

Terms of Sale – CTC Testing Services

This document (together with the documents referred to in it) sets out the terms and conditions on which SBS supply the CTC Testing Services listed on our website www.sourcebioscience.com ("the Website") to the Client.

These terms and conditions apply to both CTC Testing Services ordered through the Website and CTC Testing Services ordered other than through the Website.

Please read these terms and conditions carefully. The Client should understand that by ordering any of our CTC Testing Services, the Client agrees to be bound by these terms and conditions.

The Client should retain a copy of these terms and conditions for future reference.

Please understand that if the Client refuses to accept these terms and conditions, the Client will not be able to order any CTC Testing Services from SBS.

1. INTERPRETATION

1.1 In these conditions of supply the following words will (unless the context otherwise requires) have the following meanings:

"CEC Testing" means the enumeration of circulating endothelial cells (CEC) in whole blood;

"CTC Testing" means the enumeration of circulating tumour cells (CTC) of epithelial origin in whole blood;

"Client Relations" means our client relations representatives at Tel: 44 (0)115 9739012;

"Conditions" the conditions set out below and overleaf;

"Contract" the contract between us and you for the supply of Services comprising these Conditions and any documents referred to in them;

"Data Protection Legislation" the Data Protection Act 1998 and all subordinate legislation;

"Laboratory" Source BioScience UK Limited's laboratory at 1 Orchard Place, Nottingham Business Park, Nottingham NG8 6PX;

"Orders" as defined in term 4.1;

"Party" you or Source BioScience UK Limited; **"Parties"** means you and Source BioScience UK Limited;

"Personal Data" any data compiled and/or processed by Source BioScience UK Limited pursuant to this Contract which identifies a living individual;

"Results" means the report including any data arising out of The Tests undertaken by us;

"Samples" the specimens supplied by you to us for use in respect of the Services;

"Services" means the services to be performed by us which includes The Tests, analysis of data, data processing and management, and the communication of the Results to the referring Clinician;

"The Tests" means CTC Testing and/or CEC Testing as applicable and as defined herein;

"we" / "us" / "our" Source BioScience UK Limited, a company registered in England and Wales with number 4078501 and whose registered office is 1 Orchard Place, Nottingham Business Park, Nottingham NG8 6PX; and

"you" / "your" the company, academic institution, firm, body or any representative thereof or any other person who orders the Services.

- 1.2 Any reference in these Conditions to "writing" or cognate expressions includes a reference to facsimile transmission, email or comparable means of communication.
- 1.3 The headings are for reference only and will not affect the interpretation of these Conditions.
- 1.4 We reserve the right at any time without liability to correct any clerical, typographical or other similar errors or omissions made by us.
- 1.5 References to statutes or statutory instruments shall be deemed to be references to those statutes or statutory instruments as the same may be amended or re-enacted from time to time.

2. APPLICATION OF TERMS

- 2.1 Subject to clause 2.3, these Conditions are the only conditions on which we are prepared to deal with you in relation to the Services and they will govern the provision of the Services.
- 2.2 No terms, conditions or warranties endorsed upon, delivered with, referred to or stipulated or contained in any purchase order or other similar document delivered or sent by you to us will form part of the Contract.

- 2.3 No variation to, waiver of or addition to these Conditions or any representation about the Services will have any effect unless it is expressly agreed in writing and contains a specific reference to these Conditions.

3. THE SERVICES AND YOUR OBLIGATIONS

- 3.1 You warrant that you:
- 3.1.1 have obtained all necessary third party consents in respect of your submission of the Samples to us for use in undertaking the Services;
 - 3.1.2 shall comply with all applicable laws in respect of your possession of and/or use of the Samples, Products and Results;
 - 3.1.3 shall supply us with the Samples in respect of each Order for Services in a timely manner and, in any event, in such a timescale as will allow us to meet our delivery obligations;
 - 3.1.4 shall be responsible for ensuring that the Samples are of appropriate quantity, quality and purity suitable for use by us in the performance of the Agreement; and
 - 3.1.5 have gained any required ethical permissions and/or consents for the us to perform The Tests on the Sample and you accept that we shall have no liability if these permissions and approvals have not been properly obtained or granted.
- 3.2 Any defect in the Services which is due in whole or in part to defects in the Samples that you have submitted to us under this contract, including but not limited to, inadequate quantity of Sample (meaning any Sample of a quantity that is less than 4 millilitres) or a non viable Sample (meaning any Sample that has clotted and/or at the time of receipt by us is found to have been taken from the patient more than 96 hours ago) (collectively "Defective Samples") will not entitle you to terminate the Contract, reject any Services provided, make any deductions from fees or claim damages in respect of such defect.
- 3.3 In the event of us receiving a Defective Sample from you, unless otherwise agreed by us prior to your submission of the relevant Sample, we shall proceed in accordance with the following:-,
- 3.3.1 Where the Sample has clotted: If the Sample has clotted prior to us undertaking The Tests we shall dispose of the Sample in accordance with standard laboratory practice and shall notify you as soon as reasonably practicable that the Sample had clotted and has been disposed of;
 - 3.3.2 Where the Sample is of insufficient quantity: If you submit a Sample to us that is of a quantity of less than 4 millilitres we shall use reasonable endeavours to contact you to confirm whether you wish us to proceed with The Tests. In the event that we are unable, for whatever reason to gain your instruction and we believe that there is a risk of the Sample becoming non-viable due to the passage of time then we shall proceed with undertaking The Tests.
 - 3.3.3 In the event that we receive a Sample from you that does not clearly identify the date and time of blood draw from the patient (the "**Information**") on the requisition form

we shall use reasonable endeavours to contact you to obtain the Information. In the event that we are unable to obtain the Information from you, within one hour following receipt of the Sample, we shall proceed with undertaking The Tests.

- 3.4 You shall co-operate with us, as we may reasonably determine, in relation to the provision of the Services.

4. ORDERS AND DELIVERY

- 4.1 You shall provide us with an order (the "Order") for the Services which shall be in accordance with the following procedure:

4.1.1 You shall contact Client Relations to indicate your test requirement;

4.1.2 Client Relations will process your payment for The Tests;

4.1.3 Upon completion of payment we shall arrange to send a test kit to you;

4.1.4 You will submit your Sample to our Laboratory accompanied by a completed test request form which can be downloaded from /diagnostic-tests/order-a-test. Each package that you submit shall be:

4.1.4.1 addressed for the attention of: "CTC Processing team"; and

4.1.4.2 Be clearly marked as "Urgent Blood Sample for CTC Testing".

- 4.2 In drawing the Sample from your patient and submitting the Sample to us for the Tests you agree to solely use the equipment within the test kit provided by us.

- 4.3 You shall ensure that the content of your order for Services is complete and accurate.

- 4.4 Unless expressly agreed otherwise in writing by us, any times specified or agreed by us for the delivery of the Services are given in good faith but are an estimate only. If no time is specified or agreed by us delivery will take place within a reasonable time following our receipt of the Samples. We will not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by a delay in the delivery of the Services.

5. PRICE AND PAYMENT

- 5.1 Unless expressly agreed otherwise in writing by us, the fees for the Services shall be our standard fees as listed on our website.

- 5.2 We shall invoice you for the work following completion of the Services and you shall pay the fees for the Services within 30 days of receipt of an invoice from us.

- 5.3 Subject to this clause 5.3, all fees are exclusive of VAT, which sum shall be added to the invoice and shall be payable by you. UK VAT is applicable to transactions within the European Union including the UK. For EU based organisations, registered outside the UK, supply of a valid VAT registration number is required, if you are to avoid UK VAT. Eligible bodies in the UK may qualify for zero rating under VATA 1994, Schedule 8, Group 15. Such organisations should check their eligibility status carefully and only supply a certificate where they are fully satisfied that zero-rating applies. We reserve the right to charge VAT to you where you do not provide a valid zero-rating certificate or where instructed to do so by HMRC.

- 5.4 No payment will be deemed to have been received until we have received the payment in full in cleared funds. Time for payment will be of the essence of the Contract.
- 5.5 All payments payable to us under the Contract will become due immediately on termination of this Contract despite any other provision of these Conditions.
- 5.6 You will make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 5.7 If you fail to pay us any sum due pursuant to the Contract, then without prejudice to our other rights and remedies you shall pay interest to us on such sum from the due date for payment at the statutory rate from time to time in force accruing on a daily basis until payment is made in full (whether before or after any judgement).

6. SAMPLES, PROCESSING, STORAGE, RISK AND OWNERSHIP

- 6.1 Upon receipt of Samples we shall verify that the paperwork and the accompanying Sample concur.
- 6.2 We shall take reasonable care of any Sample whilst in our possession.
- 6.3 Provided that the Samples are of satisfactory quality, we shall proceed with the performance of the Services and will provide all data arising from the same. Any Defective Samples shall be dealt with in accordance with Clause 3.3 herein.
- 6.4 We will not be liable for any loss or damage to Samples unless such loss or damage arises as a direct result of our negligence.
- 6.5 You understand and accept that the Samples will be used up in the course of the conduct of the Services. Any unused Samples left over or resultant products of the Tests will be disposed of in accordance with standard laboratory practice.

7. RESULTS

- 7.1 Retention or return of Samples will only be undertaken at your express instruction and at your cost and risk.
- 7.2 Unless otherwise expressly agreed between us, we shall supply the Results to you by one of the following mechanisms: email at an agreed email address to be provided by you prior to the commencement of the Services via a secure FTP website or on a CD Rom.
- 7.3 We will not under any circumstances be liable for your use of the Results.

8. CONFIDENTIAL INFORMATION

- 8.1 Each Party shall keep strictly confidential all information concerning the business and affairs of the other together with any information disclosed under this Agreement (including, without limitation, the Samples) obtained from the other either pursuant to this Agreement or prior to and in contemplation of it, shall use the same exclusively for the purposes of this Agreement, and shall disclose the same only to those of its directors, Consultants and employees to whom and to the extent that such disclosure is reasonably necessary for the purposes of this Agreement.

8.2 The obligations of clause 8.1 above shall survive the termination of this Agreement but shall not apply to any information which: -

- 8.2.1** the recipient can demonstrate was already in its possession and at its free disposal prior to receipt under the circumstances mentioned at clause 8.1 above;
- 8.2.2** is subsequently disclosed to the recipient without any obligation of confidence by a third party who has not derived it directly or indirectly from the disclosing party; or
- 8.2.3** enters the public domain through no act or default of the recipient, its agents or employees.

9. WARRANTIES

9.1 We warrant that we shall perform the Services using reasonable skill and care and in accordance with all applicable laws.

10. LIMITATION OF LIABILITY

- 10.1** Save for the warranties given by us at clause 9, all warranties, conditions and other terms (whether implied by statute or otherwise) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.2** Nothing in these Conditions excludes or limits our liability for fraudulent misrepresentation or for any death or personal injury caused by our negligence.
- 10.3** Subject to clause 10.2, we will not be liable to you in contract, tort (including, without limitation, negligence), misrepresentation or otherwise for any:
 - 10.3.1** economic loss of any kind (including, without limitation, loss of use, profit, anticipated profit, business, contracts, overhead recovery, revenue or anticipated savings);
 - 10.3.2** any damage to your reputation or goodwill: or
 - 10.3.3** any other special, indirect or consequential loss or damage (even if we have been advised of such loss or damage) arising out of or in connection with the Contract.
- 10.4** Subject to the provisions of clause 9 and clause 10.2, our total liability in contract, tort (including, without limitation, negligence), misrepresentation or otherwise arising out of or in connection with this Contract (a "Default") will be limited to the price paid or payable in respect of the Services to which the Default relates.
- 10.5** The provisions of this clause 10 shall survive the termination or expiry (for whatever reason) of this Contract.

11. TERMINATION

- 11.1** We may terminate the Contract immediately if:
 - 11.1.1** you fail to pay the price on the due date;
 - 11.1.2** you are in breach of any term of the Contract and have failed to remedy such breach within 28 days of receipt of written notice specifying the breach and requiring it to be remedied;
 - 11.1.3** there is a material change in the ownership or control of you; or

- 11.1.4 you are wound up or become insolvent or have a receiver or administrative receiver appointed or suffer the appointment or the presentation of a petition for the appointment of an administration or any equivalent or analogous event occurs in any other jurisdiction.
- 11.2 The termination of the Contract (howsoever arising) will be without prejudice to any rights and remedies which may have accrued to either party.
- 11.3 Any Conditions which impliedly have effect after termination or expiry will continue to be enforceable notwithstanding termination or expiry.

12. ANTI-BRIBERY COMPLIANCE

- 12.1 You shall:
 - 12.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including to the Bribery Act 2010 (“Relevant Requirements”);
 - 12.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 12.1.3 comply with our Anti-bribery Policy which can be requested from our Registered Office as SBS may update them from time to time (“Relevant Policies”);
 - 12.1.4 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 12.1.2, and will enforce them where appropriate;
 - 12.1.5 promptly report to us any request or demand for any undue financial or other advantage of any kind received by the Company in connection with the performance of this agreement;
 - 12.1.6 immediately notify us (in writing) if a foreign public official becomes an officer or employee of you or acquires a direct or indirect interest in you, and you warrant that you have no foreign public officials as direct or indirect owners, officers or employees at the date of this agreement; and
 - 12.1.7 within 2 months of the date of this agreement, and annually thereafter, certify to us in writing, signed by an officer of you, compliance with this clause 12 by you and all persons associated with you under clause 12.2. You shall provide such supporting evidence of compliance as we may reasonably request.
- 12.2 You shall ensure that any person associated with you who is performing services in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on you in this clause 12 (Relevant Terms). You shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to us for any breach by such persons of any of the Relevant Terms.
- 12.3 Breach of this clause 12 by you shall be deemed a material breach.

- 12.4** For the purpose of this clause 12, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purpose of this clause 12, a person associated with you includes any agent, delegate or subcontractor of you.

13. FORCE MAJEURE

- 13.1** We will not be liable to you or be deemed to be in breach of these Conditions by reason of any delay in performing or failure to perform any of its obligations under these Conditions if such delay or failure was beyond our reasonable control including, without limitation, fire, flood, strike or other industrial action of whatever nature. If we are unable to perform our obligations under these Conditions we will promptly notify you of the nature and extent of the circumstances in question.

14. GENERAL

- 14.1** You not without our prior written consent assign or transfer the Contract or any part of it to any other person.
- 14.2** We may without your prior written consent assign, transfer or subcontract the Contract or any part of it to any other person.
- 14.3** Each of rights or remedies under these Conditions are without prejudice to any other right or remedy which we may have under these Conditions or otherwise.
- 14.4** Any notice or other document to be served under the Contract must be in writing and may be delivered or sent by prepaid first class post or facsimile transmission. Any notice or document shall be deemed served, if delivered at the time of delivery, if posted, 48 hours after posting and if sent by facsimile transmission, at the time of transmission.
- 14.5** If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, unenforceable or unreasonable it will, to the extent of such illegality, invalidity, voidness, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 14.6** Failure or delay by either party in exercising any right or remedy provided by the Contract or by law will not be construed as a waiver of such right or remedy or a waiver of any other right or remedy.
- 14.7** A person who is not a party to the Contract will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 14.8** The Contract will be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.