

## TERMS AND CONDITIONS FOR THE SUPPLY OF ANALYTICAL SERVICES

### ("the Conditions")

#### 1 Interpretation

In the Conditions the following expressions shall (unless the context requires) have the following meanings:

"Affiliate"	means, as of any point in time and for so long as such relationship continues to exist, any entity that, directly or indirectly, Controls the Company or is Controlled by the Company or is under common Control with the Company, where "Control" means the power and ability to direct the management and policies of the controlled enterprise, whether directly or indirectly through one or more intermediaries, through ownership of voting securities of the controlled enterprise or by contract or otherwise; and the terms "Controls" and "Controlled" shall be construed accordingly;
"Applicable Law"	means all laws, regulations, rules, guidelines and other requirements of any government or regulatory authority applicable to the operation of a party's business and/or the performance of a party's obligations under the Contract;
"Client"	means the person, firm or company to whom a Quotation is addressed or to whom any Services are provided and/or for whom any Test(s) is or are carried out;
"Confidential Information"	all information in respect of the business of the Company, including (but not limited to) know-how or other matters connected with the Services and information concerning the Company's relationships with actual or potential clients, customers or suppliers and the needs and requirements of the Company and any other information which if disclosed will be liable to cause harm to the Company;
"Company"	means the Source BioScience company specified in the Quotation which is dependent upon the location in

which you receive the Services or any Affiliate thereof. In this context each “Company” operates separately under these Conditions;

“Contract”	means the contract for the supply of Services of which the Quotation and the Conditions form part, including any relevant Technical Agreement(s) between the Client and the Company. In the event of any conflict between: (i) the Quotation and/or the Conditions; and (ii) the terms and conditions of any such Technical Agreement, the former shall prevail;
“Losses”	means all losses, liabilities, claims, costs, expenses, damages, actions, awards, penalties and/or fines, obligations and also includes all losses, liabilities, costs and expenses in relation to or resulting from any demands, claims or proceedings;
“Price”	means the price stated in the Quotation or otherwise agreed with the Client, together with all other sums due pursuant to the Conditions;
“Quotation”	means the Company’s quotation (whether written or oral) of which the Conditions form part;
“Report”	means any test certificate, technical report, non-destructive test or inspection record, drawing, spreadsheet, recommendation, advice or the like issued by the Company in respect of the Services;
“Sample”	means any material, item, product or compound supplied by the Client to form the basis of any Services to be provided and/or any Test(s) to be carried out;
“Services”	means the analytical services specified in the Quotation;
“Technical Agreement”	means the document (if any) agreed between the parties, which provides additional technical information about the Services to that already given within the Quotation and provides for the quality standards applicable to the Services; and
“Test”	means any testing, analysis, assay, inspection or the like specified in a Quotation.

## **2 Quotation**

- 2.1 The Quotation constitutes an offer by the Company to provide Services and/or carry out a Test or Tests subject to the Conditions and is open for acceptance for seven days only from the date of the Quotation unless previously withdrawn by the Company. Acceptance is based on the receipt of an instruction in writing or receipt of the Sample by the Company.
- 2.2 Except in accordance with the Conditions no variation of the Contract will be accepted unless agreed in writing by the Company.
- 2.3 The Quotation shall prevail over any terms or conditions (whether or not inconsistent with the Quotation and/or the Conditions) contained or referred to in any correspondence, order, documentation submitted by the Client or elsewhere. Furthermore, no condition, statement or representation: (i) contained in any advertisement or brochure or in any trade or promotional circular or other literature, including (but not limited to) the terms or conditions of any trade association or other body; or (ii) which would or might but for this Condition 2.3 be implied or incorporated by custom or trade, usage, negotiations, course of dealing or otherwise, shall be deemed to be incorporated in the Contract and all of the same are hereby expressly excluded from the Contract.

## **3 Price**

- 3.1 The Price is based on information available to the Company at the date of the Quotation. If during the period of the Contract there shall be any variation in the cost of materials, labour or otherwise to the Company, the Price may, in the absolute discretion of the Company, be adjusted to take account of such variation.
- 3.2 In addition to the amount specified in the Quotation the following shall be payable if appropriate:
  - 3.2.1 any applicable value added tax;
  - 3.2.2 any packing, packaging, insurance, carriage, freight and/or travel costs, any bank charges any destruction costs any storage charges and/or any third party disbursements incurred by the Company on behalf of the Client in relation to the Services and/or any Sample or other materials or property supplied by the Client, whether occurring or being incurred on the Company's premises or elsewhere;
  - 3.2.3 any: (i) other insurance costs incurred by the Company, in its absolute discretion, in respect of any Sample and/or other materials or property belonging to the Client in the possession of the Company; and (ii) storage charges of the Company if any Sample or other materials or property supplied

by the Client and stored on the Company's premises are not removed from the Company's premises within seven days of the date of notification to the Client that they are ready for collection;

- 3.2.4 with prior notice, the cost of all sub-contractors employed by the Company unless included in the Quotation;
- 3.2.5 any additional costs incurred by the Company in accordance with the Conditions; and
- 3.2.6 any special standards or specifications required for the performance of the Services above and beyond those set out in the Quotation and/or any relevant Technical Agreement(s).

#### **4 Payment**

- 4.1 The Price shall be paid to the Company in full, in cleared funds, without any deduction, set-off or counterclaim within thirty days of the date of the Company's invoice. Time of payment is of the essence to the Contract. In default of payment within the applicable thirty-day period, the Company may: (i) suspend any further Services being carried out for the Client; (ii) withhold the provision of Reports; (iii) alter or withdraw credit terms; and/or (iv) amend any applicable terms, prices or service levels. The amount outstanding from time to time shall bear interest (both before and after any judgment) at the rate of 5% per annum above the Bank of England base rate from time to time from the due date for payment until payment in full is made.
- 4.2 All payments due to the Company shall be payable within the specified time irrespective of whether or not the Client has recovered payment from a third party and, for the avoidance of doubt but without prejudice to the generality of the foregoing, this includes payments of fees due to the Company acting as experts or as expert witnesses when instructed by solicitors acting for a party to a dispute.
- 4.3 If, in the Company's view, the Client's credit-worthiness deteriorates before completion of the Services, the Company may require: (i) payment in full or in part of the Price prior to completion; and/or (ii) the provision of security for payment by the Client in such form as is acceptable to the Company.
- 4.4 The Company has a general lien on all the Client's property in the Company's possession in satisfaction of any amount owed by the Client to the Company under the Contract and may deal with it as it sees fit.

## **5 Execution of Services**

- 5.1 Tests shall be carried out singly unless prior written instructions from the Client are received for replicates or unless the Company considers replicates are necessary or desirable. The Company reserves the right to charge for replicates even if the original result is confirmed.
- 5.2 The Client shall supply as much information as possible to the Company about each Sample and/or Services requirement in order to assist in achieving an efficient service. Where any such information relating to any Sample and/or Services requirement is incorrect and the Company is involved in additional work as a consequence, the Company reserves the right to charge for such additional work.
- 5.3 Unless specific prior instructions in writing are received by the Company any Test shall be carried out on a Sample in the state in which the Sample is received. The Company reserves the right to charge for any work required to be carried out to any Sample prior to the performance of any Services.
- 5.4 Methods of carrying out the Services and providing Reports shall be at the sole discretion of the Company unless prior instruction in writing is received from the Client specifying a particular procedure. Charges for such special procedures will be agreed between the Company and the Client prior to carrying out the relevant Services.
- 5.5 A general description of the method used in the performance of the Services shall be given verbally on request. Where written descriptions of detailed procedures are requested, whether as part of any Report or issued separately, the Company reserves the right to make an additional charge. If the method referenced in any Report represents the end product of development work carried out at the Company's expense, the method shall only be revealed at the discretion of the Company.
- 5.6 The Company may, at its sole discretion, undertake to give priority in carrying out any particular Services. A surcharge may be imposed by the Company for the carrying out of priority work. Details of these arrangements will be issued by the Company on request.

## **6 Samples subject of legal proceedings**

If any Sample is, or is potentially, the subject of legal proceedings, this fact must be notified to the Company in writing before the Services are carried out. If that fact is not disclosed to the Company at that stage, the Company may not, in its absolute discretion, be prepared to provide expert testimony.

## **7 Disclaimer/Liability**

- 7.1 The following provisions of this Condition 7 set out the entire liability of the Company and its employees, agents and sub-contractors to the Client howsoever arising.
- 7.2 The Company does not exclude its liability (if any) to the Client:
- 7.2.1 for breach of the Company's obligations arising under section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
  - 7.2.2 for personal injury or death resulting from the Company's negligence;
  - 7.2.3 for fraud or fraudulent misrepresentation; or
  - 7.2.4 for any matter which it would be illegal for the Seller to exclude or limit or to attempt to exclude or limit its liability.
- 7.3 Except as provided in Condition 7.2 the Company shall not be liable to the Client (whether in contract, tort (including negligence), breach of statutory duty or otherwise) for any loss of profit, loss of business, loss of market, loss of contract, damage to goodwill, loss of anticipated savings, loss of revenue, loss or damage incurred as a result of third party claims or any indirect or consequential loss howsoever caused.
- 7.4 Subject to Condition 7.2 and Condition 7.3, the Company's aggregate liability under the Contract (whether in contract, tort (including negligence), breach of statutory duty or otherwise) arising out of or in connection with the performance or contemplated performance of the Contract or any delay in performance or failure to perform by the Company or otherwise howsoever arising shall be limited to the Price.
- 7.5 Subject to the other provisions of the Conditions any claim by the Client against the Company shall be made in writing and notified to the Company within 365 days of completion of the Services under the Contract by the Company to the Client.
- 7.6 All Services are undertaken in good faith, with reasonable skill and care, in accordance with Applicable Law and on a confidential basis. Reports are issued on the basis of information known to the Company at the time that the Services are carried out. Although the Company will use all reasonable endeavours to ensure accuracy, the Services depend, inter alia, on the effective co-operation of the Client, its staff and on the information submitted to the Company. Save as required by law, no representation or warranty, whether express or implied or

otherwise as to the accuracy of any Report is given by the Company. In consequence, all Reports are prepared on the basis that:

- 7.6.1 there is no responsibility to any person or body other than the Client;
  - 7.6.2 they are not carried out for any particular purpose and no statement is to be deemed in any circumstances to be or give rise to a representation, undertaking, warranty or contractual condition unless specifically stated;
  - 7.6.3 they are determined solely by the professional analysis undertaken by the Company's staff on each individual Contract and any forecasts by the Company of the results are an estimate only;
  - 7.6.4 the Company is entitled to be paid the Price irrespective of the results or conclusions reached in the Report;
  - 7.6.5 the results of the Services shall address the items and information submitted only and are not to be regarded as representative of any larger population from which the Sample was taken; and
  - 7.6.6 the results are final and approved by the Company. The Company shall be under no liability where the Client has acted on preliminary, unapproved results or advice.
- 7.7 All time limits, if any, for the provision of the Services or any Test or Tests is or are estimates and no undertaking is given to provide the Services, to carry out any Test or Tests or to despatch any Report within any period of time.
- 7.8 The Company shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Services, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, causes beyond the Company's reasonable control shall include an Act of God, explosion, adverse weather conditions, flood, earthquake, tempest, fire, accident, war or threat of war, acts or threats of terrorism, sabotage, insurrection, riot, civil disturbance, requisition, acts, restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of the governmental, parliamentary or local authority, import or export regulations or embargoes, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery, power failure or breakdown in machinery.

- 7.9 Except as otherwise expressly provided in the Conditions, all warranties, conditions or other terms express or implied, statutory, customary or otherwise are excluded to the fullest extent permitted by law.
- 7.10 The Client acknowledges that the above provisions of this Condition 7 are reasonable and reflected in the Price, which would be higher without those provisions, and the Client will accept such risk and/or insure accordingly.

## **8 Obligations of the Client**

- 8.1 The Client shall provide with each Sample and / or the Services a unique purchase order, unique reference or unique authorisation with sufficient detail to allow the Company to identify each Sample (if applicable) and relate it to a specific Quotation and the Services and the Company shall be entitled in good faith to rely upon such purchase order, reference or authorisation provided to carry out the Services.
- 8.2 The Client may reproduce or replicate any Report in the form provided by the Company but shall not, without the written consent of the Company, reproduce or replicate any Report which has been modified from the form provided by the Company.
- 8.3 The Client shall be bound to inform the Company in writing prior to the Company carrying out any of the Services on a Sample that is of a dangerous or unstable nature and provide instruction on the safe handling of the Sample. The Client shall indemnify the Company from and against all Losses suffered by the Company, including, without prejudice to the generality of the foregoing, all damage to the Company's property and all claims in respect of injury to or deaths of any of the Company's employees, sub-contractors or agents or of any third party directly or indirectly arising from or in connection with the failure of the Client to inform the Company of the dangerous or unstable nature of a Sample and/or to provide adequate instruction on the safe handling of the Sample. Where the Client informs the Company that a Sample is of a dangerous or unstable nature, the Company may, in its absolute discretion, elect not to carry out the Services and to terminate the Contract whereupon the provisions of Condition 12.3 will apply, save that the Company shall have no liability for its termination of the Contract.
- 8.4 The Client agrees to indemnify, keep indemnified and hold harmless the Company from and against all Losses which the Company may suffer or incur arising out of or as a result of any breach or negligent performance or failure in performance by the Client of the terms of the Contract or breach of any law or any claim threatened or made against the Company by any third party arising out of the Services or out of any delay in performing or failure to perform the Services.



- 8.5 Where Services are provided at the premises of the Client, the Client will be responsible for providing a safe system of work for the Company and its employees while providing the Services and the Client shall be responsible for all costs necessarily required in discharging this obligation and shall indemnify the Company and its employees, sub-contractors and agents in respect of all Losses suffered as a result of any breach by the Client hereof.

## **9 Risk and property in relation to Samples**

- 9.1 Unless stated in the Quotation, Samples are and remain at all times (including, without limitation, whilst at the Company's premises and during transportation to and from the Company's premises) at the entire risk of the Client who shall be responsible for effecting and maintaining its own insurance cover in relation thereto, it being hereby acknowledged by the Client that the charges of the Company do not include insurance.
- 9.2 Unless expressly stated to the contrary in the Contract, Samples of a stable nature shall be retained and stored for one month from the date of their Test and then destroyed.
- 9.3 Where Samples are, in the sole opinion of the Company, too bulky or too unstable to allow retention and storage time of more than one month, it will be at the absolute discretion of the Company as to the length of time such Samples are kept before being destroyed.
- 9.4 Samples shall be returned to the Client only if prior instructions in writing in that regard are received by the Company and the Client shall be charged for all costs associated therewith (including carriage and freight).

## **10 Ownership, copyright and patents in relation to Services**

- 10.1 All copyright in records, scientific documentary, primary data or electronic means of handling data produced during the provision of any of the Services shall belong to and remain the property of the Company unless otherwise agreed as part of the Contract.
- 10.2 Ownership and copyright in the Report(s) shall remain with the Company until the Client has discharged all its obligations under the Contract, including payment of the Price, whereupon ownership and copyright in the Report(s) shall pass to the Client unless and to the extent that the Company is forced to part with any such Report, or any information of any nature contained in any such Report, to any body exercising its statutory powers.
- 10.3 The Client hereby warrants that it will not use the Report(s) or any other reports, results or information supplied by the Company for the purposes of advertisement

or publication to third parties. Any such advertisement and/or publication of the Report(s) or other reports, results or information supplied by the Company is permitted under the Contract only with the prior written consent of the Company, who shall have the right to increase the Price where it consents to such advertisement and/or publication.

- 10.4 The Client hereby undertakes to abide by any Applicable Law relating to marks, emblems or logos attached to the Reports or any other documents issued under the Services.
- 10.5 All inventions arising from the Contract and any applications for patents or similar protection, whether in the United Kingdom or elsewhere, shall be the property of the Client (once all payments due to the Company under the Contract have been discharged), but the Company is hereby granted an irrevocable royalty free licence, with the right to sub-license, to apply them or any information gained to work outside the specific field in which the development for the Client took place.

## **11 Sub-contracting and assignment**

- 11.1 Unless otherwise restricted by the terms of the Contract and/or any Applicable Law, the Company shall be entitled, in its absolute discretion, to sub-contract the whole of or any part of the Services.
- 11.2 The Company may assign, delegate, licence or hold on trust, all or any part of its rights or obligations under the Contract.
- 11.3 The Contract is personal to the Client which may not assign, delegate, licence, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.

## **12 Termination**

- 12.1 The Client shall not terminate the Contract without the written consent of the Company which may be subject to such terms, as in the Company's absolute discretion, recompense the Company for all loss it may suffer as a result of termination.
- 12.2 The Company may terminate the Contract and any other contract with the Client forthwith, without prejudice to any other right or remedy available to the Company and without the Company incurring any liability to the Client, in the following circumstances:
  - 12.2.1 if the Client shall commit a breach of any terms of the Contract or any other contract with the Company unless such breach is capable of remedy and the

Client has failed to comply with a notice requiring remedy within the period specified in the said notice;

12.2.2 if the Client fails to make payment of the Price within the specified time;

12.2.3 the Client makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or ceases or suspends payment of any of its debts or unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986;

12.2.4 an encumbrancer takes possession, or a receiver or administrator is appointed, of any of the property or assets of the Client;

12.2.5 the Client ceases, or threatens to cease, to carry on business;

12.2.6 the Company reasonably apprehends that any of the events mentioned at Conditions 12.2.3, 12.2.4 or 12.2.5 above is about to occur in relation to the Client and notifies the Client accordingly; and

12.2.7 as provided in Condition 8.3.

12.3 Notwithstanding that the Company terminates the Contract, this shall be without prejudice to the accrued rights and remedies of the parties prior to termination of the Contract and any rights or remedies under the Conditions, which shall remain in force, including the right to suspend all further Services to be made under any other contract with the Client (and in such event the Client shall not be released from any of its obligations to the Company under any other contract) and the right for the Company to receive full compensation for its loss under the Contract or any other contract with the Client.

12.4 On termination of the Contract pursuant to Condition 12.2, any indebtedness of the Client to the Company shall become immediately due and payable.

### **13 Confidentiality**

13.1 All Confidential Information shall be kept by the Client in the strictest confidence. Save for the purposes of fulfilling its obligations under the Contract, the Client shall not, without the prior written consent of the Company, disclose, divulge or grant access to the Confidential Information which it has received and shall not permit any of its employees, agents or officers to disclose, divulge or grant access to such Confidential Information.

13.2 Notwithstanding Condition 13.1, the Client may disclose Confidential Information which it has received if:

- 13.2.1 it is required to do so by any governmental local government or regulatory authority or by law (but then only to extent it is strictly required to do so);
  - 13.2.2 it is strictly necessary for the purpose only of obtaining professional advice in relation to the Contract;
  - 13.2.3 it is already known to the Client prior to the time of disclosure by the Company (where the Client can prove the same with documentary evidence); or
  - 13.2.4 it is information which subsequently becomes public knowledge other than by breach of the Contract by the Client.
- 13.3 The obligations of the parties under this Condition 13 shall continue to apply without limit of time.

## **14 General**

- 14.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company under the Contract or any other contract.
- 14.2 Nothing in the Conditions shall create or be deemed to create a partnership between the parties.
- 14.3 The Conditions, the Quotation and the Contract contain all the provisions which the parties have agreed in relation to the subject matter of the Contract and supersede any prior written or oral agreements, representations or understandings between the parties. The Client agrees that it has not been induced to enter into the Conditions or the Contract by a statement or promise which they do not contain save that the Conditions shall not exclude any liability which the Company would otherwise have to the Client in respect of any statements made fraudulently by the Company.
- 14.4 In the event of one or more of the provisions of the Conditions being held by a competent authority to be invalid, illegal, or unenforceable, in whole or in part, the validity, legality or enforceability of the remaining provisions of the Conditions and the remainder of the provision in question shall not be affected thereby.
- 14.5 All notices to be served by one party on the other must be in writing and shall be deemed duly delivered or served at the time of service if delivered personally and forty eight hours after posting if posted by first class or airmail prepaid post in each case to the registered address, if applicable, or if not applicable the last known address of the other party.

- 14.6 No failure or delay by the Company to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right, power or remedy.
- 14.7 For the purpose of the Contracts (Rights of Third Parties) Act 1999, the Quotation and the Conditions do not and are not intended to give any rights or any right to enforce any of its provisions to any person who is not a party to it (save for any Affiliate).
- 14.8 The Quotation, Conditions and the Contract shall be governed by and construed in accordance with the laws of England and Wales and the Client submits to the exclusive jurisdiction of the English Courts.