM AGREEMENT

2.1. These Terms and Conditions (“Terms”), an offer such as a Quotation or a Price Agreement (if any), and the Purchase Order comprise the agreement (“Custom Agreement”) between Customer and NIMAGEN. This Agreement is the full and exclusive contract between Parties with respect to purchase of Custom Research Solutions, including custom laboratory products and/or custom laboratory services (“Work”) from NIMAGEN, according to the detailed description in the applicable Quotation, Price Agreement or other written Statement of Work (“SOW”), as submitted by NIMAGEN and accepted by Customer.

2.2. In the event of a conflict of Terms and Conditions contained in the Custom Agreement documents, the SOW takes precedence over these Terms and Conditions, and any written Contract signed by both Parties takes precedence over either. The Custom Agreement supersedes all prior communications between Parties, whether written or oral, relating to the Work, except for a written contract signed by NIMAGEN and Customer.

2.3. By submission of a Purchase Order (“PO”) or other similar document to indicate payment for the Work, Customer indicates acceptance of the Custom Agreement. NIMAGEN explicitly rejects any different terms or provisions contained in any document Customer provides. If the Terms and Conditions in the Custom Agreement differ from the terms of Purchase Order, the Custom Agreement will be applicable for acceptance and processing of the Purchase Order by NIMAGEN.

2.4. Custom laboratory Products and/or custom laboratory Services (“Work”), for the purpose of agreement, are non-standard Products or Services which have specific function unique to Customer. Purchase Orders for Work cannot be cancelled by Customer.

3. PERFORMANCE OF WORK

3.1. NIMAGEN will perform the Work as an independent contractor, using methods, materials, equipment, and/or related intellectual property owned or controlled by NIMAGEN or its affiliates (“Service Provider Technology”) to provide Customer with data and/or materials produced by NIMAGEN as a direct result of the Work, as specified in the SOW (“Deliverables”).

3.2. Deliverables may include data or materials that result from the use of Data or Materials Customer supplied (“Customer Materials”). NIMAGEN will make a good faith effort to start and complete all Work on time, and will notify Customer if substantial delays are likely.

3.3. NIMAGEN will comply with all laws and regulations generally applicable to Work, and with any specific regulatory framework agreed in the SOW.

3.4. NIMAGEN may delegate performance of the Work, or parts thereof, to an affiliate or authorized subcontractor, provided that all Work will be performed in accordance with the Custom Agreement.

4. CUSTOMER DATA AND MATERIALS

4.1. Customer will provide NIMAGEN with Customer Materials specified in the SOW, in compliance with applicable laws and regulations and in sufficient amounts, as well as relevant safety information and other characteristics of Customer Materials that NIMAGEN needs to perform the Work, including without limitation any certification or documentation of Customer Materials NIMAGEN reasonably requests of Customer.

4.2. The Customer Materials, and all information about Customer Materials, whether provided by Customer or generated by NIMAGEN in the performance of Work (such information referred to as “Data”), shall be subject to the confidentiality and non-use requirements of Articles 8 and 9. Upon completion of the Work, NIMAGEN will maintain records of the Data for a period of no less than one (1) year. NIMAGEN will use Customer Materials and Data only in accordance with the SOW, and will not modify nor reverse engineer Customer Materials except as agreed therein.

4.3. Unless otherwise specified in the SOW or agreed in writing, any Customer Materials not consumed in the Work or required for additional Work will be destroyed after six (6) months. NIMAGEN will not transfer Customer Materials, in whole or in part, to any third Party, other than a subcontractor, without Customer’s prior written approval.

5. USE LIMITATIONS

5.1. Except as expressly agreed otherwise in the SOW, Customer agrees to use Deliverables only for its lawful internal research purposes, not for use in humans, and in accordance with any Limited Use Label License (LULL) identified in the SOW, and Deliverables shall not be transferred to or commercially used by or for any third Party, regardless of whether such transfer or commercial use of Deliverables is for Customer research purposes. The research use limitation, however, shall not preclude Customer’s use of (a) Deliverables in lawful research and development of commercial Products or Services, provided that such Product or Service does not require the practice Service

Provider Technology, or (b) any Data for the regulatory approval and commercialization of such Products or Services.

5.2. Where more than one LULL is applicable, the most restrictive LULL shall apply, and these Terms and Conditions take precedence over any less restrictive LULL, but any use limitations or permissions explicitly stated in the SOW take precedence over either. Without limiting the foregoing, Customer shall not directly or indirectly supply materials or information provided hereunder to any entity, or destination, or for any use, except in full accordance with all applicable laws and regulations, including without limitation export control and trade sanctions laws and regulations of the European Union or United States.

6. PAYMENT AND DEFAULT TERMS

6.1. Customer will pay NIMAGEN for the Work within 30 days after the date of the respective invoice(s), which NIMAGEN will send to Customer when NIMAGEN completes the Work (or portion thereof), according to the payment schedule and currency specified in the SOW.

6.2. In addition to the provisions in Article 6.1, in the case of Work NIMAGEN is also entitled to demand payment in instalments as follows: (a) 30% of the agreed price when entering into the Agreement, and (b) 30% of the agreed price at the testing or inspection or shipment of the finished product or the most important components thereof, and (c) 40% within thirty (30) days of the day on which the second instalment of 30% has been paid.

6.3. If Customer defaults on any payment when due, NIMAGEN, at its option and without prejudice to its other lawful remedies, may delay performance, defer delivery, charge interest on undisputed amounts owed, and/or terminate the Custom Agreement.

6.4. Unless otherwise stipulated, The NIMAGEN Terms and Conditions of Sale and Delivery apply.

7. OWNERSHIP AND INTELLECTUAL PROPERTY

7.1. As between the Parties, except as otherwise explicitly agreed in the SOW, Customer will be the exclusive owner of (a) the Data, (b) Customer Materials, (c) any derivatives or modifications of Customer Materials that we generate as a direct result of the Work, and (d) any inventions and/or discoveries that directly result from our performance of the Work and that directly relate to Customer Materials, whether or not copyrightable or patentable ("Customer Inventions").

7.2. At the request and expense of Customer, NIMAGEN will conduct all things reasonably necessary to assist Customer in obtaining patents or copyrights on any Customer Inventions, provided however that Customer Inventions shall not include Service Provider Technology or any improvements or modifications thereof, whether developed before or during the performance of the Work.

7.3. Customer shall not, by virtue of the Work performed hereunder, obtain any license or other rights in any Service Provider Technology to (a) use Deliverables other than as set forth in Articles 3 and 4, (b) independently recreate the Deliverables or any materials that are proprietary to NIMAGEN, even if used to perform the Work; and/or (c) sell or otherwise use the Deliverables for commercial purposes whether or not commercialized for research use; unless expressly stated in the SOW or agreed in a separate written contract between Parties.

7.4. NIMAGEN will own its computers, laboratory notebooks or other records maintained with respect to the Work; but to the extent such computers, notebooks or records contain any Data or other confidential information of Customer, such Data and confidential information will continue to be Customer property, and the parts of the notebooks and records that contain Customer confidential information will be subject to NIMAGEN's obligations of non-use and confidentiality as set forth in Article 9.

8. NON-EXCLUSIVITY

8.1. Unless expressly agreed in writing, all Work is provided on a non-exclusive basis, and NIMAGEN reserves all rights for itself and its affiliates to provide third Parties with deliverables that are identical or similar to Deliverables, provided that in doing so, NIMAGEN will not use any Customer Materials or information received from Customer to perform Work for any third Party. Notwithstanding anything else in the Custom Agreement, where NIMAGEN performs the Work without reliance on Customer Materials or confidential information Customer provided, NIMAGEN reserves all rights to commercialize such Work as a catalog Product.

9. CONFIDENTIALITY

9.1. NIMAGEN will treat all Customer Data and Materials as proprietary and confidential to Customer, and will not disclose Data or Customer Materials to any person except to its employees, consultants, and subcontractors as necessary for purposes of providing the Work, and then only subject to a written Confidentiality Agreement that includes the requirements specified herein.

9.2. For any information or materials comprising Service Provider Technology disclosed to Customer by NIMAGEN, Customer will treat such information and materials as proprietary and confidential to NIMAGEN. Each Party shall protect the proprietary and confidential information or materials of the other Party by using the same degree of care as such Party uses to protect its own materials and information, but in any event no less than a reasonable degree of care.

9.3. Notwithstanding any other provisions herein, however, each recipient Party shall have no obligation to the other Party for any information or material that is (a) already known to the recipient party, (b) publicly known other than by a wrongful act of the recipient Party, (c) received from a third Party lawfully entitled to disclose it, (d) disclosed pursuant to an enforceable order of a court or administrative agency, and/or (e) is independently developed by or for the recipient Party.

10. WARRANTIES FOR CUSTOM PRODUCTS

10.1. NIMAGEN's sole warranty for the performance of Work is that the Work will be performed using due care in accordance with (a) the Custom Agreement, including the respective SOW and (b) laws, regulations and generally prevailing industry standards applicable to such Work. NIMAGEN does not warrant or represent that the results of the Work will be acceptable to any regulatory agency to which they are presented or that they will advance Customer's interests.

10.2. If Customer believes that NIMAGEN, in breach of its limited warranty, has made a material error in the Work that renders the results of such Work invalid, Customer must notify NIMAGEN of such error in writing, within one (1) month after receipt of the final Deliverable for such Work.

10.3. For valid warranty claims made, NIMAGEN will either (a) repeat the particular Work at its own expense or (b) refund to Customer the invoiced amounts actually paid for the particular Work giving rise to breach of warranty.

THE WARRANTY SET FORTH IN THIS SECTION 10 IS IN LIEU OF ANY AND ALL OTHER WARRANTIES RELATING TO THE WORK, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT DELIVERABLES OR USE THEREOF WILL NOT INFRINGE ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT. WE SHALL NOT BE LIABLE UNDER ANY LEGAL THEORY, FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OR FOR LOSS OF PROFITS OR LOSS OF BUSINESS, EVEN IF WE HAD NOTICE OF THE POSSIBILITY THEREOF. OUR LIABILITY TO CUSTOMER FOR BREACH OF ANY PROVISION OF THE CUSTOM AGREEMENT (OTHER THAN BREACH OF THE WARRANTY IN THIS SECTION 9 FOR WHICH LIABILITY IS LIMITED TO RE-PERFORMANCE OR REFUND AS SPECIFIED HEREIN) SHALL BE LIMITED TO DAMAGES IN AN AMOUNT NOT TO EXCEED THE FEE TO BE PAID FOR THE WORK.

NOTHING IN THE CUSTOM AGREEMENT SHALL LIMIT OR EXCLUDE THE LIABILITY OF EITHER PARTY FOR DEATH OR PERSONAL INJURY RESULTING FROM NEGLIGENCE OR FOR FRAUD OR FRAUDULENT MISREPRESENTATION.

11. CHANGES

11.1. Changes made to Work and Work Purchase Orders received by NIMAGEN within four (4) weeks of designated delivery date shall be subject to a surcharge of up to thirty (30) percent plus any additional fees or costs relative to Customer's requests for Product or Service redesign or modification. Changes to Work must be agreed by both Parties in writing.

11.2. All warranty is deemed inapplicable if Customer makes changes to the custom Product supplied or allows them to be made, or if the custom Product supplied has not been or is not being used or treated exactly according to NIMAGEN's directives or instructions for use, or is being used or treated injudiciously in any other way, or if the Product supplied has been or is being used or applied for purposes other than for which it is intended, or if the custom Product supplied has been or is being used in a way which NIMAGEN could not reasonably have expected.

12. TERMINATION

12.1. NIMAGEN may terminate the Custom Agreement if (a) Customer breaches any Customer Material provision of the Custom Agreement and fails to remedy the breach to NIMAGEN's satisfaction within 15 days after NIMAGEN written notice to Customer, (b) NIMAGEN is unable to obtain third party materials or technology specified in the SOW, for reasons beyond its reasonable control, (c) NIMAGEN determines that biosecurity, biosafety, and/or feasibility reasons prevent or are likely to prevent the performance of the Work, or (d) Customer is, or is deemed by law to be, unable to pay its debts or perform its obligations under the Custom Agreement.

12.2. Customer will have the right to terminate a Custom Agreement, also subject to the provisions of the SOW, upon 30 days' prior written notice to NIMAGEN. Termination of Work in progress will result in a partial charge in proportion with the percentage of Work completed at the time of cancellation, in addition to any other termination or cancellation charges specified in the SOW, all to be settled by Customer.

12.3. In the event of termination, as indicated in this Article, NIMAGEN is never obliged to reimburse any losses over the other Party.

13. INDEMNIFICATION

13.1. Except to the extent caused by NIMAGEN willful misconduct, Customer shall indemnify and hold harmless NIMAGEN, its affiliates, officers, directors, and employees ("Indemnified Party") from and against any and all expenses (including, but not limited to, reasonable attorney's fees) and losses incurred by any such Indemnified Party in connection with any claim asserted by a third Party arising out of or based on (a) Customer Materials or use thereof in performance of the Work as specified in the SOW, and/or (b) any Product or Service of Customer that is based in whole or part on Customer's reliance on Deliverables, or any portion or derivative thereof, and/or (c) breach of Article 5 ("Use Limitations").

14. MISCELLANEOUS

14.1. The Custom Agreement may not be assigned without the consent of the other Party, except that each Party may assign the Custom Agreement to an affiliate or to any other party to whom it transfers the business and assets related to this Custom Agreement, provided that such assignee assumes all the rights and obligations of its assignor.

14.2. The Custom Agreement shall be governed by the laws of The Netherlands for such portion of Work performed both in and outside the European Union, except that matters pertaining to patents and other intellectual property rights shall be governed by the laws of the jurisdiction in which such intellectual property rights exist.

14.3 The Custom Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods which is barred from application.

14.4. If any part of these Terms and Conditions are found to be legally unenforceable, the remaining articles or clauses of these Terms and Conditions will be unimpaired, and Parties shall in good faith negotiate an enforceable provision that most closely achieves the objectives of the unenforceable provision.

14.5. Except for payment obligations, neither Party shall be responsible for failure to perform its obligations due to natural disasters or other force majeure causes beyond its reasonable control.

14.6. Neither Party shall use the name of other Party, its affiliates, or of its employees in any promotion or publication without prior written consent of such other party. No waiver by either Party of any breach hereof shall constitute a waiver of any other breach thereof.

14.7. The provisions in these Terms and Conditions for Custom Research Solutions supplement the NIMAGEN Terms and Conditions of Sale and Delivery, unless explicitly departed from.