

GENERAL TERMS AND CONDITIONS FOR MAD SERVICES



1 Definitions

For the purposes of the present General Terms and Conditions the following terms shall be defined as follows:

- UvA the legal person of the Universiteit van Amsterdam, having its registered office in Amsterdam.
- MAD MAD: Dutch Genomics Service & Support Provider of the Swammerdam Institute for Life Sciences of the Universiteit van Amsterdam.
- Client a natural or legal person commissioning the MAD to carry out advisory or research work.
- Party/Parties MAD and the Client, hereinafter referred to as “the Parties” or separately as “the Party”.
- Agreement the Agreement under which MAD undertakes to the Client to carry out the work commissioned by the latter. The Agreement shall comprise a by Client signed Quotation and concurrent acceptance of the General Terms and Conditions.
- Service microarray, next generation sequencing, ViSiR Plant Applications (ViSiR Plant Check, DiViSiR Plant Assay plus DeViSiR Plant Test), and/or bioinformatics services, research and advisory work in the broadest sense, carried out by MAD for a third party.
- Overview of Service overview of the various services provided by MAD
- Commission request to perform the Service stated on the Quotation by signing it.
- Quotation customer-specific price quotation specifying the services to be provided and the associated prices.
- Samples the biological material(s) to be supplied to MAD by the Client for use in executing the Service
- Results the data obtained by MAD as a result of executing a Service.
- Report a written report to the Client as the Results of a Service.

2 Application

- 2.1 These terms and conditions shall apply to all Quotations by, all Commissions to and all Agreements with MAD relating to the provision of Services.
- 2.2 The Client may only rely upon stipulations or conditions of his own that differ from these General Terms and Conditions, if these stipulations or conditions have been expressly agreed in writing with MAD.

3 Nature and extent of the Commission

- 3.1 The Commission shall result from the signing of the Quotation under an Agreement.
- 3.2 The nature and extent of the Commission shall be determined by the Services stated in the Quotation. The Client shall have sole responsibility for the correct amounts, labelling and listing of the Samples.
- 3.3 Amendments, additions or extensions to the Agreement shall not be binding until agreed in writing by the Parties.
- 3.4 The MAD shall honour Quotations and Overviews of Service for a period of six weeks from the date on which the Quotation is sent, unless otherwise stated in the Quotation or Overview of Service.
- 3.5 The Client may not use knowledge, ideas or data furnished to the Client by MAD in connection with the Quotation or Overview of Service, or cause them to be used, other than for the purpose of assessing the Quotation or Overview of Service.

4 Fulfilment of the Commission, Samples, Results and Reports

- 4.1 MAD shall fulfil the Commission with care on the basis of possessing, knowledge and expertise to supply microarray and sequencing services to third parties using the appropriate equipment.
- 4.2 By accepting the Commission, MAD does not commit itself to anything more than striving to achieve results useful to the Client by carrying out the work commissioned.
- 4.3 The Client shall supply such Samples, data and information as are required to fulfil the Agreement and cooperate fully insofar as is necessary for the Commission to be fulfilled and completed satisfactorily. The Client shall have sole responsibility for the selection, representativeness, amount, coding, transport and delivery of the Samples and all costs thereof. The Samples shall be delivered on dry ice/liquid nitrogen unless agreed otherwise.
- 4.4 The Client can only submit samples for ViSiR Plant Applications that originate from the Client's own breeding programs, unless otherwise explicitly agreed between MAD and the Client.
- 4.5 Each DeViSiR Plant Tests is developed to monitor the presence of a plant immune response to a specific pathogen. If Client purchases an existing DeViSiR Plant Test for the immune response to a specific pathogen, MAD will share the relevant DeViSiR target siRNA sequences and grant Client a license to perform the DeViSiR Plant Test themselves.
- 4.6 If Client purchases a non-existing DeViSiR Plant Test, MAD will use Client's Samples to develop and test a DeViSiR Plant Test for the specified pathogen. If successful, MAD will share the relevant DeViSiR target siRNA sequences and grant Client a license to perform the DeViSiR Plant Test themselves.
- 4.7 MAD shall have the right to suspend fulfilment of the Commission until such time as the Client has met the obligations set out in the previous paragraph.
- 4.8 The quality of the Samples supplied shall conform to minimum quality standards as communicated by MAD to the Client. The current technology only permits sample quality control enabling demonstrably poor samples to be identified and rejected. These technologies however do not enable quality to be determined in such a way as to guarantee good end-results from the Service as a whole.
- 4.9 Any Samples that do not conform with the standards shall not be used for the Service and MAD shall:
 - a. inform the Client as soon as possible, and
 - b. defer the Service until such time as the Client delivers Samples that do conform with the quality standards, and/or charge the Client for the quality tests.If the Client indicates that rejected Samples shall nevertheless be used for the Service, this shall be confirmed to MAD by e-mail and/or in writing. In such cases the Service shall be performed without MAD standard warranty.
- 4.10 MAD shall take responsibility for the handling and storage of the Samples as soon as they have been delivered in good condition.
- 4.11 MAD shall use the Samples solely for executing the Service commissioned by the Client, with the exception of Samples used for DiViSiR Plant Applications, for which MAD reserves the right to develop a dedicated DeViSiR Plant Test for the immune response to the predicted pathogen, for the purpose of offering it to the Client and other clients.
- 4.12 Unless otherwise agreed in writing, MAD shall keep (the remaining of) Samples for a maximum of one (1) year after the completion of a Service in case of problem concerning a Service fulfilled. The cost of returning Samples at the Client's request shall be borne by the Client. After one (1) year, or the otherwise agreed period, the samples are released from the General Terms and Conditions without notice.
- 4.13 The Commission shall be fulfilled by MAD within a period of six (6) weeks per experiment of

four (4) to forty-eight (48) Samples from arrival of the Samples, subject to the provisions of 4.3 and 4.5 and based on Service in line with standard protocols. For experiments larger than forty-eight (48) samples a longer period will apply. MAD and the Client will provide each other with such information as is required to determine whether the Service can be carried out using standard procedures. If customer-specific protocols are to be used, MAD shall state in the Quotation what length of time is required for the Service.

- 4.14 The Commission shall be fulfilled within the time limit unless this proves impossible. If the time limit is likely to be exceeded MAD shall consult with the Client as soon as possible. MAD shall not be deemed to be in default by the mere expiry of the time limit without notice of default and shall not be held responsible for any loss or damage suffered by the Client as a result.
- 4.15 Reports by MAD on the status of the Service shall be made to the Client electronically.

5 Charges and payments

- 5.1 The Quotation will state the price that has been agreed for the Commission.
- 5.2 The Client shall be charged for all Services fulfilled by MAD, irrespective of whether the Results obtained from the Client's Samples meet the quality criteria, provided MAD is able to demonstrate by means of internal quality controls that the Service in question was carried out correctly and with care.
- 5.3 All amounts stated by MAD are exclusive of VAT unless otherwise stated.
- 5.5 MAD reserves the right to send interim invoices if the duration of a Service exceeds 3 months
- 5.6 MAD may at any time demand payment in advance in respect of a maximum of 100% of the consumables costs for a Service and 30% of the remaining Service price.
- 5.7 Payments shall be made within thirty days of the date of the invoice, with no discount or set-off permitted. If the Client fails to pay the amount due within the time limit he shall be deemed to be in default without a notice of default being required. In the event of the due date for payment not being met MAD shall have the right to charge the permitted statutory interest. In the event of the amount of the invoice not being paid, or not being paid in full, any judicial and extra-judicial costs of collection shall be borne by the Client.
- 5.8 MAD shall retain ownership of any items (including the Reports arising from the Service) furnished to the Client in connection with the Commission until such time as the amount due to MAD from the Client has been paid in full.

6 Intellectual property, confidentiality and use of results

- 6.1 All patent rights, copyrights and other intellectual property rights that arise or could be acquired in connection with the Results arising from the Commission shall be assigned to the Client, except in respect of technology, software and experimental methods whose development was not directly intended with the placement of the Commission and that fall under MAD's licence agreements with third parties. If other agreements have been or are subsequently made in writing between UvA and the Client, these written agreements shall take precedence.
- 6.2 All data obtained using microarray Services by MAD using Affymetrix microarrays fall under Affymetrix Inc. Customer Service Provider licences. The Client, being the End-User, shall observe the conditions of these licences, which are set out at www.affymetrix.com.
- 6.3 The ViSiR Plant Applications are based on the detection of specific siRNAs originating from the immune mechanisms of plants towards viruses or other phytopathogens. As such, the ViSiR Plant Applications do not detect the pathogen itself, but only indicate the presence of an immune response in a plant sample. At no time MAD claims that ViSiR Plant Applications identify the presence of any pathogen in the tested plants. MAD therefore has no obligation to report any quarantine pathogens. Thus MAD will not share the ViSiR Plant Applications outcomes with any other entity than Client.
- 6.4 MAD shall only have the right to publish the Results obtained in connection with the fulfilment of the Commission, if this has been expressly agreed in writing with the Client. With the exception of plant pathogen sequence predictions obtained in DiViSiR Plant Assays, for which MAD will share these sequence predictions with the Client, but reserves the exclusive right to make them public, unless otherwise explicitly agreed between MAD and the Client.
- 6.5 For the results of ViSiR Plant Applications, MAD reserves the right to develop dedicated DeViSiR Plant Tests for the immune response to a predicted pathogen, for the purpose of offering it to the Client and other clients.
- 6.6 At no time Client is allowed to share DeViSiR target siRNA sequences with anybody and MAD reserves the right to offer developed DeViSiR Plant Tests to other clients.
- 6.7 MAD shall have the right to mention the Service to the Client orally to promote MAD's

Services, but not in publications, press releases etc. unless the Client has given written permission for this.

- 6.8 The Parties undertake to observe confidentiality and non-use, up to a maximum of two (2) years after the expiry of the Agreement, of each other's data of which they have taken cognizance in the course of the fulfilment of the Service. The Parties shall also impose these obligations on persons employed by them in the course of the Service. For this purpose the Results of the Service fulfilled for the Client shall be regarded as data belonging to the Client. This obligation of confidentiality shall not apply to:
- data already in the possession of the receiving Party when they are communicated to the latter by the communicating Party;
 - data that are already, or become, general knowledge with no violation of any condition under this Agreement;
 - data lawfully obtained from a third party by the receiving Party;
 - data ordered to be made public by a competent judicial body;
 - data originating from, or developed by, the receiving Party independently of any disclosure by the communicating Party.

7 Warranties

- 7.1 MAD warrants that it possesses all the technological knowledge and equipment required to fulfil the Service.
- 7.2 MAD undertakes to fulfil the Services with care in accordance with the state of the art and using validated protocols.
- 7.3 By accepting the Commission MAD does not commit itself to anything more than striving to achieve results useful to the Client by carrying out the work commissioned. MAD cannot guarantee that:
- particular Results obtained by fulfilling the Service
 - do not contain errors or inaccuracies
 - are suitable for application by the Client.
- 7.4 The Results of the Service shall be scrutinized on the basis of quality criteria. If these criteria are not met, MAD shall repeat the Service in question. If the quality criteria are then met, only the agreed price for the Service shall be payable to MAD by the Client. The Client shall at all times have the right to inspect the Results and the related quality controls.

8 Liability

- 8.1 Neither UvA nor MAD nor persons employed by MAD in the course of fulfilling the Commission may be held liable for any loss or damage due to the use or application of the Results from the Service other than in the event of gross negligence or intent on the part of the MAD or violation by the MAD of the warranties given by it in this General Terms and Conditions document.
- 8.2 MAD shall only be liable for direct loss or damage due to failure to meet its obligations for which MAD is responsible. MAD shall however not in any circumstances be liable for any expenses incurred by the Client in generating and delivering new Samples.
- 8.3 If MAD is held liable in respect of the liability set out in paragraph 1 or 2 of this Article or otherwise, it shall accept liability only up to a maximum of the financial interest of the Agreement in question referred to in Article 5.1. If fulfilment of the Commission takes a number of years this shall be the financial interest calculated for the last full calendar year.
- 8.4 The Client hereby indemnifies UvA, MAD and persons employed by MAD for the fulfilment of the Commission against any claims by third parties in respect of loss or damage suffered by these third parties arising from the use or application of the Results.
- 8.5 MAD and the Client shall not be liable if they are unable as a result of force majeure to meet their obligations to each other, to meet them in time or to meet them fully. Force majeure shall in any event include:
- sickness of staff responsible for carrying out the Service for a period of over thirty days,
 - failure of equipment required for the Service that cannot reasonably be replaced quickly,
 - problems with third-party supplies of consumables, equipment or other aids required to fulfil the Service.
- If MAD or the Client suffers force majeure, it/he shall report the nature and extent thereof to the other Party immediately. In case of force majeure the Parties shall consult in order to alleviate the consequences thereof and/or to agree a fair and reasonable alternative arrangement. If the Parties do not succeed in reaching agreement within a reasonable time on the continuation of the Service, they shall have the right to immediately terminate the Agreement by registered letter. This shall not give rise to an entitlement to compensation on the part of the Client. In the event of termination MAD shall be entitled to a pro rata portion of the agreed payment.
- 8.6 Claims by the Client against UvA and MAD arising from or connected with the fulfilment of a Commission by MAD and persons employed by MAD in the course of fulfilling the Commission shall lapse entirely if they are not expressly made known within one year of the date of the final invoice, unless the Client can demonstrate that it was impossible to meet duty of notification within the time limit.

9 Miscellaneous

- 9.1 When on the premises of MAD the Client and his staff shall respect the 'house rules' for users of the premises concerned. The Client shall take responsibility for ensuring that his staff behaves in accordance with this provision.
- 9.2 If a Party fails to meet any obligation under the Agreement the other Party shall notify the Party in default to this effect in writing and give the Party in default the opportunity to meet its/his obligations within a reasonable period. If the Party in default still does not meet its/his obligations within the time limit, its/his rights under the Agreement shall cease and the other Party shall no longer be obliged to meet any obligation upon it/him.

10 Termination of the Agreement

The Agreement shall terminate with immediate effect if the Client applies for suspension of payment or bankruptcy or is declared bankrupt.

11 Applicable law and disputes

- 11.1 The Agreement between MAD and the Client shall be subject to Dutch law.
- 11.2 Any disputes arising under the Agreement shall be adjudicated by the competent court in Amsterdam.
- 11.3 The Parties may agree that a dispute be settled by arbitration.

12 Final provisions

These General Terms and Conditions shall enter into force on January 1st, 2011