

SMS Analytical Ltd - TERMS AND CONDITIONS

- 1. Interpretation- The following definitions and rules of interpretation apply in these Conditions.**
- 1.1 Definitions:**
- Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- Charges:** the charges payable by the Client for the supply of the Services in accordance with clause 5. (*Charges and payment*).
- Conditions:** these terms and conditions as amended from time to time in accordance with clause 10.5.
- Contract:** the contract between the Supplier and the Client for the supply of Services in accordance with these Conditions.
- Client:** the person or firm who purchases Services from the Supplier who is identified in a Quotation.
- Deliverables:** the deliverables if any set out in the Quotation produced by the Supplier for the Client.
- Services:** the services, including the Deliverables, supplied by the Supplier to the Client as set out in the Quotation.
- Quotation:** a quotation issued by Supplier setting out details of the Client, Services, Charges and other relevant provisions, incorporating these Conditions.
- Supplier:** SMS Analytical Ltd.
- 2. Basis of contract**
- 2.1** The Contract shall come into existence by the written acceptance by the Client of the Quotation (which may take the form of the issue of a purchase order). These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate (in a purchaser order or otherwise), or which are implied by trade, custom, practice or course of dealing.
- 3. Supply of Services**
- 3.1** The Supplier shall supply the Services to the Client in accordance with the Quotation in all material respects.
- 3.2** The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Quotation but any such dates shall be estimates only.
- 3.3** The Supplier warrants to the Client that the Services will be provided using reasonable care and skill and in accordance with good industry practice and all applicable laws.
- 3.4** **Samples** (where specified or required) will be made available promptly to SMS Analytical Ltd by the Client together with all relevant safety and handling data, MSDS etc. The Client will bear the cost of transport of the samples to SMS Analytical Ltd. In the event of SMS Analytical Ltd collecting the samples, and if they are large or heavy, all necessary loading assistance and equipment will be provided by the Client to enable safe handling of the samples at the Client's premises. Offloading of the samples at SMS Analytical Ltd premises will be carried out at the risk of SMS Analytical Ltd. If so requested by the Client in writing, any unused samples will be returned to the Client's premises at the Client's expense. Ownership of the samples shall remain with the Client at all times. SMS Analytical Ltd may retain part or some of the sample at their discretion for future tests.
- 4. Client's obligations**
- 4.1** The Client shall:
- (a) co-operate with the Supplier in all matters relating to the Services;
 - (b) provide the Supplier with access to the Client's premises, office accommodation, other facilities and employees as reasonably required by the Supplier;
 - (c) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - (d) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - (e) comply with all applicable laws; and
 - (f) comply with any additional obligations as set out in the Quotation.
- 5. Charges and payment**
- 5.1** The Charges for the Services shall be calculated in accordance with the Quotation.
- 5.2** The Supplier shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 5.3** The Supplier shall invoice the Client on completion of the Services or weekly/monthly in arrears, as specified on the Quotation.
- 5.4** The Client shall pay each invoice submitted by the Supplier **within 30 days** of the date of the invoice in sterling and in full and in cleared funds to a bank account nominated in writing by the Supplier.
- 5.5** All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Client, the Client shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.6** If the Client fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 8., the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.6 will accrue each day at 4% a year.
- 5.7** All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 6. Intellectual property rights**
- 6.1** All intellectual property rights (**IPR**) in or arising out of or in connection with the Services (other than IPR in any materials provided by the Client) (**Supplier IPR**) shall be owned by the Supplier.
- 6.2** Subject to payment of the Charges, the Supplier grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free licence to use the Deliverables and any Supplier IPR incorporated into any Deliverable excluding materials provided by the Client) for the purpose of receiving and using the Services and the Deliverables in its business for its own internal business purposes.
- 6.3** The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.
- 6.4** The Client grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to the Supplier for the term of the Contract for the purpose of providing the Services to the Client.
- 7. Limitation of liability:**
- 7.1** Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 7.2** Subject to clause 7.1, the Supplier's total liability to the Client under the Contract shall not exceed an amount equal to the Charges. The Supplier's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.
- 7.3** Subject to clause 7.1, the Supplier shall not be liable for the following types of loss:
- (a) Loss of profits
 - (b) Loss of sales or business.
 - (c) Loss of agreements or contracts.
 - (d) Loss of anticipated savings.
 - (e) Loss of use or corruption of software, data or information.
 - (f) Loss of or damage to goodwill.
 - (g) Indirect or consequential loss.
- 7.4** The Supplier has given commitments as to compliance of the Services with relevant provisions in clause 3.. In view of these commitments, the terms implied by statute or law are, to the fullest extent permitted by law, excluded from the Contract.
- 7.5** This clause 7. shall survive termination of the Contract.
- 8. Termination**
- 8.1** Where the Quotation is capable of termination for convenience, as specified in the Quotation, without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party such written notice as may be specified in the Quotation.
- 8.2** Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 28 days of that party being notified in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.3** Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Client and the Supplier if the Client fails to pay any amount due under the Contract on the due date for payment, the Client becomes subject to any of the events listed in clause 8.2(b) to clause 8.2(d), or the Supplier reasonably believes that the Client is about to become subject to any of them.
- 9. Consequences of termination**
- 9.1** On termination of the Contract:
- (a) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt;
 - (b) the Client shall return all of the Supplier's materials in its possession and any Deliverables which have not been fully paid for.
- 9.2** Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 9.3** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 10. General**
- 10.1** **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 10.2** **Assignment and other dealings.** Neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the other party.
- 10.3** **Confidentiality.**
- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.3(b).
 - (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
 - (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 10.4** **Entire agreement.**
- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 - (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
 - (c) Nothing in this clause shall limit or exclude any liability for fraud.]
- 10.5** **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 10.6** **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 10.7** **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 10.8** **Notices.**
- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in Quotation or otherwise notified to the other party.
 - (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - (ii) if sent by next working day delivery service, at the time recorded by the delivery service; and
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 10.8(b)(iii), business hours means 9.00am to 5.00pm UK Monday to Friday on a day that is not a public holiday in the place of receipt.
 - (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 10.9** **Third party rights.**
- Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 10.10** **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 10.11** **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.