



## GENERAL TERMS AND CONDITIONS

### LPD Lab Services Limited

#### 1 General

In these Conditions:

- 1.1 **"Seller"** shall be LPD Lab Services Limited, D Building Philips Site, Philips Road, Blackburn, Lancashire, UK (Registered Company Number 06479017) and shall include its successors or assigns in business; and
- 1.2 **"Buyer"** shall be the person firm or company named in the Quotation to which these Conditions are designated to apply;
- 1.3 **"Contract"** means the agreement incorporating the Conditions and Quotation between Seller and the Buyer for the provision of the Services and such other documents that the parties intend should be included;
- 1.4 **"Quotation(s)"** means the quotations setting out details of the Service and which refer to these Conditions;
- 1.5 **"Conditions"** means these conditions headed General Terms and Conditions and the Quotation(s);
- 1.6 **"Services"** shall mean the goods and/or services agreed to be supplied by Seller in accordance with these Conditions as described in the Quotation. These services may include technical advice, consultancy, analytical and investigation work;
- 1.7 **"Commencement Date"** shall mean the date as set out in the Quotation or as agreed to by the Parties in writing;
- 1.8 **"Additional Services"** means any follow up or supplementary work beyond the scope of the original contract or quotation. Details are set out in clause 4 of these Conditions.
- 1.9 **"Fee"** means the fees payable for the Services as set out in the Quotation;
- 1.10 **"Force Majeure"** means, in relation to either party, any circumstances beyond the reasonable control of that party including, without limitation, any strike, lock-out or any form of industrial action;
- 1.11 **"Information"** means drawings, specifications, photographs, samples, models, computer software, processes, procedures, instructions, reports, papers, correspondence and any other technical information relating to the activities of either party, and including oral information if confirmed in writing within 30 days;
- 1.12 **"Intellectual Property Rights"** means all trade marks, patents, utility models, petty patents, design patents, registered design rights, mask works, design rights and copyright, and applications in any country of the world for any of the foregoing;
- 1.13 **"Normal Working Hours"** shall be from 08:00 to 16:00 Monday to Thursday and 08:00-14:30

on Friday, excluding bank holidays or as set out in the Quotation;

- 1.14 **"Site"** means the premises specified in the Quotation, where Services may be carried out.

#### 2 Interpretation

- 2.1 All references to a statutory provision shall be construed as including references to any statutory provision modification, consolidation or re-enactment (whether before or after today's date) for the time being in force.
- 2.2 Except where the context otherwise requires, words denoting the singular include the plural and vice versa; words denoting any gender include all genders; words denoting persons include firms and corporations and vice versa.
- 2.3 Clause headings are for ease of reference only and do not affect the construction of these Conditions.
- 2.4 In the event of any conflict of terms and conditions between the Contract and the Quotation the order of precedence shall be:
- 2.4.1 Quotation; and
- 2.4.2 Conditions; Note that the Quotation and Conditions together constitute the Contract.

#### 3 Performance of the Services

- 3.1 The Seller will use best scientific practice in his way of working and endeavour to provide information, which is accurate within the limitations of the techniques used and the state of the samples supplied for investigation. Any conclusions and recommendations will be made on the basis of the data generated by the Seller and the skill and experience of the Seller's personnel. Information will be presented to the Buyer in a concise and accurate manner with any limitations carefully explained. All conclusions and information thus presented will be opinions given in good faith and no liability will be accepted for any consequences of acting on this information.
- 3.2 The Seller shall diligently perform the Services in accordance with the terms of the Contract and (where appropriate and so designated) at the Site.
- 3.3 The Seller shall make available sufficient personnel to provide the Services at the times agreed between the Seller and the Buyer for the performance of the Services, or if no such times are agreed, at such times as will enable the Seller to perform the Services in accordance with the Contract.
- 3.4 Unless otherwise agreed, the Services shall be performed during Normal Working Hours and any Services performed outside Normal Working Hours by the Seller at the request of the Buyer shall be deemed to be Additional Services.
- 3.5 The Seller agrees that any Intellectual Property Rights arising out of or relating to work done by any of its employees for the Buyer shall remain the Buyers Intellectual Property and that none of its employees shall have any title, right or interest, whether legal or beneficial, in any such Intellectual Property Rights.

- 3.6 The Seller shall incur no liability to the Buyer whatsoever by reason of any delay in the performance of the Services:
- 3.6.1 If the delay is due wholly or partly to any act or omission of the Buyer, including but not limited to failure to approve any documents, reports, specifications or the results of the Services for which approval is required by the Buyer within any periods agreed in writing between the Seller and the Buyer or if there is no such period within a reasonable time;
- 3.6.2 If the delay is due to an event of Force Majeure. In the event of any such delay as aforesaid, the Seller shall have the right to an extension of time to perform the Services by such reasonable period having regard to the nature of such delay.

#### 4 Additional Services

- 4.1 The Buyer shall have the right at any time to request that Additional Services be carried out as part of the Contract. The Buyer shall give notice to the Seller of such Additional Services and the Seller shall within a reasonable time following the service of such notice provide the Buyer with a quotation for the provision of the Additional Services or shall in its discretion decline to provide such a Quotation. The Seller may request of the Buyer, as part of the preparation of such Quotation, and the Buyer shall promptly furnish, such information as the Seller may reasonable require.
- 4.2 No Additional Services shall be agreed or implemented unless the Seller and the Buyer have signified their agreement thereto in writing. On agreement the Additional Services shall be subject to the terms of the Contract to which the Services relate, unless specifically otherwise agreed. For purposes of this clause, writing shall include fax and email correspondence.

#### 5 Quotations and acceptance

- 5.1 Quotations submitted by the Seller shall be valid for the period therein stated, or where no period is stated then for a period of thirty days from date of issue.
- 5.2 Each order is subject to these Conditions, which may not be modified or varied without prior written agreement by the Seller, and which shall replace any other conditions, which may be submitted at any time by the Buyer.
- 5.3 Unless expressly incorporated into the Contract by express written agreement, descriptions and illustrations contained in any catalogues, price lists, web sites and other publicity or advertising material issued by the Seller are not intended to form part of the Contract.
- 5.4 The Seller reserves the right to accept or reject any order received from the Buyer.
- 5.5 The Seller reserves the right to make deliveries of the Services in instalments and invoice in instalments if the contract runs for longer than 1 month or is of sufficiently high financial value.

#### 6 Responsibilities of the Buyer

- 6.1 Throughout the period of the Contract the Buyer shall afford the Seller such access to the Site and the Buyer's equipment, data and information records and other material relevant to the provision of the Services as the Seller may require to provide the Services, provided always that the Buyer shall be obliged to afford such access only during its Normal Working Hours. Further, the Buyer shall:
- 6.1.1 Advise the Seller of the rules and regulations which are then in force for the conduct of personnel at the Site. The Seller shall ensure that its personnel comply with any such rules and regulations;
- 6.1.2 Make available such working space and facilities at the Site as the Seller may reasonably require. Such working space and facilities shall be comparable to but not better than those given by the Buyer to its own personnel of similar status;
- 6.1.3 Make available appropriate personnel to liaise with the Seller;
- 6.1.4 Secure and otherwise keep safe all and any property of the Seller; and
- 6.1.5 Respond promptly to requests made by the Seller for Information and access to documents and records of the Buyer necessary to enable the Seller to perform the Services.
- 6.2 The Buyer shall supply to the Seller free of charge such materials, instruments or equipment which the Seller may need to carry out the Services as may be specified in the Contract.

#### 7 Fee

- 7.1 Subject to Clause 7.2 the fee for the Services includes delivery, unless stated otherwise, but shall be exclusive of VAT. While the Seller will endeavour to maintain any price quoted for the Services, the Seller reserves the right to vary that price to take account of any variations in costs other than those within his control, including, but not by way of limitation, any tax, fee or charge imposed by any government or other authority or any change in the rate of import duty payable on the Services or materials, taking effect between quotation and delivery.
- 7.2 The Seller reserves the right to renegotiate in good faith the price of the Services of non-UK origin where the rate of exchange varies between the time of quotation and the date of delivery.
- 7.3 Fees quoted and/or agreed with the Buyer are based on the intended quantities of Services to be provided or intended amount of work to be carried out. The Seller reserves the right to vary the Fee if the Buyer fails to take delivery of such quantities within the agreed delivery period or, if no such period is agreed, within six months of acceptance of order.
- 7.4 Claims in respect of any error in pricing must be made in writing to the Seller within fifteen days of receipt of the invoice.



- 7.5 All travel, accommodation, subsistence and any other expenses as specified in Quotation and incurred by the Seller in the course of providing the Services shall be payable in addition to the Fees and charged to the Buyer at cost.
- 7.6 Fees for any Additional Services shall be charged at the rate(s) specified at the time the Additional Services are agreed between the Seller and the Buyer.
- 8 **Materials for Analysis/Examination/Processing**
- 8.1 All material sent to the Seller for analysis, examination or processing shall be sent at the Buyer's expense and no charges shall be levied on the Seller in respect of such expenses. The Buyer shall bear any and all risk of loss or damage in transit of materials sent to the Seller. Costs of any further shipment of material, as part of an agreed programme of work, shall also be the responsibility of the Buyer. This will include provision of appropriate packing materials.
- 8.2 All materials sent to the Seller shall be accompanied by a Hazardous Material Data Sheet. The Seller reserves the right not to accept such materials without sufficient documentation.
- 8.3 All material sent to the Seller for examination shall remain the property of the Buyer. A maximum storage period of 6 months will apply. Any disposal of such materials will then be the responsibility of the Buyer including any special requirements for packing shipment and disposal.
- 9 **Property and Risk**
- 9.1 The risk in the any deliverables generated by the Services shall pass to the Buyer immediately on delivery to the Buyer or, if the Buyer fails to take delivery, at the time the Seller has tendered delivery, which may be by electronic means.
- 9.2 The property in the deliverables generated by the Services shall remain with the Seller until payment is received in full for all the Services provided by the Seller in accordance with the terms of the Contract.
- 10 **Intellectual Property Rights**
- o Unless otherwise agreed in writing, the ownership of reports and any copyright, patents, registered designs, design information, conceptual solutions or analysis or any other right arising from LPD Lab Services Limited providing the Services other than third party rights ("the rights") shall remain vested in LPD Lab Services Limited and the Customer shall be granted a non-exclusive non-transferable license to use the right solely in accordance with these terms and conditions.
- 11 **Delivery**
- 11.1 Any delivery date quoted in respect of the Buyer's order is the Seller's best estimate given in good faith and is subject to the Buyer providing the Seller in due time with all the necessary samples and information. Whilst the Seller will use all reasonable endeavours to deliver the Services by such date, the Seller cannot accept any liability whatsoever which may arise as a result of delayed despatches or failure to deliver by such date.
- 11.2 Services are normally delivered carriage paid in Great Britain and Ireland, but the Seller reserves the right to charge for deliveries other than to the Buyer's normal premises or when abnormal charges are incurred due to the Buyer's requirements.
- 11.3 Where delivery of the Services and payment thereof is made by instalments, any failure on the part of the Seller to deliver an instalment or comply with these conditions shall not entitle the Buyer to reject further instalments under the Contract.
- 11.4 Where electronic data is generated as part of the Contract, delivery by email to the Buyer shall constitute delivery. Such electronic data will be retained by the Seller for a period of not less than 2 years, unless requested otherwise by the Buyer.
- 11.5 All Quotations for analysis work or investigations are designed to carry out such work in the most cost effective manner. If significant conclusions are obtained before the finish of the work detailed in the Contract, then the Buyer and Seller can both agree that the work is complete before the full Quotation Fee is reached. This should be confirmed in writing between the Buyer and the Seller. For avoidance of doubt, writing shall include emails and faxes.
- 11.6 Where the Quotation Fee is reached and the investigation work is not complete then the Buyer can authorise a further amount of work to be carried out by the Seller. This should be agreed in writing. For avoidance of doubt, writing shall include emails and faxes.
- 11.7 Claims in respect of any error in the quality of Services or deliverables generated by the Services must be made in writing to the Seller within five days of receipt. If a claim has not been received within 5 days after receipt then such Services are deemed to have been irrevocably accepted by the Buyer
- 11.8 Delivery of more or less than the quantity of Services contracted shall not entitle the Buyer to reject the whole or part of the Services delivered.
- 12 **Cancellation or Variation of Order**
- 12.1 No cancellation of any order shall be accepted unless:
- 12.1.1 The cancellation is received by the Seller in writing, and
- 12.1.2 The seller's acceptance of the Buyer's cancellation is conditional on the Buyer agreeing within a reasonable time to pay the Seller;
- 12.1.3 The full value of that part of the Services completed and work done in connection with the order and any components and/or materials purchased by the Seller which cannot reasonably be used elsewhere within a reasonable period, are paid by the Buyer;

- 12.1.4 Any other costs and liabilities, which are incurred by the Seller by reason of the cancellation by the Buyer are paid for by the Buyer.
- 12.2 If at any time after receiving an order from the Buyer, the Buyer wishes to make any modifications or additions to the order, then the Buyer shall only be permitted to do so after obtaining the written agreement of the Seller and after the Seller has agreed to any variation to the Services, Fee and/or any revised delivery date. For avoidance of doubt, writing shall include emails and faxes.
- 12.3 Any extra cost or liability incurred by the Seller due to suspension of work or rescheduling of delivery or performance of the Services arising out of or resulting from the Buyer's instructions, lack of, or mistaken instructions or to any interruptions or delays attributable to the Buyer shall be added to the Fee of the Services and paid for accordingly by the buyer.
- 13 Terms of payment**
- 13.1 For new customers, all fees payable in respect of the Services to be provided need to be paid prior to the commencement of the Services, in response to a Proforma invoice, and time of payment shall be of the essence.
- 13.2 For existing customers, who have completed a "Lab Customer Credit Application" and have been successfully applied for a "Trade Credit Account" the Services will be provided upon receipt of a Purchase Order number from the Buyer
- 13.3 For existing customers, where Services are provided over a longer period of time encompassing more than one calendar month, the Services provided will be accrued at each month end, and an invoice issued, until all the Services have been provided.
- 13.4 For existing customers, all Fees payable in respect of the Services must be paid by the Buyer on a date which will ensure that payment is received by the Seller not later than thirty days following the date of invoice, and time of payment shall be of the essence.
- 13.5 The Seller reserves the right to suspend any deliveries of the Services to the Buyer whether pursuant to this Contract or any other Contract and cancel any orders received from the Buyer conditional on:
- 13.5.1 Where any payment due by the Buyer is not received by the Seller in due time; or
- 13.5.2 If any other obligations due to be performed by the Buyer remains unfulfilled, or the Buyer is otherwise in breach of any of the terms of this Contract.
- 13.6 In the event of the Buyer being in breach of any of the terms of this Contract or if any of the events specified in clause 13.5 shall occur, the Seller reserves the right to demand payment forthwith in respect of the Services delivered, but for which payment has not been made.
- 13.7 Payment may be made by electronic means, only when a separate agreement is in place covering the detailed arrangements for such means of payment.
- 14 Termination**
- 14.1 The Seller may by notice in writing to the Buyer forthwith terminate the Contract upon the happening of any of the following events:
- 14.1.1 If the Buyer shall commit a material breach of any of the terms of the Contract and shall fail to remedy such a breach (if capable of remedy) within thirty days of being notified in writing thereof by the Seller, specifying the nature of the breach and stating the intention of the Seller to terminate;
- 14.1.2 If any payment payable by the Buyer under the Contract shall be in arrears whether the same shall have been formally demanded or not;
- 14.1.3 If an order shall be made or an effective resolution passed for the appointment of a receiver of any of the assets of the Buyer or for winding up of the Buyer or if the Buyer becomes insolvent, makes or attempts to make any composition with the Buyer's creditors, or commit an act of bankruptcy.
- 14.2 The Seller reserves the right at the Seller's discretion to charge interest on accounts due but unpaid from the due date to the actual date of payment at the rate stipulated in the Late Payment of Commercial Debts (Interest) Act as stipulated from time to time from day to day and compounded every six months.
- 15 Warranty**
- All work is carried out to the best available standards. However, in the event of any dispute into the accuracy of the information supplied to the Buyer, the Seller will repeat an investigation if there is sufficient contradictory evidence. The Buyer should supply this evidence within a period of 2 months from date of invoice
- 16 Limitation of Liability**
- 16.1 This clause defines the limits of Seller's liability to the Buyer in respect of this Contract whether in contract or tort including negligence and Buyer's sole remedies in respect of any act or default of Seller.
- 16.2 Seller will accept liability for death or personal injury resulting from its negligence and for any breach by it of Section 12 of the Sale of Goods Act 1979.
- 16.3 Seller will accept liability for direct physical damage to the tangible property of Buyer to the extent it is caused by the negligence of Seller subject to the exclusions set out in clause 16.5 and up to a maximum limit of £1,000,000 in the aggregate.
- 16.4 Except as provided within this clause, Seller's total liability in respect of any one default shall not exceed 125% of the Fee for the Services in respect of which the Seller is in default. If a number of defaults give rise to substantially the same loss or are attributable to the same or similar cause, then they shall be regarded as giving rise to only one claim. Seller will be

- afforded a reasonable opportunity to remedy any such default.
- 16.5 Except as provided within this clause, Seller shall not be liable for loss of profits, business, revenue, anticipated savings, special, indirect or consequential losses, even if foreseeable by or in the contemplation of Seller or any claim made against Buyer by any other person.
- 16.6 Except as expressly stated herein all conditions and warranties implied statutory or otherwise are hereby excluded to the maximum extent permitted by law.
- 17 **Force Majeure**
- The Seller reserves the right to suspend performance or delivery of the Services to the Buyer in whole or in part and the Seller shall not be liable for any failure on the part of the Seller to perform any of our obligations whatsoever in the event or by reason of an event of Force Majeure.
- 18 **Confidentiality**
- 18.1 Except with the previous written consent of the Seller, the Buyer shall not use (other than for the purposes of fulfilling the Contract) or disclose to any other person any Information relating to the Services or to the Contract, where such Information is indicated by the Seller either expressly or by implication as being confidential information.
- 18.2 As part of the contract it may be necessary for the Seller to receive confidential information from the Buyer. In these cases a confidentiality agreement can be signed between both parties and any information received from the Buyer will be stored by the Seller in a secure manner.
- 18.3 If confidential information is received by the Seller from the Buyer in order to carry out the Contract which the Buyer subsequently requests to be destroyed and/or returned to the Buyer, then the Seller reserves the right not to so destroy and/or return such information if there are any outstanding payments on the Contract.
- 19 **Waiver**
- No admission, act or omission made by us shall during the continuance of the Contract or thereafter constitute a waiver of or release you from any liability incurred under the Contract.
- 20 **Notices**
1. Any notice, request, instructions or other document to be given hereunder shall be delivered or sent by first class post, email, telex or facsimile (such telex or facsimile notice to be confirmed by letter posted within 12 hours) to the address of the other party set out in the Contract (or such other address as may have been notified in writing by either party) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon the expiration of 48 hours after posting, if sent by email 48 hours after sending (unless any message indicating that the message may not have been received by the recipient is generated) and (if sent by telex or facsimile) upon the expiration of 12 hours after despatch.

21 **Invalidity and Severability**

2. If any provision of the Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of the Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

22 **Agency Partnership or Joint Venture**

The Agreement shall not operate so as to create a partnership or joint venture of any kind between the parties hereto.

23 **Assignment**

The Buyer shall not, without prior written consent of the Seller, assign any of the Buyer's rights or obligations hereunder to any other person firm or company.

24 **Export Control**

The Buyer undertakes to comply with and not to do anything which would render the Seller in contravention of the Export Administration Regulations of the U.S. Department of Commerce for the time being in force.

25 **Governing Law**

The Contract shall be governed by English law, and shall be subject to the non-exclusive jurisdiction of the English Courts.

26 **Laboratory Address**

LPD Lab Services Limited, D Building Philips Site, Philips Road, Blackburn, Lancashire BB1 5RZ

27 **Laboratory Telephone**

Contact numbers are: -  
 Hotline: 01254 676 074  
 Fax: 01254 278 845  
 Tel Mobile: 07791 018 474 (Mike Ellicott)  
 Tel Mobile: 07704 856 530 (Stephen Jenkins)

