General Conditions - STW

Article 1
Definitions

For the purpose of these general conditions, the following definitions will apply:

1. **General conditions**: the present terms and conditions that STW imposes upon beneficiaries and users.
2. **Background knowledge**: all inventions, outcomes, materials, methods, processes, products, programmes, software, findings or discoveries that have been generated prior to or independent of a project and are necessary for the project or for the utilisation of the results. This includes any intellectual property rights to that background knowledge.
3. **Beneficiary**: a legal entity that receives funding from STW.
4. **Statement**: financial status of the project at any given time.
5. **Call**: call for proposals.
6. **Co-funding**: a contribution in cash or in kind, pledged to the project in writing and unconditionally by a user.
7. **Sub-project leader**: the person who is ultimately responsible for the content and execution of part of a project. The obligations stated in these general conditions for a project leader also apply to the sub-project leader unless explicitly stated otherwise.
8. **Third party**: a natural person or legal entity other than STW, users or beneficiaries.
9. **Termination date**: the date on which the last temporary personnel appointment (funded by STW) to the project ends.
10. **Funding**: a financial contribution from STW to the costs of a project.
11. **Grant decision**: STW's decision to award the (un)conditional funding.
12. **Funding agreement**: the agreement of the beneficiary/project leader with the general and specific conditions.
13. **Users**: natural persons or legal persons who are able to apply the results of the project and are members of the user committee.
14. **User committee**: a committee set up by STW consisting of users, the project leader, sub-project leaders, researchers appointed temporarily to the project, other researchers and an STW representative.
15. **Investments**: durable goods on which economic value is depreciated.
16. **Invention disclosure form**: collection of information about an invention used as a basis for determining the patentability and utilisation of the invention.
17. **Know-how**: a package of non-patented practical information, resulting from experience and testing, which is: not public, that is to say, not generally known or easily accessible, substantial, that is to say, significant and useful for the production of the contract products, and identified, that is to say, described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria of secrecy and substantiality.
18. **Market price**: a price that, according to the prevailing Framework for State aid for Research, Development and Innovation is not state aid.
19. **Material**: consumables, materials, small instruments and aids which have no residual economic value after use, domestic travel, project-specific training courses and conference posters.
20. **Option**: the right - to be exercised within three (3) months of the submission of a written notification of a **result** - to acquire title to or a licence for that **result** against a **market price**.

21. **Party**: a **user**, a **beneficiary**, or **STW**.

22. **PIF**: personnel information form.

23. **Project**: research for which **funding** has been awarded by **STW**.

24. **Project plan**: the description of the **project**.

25. **Project leader**: the person with ultimate responsibility for the content and realisation of a **project** as referred to in the **project plan**.

26. **Publication**: the disclosure of **results** by any means, except for disclosure resulting from patents or patent applications on **results**.

27. **Results**: all inventions, **results**, materials, methods, processes, products, programmes, software, findings or discoveries generated within a **project**, and the intellectual property rights thereto and **know-how**.

28. **Specific conditions**: conditions applied by **STW** in relation to the **funding**, in addition to these **general conditions**.

29. **Starting date**: the date on which the **project leader** makes an initial expenditure from allocated **funding** or the date of the first appointment of personnel.

30. **STW**: abbreviation for 'Stichting voor de Technische Wetenschappen' (registered name) or 'Technologiestichting STW' or 'Technology Foundation STW'.

31. **Continuation application**: the **project leader's** request to **STW** to allocate the funds reserved for continuation at the time of the award.

32. **Utilisation**: the set of activities aimed at maximising the possibility of **results** actually being applied.

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**Part 1 - Execution of the project**

**Article 2**

**General obligations of the beneficiary and the project leader**

1. The **beneficiary** ensures that the **project leader** complies with all obligations imposed on the **project leader** in these **general conditions** and by the **specific conditions**. The **beneficiary** ensures that the **funding** is used appropriately for the purposes for which it is awarded.

2. The **beneficiary** provides the infrastructure, facilities and supervision necessary for the **project**.

3. The **project leader** conducts the **project** in accordance with the **project plan**, to the best of his or her knowledge and ability and in accordance with criteria and standards applicable to scientific and/or technological research and in accordance with the nationally and internationally accepted standards for scientific conduct as stated in the **Netherlands Code of Conduct for Scientific Practice 2012** (Association of Universities in the Netherlands). The **project leader** and the **beneficiary** are responsible for the selection and appointment of personnel with appropriate qualifications.

4. The **project leader** conducts the **project** as of the **starting date** and completes the **project** within six years after the **starting date**. A **project** may commence when the **specific conditions** have been fulfilled and the **funding agreement**, signed by the **beneficiary** and the **project leader**, has been received by **STW**. The **starting date** will be within twelve months of the date of the **grant decision**, unless STW gives written permission for a later **starting date**.
5. If the project is conducted by more than one beneficiary, the project leader designates a sub-project leader for each beneficiary at the start of the project. The beneficiaries are jointly and severally responsible for the execution of the entire project.

6. In the execution of the project, all parties will comply with all applicable legislation and will behave in an ethically acceptable manner as expected in scientific and/or technological research.

7. In the procurement of investments for the project, the beneficiary will comply with the public procurement rules as contained in the 'Decree on Procurement Rules for Public Contracts' [Besluit Aanbestedingsregels voor Overheidsopdrachten]. Investments funded by STW remain the property of STW.

8. The project leader informs STW immediately if new information emerges which is relevant to the project, the execution of the project, or to the utilisation of the results during the project and after its termination date.

Article 3
User committee and reporting

1. In consultation with the project leader, STW sets up a user committee. The project leader chairs the user committee and a representative of STW acts as its secretary. After permission from STW and the project leader and taking account of the recommendation of the user committee in this respect, new users may be admitted to the user committee in the course of the project.

2. Users can withdraw from the user committee after informing STW in writing of their intention to do so.

3. The user committee meets at least once a year at a location to be determined by STW. With the permission of STW, the user committee may meet less frequently.

4. The task of the users in the user committee is to advise the project leader on the direction of the project so as to maximise the possibility that the results are applied by the users or by third parties.

5. The users will inform the project leader and/or STW of all remarks, comments, questions and advice, whether solicited or unsolicited.

6. The users will provide the secretary with any information he requested and further whenever a user:
   - wishes to bring remarks, comments, questions and advice to the notice of the other users and wishes to know their opinion thereon;
   - deems a discussion with the entire user committee desirable;
   - wishes to initiate recommendations on behalf of the entire user committee;
   - foresees opportunities for patent applications, licence agreements and research contracts.

7. The project leader reports in writing on the progress of the project at least two weeks before a user committee meeting. The project leader sends this report to STW. The project leader reports at least on the aim of the research, the work plan, milestone planning, results, utilisation, cooperation and contacts with users, conferences and publications. A financial résumé is also added, together with a detailed statement of the in-kind co-funding provided to date. The project leader is responsible for ensuring that the results are presented during the user committee meeting.

8. In April of each year, the users submit to STW a summary of their own in-kind contributions over the previous year. STW is entitled to audit these summaries, or have them audited.
9. The project leader submits a continuation application to STW within twenty-four (24) months after the starting date. In the continuation application the project leader describes the progress, work plan/milestone planning, anticipated results, (additional) input from users, options for protecting the results, options for commercialising results and the necessity of the remaining funding in order to carry out the project plan. STW may impose further conditions regarding the content of the continuation application.

10. STW submits the continuation application to the users in the user committee. STW asks the users to give a reasoned opinion (in writing or during the user committee meeting) on the continuation of the project. On the basis of the continuation application and the opinion of the users, STW takes a decision on the continuation of the project.

11. Within two months of the termination date, the project leader sends to STW the completed final forms provided by STW to STW.

Part 2 - Funding and payment

Article 4
Costs eligible for funding

1. Only costs for which funding has been awarded in the grant decision and which are incurred by the beneficiary during and for the purposes of the project are eligible for funding.

2. The following costs are eligible for funding:
   - temporary personnel positions, up to a maximum of four years per personnel position on the basis of a full-time appointment;
   - material;
   - foreign travel expenses;
   - investments.

3. Costs incurred prior to the date of the grant decision are not eligible for funding unless the beneficiary has obtained written permission from STW prior to incurring those costs. Costs incurred after the date of the grant decision but before the starting date are not eligible for funding unless the beneficiary has obtained written permission from STW before the starting date, prior to incurring those costs.

4. The personnel positions referred to in the grant decision are funded in accordance with the rates which apply on the date of the grant decision under the ‘Agreement on the funding of scientific research between VSNU and NWO’, without supplement for the risk of unemployment. The rates which apply on the date of the grant decision are maintained for the duration of the project.

5. Foreign travel expenses are funded in accordance with ’reisbesluit buitenland’ (International Travel Decree) of the Ministry of the Interior and Kingdom Relations.

6. If by the termination date the funding has only been used in part, the remaining funding reverts to STW.
Article 5
Payment

1. Only costs for which funding has been awarded in the grant decision can be declared.
2. STW allocates the funding conditionally on award as follows:
   - for material, travel and investments, funding is allocated for the first two years after the starting date;
   - for personnel positions, funding is allocated for the first three years after the starting date;
   - the remaining funding is allocated in the event of a positive decision from STW on the continuation of the project.
3. For personnel positions, the beneficiary submits a PIF form to STW. STW only transfers funding for personnel positions for which a correctly completed PIF form has been received.
4. STW pays the funding to the beneficiary after the beneficiary/project leader has submitted a declaration in this respect. The beneficiary/project leader submits the declaration to STW within one month of the invoice date. The beneficiary/project leader declares costs by means of a statement.
5. The beneficiary draws up invoices for material (excluding travel expenses) and investments on behalf of STW, care of the beneficiary, unless other arrangements have been made with the beneficiary. The beneficiary submits the invoice including the necessary statements to STW within the supplier’s payment period. After approval, STW pays directly to the supplier of the material and investments in question. STW pays invoices only if they have been signed by a person established as an authorised signatory on the project by means of the authorised signatory form issued as an appendix to the grant decision.
6. The beneficiary/project leader declares travel expenses by means of a statement accompanied by all original documentary evidence.
7. The beneficiary/project leader sends the final declarations to STW within three months of the termination date. Declarations received by STW more than three months after the termination date, or after the date specified in the call if this is less than three months before the termination date, are no longer eligible for payment.

Article 6
Co-funding

1. STW invoices the user for in-cash co-funding to the user. After STW has received the co-funding, it makes these funds available to the project as funding.
2. In order to calculate the value of co-funding, provided in kind as man-hours the rates set by STW apply. Co-funding provided as material goods is calculated on the basis of cost price. Any depreciation already effected shall be deducted from the cost price and the cost price shall be allocated to the project in proportion to use.
Part 3 - Intellectual property rights and publication

Article 7
Property rights and protection of results

1. The party that contributes background knowledge to the project retains title to such background knowledge.

2. Results that are capable of being protected by intellectual property rights are owned jointly by STW and the beneficiary. The provisions of Article 8.8 will apply in the event that a user is co-inventor.
   If results are generated by two or more beneficiaries together, and the contributions of each of these beneficiaries are inseparable, the results are owned jointly by STW and the beneficiaries concerned.
   Any results that are generated solely by a user or an employee of that user, will be owned by the user in question.
   If employees or other persons working for a party are entitled to claim rights to results, that party shall ensure that it is possible to exercise those rights in a manner compatible with these general conditions.

3. The project leader informs STW immediately if results are generated which are eligible for protection by a patent and completes an invention disclosure form to this end. Based on the invention disclosure form, STW and the beneficiary jointly decide, preferably after consulting the users, whether the results will be patented and they make more detailed written arrangements in this respect.

4. The beneficiary/project leader will lend all necessary support that reasonably may be expected to the process of applying for a patent on results, during the project and after its termination date.

5. If any party is of the opinion that there are patentable results, that party, the beneficiary and STW will make further arrangements about a possible patent application on these results and about the costs of such an application, before any patent application is filed.

6. If any party is of the opinion that there are results that should be kept confidential as know-how, that party, the beneficiary and STW will make further arrangements about the confidentiality of such know-how under conditions further to be determined. Such arrangements can only be made in the event that the results in question are not eligible for publication.

Article 8
Assignment of rights to results

1. Use of background knowledge for the benefit of the project
   The owner of background knowledge grants the beneficiary/beneficiaries the right, free of charge, to use the background knowledge for the purpose of the project, provided that the owner in question is legally entitled to grant such a right.

   If the background knowledge is necessary for the commercial use of the results, the owner will grant the other parties the right to use the background knowledge against a reasonable or fair
market price; provided that the owner in question is legally entitled to grant such a right and that it would not harm the reasonable commercial interests of the owner.

If a user is owner of the results in accordance with Article 7.1, Article 8.1 will apply to the results mutatis mutandis.

2. Use of results during the project
   During the project, all results may be used by all users and all beneficiaries for the purpose of the execution of the project and for the evaluation of the results of the research.

3. Utilisation of results in general
   The beneficiary, project leader and STW endeavour to ensure adequate and effective utilisation of the results both during and after the project. The beneficiary, project leader and STW shall in order to promote the utilisation of the results, regularly consult about the process and the content. Principles of the cooperation between the beneficiary and STW are taking full advantage of mutual expertise and existing capacity in mutual trust and respecting each other’s policy.

4. Option when one user contributes more than 10% co-funding
   A user that contributes more than ten (10) percent of the total value of funding and co-funding allocated to the project has an option during the course of the project and for up to three months after the end of the project.

5. Option when two or more companies together contribute more than 10% co-funding
   If two or more users, who are themselves not primarily financed by public funds, together contribute more than ten (10) percent of the total value of funding and co-funding allocated to the project, those users can jointly claim an option under the following conditions:
   - the users in question will notify STW in writing, within six (6) months of the grant decision, that they wish to claim an option jointly; and
   - the users will grant written power of attorney to a representative to negotiate and maintain contact with STW on their behalf and they will inform STW thereof.

6. Option when two or more companies each contribute more than 10% co-funding
   If two or more users each contribute more than ten (10) percent of the total value of funding and co-funding allocated to the project, they have a choice:
      - they can claim the right to an option on no more than a semi-exclusive licence; or they can each claim the option for a different application field.
   If the users do not inform STW – jointly and in writing, within six months of the date of the grant decision - of the application fields for which their options shall apply, they are only entitled to an option on no more than a semi-exclusive licence.

7. Exercising the option; non-exclusive royalty free licence in case of more than 30% co-funding
   A user must exercise the option in writing. Exclusive or non-exclusive rights of use and property rights to results are granted to a user under the following conditions:
      - If the user has contributed thirty (30) percent or less of the total value of funding and co-funding allocated to the project, the user pays a fair market price for use or ownership of the results.
• If the user has contributed more than thirty (30) percent of the total value of funding and co-funding allocated to the project, that user receives a non-exclusive, royalty-free licence to the results and the user pays a fair market price for the exclusive use or ownership of the results.

This procedure also applies also if an option is exercised by the representative referred to in Article 8.5.

8. Non-exclusive licence in the case of more than 10% project funding in the form of personnel and co-inventorship

If
- a user has contributed in-kind co-funding to the project, whereby the contribution in the form of personnel is ten (10) percent or more of the total value of funding plus co-funding, and
- an employee of the user is co-inventor of a patent on a result,

that user will be granted an option on a non-exclusive, royalty-free and non-transferable commercial right of use for a maximum of thirty (30) months to that patent.

9. General provisions in respect of licences

The following provisions apply to each licence:
• The licensee undertakes to endeavour to effectively commercialise or apply the results and to report on those endeavours.
• The results may be used by the beneficiary for the purposes of non-commercial research and teaching.
• The licensee indemnifies STW and the beneficiary against claims from himself and from third parties for damage resulting from the use of the results.
• If it transpires that the agreements made are not in line with the EU framework for State Aid for Research, Development and Innovation, as applicable at the time the agreement comes into force, the parties will negotiate in good faith about alternative arrangements that reflect the original provisions as closely as possible and are in accordance with said framework.
• Patent fees must be paid by the licensee(s).
• The rules set out in Article 8.9 apply mutatis mutandis when a licence is granted to a third party.

Article 9

Freedom to operate

1. The beneficiary/project leader and STW will refrain from entering into any arrangement with a user or a third party regarding the results without prior written permission from each other, such as arrangements:
   • whereby the third party acquires property rights or user rights to results;
   • regarding confidentiality of results;
   • regarding conditions imposed on a publication.
2. The project leader will refrain from the following for the benefit of the project without prior written permission from STW:
   • using materials or confidential information from a third party or
   • commissioning work by a third party which has no employment relationship with the beneficiary.
3. Parties inform each other immediately if there are indications over the course of the project that the results are covered by a patent or patent application of the beneficiary, a user or a third party.

4. The project leader and the beneficiary ensure to the best of their knowledge that the information in the project plan with regard to contracts with third parties and patents is correct to the best of the project leader’s knowledge.

Article 10
Confidentiality and publication

1. During the project all parties shall maintain confidentiality regarding the results and shall not disclose these to third parties. This confidentiality requirement does not apply to:
   - results which are disclosed in a publication in accordance with this Article 10;
   - results which are disclosed as a result of the formalities for the protection of results;
   - reporting of results to the user committee
   - results which must be disclosed pursuant to a decision of a Court or a body governed by public law, on the condition that the recipient notifies the provider in writing about such disclosure.

   The beneficiary ensures that adequate confidentiality is guaranteed in the appointment of personnel working on the project.

   For users, this duty of confidentiality continues until five (5) years after the end of the project.

2. The project leader submits a proposed publication to STW at least thirty days before its intended disclosure.

3. STW then submits the publication to the users in the users committee, asking them to inform STW within 30 days whether, in their opinion, the publication contains a patentable invention and/or whether there are utilisation opportunities.

4. Within thirty days after the publication has been submitted to STW, STW informs the project leader in writing whether there are any objections to the publication. If no objections have been raised before that deadline, the project leader may disclose the publication. STW may decide to suspend the publication for up nine months if any objections are raised. STW takes this decision following consultation with the project leader.

5. The project leader ensures that every scientific publication contains the following declaration to indicate that the results were achieved with financial support from STW:

   “This research is supported by the Dutch Technology Foundation STW, which is part of the Netherlands Organisation for Scientific Research (NWO), and which is partly funded by Ministry of Economic Affairs.”and, for Dutch publications:

   “Dit onderzoek is medegefinancierd door Technologiestichting STW, die onderdeel is van de Nederlandse Organisatie voor Wetenschappelijk Onderzoek (NWO) en deels gefinancierd wordt door het Ministerie van Economische Zaken.”

   The project leader also ensures that publications, including scientific posters and prototypes, contain the STW logo whenever possible. For the purposes of reporting to the government and society, STW may publish summaries of the project following consultation with the project leader.

   The project leader cooperates in this respect, even after the end of the project.
Article 11
Income from utilisation

1. STW invoices the fee agreed by STW with a user or a third party for the use or ownership of results.
2. The fee referred to under 11(1) is divided between STW and the beneficiary as follows after receipt of the fee:
   - the costs incurred by STW and/or the beneficiary for the purposes of protection or otherwise of the results, are deducted from the fee and shall be reimbursed;
   - 50% of the fee up to a cumulative total of 250,000 euros cumulative per project is allocated by STW on a declaration basis to the project leader for the purposes of research. For this allocation, the project leader submits a budget proposal and project plan which is globally reviewed by STW;
   - STW transfers the other 50%, which will be distributed according to the policy of the beneficiary, directly to a bank account to be designated by the beneficiary;
   - if the total fee mentioned under 11.2 exceeds 250,000 euro, STW and the beneficiary will confer on the division of the fee in excess of 250,000 euro.
3. If the project leader is no longer employed by the beneficiary at the moment the fee is paid to STW, but if there is a successor who continues the research line, the 50% mentioned in the second bullet under 11.2 is allocated to the research group. If the research group also no longer exists at the time when income arises, STW consults with the beneficiary about the allocation to research of the 50% mentioned in the second bullet under 11.2.
4. If two or more beneficiaries are jointly entitled to results, they will make arrangements between themselves with regard to the division of the fee due to them on the basis of the division referred to under Article 11(2) (STW 50%/beneficiary/beneficiaries 50%) and inform STW of this arrangement. If STW has not been informed about this within six months after a request for information, STW will divide the fee equally between the beneficiaries.

Part 4 - Other provisions

Article 12
Term and termination

1. The funding commences on the starting date and ends no later than six years after the starting date or, if earlier, when the salary of the last researcher is no longer funded in the context of the project.
2. STW may end the funding prematurely, before or after the start of a project:
   - if a negative decision is given on a continuation application;
   - if there is no user committee or no user committee can be put together;
   - if the project leader is no longer employed by the beneficiary, whereby the beneficiary will cooperate to the best of its ability in transferring the research to another organisation at STW’s request;
• if a user contributing co-funding has been declared bankrupt or no longer contributes its co-funding for any other reason;
• if the project has not started within twelve months after award;
• in a situation as referred to under 12.3.

3. STW may re-claim the funding provided if it emerges during the project or following a control that:
   • the project leader or beneficiary is acting contrary to these general conditions, the grant decision and/or the funding agreement;
   • the project leader is not conducting the project in accordance with the approved project plan;
   • the beneficiary or project leader has provided incorrect or incomplete information;
   • the beneficiary/project leader is receiving funds from a source other than STW for the research in the project.

4. Within three months after receipt of the final report, STW determines the funding.

5. If STW terminates the project on any of the above grounds, users shall not hold STW liable for any damage or loss whatsoever.

Article 13
Controls

The beneficiary shall have adequate internal control measures to monitor the lawful use of the allocated funding. These shall include a tendering procedure. At STW’s request, the beneficiary shall allow access to the administrative organisation and the internal control system. In addition, STW may ask the beneficiary to demonstrate the working of its control system.

At any time during the conduct of the project and for up to five years after its end, STW may carry out or commission an inspection to investigate whether the project is being/has been conducted in accordance with the provisions of the grant decision and whether the costs have been charged to the project in accordance with those provisions. The beneficiary sends STW all information and data requested by STW.

The beneficiary grants STW and persons appointed by STW on-the-spot access, at reasonable times, to the beneficiary’s offices and to all information which is necessary and relevant for the purposes of the inspection.

Article 14
Indemnity and liability

The beneficiary indemnifies STW against claims by third parties with respect to any damage suffered by them as a result of the conduct of the project, the associated publications and the use of the results.

The beneficiary is liable for all damage to equipment funded by STW and takes care of such equipment in a responsible manner.
Article 15
Complaints and objections

1. STW has a complaints procedure. All complaints submitted in writing are dealt with by STW in accordance with that procedure. For information about submitting a complaint, see the rules on complaints at www.stw.nl

2. The Dutch General Administrative Law Act [Algemene wet bestuursrecht] provides an interested party the opportunity to file a motivated objection to a decision by STW on the funding of a project. Such objections must be submitted in writing to the NWO Governing Board at PO Box 93138, NL-2509 AC The Hague [NL] within six (6) weeks of the date of STW's decision. The disputed decision should be included with the appeal as an appendix. The interested party should send a copy of the objection to STW for the attention of the Director.

Article 16
Applicable law and disputes

Dutch law is applicable. Disputes under civil law that arise between the parties, in connection with and/or as a consequence of the project or otherwise between parties, will be submitted to the competent Court in Utrecht.

Further information

General information is available from Technology Foundation STW

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