

## Terms of Sale - Reference Laboratory Services

This document (together with the documents referred to in it) sets out the terms and conditions on which SBS supply the Reference Laboratory Services listed on our website [www.sourcebioscience.com](http://www.sourcebioscience.com) ("the Website") to the Client.

These terms and conditions apply to both Reference Laboratory Services ordered through the Website and Reference Laboratory Services ordered other than through the Website.

Please read these terms and conditions carefully. The Client should understand that by ordering any of our Reference Laboratory 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 Reference Laboratory 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:

"By-Products" any slides, extracted or amplified DNA that is generated in the course of performing the Services;

"Conditions" the conditions set out below and overleaf;

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

"CPA" Clinical Pathology Accreditation from Clinical Pathology Accreditation (UK) Limited (company number 2675095);

"Client" the company, academic institution, hospital, NHS Trust, firm, body or any representative thereof or any other person who submits a Specimen and a Request Form to the Provider or who submits a Specimen with a written request to the Provider to purchase the Services;

"Client Property" Specimens and Specimen Request Information submitted by the Client to the Provider;

"Provider" 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;

"Results" the Report and/or any data arising out of the results of the Services;

“Report” the Report (in the format set out in the ‘Results’ section of the Request Form or as otherwise provided from time to time) of the results of the testing comprised within the Services;

“Request Form” the standard documentation, which has been developed by the Provider to enable prospective clients to identify the type of test that they wish the Provider to undertake on their Specimen and which the Client submits to the Provider as an express request to undertake a given test;

“Retained Specimens” those Specimens that are submitted by the Client to the Provider as slides and all By-Products that are prepared by the Provider through the use of the Clients Specimen(s);

“SBS” means Provider;

“Specimen” any and all samples whether these be slides, blocks or wet specimens, sent by the Client to the Provider for testing under these terms and conditions;

“Specimen Request Information” the patient request form or accompanying request document or letter belonging to the Client, which accompanies any Specimens submitted to the Provider; and

"Services" the testing identified by the Client in the Request Form together with the Report which the Provider undertakes on behalf of the Client following receipt of a Specimen and a Request Form from the Client or receipt of a Specimen and a written request from the Client.

- 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 The Provider reserves the right at any time without liability to correct any clerical, typographical or other similar errors or omissions made by it.
- 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 the Provider is prepared to deal with the Client 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 the Client to the Provider 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.
- 2.4** Each submission of a Request Form for Services issued by the Client to the Provider will be deemed to be an acceptance by the Client of the purchase of Services subject to these Conditions.
- 2.5** Each submission of a Specimen together with an express request for Services (“Order”) issued by the Client to the Provider will be deemed to be an acceptance by the Client of the purchase of Services subject to these Conditions.
- 2.6** The Client must ensure that the content of its order for Services either by completion and submission of the Request Form or submission of a Specimen together with an express request for Services, is complete and accurate.
- 2.7** Any Request Form or Order for Services which has been submitted to the Provider may only be cancelled if written notification of such cancellation is received by the Provider prior to the Provider undertaking the Services. The Client will indemnify the Provider in full against all losses (including, without limitation, loss of profit), costs (including, without limitation, inventory and other commitments made by the Provider as a result of such Request Form), damages, charges and expenses incurred (directly or indirectly) by the Provider as a result of such cancellation.

## **3. DELIVERY**

- 3.1** Any times specified or agreed by the Provider for the delivery of the Services are given in good faith but are an estimate only. If no time is specified or agreed by the Provider delivery will take place within a reasonable time following receipt of the Request Form and Specimen or receipt of the Specimen Request Information and Specimen. The Provider will not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Services.
- 3.2** The Provider shall supply the Report by post, facsimile or secure electronic transmission to the Client contact and address (or, where relevant, facsimile number) noted in the Request Form.
- 3.3** Unless agreed in writing otherwise, the Provider shall retain all Retained Specimens but shall return all other Specimens to the Client. Delivery will be deemed to take place when

the Provider delivers the Specimens to a carrier nominated by the Provider for the purpose of transmission to the Client.

- 3.4** The Provider will use reasonable endeavours to ensure where necessary that any Specimens to be returned to the Client are packed so as to be adequately protected against damage in normal conditions of transit of usual duration.

#### **4. RISK AND OWNERSHIP**

- 4.1** Unless otherwise agreed in writing all Specimens to be returned to the Client are at the risk of the Client from the time of delivery to the Client in accordance with clause 3.3.

#### **5. PRICE AND PAYMENT**

- 5.1** Unless expressly agreed otherwise in writing by the Provider, the Services are supplied by reference to the Provider's price list published by the Provider from time to time.
- 5.2** The Provider may invoice the Client for the Services at any time after the despatch of the Report on a given Specimen in accordance with clause 3.2.
- 5.3** The Client shall pay the fees for the Services upon receipt of an invoice from the Provider and within 30 days of the date of such invoice.
- 5.4** All fees are exclusive of VAT, which sum shall be added to the invoice and shall be payable by the Client.
- 5.5** No payment will be deemed to have been received until the Provider has received the payment in full in cleared funds.
- 5.6** Time for payment will be of the essence of the Contract and the Client will indemnify the Provider against all expenses and legal costs (on a solicitor client basis) incurred by the Provider in recovering overdue amounts.
- 5.7** All payments payable to the Provider under the Contract will become due immediately on termination of this Contract despite any other provision of these Conditions.
- 5.8** The Client will make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by the Provider to the Client.
- 5.9** If the Client fails to pay the Provider any sum due pursuant to the Contract, the Client shall pay interest to the Provider at the rate of interest specified from time to time in the Late Payments of Commercial Debts (Interest) Act 1998, calculated daily on such sum from the due date for payment until payment is made in full (whether before or after any judgement).
- 5.10** In the event that Client asks the Provider to repeat Services for any reason, Client will be required to meet any additional costs associated with such repeat work.

## 6. WARRANTIES

- 6.1** The Provider warrants (subject to the provisions of this clause 6) that the Services will be performed:
- (a) safely and with reasonable care and skill;
  - (b) using properly qualified and experienced persons; and
  - (c) in accordance with English law.
- 6.2** The Provider will not be liable for a breach of the warranties in clause 6.1 where and to the extent that a defect arises:
- 6.2.1** from the Specimen being of an inferior quality such that the laboratory testing is unsuccessful; or
  - 6.2.2** as a result of the Client's negligence.
- 6.3** Subject to clause 6.2, if any of the Services do not conform with the warranties set out in clause 6.1 the Provider will at its option and cost re-perform such Services or refund the price of such Services at the pro rata Contract rate.
- 6.4** The Provider shall (subject to clause 7.2) have no further liability (in contract, tort (including, without limitation, negligence) or otherwise) for breach of any of the warranties in clause 6.1 in respect of the Services or any other term of this Contract.
- 6.5** The Client warrants that at all times it has obtained all necessary ethical permissions and consents in connection with:
- 6.5.1** its submission of the Specimens to Provider; and
  - 6.5.2** Provider's use of the Specimens.

## 7. LIMITATION OF LIABILITY

- 7.1** Save for the warranties given by the Provider at clause 6.1, all warranties, conditions and other terms (whether implied by statute or otherwise) are, to the fullest extent permitted by law, excluded from the Contract.
- 7.2** Nothing in these Conditions excludes or limits the liability of the Provider for fraudulent misrepresentation or for any death or personal injury caused by the Provider's negligence.
- 7.3** Subject to clause 6 and clauses 7.1 and 7.2, the Provider will not be liable to the Client in contract, tort (including, without limitation, negligence), misrepresentation or otherwise for any:
- 7.3.1** economic loss of any kind (including, without limitation, loss of use, profit, anticipated profit, business, contracts, overhead recovery, revenue or anticipated savings);
  - 7.3.2** any damage to the Client's reputation or goodwill: or
  - 7.3.3** any other special, indirect or consequential loss or damage (even if the Provider has been advised of such loss or damage) arising out of or in connection with the Contract.
- 7.4** Subject to the provisions of clause 6 and clauses 7.1, 7.2 and 7.3 the Provider's 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 (or the relevant part of the Services) to which the Default relates.

- 7.5 The provisions of this clause 7 shall survive the termination or expiry (for whatever reason) of this Contract.

## **8. THE CLIENT'S PROPERTY**

- 8.1 The Provider will take reasonable care of the Client's Property whilst it is in the Provider's possession until delivery in accordance with clause 3.3.
- 8.2 The Provider will not be liable for any loss or damage to the Client Property unless such loss or damage arises as a direct result of the Provider's negligence. Where the Provider is liable under clause 8.1, the Provider's liability to the Client will be limited to the lesser of:
- 8.2.1 the sums noted in the limitation of liability set out at clause 7.4; or
  - 8.2.2 the actual value of the Client Property; or
  - 8.2.3 the cost of the replacement or repair of the loss or damage to the Client Property.
- 8.3 The Client will ensure that the Client Property is in accordance with any specification agreed between the parties, and in any event are in good condition and of appropriate quantity, quality and purity and suitable for use by the Provider in the performance of the Contract and while the Provider will use reasonable endeavours to verify any relevant aspects of the Client's Property no responsibility is accepted by the Provider for its accuracy.
- 8.4 Any defect in the Services which is due in whole or in part to defects or limitations in the Client's Property will not entitle the Client to terminate the Contract, reject the Services, make any deductions from the Contract price or claim damages in respect of such defect.
- 8.5 The Client will keep the Provider indemnified in full against all liability, loss, damage, injury, claim, action, demand, expense or proceeding awarded against or incurred by the Provider as a result of or in connection with the use by the Provider of the Client's Property.
- 8.6 Client understands and acknowledges that there is a risk that some of the Services may not deliver the end result that it is seeking and it accepts that this is foreseeable given the nature of the Services (by way of an illustrative example only, laboratory testing on DNA that may be inadequate in terms of quantity and/or quality may not deliver desired end results). Client agrees that a successful outcome is intrinsically linked to the quality of the Specimen as well as other external variable factors that can influence the end results. The Provider shall have no liability whatsoever in connection with any defects in the accuracy of the Results, unless it can be demonstrated that such defects in the accuracy of the Results are attributable to negligent acts and/or omissions or breaches of any of the warranties provided by Source BioScience under the Contract.

- 8.7 Client understands and accepts that the Specimen and/or By-Product may be used up in the course of the conduct of the Services.

## 9. CONFIDENTIALITY AND DATA PROTECTION

- 9.1 The Provider shall maintain the confidentiality of all patient information in accordance with the obligations of non-disclosure and non-use set forth in this clause 9 and shall at all times:
- 9.1.1 process patient information in accordance with the provisions of this Agreement solely for the purposes of the Services as specified in the applicable Request Form or the Client's other written request for Services;
  - 9.1.2 process the patient information as the Client's 'data processor' (as 'data processor' is defined in the Data Protection Act 1998 (the "DPA") and only process the patient information for the purposes set out in this Agreement; and
  - 9.1.3 subject to the Client supplying patient information which is compliant in all respects with the DPA (including, without limitation, the eight Data Protection Principles contained in Schedule 1 of the DPA), ensure that all patient information is kept in accordance with the reasonable instructions of the Client.
- 9.2 The Client will keep the Provider indemnified in full against all liability, loss, damage, claim, action, demand, expense or proceeding in respect of any breach by the Client of the provisions of clause 9.1.3.

## 10. INTELLECTUAL PROPERTY RIGHTS ("IPRS")

- 10.1 The Client will keep the Provider indemnified in full against all liability, loss, damage, claim, action, demand, expense or proceeding in respect of any infringement or alleged infringement of any IPRS resulting from any use by the Provider of the Client Property or any compliance by the Provider with the Client's instructions, whether express or implied.

## 11. TERMINATION

- 11.1 The Provider may terminate the Contract immediately if:
- 11.1.1 the Client fails to pay the price on the due date;
  - 11.1.2 the Client is in breach of any term of the Contract and has 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 the Client; or
  - 11.1.4 the Client is wound up or becomes insolvent or has a receiver or administrative receiver appointed or suffers 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** The Client 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 the Provider’s Anti-Bribery Policy which can be requested from our Registered Office as the Provider 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 will enforce them where appropriate;
- 12.1.5** promptly report to the Provider any request or demand for any undue financial or other advantage of any kind received by the Client in connection with the performance of this agreement;
- 12.1.6** immediately notify the Provider (in writing) if a foreign public official becomes an officer or employee of the Client or acquires a direct or indirect interest in the Client, and the Client warrants that it has 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 the Provider in writing, signed by an officer of the Client, compliance with this clause 12 by the Client and all persons associated with it under clause 12.2, the Client shall provide such supporting evidence of compliance as the Provider may reasonably request.

- 12.2** The Client shall ensure that any person associated with the Client 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 the Company in this clause 12 (Relevant Terms). The Client shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Provider for any breach by such persons of any of the Relevant Terms.

- 12.3** Breach of this clause 12 by the Client 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 the Client includes any agent, delegate or subcontractor of the Client.

### **13. FORCE MAJEURE**

- 13.1** The Provider will not be liable to the Client 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 the Provider's reasonable control including, without limitation, fire, flood, strike or other industrial action of whatever nature. If the Provider is unable to perform its obligations under these Conditions it will promptly notify the Client of the nature and extent of the circumstances in question.

### **14. GENERAL**

- 14.1** The Client will not without the prior written consent of the Provider assign or transfer the Contract or any part of it to any other person.
- 14.2** The Provider may without the prior written consent of the Client assign, transfer or subcontract the Contract or any part of it to any other person.
- 14.3** Each right or remedy of the Provider under these Conditions is without prejudice to any other right or remedy which the Provider 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.