SML Laboratories
Rosebury Business Park
Brampton Road
Eastbourne
East Sussex
BN22 9BN

TERMS & CONDITIONS OF BUSINESS

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1. Definitions

1.1. Supplier: SML Laboratories Ltd. Registered in England & Wales number 16024659.
1.2. Client: The legal entity for whose benefit the services/goods are being purchased.
1.3. Contract: The contract between the Supplier and Client for the supply of Services in accordance with these conditions.
1.4. Working Day: A week day other than a Saturday or Sunday or a public bank holiday in England and Wales.
1.5. Quotation: A written quotation issued by SML Laboratories (in its discretion) for specific Services.
1.6. Contract rates: Agreed rates for routine Services provided to an individual Client.
1.7. Standard Rates: Our default standard price list (rate card) for all Services.
1.8. Charges: The cost of all services deliverables, consumables and associated additional charges
1.9. Services: Supply of analytical testing services resulting in the provision of Deliverables.
1.10. Deliverables: Analytical report, written information, results, certificates, test or inspection records, drawings, or the like in respect of the Services.
1.11. Report date: The date provisionally indicated for production of the Deliverables.
1.12. Samples: The samples which the Client requires analysing, testing or holding in connection with the Services.
1.13. Consumables: Materials including packaging, sample containers, sampling equipment.

2. General

2.1. These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate (including the Client's Order), or which are implied by trade, custom, practice or course of dealing.

3. Validity of Prices

3.1. The price for the supply of goods and services are set out in our quotation, any agreed contract rates, or otherwise as set out in our Standard Rates.
3.2. We reserve the right to amend any quotation or prices where documentation, specification or materials relating to the samples materially change.
3.3. The Supplier reserves the right to make any reasonable changes to the delivery of goods/services to the Client in order to comply with UK law or Health & Safety requirements.
3.4. Any Quotation, Contract Rates and Standard Rates provided is only valid for 30 days from date of issue, unless stated otherwise. SML Laboratories reserves the right to renegotiate or withdraw and quotation passed its validity date.

4. Final Price

4.1. The price of the goods and services is exclusive of Value Added Tax which shall be charged at the rate prevailing at the relevant tax point.
4.2. A minimum charge of £60 shall apply per order for any service/goods from the Supplier.
4.3. We reserve the right to charge for Consumables where these are not used or not returned. Such Consumables remain the property of SML Laboratories.

5. The Order

5.1. An Order may be placed by the Client in writing or by email.
5.2. The Supplier only accepts the Order on written confirmation to the Client of their ability to meet the requirements of the Order in the stipulated timeframe.

6. Payment

6.1. For Clients wishing to trade on credit terms with the Supplier a credit account application form must be completed and approved by the supplier. Form available on request.
6.2. We shall invoice you on provision of the Deliverables. Invoiced amounts shall be due and payable once the goods have been delivered on 28-day terms.
6.3. Failure to pay within the period specified shall entitle us to charge you for costs and expenses incurred in recovering late payments, and to charge interest at the rate then in force pursuant to the Late Payment of Commercial Debts (Interest) Act 1998, as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002, as at the due date.
6.4. The client shall notify the supplier in writing within 7 days of invoice issue of any queries relating to invoice charges for their work. Any queries received after 7 days will not be considered.
6.5. New clients may be requested to make full or partial payment in advance before commencing the Services or prior to production of the Deliverables.
6.6. We reserve the right to watermark or redact reports pending payment.
6.7. You will only own the goods once they have been successfully delivered and when we have received cleared payment in full. Goods supplied are not for resale.

7. Provision of Consumables

7.1. If it is agreed that we will provide Consumables, we will deliver these to the address you specify for delivery. It is important that this address is accurate.
7.2. If delivery is delayed due to any cause beyond our reasonable control, the Supplier will contact the Client before the delivery date to agree a new delivery schedule.
7.3. SML Laboratories does not accept any costs or loses associated with the supply or failure to supply materials, containers and other periphery requested by the Client.
7.4. As soon as we have delivered the Consumables, you will be responsible for them, and we will not be liable for their loss or destruction. You would need to take necessary steps to insure the items.

8. Sample Collections

8.1. Unless otherwise agreed with SML Laboratories, the Client is responsible for arranging safe and timely delivery of the Samples to SML Laboratories facility.
8.2. The Client is responsible for ensuring Samples are packaged appropriately for transport. SML Laboratories shall accept no liability in connection with Samples being inappropriately packaged and the Client shall be liable to pay the Charges in respect of Services which cannot be provided.
8.3. Our sample collection service is only available where agreed and is subject to our separate policy on sample collections. No liability is accepted for damage in transit for this service.
8.4. We shall use reasonable endeavours to arrange for the Samples to be collected at the time and date notified. However, the service cannot be guaranteed.
8.5. The Client will be liable for any additional collection service charges resulting from abortive attempts to collect samples. We reserve the right to charge for standing time waiting for samples to be ready for collection for every quarter of an hour or part thereof for at a rate of £60 per hour.
8.6. If the Client is arranging its own transportation of the Samples, the Client shall be wholly responsible for sourcing appropriate transportation.

9. Sample Deliveries

9.1. Risk and responsibility for the Samples shall only pass to SML Laboratories once they have been delivered to, signed for and inspected by SML Laboratories at their Laboratory.
9.2. SML Laboratories will not be responsible for any losses of any nature (howsoever arising) if Samples are lost or damaged in transit or delivery.

10. Timescales

10.1. Time of delivery to SML Laboratories facility shall be of the essence of the Contract.
10.2. Samples received for analysis by the Supplier before 4pm on a Working Day are classified as booked in on day Zero "0". Day one "1" is the first Working Day after receipt of the Sample.

11. Sample Restrictions

11.1. Clients must inform the Supplier in advance of any samples being delivered for testing that they suspect of being hazardous to health and provide a Risk Assessment Form with the sample.
11.2. Clients are responsible for ensuring adequate quantity of sample in appropriate containers are provided with a written schedule detailing the analysis. Details of how to comply with these requirements is available on request and from our website.
11.3. SML Laboratories cannot be held responsible for missing delivery dates if the sample quantities or written schedules are inaccurate.
11.4. Where samples are classified as Hazardous or containing Asbestos the Client is obliged to collect for disposal their samples at their own cost or accept an Environmental disposal charge.

12. Deviating Samples

12.1. Deviating samples are Samples which may have exceeded their maximum preservation time, lack the date and/or time of sampling, are not at the appropriate temperature, have inappropriate headspace, be in inappropriate sample containers or otherwise not conform with our standard requirements for samples. As a result, deviating samples may jeopardise the validity of the reported test result and other Deliverables.
12.2. SML Laboratories will assess Samples as to whether they are suitable for testing or are a deviating sample and shall contact the Client as appropriate. SML Laboratories will continue to test all Samples, regardless of deviating Samples, unless otherwise instructed by the Client and the Client shall be liable for the Charges due in respect of such testing.
12.3. Where Samples are supplied without adequate testing instruction to inform that refrigerated or otherwise specific storage conditions (temperatures) are required, then SML Laboratories are not required to maintain such conditions and samples may be stored under ambient conditions.
12.4. Where the volume/mass of sample received is less than that required to the specified standard, and upon subsequent technical review there is sufficient material to perform the required test; the testing will be completed and a note regarding this added to the report as appropriate.

13. Client Obligations

13.1. The Client shall provide SML Laboratories in a timely manner with such information and materials as reasonably required to provide the Services and cooperate in all matters relating to the services.

14. Sample storage and disposal

14.1. Samples provided by the Client for analytical testing will be kept at ambient conditions and disposed of 28 days (14 days for waters) after the issue of the Deliverables.
14.2. This also applies to samples provided at the same time but not tested. All such untested samples shall be subject to a sample disposal fee.
14.3. Samples requiring controlled storage during or after this period will incur a weekly charge.
14.4. The portion of sample tested for asbestos (or if identified, the whole sample) will be retained for 6 months from the initial report issue date in accordance with UKAS LAB 30.

15. Performance

1.1. The Method of analysis shall be provided by SML Laboratories
1.1. If in our opinion it is not reasonably practicable for any reason to carry out any of the work we are instructed to carry out, we shall be entitled to refrain from carrying out or completing such work and will consult with you as to what if any work is to be undertaken.
15.1. If the cost to us of carrying out the work is subsequently increased by reason of increases in the cost materials and/or labour and/or any other factor outside our control, then we shall notify you before undertaking any work to which the increase will apply. If you require us to discontinue the work, you shall only be required to pay us for the work already carried out.
15.2. Reporting of the Uncertainty of measurement is not routinely included in our test reports, but is available on request, subject to separate quotation.
15.3. Where the Client questions the validity of a particular result, the Client shall pay for the cost of re-analysis where the original result is upheld within suitable margin tolerance. Where the result is replaced, no charge will be made.

16. Warranty

16.1. The Supplier warrants that the services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry

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standards and practices. Our published schedule and price list will clearly indicate what analytical work is performed under our scheduled accreditations.

16.2. In the event that collateral warranties or letters of reliance are requested by a Client and agreed to be provided by SML Laboratories, SML Laboratories shall be entitled to apply a charge of £250 or 10% of the analysis costs (whichever is greater) per set of warranties or letter of reliance provided.

16.3. Any Deliverable may be made subject to such conditions and caveats as SML Laboratories may deem appropriate in its absolute discretion (acting reasonably).

17. Intellectual property rights

17.1. All Intellectual Property Rights in or arising out of or in connection with the Services and Deliverables, shall belong to and remain the property of SML Laboratories unless otherwise expressly agreed as part of the Contract.

17.2. Provided the Client has paid the Charges due in full, SML Laboratories 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 for the purpose of receiving and using the Services and the Deliverables in its business but the Client shall not have the right to sub-license, assign or otherwise transfer the rights granted to it under this Condition.

17.3. The Client shall indemnify SML Laboratories against all losses to which SML Laboratories may become liable as a result of a claim that the use of any data, equipment or other materials supplied by the Client for the performance of the Services involves the infringement of any Intellectual Property Rights of any third party.

18. Right to Cancel

18.1. The Supplier will permit the Client to cancel a Contract at any time and we retain the right to charge for all analysis under way or completed, whether reported or not.

18.2. If you have received Consumables before you cancel a Contract then you must return these back to our address at your own cost and risk otherwise, we will charge for these.

19. Invalidity

19.1. If any part of these terms and conditions is unenforceable (including any provision in which we exclude our liability to you) the enforceability of any other part of these conditions will not be affected.

20. Liability

20.1. Except for death or personal injury caused by our negligent acts or omissions we shall only be liable for any loss or damage which is a reasonably foreseeable consequence of a breach of this Agreement.

20.2. You will be responsible for all claims, liabilities, damages, costs and expenses suffered or incurred by us as a result of your breach or default in the discharge of your obligations.

20.3. Analytical data provided by the Supplier is limited in implication to the sample provided by the Client. No report should be read to imply the sample is representative of the mass from which it was taken.

20.4. The Client acknowledges and expressly agrees that the performance of the Services may damage or destroy any and all Samples and any other materials or property delivered by Clients to SML Laboratories in relation to the Contract. Under no circumstances will SML Laboratories be responsible for any additional costs or consequential damages and indirect losses.

21. Limitation of Liability

21.1. SML Laboratories will maintain Professional Indemnity Insurance provided that such insurance is available at commercially reasonable rates and on commercially reasonable terms. The limits and exclusions in this Condition reflect the Services to be provided, Charges payable and insurance cover SML Laboratories has been able to arrange, and the Client is responsible for making its own arrangements for the insurance of any excess loss.

21.2. Nothing in the Contract limits any liability which cannot legally be limited, including liability for death or personal injury caused by negligence; fraud or fraudulent misrepresentation; and breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982.

21.3. SML Laboratories total liability in respect of the Services and results produced for a particular Sample shall be limited to 125% of the Charges payable for the testing of that Sample.

21.4. SML Laboratories total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall not exceed 125% of the Charges for the Services.

22. Confidentiality

22.1. Each party undertakes that it shall not at any time during the Contract, or following its termination, disclose to any person any confidential information of the other party.

23. Data Protection

23.1. You consent to the computer storage and processing of your personal data by us in connection with this Agreement and to the transmission of this data across the company and its business partners for the purposes of our legitimate interests including statistical analysis, marketing of our services and credit control. If you breach this Agreement, your personal data may be disclosed or passed to third parties to the extent necessary to assist recovery procedures.

24. Governing Law and Jurisdiction

24.1. Parties to this Agreement agree to submit to the exclusive jurisdiction of the courts of England and Wales.

25. Entire Agreement

25.1. This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written.

26. Third Party Rights

26.1. Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.

27. Customer Services

27.1. To protect your own interests please read the conditions carefully before placing your order. If you are uncertain as to your rights under these Terms & Conditions or you want any explanation about them, please write or telephone to our Business Development department, at the address and telephone number set out above.

27.2. If you are unhappy with any aspect of our service, please contact the General Manager at the above address. Any complaints will be dealt with sympathetically and we will work with you to reach a satisfactory conclusion.

28. Changes to Terms and Conditions of Business

28.1. We reserve the right to make minor changes to this Agreement from time to time. Any major changes will only be made with your agreement.

29. Indemnity

29.1. The Client agrees to indemnify, keep indemnified and hold harmless SML Laboratories from and against all losses which SML Laboratories may suffer or incur arising out of or as a result of:

- breach of any law by the Client in connection with the performance of the Services;
- any claim threatened or made against SML Laboratories by any third party arising out of the Services or out of any delay in performing or failure to perform the Services (even if such claim is solely or partly attributable to the fault or negligence of SML Laboratories) to the extent such claim is in excess of the Charges paid for the Services under the Contract that are subject to the claim; or
- any claims arising as a result of any misuse or unauthorised use of any Reports issued by SML Laboratories or any Intellectual Property Rights belonging to SML Laboratories (including trademarks) pursuant to this Contract.

29.2. Notwithstanding any other provision of these Terms and Conditions, the Client's liability under this indemnity shall be unlimited.

30. Force Majeure

30.1. The parties shall not be liable for delay in performing, or failure to perform, any obligation under the Contract if such delay or failure to perform is caused directly or indirectly by any act of God, flood, drought, earthquake or other natural disaster, pandemic, epidemic, war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, riot, accident, terrorism, explosion, strike or labour dispute, any law, or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent, delay or default by subcontractor or supplier of materials or services, the existence of any circumstance making performance commercially impracticable or any other cause beyond the party's reasonable control, provided that this condition 15 shall not apply to any obligation to make any payments due to SML Laboratories under the Contract.

31. Sub-contracting

31.1. Unless otherwise restricted, SML Laboratories shall be entitled, in its absolute discretion, to sub-contract the whole of or any part of the Service.

31.2. SML Laboratories may assign, delegate, license or hold on trust, all or any part of its rights or obligations under the Contract.

31.3. The Contract is personal to the Client which may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without SML Laboratories prior written consent.

32. General

32.1. 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.

32.2. SML Laboratories may assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Client shall not 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 or any Deliverables without the prior written consent of SML Laboratories.

32.3. The Contract constitutes the entire agreement between the parties and supersedes and supersedes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

32.4. 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.

32.5. 17.5 Except as set out herein, no variation of the Contract shall be effective unless it is in writing and signed by the authorised representatives of each party.

32.6. 17.6 No failure or delay by a party to exercise any of its right or remedies (under the Contract or by law) shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

32.7. 17.7 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 and such modification shall not affect the validity or enforceability of the rest of the Contract.

32.8. 17.8 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 pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case). This Condition 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.

32.9. 17.9 A person who is not a party to the Contract shall not have any rights under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms.

32.10. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it shall be governed by and construed in accordance with English law. 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.