

1 INTERPRETATION

- 1.1 **Business Day:** a day (other than a Saturday, Sunday or public holiday in England or any day falling in the period between Christmas Day and the New Years Day)
- 1.2 **Butterworth:** Butterworth Laboratories Limited (Company no. 1185121), 54/56 Waldegrave Road, Teddington, Middlesex, TW11 8NY;
- 1.3 **Client:** the company or firm who purchases Services from Butterworth;
- 1.4 **Client Materials:** all documents, information, Samples, items, substances and material which are provided by the Client to Butterworth in connection with the Services;
- 1.5 **Conditions:** these terms and conditions as amended from time to time;
- 1.6 **Contract:** the contract between Butterworth and Client for the supply of Services in accordance with these Conditions;
- 1.7 **Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- 1.8 **Order:** the Client's order for Services as set out in the Client's written acceptance of a Quotation, or the Client's purchase order form, or completed sample submission form/instruction, as the case may be;
- 1.9 **Quotation:** the cost for the Services and scope of the Services, as provided in writing by Butterworth;
- 1.10 **Raw Data:** A documented record of the original observations and activities relating to the Service(s). This may be in the format of hand written notes and calculations, instrument print-outs or as electronic records;
- 1.11 **Report:** the document signed on behalf of Butterworth by any authorised signatory containing results and outcomes relating to the Service(s). Reports may be in the form of a certificate of analysis, a validation report or such other form as Butterworth determines unless stated in the Quotation or agreed between the parties in writing;
- 1.12 **Samples:** goods, substances or materials provided by the Client to enable the Services to be performed;
- 1.13 **Service(s):** any analytical testing or consulting provided by Butterworth for the Client.

2 BASIS OF CONTRACT

- 2.1 The Quotation constitutes an offer by Butterworth to provide the Services in accordance with these Conditions.
- 2.2 The Quotation shall only be deemed to be accepted when the first of the following occurs:
- 2.2.1 the Client signs the Quotation and it is received by Butterworth;
- 2.2.2 the Client provides the Order and it is received by Butterworth; or
- 2.2.3 Butterworth receives the Samples;
- at which point and on which date the Contract shall come into existence.
- 2.3 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Butterworth which is not set out in the Contract.
- 2.4 Any descriptive matter or advertising issued by Butterworth, are issued for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Where the Client and Butterworth have entered into a contract in writing signed by the Client and Butterworth and that contract governs the supply of Services as part of an ongoing arrangement for the provision of services by Butterworth and has not terminated or expired, then the terms of that contract shall apply to the exclusion of these Conditions save where that contract expressly adopts these Conditions, whether with or without variation, in which case these Conditions shall apply subject to such variation (if any).
- 2.7 Any Quotation given by Butterworth is only valid for the period stated on the Quotation.

3 CONFIDENTIALITY

- 3.1 Subject to any independent formal and written confidentiality agreement entered into by the parties and condition 3.2:
- 3.1.1 each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, products, processes, trade secrets, know how, finances, affairs, customers, clients or suppliers of the other party;
- 3.1.2 the Client agrees to treat the Report as confidential and not to make it public nor disclose it to any third party without Butterworth's consent, save to the extent that disclosure is made to those third parties referred to in condition 13.4 (provided that the Client requests that those third parties treat the Report as confidential).
- 3.2 Each party may disclose the other party's confidential information:
- 3.2.1 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 condition 3; and
- 3.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations or exercise its rights under the Contract.

4 THE ANALYTICAL SERVICES & REPORTS

- 4.1 Contracts to perform Services are accepted by Butterworth on the basis that full disclosure is made by the Client of all information and documentation which may affect Butterworth's ability to correctly perform the Services in a safe manner and that Butterworth will not be liable to the Client for any delay, failure to perform or for defective Services unless such full disclosure has been made.
- 4.2 If the results of the Services are to be used for litigation or possible litigation this must be made known to Butterworth when requesting a Quotation. Butterworth employees will not act as expert witnesses, nor enter into discussions nor offer opinions on the application or consequence of the results provided in the supply of the Services.
- 4.3 If the Client requires Butterworth to perform the Services in a shorter time than that specified in the Quotation, it is the responsibility of the Client to negotiate whether this is possible with the Butterworth. If Butterworth (in its absolute discretion) agrees a shorter time Butterworth will issue a revised Quotation to incorporate the changes to the Services. The Client should not assume such revision can be accommodated without accepting the revised Quotation.

- 4.4 The Client must inform Butterworth of hazards of any kind relating to Samples when requesting a Quotation. Samples submitted should be labelled with the appropriate hazard labels and safety data sheets; failure to do so may result in a delay in the start of Services and an additional handling charge.
- 4.5 Where hazards are not universally known as inherent in the Sample or advised in writing to Butterworth prior to the issue of the Quotation, Butterworth may raise an additional charge for handling or disposing of any Sample as appropriate.
- 4.6 Work carried out by Butterworth will be in accordance with that set out in the Quotation and Butterworth shall be entitled to test any Samples to destruction. All Samples remaining following analysis will be disposed of by Butterworth no earlier than one month following the date of the Report. If requested in writing, all Samples remaining after analysis will be returned by courier and charged to the Client at cost plus Butterworth's standard administration charge in force at that time.
- 4.7 Any Report issued by Butterworth will be factual and will relate only to the Samples in respect of which the Services have been performed and not to the bulk from which the Samples analysed may have been selected. All results reported will relate the Samples on an 'as received' basis, unless otherwise instructed in writing, or documented in an agreed methodology.
- 4.8 Butterworth shall make all reasonable efforts to supply the Services by any provisional completion date but Butterworth do not guarantee such a date, which is given by way of estimate only. Time shall not be of the essence of the Contract in relation to the performance of the Services.
- 4.9 The Client is responsible for the transportation and delivery of Samples to Butterworth and Butterworth accept no responsibility for Samples received in a condition which may affect the Services or the results or outcome contained in any Report. If any Sample is received in a damaged condition, Butterworth reserve the right to charge for the time taken to dispose of the Sample in a safe manner.
- 4.10 Butterworth reserves the right to withdraw provision of the Services to the Client after their acceptance of a Quotation but prior to commencement of the Services, in which case Butterworth will (save as provided by condition 4.5) at its own cost return any Samples to the Client and neither party will have a claim against the other.

5 QUALITY ASSURANCE, METHODOLOGY AND ARCHIVING

- 5.1 Unless stated otherwise in the Quotation, Butterworth shall perform the Services in compliance with its Quality Management System (details of which are available on request).
- 5.2 Requirements for the Service to be performed to any specific regulations or standards must be requested by the Client at the time of requesting a Quotation
- 5.3 Methods forming part of Butterworth's ISO17025 Accreditation Schedule which are to apply to the Services will be clearly indicated in the Quotation.
- 5.4 Applicable administration charges associated with Services performed in compliance with GCP or GLP will be detailed in the Quotation.
- 5.5 Butterworth shall be entitled to charge for additional work, whether at the Client's request or not, which is carried out:
 - 5.5.1 in performing investigations in respect of results which are out of specification, out of trend or unexpected; and/or
 - 5.5.2 in repeating analysis of a Samplein each instance where such additional work is a consequence of a defective, incorrect or out of specification Sample or incorrect information supplied by the Client.
- 5.6 Butterworth are not responsible for final release or acceptance of any products based upon any Service(s) provided by Butterworth and Butterworth does not provide the services of a Qualified Person (QP). It is the responsibility of the Client to ensure that the Service(s) meet the Client's quality and compliance requirements including any needed for manufacturing or marketing authorisations.
- 5.7 The test specific Raw Data, or in the case of electronically generated records, certified hard copies, will be sent to the Client with the Report. Electronic Raw Data and electronic copies of Raw Data and certified copies will be stored in Butterworth's archives in accordance with Butterworth's archiving policy, after which they will be destroyed.

6 INVOICE AND PAYMENT

- 6.1 On completion of the Service(s), Butterworth will submit an invoice to the Client in respect of the Services.
- 6.2 The Client shall pay each invoice submitted by Butterworth within 30 days of date of invoice, or such other date as specified in the Quotation.
- 6.3 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by Butterworth to the Client, the Client shall, on receipt of a valid VAT invoice from Butterworth, pay to Butterworth 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.
- 6.4 If the Client fails to make any payment due to Butterworth under the Contract by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 4% per cent per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.
- 6.5 The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).
- 6.6 If the Client requests any change in the specification of the Service(s) or any additional Service(s) and Butterworth agrees to such changed or additional Service(s) being supplied, those Service(s) will be invoiced at Butterworth's then current standard charges unless they have been the subject of a further Quotation.
- 6.7 Additional Services including (but not limited to) further copies of the Report, or Raw Data, will be subject to an additional charge as detailed in a separate Quotation.
- 6.8 Butterworth reserves the right to make an appropriate charge to the Client for Service(s) which are cancelled by the Client after receipt of Samples, for whatever reason.
- 6.9 All payments by the Client shall be in £ GBP, unless payment in € Euro or \$ USD has been previously agreed in writing by Butterworth or where the Quotation is in such currency. Payment shall be by way of electronic funds transfer to such account as Butterworth may notify the Client.
- 6.10 If the Client pays any amount to Butterworth without apportioning it between specific debts or liabilities it shall be apportioned as Butterworth thinks fit.
- 6.11 In instances where the Services may take longer than one month to complete, Butterworth shall have the right to produce interim invoices either after the completion of a distinct phase of the work or at the end of each month and calculated on a work performed basis.

- 6.12 Butterworth reserves the right to withhold Reports and to discontinue provision of the Service(s) at any time or during any period during which any amounts are owed by the Client to Butterworth. Butterworth accept no responsibility for the consequences of withholding Reports or discontinuing work in such circumstances.
- 6.13 Butterworth shall provide such co-operation and assistance to the Client as Butterworth in its absolute discretion considers reasonable in matters relating to the Service(s), the Reports and Raw Data up to 30 days after completion of the Service(s), but otherwise Butterworth reserves the right to charge for any additional consultation which will be subject to its current standard charges in force from time to time or otherwise agreed with the Client in writing.

7 LIABILITIES

- 7.1 Nothing in the Contract shall limit or exclude the Butterworth's liability for:
- 7.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 7.1.2 fraud or fraudulent misrepresentation; or
 - 7.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 7.2 Subject to condition 7.1, Butterworth shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 7.2.1 loss of profits;
 - 7.2.2 loss of sales or business;
 - 7.2.3 loss of use or corruption of software, data or information;
 - 7.2.4 loss of damage to goodwill; and
 - 7.2.5 any indirect or consequential loss.
- 7.3 Subject to condition 7.1, Butterworth's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to £1,000,000.
- 7.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.5 Butterworth shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Butterworth's failure or delay in providing the Services, where such failure or delay is caused by the Client's failure to perform any of its obligations under the Contract.
- 7.6 The Client shall indemnify and hold Butterworth harmless from any and all losses, claims, actions, damages, liabilities, costs and expenses, (including reasonable legal fees and court costs) (collectively "Losses") that arise as a result of:
- 7.6.1 the Client supplying incomplete, inaccurate or incorrect information concerning the Sample;
 - 7.6.2 any use of Samples, where full disclosure of all information and documentation referred to in condition 4.1 has not been made which may affect such use;
 - 7.6.3 any Sample received by Butterworth from or at the direction of the Client which is not clearly labelled with the correct hazardous nature of the Sample or accompanied by a Safety Data Sheet (SDS)..
- 7.7 The indemnity in condition 7.6 shall include (without limitation) any Losses incurred because Butterworth is obliged (or it is otherwise prudent) to quarantine or shut down part or the whole of its premises as a result of the circumstances referred to in condition 7.6.1 to 7.6.3.
- 7.8 This condition 7 shall survive termination of the Contract.

8 DEFECTS AND TIME LIMITS

- 8.1 Butterworth's policy is to retain Samples for no longer than one month after completion of the Services. Accordingly the Client agrees to give Butterworth notice of any defects in the Services in writing within one month after completion of the Services or as soon as is reasonably practicable after it becomes aware of any such defects.

9 FORCE MAJEURE

- 9.1 Neither party shall be liable for any delay in performing or for failure to perform its obligations under the Contract if the delay or failure results from any cause or circumstance whatsoever beyond its reasonable control, (hereinafter "event of force majeure"), provided the same arises without the fault or negligence of such party. If an event of force majeure occurs, the date(s) for performance of the obligation affected shall be postponed for as long as is made necessary by the event of force majeure, provided that if any event of force majeure continues for a period of or exceeding three (3) months, either party shall have the right to terminate the Contract forthwith by written notice to the other party. Each Party shall use its reasonable endeavours to minimise the effects of any event of force majeure.

10 TERMINATION

- 10.1 Should the Client make default in any payment due to Butterworth or otherwise be in breach of its obligations under these Conditions or under any other contract with Butterworth or compound with or execute an assignment for the benefit of its creditors or commit any act of bankruptcy or being a company enter into voluntary or compulsory liquidation or suffer a receiver, administrative receiver or administrator to be appointed over all or any part of its assets or take or suffer any similar action in consequence of debt or become insolvent or should Butterworth have reasonable cause to believe that any of these events is likely to occur, Butterworth may, by notice in writing to the Client and without prejudice to any other rights forthwith suspend or cancel the whole or part of the Services or require payment in advance or satisfactory security for further delivery of the Services or otherwise terminate the Contract with immediate effect.
- 10.2 On termination of the Contract:
- 10.2.1 the Client shall immediately pay to Butterworth all of its outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Butterworth shall submit an invoice, which shall be payable by the Client immediately on receipt;
 - 10.2.2 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, 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; and
 - 10.2.3 conditions which expressly or by implication have effect after termination shall continue in full force and effect.

11 DATA PROTECTION

- 11.1 In the course of its dealings with clients, Butterworth receives and processes information about Clients including:
- 11.1.1 contact details of the Client;
 - 11.1.2 credit references;
 - 11.1.3 name and contact details of the person requesting the Services;
 - 11.1.4 details of the Client's requirements for the Services.
- 11.2 All such information will be retained in confidence (subject to condition 3.2) and will only be used for the following purposes:
- 11.2.1 for proper performance of the Services and exercising Butterworth's rights under the Contract;
 - 11.2.2 to assess whether and how the Services be provided and at what cost;
 - 11.2.3 to report to the Client on the Services;
 - 11.2.4 to forward to the Client information regarding services provided by Butterworth and general marketing material;
 - 11.2.5 to share the information with associated and group companies and professional advisers for administrative purposes;
 - 11.2.6 disclosure to a transferee (or proposed transferee) of the whole or a material part of Butterworth's business; and
 - 11.2.7 to comply with any law or regulatory requirement.
- In consenting to these terms the Client consents to this use of such information.
- 11.3 In all other respects the information will not be shared without the Client's prior consent or as provided for in the Data Protection Act.

12 LAW AND JURISDICTION

- 12.1 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.
- 12.2 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.

13 INTELLECTUAL PROPERTY

- 13.1 In relation to the Client Materials, the Client:
- 13.1.1 and its licensors shall retain ownership of all Intellectual Property Rights in the Client Materials; and
 - 13.1.2 grants Butterworth a fully paid-up, non-exclusive, royalty-free, licence to copy and modify the Client Materials for the term of the Contract for the purpose of providing the Services and associated Report to the Client.
- 13.2 The Client warrants that the receipt and use of the Client Materials in the performance of the Contract by Butterworth, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party.
- 13.3 All Intellectual Property Rights in the Report, any development or method conceived or reduced to practice by Butterworth, written statements and other information provided by Butterworth in connection with the Services (other than the Client Materials) shall be owned by Butterworth.
- 13.4 Butterworth hereby licenses the copyright subsisting in the Report to the Client free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Client to:
- 13.4.1 comply with any obligations imposed on it by any regulator which the Client is subject to;
 - 13.4.2 provide a copy of the Report to its principal (if the Client is an agent) or supplier to the Client;
 - 13.4.3 make a regulatory application in relation to the material or substance which constitutes the Sample, provided always that the Report is replicated in full, unamended and with any copyright notices remaining visible.
- 13.5 The Client agrees not to (nor permit) any Report to be edited or amended in whole or in part, or be made available to other third parties without Butterworth's written consent, which will not be unreasonably withheld.

14 NOTICES

- 14.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its address stated in the Quotation, in the Order (in the case of the Client) or registered office (if applicable) or such other address as that party may have specified to the other party in writing in accordance with this condition 15, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.
- 14.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in condition 15.1; if sent by pre-paid first class post or other next working day delivery service, at 10.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
- 14.3 The provisions of this condition 15 shall not apply to the service of any proceedings or other documents in any legal action.

15 ASSIGNMENT & SUBCONTRACTING

- 15.1 The Client shall not, without the prior written consent of Butterworth, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.
- 15.2 Butterworth will notify the Client in advance if the whole or any part of the Services is to be sub-contracted by Butterworth.

16 MISCELLANEOUS

- 16.1 Under no circumstances will any terms introduced by the Client (whether in the Order or otherwise) take priority over these Conditions unless Butterworth agrees in writing.
- 16.2 The failure by Butterworth to enforce at any time any one or more of these Conditions shall not amount to a waiver by Butterworth of its right subsequently to enforce such Conditions.
- 16.3 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.
- 16.4 If any provision of these Conditions is declared by any judicial or other competent authority to be voidable, illegal or otherwise unenforceable this shall not affect the remaining Conditions, which shall continue in full force and effect. Any such provisions as shall be declared to be voidable, illegal or otherwise unenforceable shall be amended so that the amended provision achieves the intention of the parties.
- 16.5 No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).