

## National Laboratory Service's Terms of Business

**National Laboratory Service [NLS] is an internal business unit of the Environment Agency which carries out environmental testing and analysis**

**These terms govern the agreement between "You", Our Customer, and "Our", "Us" or "We", the NLS. The terms set out our respective obligations, limitations of liability and other important matters such as price changes. Our prices take into account the scope of the Services and these terms of business.**

**You should read the terms carefully. By asking Us to carry out Services, You are agreeing that these are reasonable. We may amend the terms from time to time, so You should always read the terms sent with a quote or tender.**

### 1 Interpretation

1.1 In these terms, unless the contrary intention appears: -

"COSHH Regulations" means the Control of Substances Hazardous to Health Regulations 2002

"Customer" means the person or organisation named in Our quote or tender "Intellectual Property Rights" means any copyright, design right, trademark or service mark, know-how, inventions, database rights, confidential information, patents, patent applications or similar industrial or commercial interests

"Price" means Our charges, taxes and expenses as shown on Our quote or tender or as varied in accordance with these terms. Charges are exclusive of Value Added Tax, which if applicable will be payable in addition, at the applicable rate

"Results" means the written or electronic report containing Our analysis of samples

"Services" – taking and/or analysis of samples, as the case may be, as set out in Our quote or tender in accordance with these terms

"Staff" means Our employees and sub-contractors

1.2 Words in the singular include the plural and vice versa

### 2 Formation of agreement

2.1 Subject to Clause 3.1, unless otherwise stated in writing by Us on a quote or tender, any prices in such quote or tender shall be valid for 30 days from its date

- 2.2 A contract shall only be formed between us when You accept in writing Our Quotation on the basis of Your request for Services.
- 2.3 Any purchase order You send to Us will be subject to these terms. Any acceptance of a purchase order will operate only as an acknowledgement of your request for Services on Our terms.
- 2.4 These terms and Our quote or tender constitute the agreement (“the Agreement”) between us and supersede all previous communications, representations and arrangements, written or oral. We both agree that the Agreement has not been entered into on the basis of any representations that are not expressly contained in the Agreement.
- 2.5 These terms may only be varied by the written agreement of Our General Manager.

### **Your obligations**

#### **3 Price**

- 3.1 Our Prices are reviewed annually, or more frequently in certain circumstances, or at intervals as agreed by us in writing, You must pay the Price applicable for the Services to be provided. We shall either inform You of our Prices in Our quote or tender or when You deliver samples to us, prior to carrying out Services in respect of those samples.
- 3.2 You must pay the Price and VAT in full within 30 days of the date of Our invoice without any deduction or set-off.
- 3.3 If You do not pay Our invoices within 30 days You will have to pay interest on the overdue amounts until the date of payment of cleared funds at the rate of 3% per annum above the then prevailing base rate of Barclays Bank plc.
- 3.4 We shall be entitled to suspend Services under any agreement between us until payment has been made in full.

#### **4 Samples**

- 4.1 You are responsible for ensuring that Samples are
  - (i) stored and handled correctly before being delivered to Us
  - (ii) delivered to Us promptly after being taken or to an agreed schedule
  - (iii) delivered in the containers provided by Us (where We have agreed to supply these ) or other suitable containers properly labelled.
- 4.2.1 You must inform Us of all relevant information including, but not limited to, health & safety information for any Samples known or reasonably suspected to contain material potentially hazardous to health, including but not limited to, materials which may be radioactive, asbestos-bearing, poisonous, biologically hazardous or otherwise polluted, in accordance with the prevailing COSHH Regulations

- 4.2.2 We are entitled to refuse to accept any sample for analysis and/or discontinue or suspend the Services where, in Our reasonable opinion, to commence or continue would pose a health and safety risk. We may, at our option, either:
- (i) require You to collect the Samples and We shall adjust the Price to reflect a reasonable charge for Services actually carried out or
  - (ii) We shall carry out a COSHH assessment and vary the Price to include the additional work and expenses.
- 4.3 You warrant that all information that You provide to Us is accurate, complete and up-to-date.

## 5 Where We take Samples

- 5.1 You must inform Us of all relevant information including, but not limited to, all relevant health & safety information for the premises or land from which the Sample is to be taken, substances to be analysed known or suspected to contain material potentially hazardous to health, including but not limited to materials which may be radioactive, asbestos-bearing, poisonous, biologically hazardous or otherwise polluted, in accordance with the prevailing COSHH Regulations.
- 5.2 You are responsible for ensuring that the premises or land where You have requested Us to take Samples are safe and comply with all legal requirements for the health and safety of Our Staff and for providing any necessary specialist personal protective equipment.
- 5.3. Our Staff may refuse to enter or remain on premises or land and/or take Samples if they reasonably consider that they may be exposed to risk by so doing. In such an event, the Price shall be a reasonable charge for the work carried out, time spent and expenses incurred.
- 5.4 You are responsible for ensuring that access is given at the time and place agreed between us and, where agreed, providing Our Staff with a suitable escort. If You do not do so and not all samples are taken as a consequence on the relevant occasion our Price shall be increased to recover the wasted time and expenses.

## 6 Court proceedings

You must notify Us if the Results are to be used in or in connection with legal proceedings or disputes anywhere in the world, whether actual, threatened, or suspected, whether involving the Environment Agency or not. If you become aware of such circumstances later, even if We have completed the Services, You must notify us as soon as possible in writing and provide such information as We reasonably require.

## 7 Permitted Use

- 7.1 Only You, Our Customer, may rely on the Results.

- 7.2 You may pass a copy of the Results to third parties only on condition that You pass a complete copy. You are responsible for indemnifying Us against any damages, losses and expenses incurred as a result of any claim brought by a third party where You are in breach of this term, including but not limited to Our legal costs.

## 8 Disposal of Samples

- 8.1 You acknowledge and agree that it is Our standard practice to dispose of analysed Samples which are not collected within 30 days of sending You the Results, except where the Results have been passed to Our Area Environment Manager under Clause 10.1.
- 8.2 If you wish a Sample to be returned to You or further analysis carried out, You must inform us of this as soon as possible and in any event by no later than 14 days after We have sent the Results to You.

### **Our obligations**

## 9 Standard of work

Provided that You have complied with Clause 4 and, where appropriate, Clause 5, We shall use our reasonable endeavours:-

- (i) to ensure that samples are analysed and the Results are notified to You within agreed timescales from receipt of the relevant samples (although time shall not be of the essence and any delay shall not be a breach of Our obligations) or such earlier or later time as we may agree in writing
- (ii) to ensure that samples are analysed in accordance with Our current documented methods wherever possible, in accordance with good scientific analytical practice including BS EN ISO/IEC 17025:2005 and exercising reasonable skill and care.

### **Sundry matters**

## 10 Confidentiality/disclosure of information

10.1 We will use Our reasonable endeavours to ensure that all information relating to the samples and Results shall not be disclosed to any third party without your consent except where

- (i) the information relates to a potential or actual pollution incident or breach of an environmental licence, in which case We shall simultaneously advise You and the relevant Environment Agency Area Environment Manager, who may take appropriate action
- (ii) We are legally obliged to disclose the information
- (iii) the information is already or comes into the public domain other than in breach of the Agreement

10.2 You will use Your reasonable endeavours to keep any of Our confidential information confidential and will not disclose it other than if

(i) You are legally obliged to disclose the information

(ii) The information is already or comes into the public domain other than in breach of the Agreement

## 11 Sub-contracting

11.1 We reserve the right to sub-contract any of the Services. We shall not sub-contract any of the Services without prior consultation with You.

11.2 You are not entitled to assign the benefit of the Agreement.

## 12 Intellectual Property Rights

12.1 When You have paid the Price in full, You will own the Intellectual Property Rights in the Results, subject to these terms. We are permitted to use the Results in carrying out obligations under the Agreement and Our legal responsibilities.

12.2 All Intellectual Property Rights owned or used or developed by Us prior to or in carrying out the Services, or used or developed in parallel, including, but not limited to the know-how, procedures and methodologies, belong to Us and nothing in these terms is a licence to You to use these for any purpose.

12.3 You may not remove Our logos or trade or service marks from the Results or use them for any other purpose.

## 13 Environment Agency's regulatory role

13.1 Nothing in the Agreement shall prejudice or affect the exercise of Our functions, duties, powers, rights, jurisdictions and obligations conferred, arising or imposed under the Environment Act 1995, or any other legislative provision, enactment, byelaw or regulation whatsoever.

13.2 Nothing in the Agreement shall operate as a statutory approval consent or licence from Us.

## Limitations

### 14 Limitation of analysis

14.1 We are not responsible for the condition of or for any deterioration of samples taken by You or on Your behalf prior to being delivered to Us. Unless We have taken samples, We have no knowledge of the circumstances in which they have been taken or the validity of the procedures used to obtain them.

- 14.2 Results only relate to the samples analysed by Us. No Results shall be read as implying that any sample or mass from which samples have been taken are fit for any intended purpose, or are sufficiently representative of the mass from which they have been taken.
- 14.3 You shall not draw any interpretations or opinions as being held by Us or attribute these to Us beyond those which are expressly stated by Us in the Results. The Results are not by themselves conclusive as to compliance or non-compliance with any legal obligations.
- 14.4 We have no responsibility or liability for the use of the Results by any third party.

#### 15 Financial limits of liability

- 15.1 If We fail to perform all or part of the Services due to a material breach of Our obligations, You may require Us to re-perform the relevant Services provided that You do so promptly after We have delivered the Results to You and in any event within 3 months. In this event, if it is not possible to re-analyse the original samples, the re-analysis shall be performed on replacement samples provided by You. In that event, We shall not charge You more than the original Price.
- 15.2 Except for Your indemnity to Us in paragraph 7
- (i) our liability to each other for all or any breach of our respective obligations shall not exceed the Price
  - (ii) neither of us shall be responsible for any loss of profit or chance, economic loss, indirect, special or consequential losses, or liability to third parties.
- 15.3 Nothing in these terms shall exclude or restrict liability for death or personal injury resulting from negligence or fraudulent misrepresentation

#### **If Problems Arise**

#### 16 Uncontrollable difficulties

- 16.1 The obligations we have to each other shall be suspended if either of us is prevented from carrying them out or hindered in doing so, by reason of an Act of God, fire, explosion, flood, accident, epidemic or quarantine restrictions, power outages or any matter or condition beyond our respective reasonable control. If either us become aware of such circumstances should let the other know as soon as possible and we should then discuss how to proceed.
- 16.2 If the circumstances continue beyond 30 days, the Agreement shall be terminated and the Price shall be varied to reflect the Services carried out.

## 17 Dispute Resolution

- 17.1 Any complaints regarding Our Services should be raised using Our Complaints Procedure. Both of us shall try to resolve any disputes between us. Initially a dispute should be referred to senior managers. If they are unable to resolve the dispute within 45 days of it being referred, then the dispute shall be referred to the Centre for Effective Dispute Resolution to appoint a mediator on its standard terms.
- 17.2 All negotiations connected with a dispute shall be confidential and without prejudice to our respective rights in any future legal proceedings. Except for the right to seek interim relief, neither of us may commence legal proceedings until 45 days after the appointment of a mediator.
- 17.3 Both of us shall bear our own legal costs of this dispute resolution procedure, but the costs and expenses of mediation shall be borne by us both equally.

## 18 Termination

- 18.1 We may terminate the Agreement, at any time, where
- (i) in our reasonable opinion, to carry out or to continue to carry out the Services would constitute a health and safety risk
  - (ii) You have failed to inform Us of material relevant information
  - (iii) You are in material breach of any of Your obligations under any agreement between You and Us and, if capable of remedy, You have failed to remedy the breach within 14 days of Our written request to do so, or if the breach is not capable of remedy
  - (iv) if You become insolvent or have a receiver appointed
  - (v) if it might conflict [or give the impression that it would conflict] with or compromise Our statutory responsibilities or reputation
  - (vi) You are a company and you undergo a change of control
- 18.2 You may terminate the Agreement at any time where
- (i) We are in material breach of any of Our obligations under the Agreement between us and, if capable of remedy, We have failed to remedy the breach within 14 days of Your written request to do so, or if the breach is not capable of remedy
  - (ii) You ask Us to stop the Services.
- 18.3 If the Agreement is terminated under 18.1(i) to (iv) or 18.2(ii), We shall be entitled to be paid the Price or, at our discretion, a lesser amount taking into account the Services carried out and the expenses We may have incurred in preparation for carrying out the Services and Our lost profit.

18.4 Clauses 6,7,10,12,13,14,15,17,19, and 24 shall survive termination.

### **General**

- 19 The Agreement shall be governed by English law and subject to the non-exclusive jurisdiction of the English Courts
- 20 For the purposes of the Contracts (Rights of Third Parties) Act 1999 nothing in the Agreement confers or purports to confer on a third party any benefit or right to enforce a term of the Agreement.
- 21 Any notice, request or other communication to be made to each other under or in connection with the Agreement shall be in writing and shall be delivered personally or sent by first class post or fax.
- 22 No delay by either of us in enforcing or using any rights shall constitute a waiver of such right. No waiver shall be a waiver of any subsequent breaches. No waiver shall be effective unless made in writing.
- 23 Where either of us processes personal data (as defined in section 1(1) of the Data Protection Act 1998) in carrying out obligations under the Agreement, that party shall take such appropriate technical and organisational measures as are necessary to comply with the seventh data protection principle set out in Part I of the Data Protection Act 1998 to protect against unauthorised or unlawful processing of data and against accidental loss or destruction of or damage to personal data
- 24 If any of these terms are unenforceable, this shall not affect the validity of the remainder.

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