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General Terms and Conditions of Product Compliance Specialists Limited (trading as Kiwa Product Compliance) for the performance of orders – 2024

(KIWA PC General Terms of Purchase 3.1)

By agreeing to purchase these selected goods and or services or other items, the Client agrees and confirms its acceptance of these General Terms and Conditions and that these terms and conditions shall act as the governing agreement to the exclusion of any other terms and conditions, standard or otherwise, including any terms and conditions contained on any applicable purchase order (the “Conditions”).

Article 1. Definitions

1.1. In these Terms and Conditions, the following words and expressions shall have the following meanings:

Additional work: all work carried out by the Contracted Party during or after the performance of the Agreement in addition to the work explicitly agreed on;

Agreement: means the contract for the provision of services consisting of the Offer and these Conditions. These may be amended, modified or supplemented from time to time in accordance with these Conditions;

Authority: means any testing laboratories or governmental or regulatory body, or organization vested with the power to enforce or evaluate laws, regulations, standards, or directives pertaining to the subject matter of this agreement. This may include, but is not limited to, entities responsible for industry oversight, licensing, certification, testing or compliance within the relevant jurisdiction;

Client: the party that enters into the Agreement with the Contracted Party;

Confidential Information: means all confidential information (however recorded, preserved or disclosed) disclosed by a one party to the other party after the date of this Agreement including but not limited to: (a) these Terms and Conditions; (b) any information that would be regarded as confidential by a reasonable businessperson relating to:

- (i) the business, affairs, customers, clients, suppliers of the disclosing party (or of any member of the group of companies to which the disclosing party belongs);
- (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs);
- (iii) any information developed by the parties in the course of carrying out the Agreement; and



(iv) Report or Results;

but not including any information that:

- a. is or becomes generally available to the public other than as a result of its disclosure by the recipient in breach of this clause or of any other undertaking of confidentiality addressed to the party to whom the information relates (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as proprietary information);
- b. was available to the recipient on a non-confidential basis prior to disclosure by the disclosing party;
- c. was, is or becomes available to the recipient on a non-confidential basis from a person who, to the recipient's knowledge, is not bound by a confidentiality Contract with the disclosing party or otherwise prohibited from disclosing the information to the Recipient;
- d. was lawfully in the possession of the recipient before the information was disclosed to it by the disclosing party;
- e. the parties agree in writing is not confidential or may be disclosed; or
- f. is developed by or for the recipient independently of the information disclosed by the disclosing party.

Contracted Party: Product Compliance Specialists Limited;

Report: means the report(s) relating to the Results;

Offer: the quotation, proposal and/or estimate submitted by the Contracted Party to the Client with respect to the provision of services by the Contracted Party;

Results: the outcome of the performance of the order by the Contracted Party; and

Kiwa Policies: [Policies and Procedures \(kiwa.com\)](https://kiwa.com);

Material: all databases, designs, drawings, details, plans, specifications, schedules, reports, results, calculations and other similar documents and information.

Services: the services to be performed by the Contracted Party detailed in the Offer including any goods or materials forming part of such performance.

- 1.2. Condition headings shall not affect the interpretation of these Conditions.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.
- 1.6. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8. The Agreement shall be binding on, and enure to the benefit of, the parties to the Agreement and their respective personal representatives, successors and permitted assigns.



- 1.9. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.
- 1.11. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12. Any words following the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.13. References to a "party" or the "parties" are to a party or the parties to the Agreement and include a reference to that party's, or those parties', successors and permitted assigns.

Article 2. Applicability

- 2.1. Unless explicitly agreed otherwise in writing or otherwise stipulated in the Offer, these Conditions apply to all Offers, Agreements and all other legal relationships between the Contracted Party and the Client.
- 2.2. Changes, additions and/or extensions of these Conditions, and/or stipulations varying these Conditions, will only be binding on the Contracted Party if they have been agreed on between the parties in writing. Notwithstanding this, the Contracted Party reserves the right to make amendments to these Conditions. Any such amendments shall be effective upon written notification to the Client, provided that the Contracted Party has given 30 days prior notice before the amendments take effect.
- 2.3. The applicability of any general or specific terms and conditions or stipulations of the Client are specifically excluded.
- 2.4. If any provision of these Conditions is or becomes invalid, illegal or unenforceable, on whole or in part, 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 paragraph shall not affect the validity and enforceability of the rest of these Conditions.
- 2.5. The Contracted Party is authorised to amend these Conditions. Such amendments take effect at the time communicated by the Contracted Party.
- 2.6. All juristic or other acts and actions performed by an officer or employee of the Client within the scope of the formation, performance and amendment in relation to the Agreement between the Contracted Party and the Client will be deemed to have been performed on behalf of the Client and be binding on the Client. In dealings with the Contracted Party, the Client cannot rely upon the fact that in respect of these acts or actions there is no authority to legally represent or bind the Client.
- 2.7. The Client agrees to adhere to and comply with:
 - 2.7.1. the Kiwa Policies, as may be amended from time to time; and
 - 2.7.2. all applicable local laws and regulations, including but not limited to any laws, statutes, regulations and codes relating to anti-bribery, anti-corruption, money laundering,
- 2.8. The Client acknowledges any failure to comply with clause 2.7. would be considered is a material breach.

Article 3. Offer, Order and formation of the Agreement



- 3.1. The Offer constitutes an offer by the Contracted Party to provide the Services subject always to the Conditions. Offers will be valid for one month from the date of issue of offer, unless agreed in writing.
- 3.2. An Agreement is formed when the Client receives a written confirmation of the order from the Contracted Party. This will be after the Contracted Party receives the written acceptance from the Client in respect of the quotation submitted by the Contracted Party, unless the Contracted Party revokes its offer within two working days of receipt of the stated acceptance. If an order is given in any other manner, the Agreement will be formed at the time that the written confirmation of the order is sent by the Contracted Party or after the Contracted Party has started with the actual performance of the order.
- 3.3. All images, drawings, statements about measurements and weights, calculations, statements concerning capacities, results and/or expected performance, etc. provided by the Contracted Party will not be binding on the Contracted Party and are only meant to give a general representation of the services to be rendered by the Contracted Party.
- 3.4. The Client is responsible for the accuracy and completeness of any documents, data, drawings or other information that it provides to the Contracted Party, and the Contracted Party shall be entitled to rely on such information to base its Offer thereon and to carry out the Services.

Article 4. Performance of the Agreement

- 4.1. The Contracted Party warrants that it shall carry out the Services using reasonable skill and care. Further obligations only exist if and to the extent that such has been agreed on in writing by the Contracted Party.
- 4.2. The Agreement shall be valid until the completion of the Services, unless otherwise agreed in writing or unless terminated earlier in accordance with clauses 15 or 16.
- 4.3. The periods stated by the Contracted Party, including the periods for performance of the Agreement, are indicative and can never be considered strict deadlines. Time is not of the essence in respect to delivery of the Results or performance of the Services.
- 4.4. If the Contracted Party and the Client agree that the Agreement will be changed, supplemented and/or extended, they will renegotiate the consequences for the price, quality and date(s) for completion, among other things. Changes to, additions to and/or extensions of the Agreement will only be binding if they have been agreed between the parties in writing or if the Agreement is performed by the Contracted Party in accordance with the changes, additions and/or extensions.
- 4.5. The Contracted Party will not be obliged to perform Additional Work as long as the Client has not given a written order for the performance of Additional Work and as long as the payment or provision of security required by the Contracted Party has not been issued. In the absence of specific arrangements in that respect, the work will be carried out by the Contracted Party at prices that are based on the rates that apply at the Contracted Party for such work.
- 4.6. Any drawings, designs, specifications, locations, instructions, inspection regulations, etc. made available by the Contracted Party prior to the performance of the Agreement or prior to entering into the Agreement or approved by the Contracted Party, regardless of their form, are part of the Agreement, unless agreed otherwise in writing.
- 4.7. The Client shall use any drawings, designs, specifications, locations, instructions, inspection regulations or information provided by the Contracted Party strictly in accordance with the Contracted Party's instructions.
- 4.8. The Client will arrange that all deliverables with respect to which the Contracted Party indicates that they are required or with respect to which the Client should reasonably understand that they are



required for the performance of the Agreement are provided to the Contracted Party in good time. If any Deliverables required for the performance of the Agreement have not been provided to the Contracted Party in good time, the Contracted Party will be entitled not to start with the performance of the Agreement and/or to suspend performance of the Agreement and/or charge the additional costs ensuing from the delay to the Client at the usual rates.

- 4.9. The Client arranges for any facilities to be made available to the Contracted Party free of charge, such as auxiliary staff, auxiliary plant and equipment, to enable the Contracted Party to carry out the work at the Client's site and/or to the Client's installations safely and the Client will be liable for and shall indemnify the Contracted Party against any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or the death of any employee of the Contracted Party or any loss, injury or damage to any property real or personal arising out of or during the course of the provision of the Services at the Client's sites or installations.
- 4.10. If auxiliary staff, auxiliary plant and equipment provided by the Client fails to comply with applicable health and safety laws and regulations or Kiwa Policies, the Contracted Party reserves the right to suspend the performance of the Services and/or not to perform the Services at all. In that case, the Client will be obliged to compensate the Contracted Party for all resulting costs (including travelling expenses and travelling time), damage and loss on an indemnity basis.
- 4.11. If it has been agreed that the Services will be performed in phases, the Contracted Party may suspend performance of such parts as pertain to a subsequent phase until the Client has approved the results of the preceding phase in writing.
- 4.12. If the Contracted Party deems such desirable, for purposes of a correct or timely performance of the order, it is authorised to have the order performed by third parties. All provisions pertaining to the exclusion or limitation of liability on the Contracted Party's part and concerning the indemnification by the Client against third-party claims will apply to these third parties, their bodies and staff.
- 4.13. The Client is not authorised to fully or partially transfer the rights and obligations arising from the Agreement or resulting Agreements to third parties.
- 4.14. The Client will not exert improper pressure on the Contracted Party and employees of the Contracted Party in the performance of the order.
- 4.15. Any failure in the performance of this Agreement discovered by the Client must be reported to the Contracted Party immediately and in writing providing details of the alleged failure. The Client cannot enforce any rights pursuant to the Agreement in the event that if the notification to the Contracted Party takes place more than ten calendar days after the time when the Client could reasonably have discovered the failure. If, the sole opinion of the Contracted Party, the Client's notification has merit and the notification was made within the stated period, the Contracted Party has the option (in its sole discretion), to either remedy the failure in the Services or to issue a credit note for the Services limited to the specific fees relating to the area of failure charged to the Client up until that point in time), and this shall be the Client's sole remedy in this respect. This shall be the Client's sole remedy for any alleged failures in the performance of the Services.
- 4.16. All juristic or other acts and actions performed by an officer or employee of the Client within the scope of the formation, performance and amendment of an Agreement between the Contracted Party and the Client will be deemed to have been performed on behalf of the Client and are binding on the Client. In dealings with the Contracted Party, the Client cannot rely upon the fact that in respect of these acts or actions there is no authority to legally represent or bind the Client.
- 4.17. Notwithstanding the provision of the Services by the Contracted Party to the Client, the Client shall remain responsible for fulfilling any applicable certification requirements under applicable laws and regulations, including but not limited to the implementation of appropriate changes and



recommendations made within the Results. Where the Services relate to the certification of products in ongoing production, the Client shall retain all responsibility for maintaining consistency in the products.

- 4.18. If the Agreement pertains to sample analysis, the Client is responsible for the selection, representation, designation of codes, brand and product names and for making the analysis samples available to the Contracted Party, unless otherwise agreed in writing. If the Contracted Party is required to undertake sampling work at the Client's premises, the Contracted Party undertakes to use all reasonable endeavours to minimise disturbance at the site. Samples received by the Contracted Party for testing shall bear either a Contracted Party applied sample reference, and/or the Client's own reference unless otherwise notified. No sampling certificates, apart from those carried out by the Contracted Party, can be accepted as independently verified sampling, but may be included in the Results (if required), along with any photographic material.

For Consultancy Services:

- 4.19. The Services shall be carried out using the standard of reasonable skill and care to be expected of an appropriately qualified professional of the Contracted Party's profession, and in accordance with applicable regulations and laws.
- 4.20. The Client acknowledges that the Contracted Party's advice and recommendations are provided in accordance with clause 4.19 and that the Contracted Party does not guarantee any particular outcome or result.
- 4.21. The Contract Party makes no warranty, express or implied, regarding the accuracy, completeness, or effectiveness of the Services provided. The Client acknowledges that any decisions made based on the Services are the sole responsibility of the Client.
- 4.22. The Client acknowledges that the Contract Party's role is advisory only. The Client is solely responsible for making all decisions related to the implementation of the Contract Party's advice and for any actions taken as a result of such advice.

Article 5. Prices and rates

- 5.1. All prices are in US Dollars (unless a different currency is specified in the Offer) and, unless agreed otherwise in writing, always exclusive of VAT, any other applicable international taxes, travelling and accommodation expenses.
- 5.2. During the course of a project, The Contracted Party shall be required to pay fees to third parties on behalf of the Client. Every effort is made by The Contracted Party to ensure that the fees charged by the third party is not only correct but also known by the Client and accounted for in our initial Offer. However, where these third-party charges are amended after the date of our quotation to the Client, The Contracted Party reserves right to charge the Client such additional expense as has been incurred on the Client's behalf as if such fee were included and referred to in the original Offer. The Contracted Party does however undertake to notify the Client within a reasonable period of any significant changes to these third-party charges.
- 5.3. The Contracted Party is entitled to increase the prices and rates once every calendar year to accommodate cost increases.

Article 6. Liability

- 6.1. The Contracted Party is only liable towards the Client for damage or loss if and to the extent provided in these Conditions save that nothing in these Conditions shall limit or exclude the Contracted Party's liability for:



- a. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - b. fraud or fraudulent misrepresentation; or
 - c. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 6.2. Subject to clause 6.1, the Contracted Party's total liability to the Client whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement shall be limited to twice the value stated in the applicable Offer and for continuing contracts to twice the amount due to be paid to the Contracted Party in the six months preceding any claim. Under no circumstances shall the Contracted Party's overall liability exceed one hundred thousand pounds (£100,000).
- 6.3. Subject to clause 6.1, the Contracted Party 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 Agreement for:
- 6.3.1. loss of profits;
 - 6.3.2. loss of sales or business;
 - 6.3.3. loss of agreements or contracts;
 - 6.3.4. loss of anticipated savings;
 - 6.3.5. loss of or damage to goodwill;
 - 6.3.6. loss of use or corruption of software, data or information; or
 - 6.3.7. any indirect or consequential loss.
- 6.4. The Contracted Party is only liable for the work that has been carried out by the Contracted Party or under its responsibility and the Contracted Party particularly does not warrant data received from third parties if it has not been stated explicitly that these data were examined by the Contracted Party and found to be correct. However, if the Client, or a third party who acts as the Client's supplier, accepts certificates, recommendations, designs, sketches, drawings, models, specifications, etc. from the Contracted Party, whether or not after its own examination, the Contracted Party is no longer liable for any damage or loss caused by the application of such recommendations, designs, etc.
- 6.5. The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.
- 6.6. The Contracted Party is only liable for the Services carried out by the Contracted Party or under its responsibility and the Contracted Party does not warrant data received from third parties if it has not been stated explicitly that these data were examined by the Contracted Party and found to be correct. However, if the Client, or a third party who acts as the Client's supplier, accepts recommendations, designs, sketches, drawings, models, specifications or other information from the Contracted Party, whether or not after its own examination, the Contracted Party is no longer liable for any damage or loss caused by the application of such recommendations, designs or specifications.
- 6.7. The Client shall be liable for and shall indemnify the Contracted Party against any expense, liability, loss, claim or proceedings whatsoever in respect of claims from third parties arising out of the provision of the Services in respect of whom the Contracted Party cannot rely upon the conditions of the Agreement. For the purposes of this clause 6.7, "third parties" includes but is not limited to the Client's staff and other persons whose services the Client uses in the performance of its work.



- 6.8. The Client shall be liable for and shall indemnify the Contracted Party against any expense, liability, loss, claim or proceedings whatsoever in respect of all third-party claims and claims for compensation with respect to certificates, recommendations, reports, designs, drawings or other information provided by the Contracted Party if they have been made available to those third parties by the Client, whether or not with the Contracted Party's consent.
- 6.9. The Client shall be liable for and shall indemnify the Contracted Party against any expense, liability, loss, claim or proceedings whatsoever in respect of damage or loss at the Contracted Party's premises caused by contamination of the equipment provided by the Client.
- 6.10. The Contracted Party has no liability whatsoever for infringements of third-party rights or statutory provisions that apply outside England and Wales, unless those rights and provisions were communicated to the Contracted Party by the Client in writing prior to commencement of the Services.
- 6.11. The Contracted Party is not liable for damage or loss of any nature whatsoever that was caused by the Contracted Party's reliance on incorrect and/or incomplete information provided by the Client and/or information not provided in sufficient time.
- 6.12. The Contracted Party accepts no responsibility or liability whatsoever arising as a result of any claims, actions, proceedings, demands, liabilities, costs, expenses or any other losses suffered (save for death or personal injury) or incurred by the Client arising from any failure of the Client's product to:
 - 6.12.1. a. achieve certification or a specific decision; or
 - 6.12.2. to be compatible in the territory for which compliance approval is obtained.
- 6.13. The Contracted Party shall have no liability whatsoever in relation to any product or item supplied by the Client who shall maintain full liability for any applicable statutory product liabilities. The Contracted Party shall not be liable for any damage caused by a product or item supplied by the Client or its use or for any costs in connection with a product recall.

Article 7. Non-disclosure

- 7.1. The Client will only use the Offer (and once the Agreement is in place, any proposals for changes, additions to and/or extensions of the Agreement) to evaluate its interest in making an order for Services.
- 7.2. Both parties shall keep strictly confidential and shall not without the prior consent of the other divulge to any third party nor make use of any Confidential Information during the course of the Agreement.
- 7.3. The Contracted Party will not make the Results obtained from the performance of the Services available to third parties for a period of 1 year after the date of delivery of the Results by the Contracted Party.
- 7.4. The obligations of this clause does not apply to any Confidential Information that:
 - 7.4.1. forms part of any testing undertaken by a third-party agent on behalf of the Contracted Party, as required by the Services;
 - 7.4.2. forms part of an application to a third-party certification agency of a compliance file to be held for possible inspection by a third-party certification agency, as required by the Agreement.
 - 7.4.3. if and as a result of disclosure by the Client to third parties, the Contracted Party deems it necessary to provide an explanation to such third parties;
 - 7.4.4. if confidentiality is prohibited by any applicable statutory regulations;
 - 7.4.5. if inspection is requested for internal or external audits to grant or extend accreditations of laboratory, inspection activities and/or of product and management system certification schedules;



- 7.4.6. if there is a danger to people or objects; or
- 7.4.7. where it is necessary to enable the Contracted Party to perform or improve its services.
- 7.5. The Contracted Party may disclose the Client's Confidential Information to an Authority who has a need to know this Confidential Information for the delivery of service. In such an event, the Contracted Party shall not be liable for any actions or omissions of the Authority, including but not limited to any unauthorized use or disclosure thereof by the Authority.
- 7.6. If possible, the parties shall consult each other in advance of disclosing Confidential Information pursuant to the provisions of clause 7.5.
- 7.7. At the Client's request, the Contracted Party will keep secret the Client's name and the fact that the research has been conducted.

Article 8. Results

- 8.1. The Client is entitled to the full and free use of the Results.
- 8.2. The Contracted Party is entitled to use or cause the use of the Results of the Agreement at no cost for its business operations or for third parties, in which respect the provisions of clause 7 regarding secrecy will be observed.
- 8.3. The Contracted Party is entitled to use or cause the use of the Results and/or any methodology or experience obtained from the Services at no cost for its business operations. This shall not relieve the Contracted Party of its obligations pursuant to clause 7.
- 8.4. The Contracted Party will keep all items provided by the Client in connection with the Services, for 2 weeks after the date on which all Results are communicated to the Client, unless specified otherwise within the Offer. If the Client has not arranged for the return of the items within the 2 week period, the Contracted Party shall be entitled to destroy the items or take such other measures which it deems appropriate in its sole discretion. Any costs associated with storage of any items for longer than 2 weeks shall be payable by the Client.

Article 9. Ownership, disclosure and use of documents

- 9.1. Any Material prepared by the Contracted Party for the performance of the Services and/or included in the Results are and will remain the Contracted Party's property and the Contracted Party reserves all intellectual property rights in the same.
- 9.2. Without the Contracted Party's prior written consent, the Client shall not:
 - 9.2.1. disclose the Material or its authorship or allow its inspection by third parties; or
 - 9.2.2. the Material or allow it to be used for instituting claims, conducting legal proceedings, or for recruitment purposes.
- 9.3. The Client will at all times be obliged to render all cooperation to the Contracted Party in order to give an explanation or provide comments, to third parties if:
 - 9.3.1. the Client discloses Results in a manner that may give rise to an incorrect representation of the facts or any misunderstandings;
 - 9.3.2. the Client refers to the standards and requirements applied by the Contracted Party, such as inspection requirements; or
 - 9.3.3. the Client does anything else within the contemplation of this clause 9.



Article 10. 3rd Party Patent and Copyright

- 10.1. The Contracted Party is not obliged to research patent rights of third parties or to research the possibility of patenting.
- 10.2. Only the Contracted Party is entitled to apply for a patent in respect of an invention, process or product connected to this Agreement in its name and at its expense.
- 10.3. The Client may only make a patent application after obtaining the prior written permission of the Contracted Party. In that case, the Client will grant the Contracted Party a licence (and right to sub-licence) for no consideration with respect to the use of the invention for its own purposes and those of third parties. The Client shall also reimburse the Contracted Party for the sum that the latter is obliged to pay the inventor pursuant to applicable law or employment conditions.
- 10.4. The Contracted Party and the Client will inform each other as soon as possible of any Results that are, in their opinion, capable of being patented.
- 10.5. The Contracted Party and the Client shall provide each other with all required cooperation (charged at reasonable costs) in the filing of patent applications in accordance with the provisions of this clause 10.

Article 11. Intellectual Property

- 11.1. The Contracted Party grants the Client a fully paid-up, worldwide, non-exclusive, non-sub-licensable, royalty-free licence during the term of the Agreement to copy and use the Materials and use the Results for the purpose of receiving and using the Services in its business.
- 11.2. The Contracted Party and its licensors shall retain ownership of all intellectual property rights in the Materials and any Results.
- 11.3. The Client:
 - 11.3.1. warrants that the receipt and use of the Materials or the Results shall not infringe the rights, including any intellectual property rights, of any third party; and
 - 11.3.2. shall indemnify the Contracted Party in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Contracted Party as a result of or in connection with any claim brought against the Contracted Party, its agents, subcontractors or consultants for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt or use of the Materials or the Results.
- 11.4. The Contracted Party shall not be liable for any use of the Materials or the Results for any purpose other than for which the same was prepared and provided.

Article 12. Force majeure

- 12.1. Force majeure shall mean circumstances that prevent the fulfilment of the Agreement and/or the Services for which the Contracted Party cannot be blamed, regardless of whether those circumstances were foreseeable.
- 12.2. The Contracted Party shall notify the Client as soon as reasonably practicable in writing that a force majeure event is occurring or has occurred and the obligations of the Contracted Party to perform the Services will be suspended until such time as the force majeure event has concluded.



- 12.3. A force majeure event shall include, but not be limited to: war, fire and other destructions, business interruptions, strikes, government measures, a general lack of the items or services required to fulfil the agreed performance, and non-foreseeable standstills relating to third parties on which the Contracted Party depends for the performance of the Services.
- 12.4. If the force majeure events lasts longer than 1 month, either party may terminate the Agreement upon written notice to the other, without any obligation to pay compensation other than for any Services carried out up to and including the date of termination.

Article 13. Payment, retention of title, collection charges

- 13.1. Payment must be made in US Dollars (unless a different currency is specified in the Offer), without deduction or set-off, within 30 days of the invoice date, unless agreed otherwise in writing. Any objections to the invoice, which must also be submitted within the stated period, do not suspend the Client's payment obligation.
- 13.2. Failure to make payment pursuant to clause 13.1, shall be deemed to be a breach of the Agreement and the Contracted Party shall be entitled, in addition to its other rights, to charge the Client interest on the entire amount due, calculated at 8% above the base rate of Bank of England. In addition, the Contracted Party will be entitled to recover all costs and expenses incurred in collecting the amount due on an indemnity basis.
- 13.3. The Client shall be liable to pay to the Contracted Party, on demand, all reasonable costs, charges or losses sustained or incurred by the Contracted Party (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Agreement, subject to the Contracted Party confirming such costs, charges and losses to the Client in writing.
- 13.4. In the absence of payment in due time of any invoice (pursuant to clause 13.1), all outstanding invoices, even invoices whose payment term has not yet expired, will become immediately due and payable by the Client.
- 13.5. The Contracted Party can at all times send interim invoices and/or require advance payments and/or require that the Client provide appropriate security, at the Contracted Party's discretion.
- 13.6. Payments made by the Client will always first be used to pay all outstanding interest and costs and secondly to pay invoices due and payable which have been outstanding for the longest period of time, even if the Client states that the payment concerns a later invoice.
- 13.7. With respect to payments and settlements, the Contracted Party's records will be binding at all times.
- 13.8. Any title due to transfer on completion of the Services and/or issuance of the Results performed by the Contracted Party ("Deliverables") shall not pass to the Client until the Contracted Party receives payment in full (in cash or cleared funds) for the Deliverables and any other goods that the Contracted Party has supplied to the Client in respect of which payment has become due, in which case title to the Deliverables shall pass at the time of payment of all such sums.
- 13.9. Until title to the Deliverables has passed to the Client, the Client shall:
 - 13.9.1. store the Deliverables separately from all other goods held by the Client so that they remain readily identifiable as the Contracted Party's property;
 - 13.9.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Deliverables;



13.9.3. maintain the Deliverables in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and

13.9.4. give the Contracted Party such information relating to the Deliverables as the Contracted Party may require from time to time.

13.10. If before title to the Deliverables passes to the Client the Client becomes subject to any of the events listed in clause 16.1, then, without limiting any other right or remedy the Contracted Party may have, the Contracted Party may at any time:

13.10.1. require the Client to deliver up all Deliverables in its possession which have not been resold, or irrevocably incorporated into another product; and

13.10.2. if the Client fails to do so promptly, enter any premises of the Client or of any third party where the Deliverables are stored in order to recover them.

13.11. The Results may be withheld by the Contracted Party should any payment be outstanding at completion of the Services.

13.12. The Results may be withheld by the Contracted Party should any payment be outstanding at completion of the contract.

13.13. Unless specifically stated otherwise in the Offer or proposal of work, the Contracted Party's payment schedule shall be as follows:

13.13.1. 100% of fees payable to third parties on behalf of the Client, to be incurred during the project, will be invoiced immediately on receipt of order; and

13.13.2. Professional fees are invoiced to the Client proportionally each calendar month for the estimated duration of the project, however the final invoice will be sent immediately upon completion of the project.

Article 14. End of the Agreement

14.1. The date of payment of the Contracted Party's final invoice is regarded as the date of termination of the Agreement, unless agreed otherwise, and provided that clauses 7 and 13 shall survive such termination.

14.2. If there is no such invoice (as described at clause 14.1 above), the Contracted Party will determine the date on which the Agreement can reasonably be deemed to have been terminated.

Article 15. Termination, interruption or extension of the order

15.1. The Client will compensate the Contracted Party for all costs and damage or loss resulting from the Client's termination, cancellation or interruption of an Agreement, without prejudice to the Contracted Party's right to take legal action.

15.2. If the Order is cancelled, the Contracted Party will charge the Client cancellation costs in accordance with the below schedule:

Process Stage	% of Offer value to be paid
Paperwork Applications (Application without samples)	
On PO Receipt	10%



<i>Application in Preparation (Following the Contracted Party's receipt of deliverables, as indicated on the status report)</i>	30%
<i>Application Prepared (Following the review and screening of deliverables by Contracted Party, as indicated on the status report)</i>	75%
<i>Application Submitted (Following the submission of application by the Contracted Party, as indicated on the status report)</i>	100%
Testing Applications (Application with samples)	
On PO Receipt	10%
<i>Application in Preparation (Following the Contracted Party's receipt of deliverables, as indicated on the status report)</i>	30%
<i>Application Prepared (Following the review and screening of deliverables by Contracted Party, as indicated on the status report)</i>	50%
Samples Received (Following the Contracted Party's receipt of samples)	75%
Testing Underway. (Following the start of testing procedures, as indicated on the status report)	100%
Portal	
On PO Receipt	10%
<i>Portal Access provided (Issuance of portal login details for nominated contact(s))</i>	100%
Research	
On PO Receipt	10%
<i>Application Preparation (Following the Contracted Party's receipt of deliverables, as indicated in Research Table)</i>	30%
<i>Application Prepared (Following the review of deliverables by Contracted Party, as indicated in the Research Table)</i>	75%
<i>Application Submitted</i>	100% of each country where application has been submitted.

15.3. In any case, the Contracted Party will be entitled to terminate the Agreement if an interruption by the Client lasts longer than six months, without being obliged to pay the Client any compensation. The effective date of an interruption is the date of the letter from the Client or Contracted Party in which the interruption is announced or, in the absence thereof, the date of the letter showing the interruption.

15.4. In the case of a delay or extension of the work involved in the Agreement, the Contracted Party may charge additional costs if the delay or extension cannot be attributed to the Contracted Party.

Article 16. Termination



- 16.1. Without affecting any other right or remedy available to it, the Contracted Party may terminate the Agreement with immediate effect by giving written notice to the Client if:
- 16.1.1. the Client commits a material breach of any term of the Agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;
 - 16.1.2. the Client repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;
 - 16.1.3. the Client suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 16.1.4. the Client commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 16.1.5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 16.1.6. the Client (being an individual) is the subject of a bankruptcy petition or order;
 - 16.1.7. a creditor or encumbrancer of the Client attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 16.1.8. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Client (being a company); or
 - 16.1.9. the Client (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 16.2. Where the Contracted Party terminates the Agreement pursuant to clause 16.1, every claim by the Contracted Party against the Client (including any issued invoices) will be due and payable immediately and in one lump sum.
- 16.3. The Client confirms that it is not the subject of any international sanctions either as a legal entity and/or any of its board members and/or any of its shareholders. In the event international sanctions apply to the Client and/or any board members and/or any shareholders, the Contracted Party will be entitled, without prejudice to any of its other rights pursuant to the Agreement, to suspend performance of the Agreement with immediate effect or to terminate the Agreement wholly or partially, at its sole discretion, without any liability to pay any compensation.



Article 17. Data Protection

17.1. The following definitions apply in this clause 17:

Controller, Processor, Personal Data, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426);

Domestic Law: the law of the United Kingdom or a part of the United Kingdom.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

17.2. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 17 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

17.3. The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller, and the Contracted Party is the Processor.

17.4. The Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Contracted Party and/or lawful collection of the Personal Data by the Contracted Party on behalf of the Client for the duration and purposes of the Agreement.

17.5. The Contracted Party shall, in relation to any Personal Data processed in connection with the performance by the Contracted Party of its obligations under the Agreement:

17.5.1. process that Personal Data as required by Domestic Law; and

17.5.2. comply with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred.

17.6. The Client agrees that the Contracted Party may process and transfer Personal Data to third parties as necessary for the performance of the Contracted Party's obligations under the Agreement, provided that the Contracted Party ensures such third parties comply with obligations equivalent to those set out in the Data Protection Legislation.

Article 18. Miscellaneous

18.1. At the Contracted Party's request and in the case of work associated with the order at the Client's site and/or installations, the Client will make the necessary facilities, such as auxiliary staff and auxiliary plant and equipment, available to the Contracted Party free of charge.

18.2. The Client shall not without the written consent of the Contracted Party assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement.

18.3. A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

18.4. The rights of the Contracted Party to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

18.5. The Client shall not, without the prior written consent of the Contracted Party, at any time from the date of the Agreement to the expiry of 6 months after the termination of the Agreement, solicit or entice away from the Contracted Party or employ or attempt to employ any person who is, or has been,



engaged as an employee, consultant or sub-contractor of the Contracted Party in relation to its obligations under the Agreement.

- 18.6. Any consent given by the Contracted Party in accordance with clause 17.5 shall be subject to the Client paying to the Contracted Party a sum equivalent to 20% of the then current annual remuneration of the Contracted Party's employee, consultant or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Client to that employee, consultant or sub-contractor.
- 18.7. The Client acknowledges and agrees that the Contracted Party may be required to disclose the Client's confidential information and / or personal data, to third parties that have a need to know, for the purposes of fulfilling the Agreement.

Article 19. Exports

- 19.1. Export Control Licence for the purposes of this clause 19, shall mean any public or governmental licence, approval, permit or similar (whether temporary or permanent), issued directly or indirectly, by the United Kingdom or any foreign government or authority which, from time to time, it is necessary to obtain in order to be entitled to market, import, export, re-export products and/or the provision of Services and/or the transfer of technology and/or Material or intellectual property rights.
- 19.2. The Contracted Party's performance of its obligations under this Agreement may, wholly or partly, be subject to Export Control Licences. If any such Export Control Licence requires signed end user certificates or any other approvals or consents from any governing authority in the applicable jurisdiction the parties agree to assist each other in applying for and completing the relevant end user certificates or other such approvals or consents and the Client undertakes to be bound by and apply the terms of such Export Control Licences.
- 19.3. The Contracted Party shall make reasonable efforts to obtain the necessary Export Control Licences, but the parties acknowledge that the issuance of Export Control Licences is at the sole discretion of the relevant authority. If any necessary Export Control Licence are delayed, denied or revoked, the Contracted Party shall notify the Client thereof in writing as soon as reasonably practicable, and the Contracted Party shall be entitled to a corresponding extension of the time for provision of the Services. In circumstances where the necessary Export Control Licence is denied or revoked, the Contracted Party shall be entitled to terminate the Agreement immediately upon written notice to the Client and the provisions of clause 16.2 shall apply.

Article 20. Disputes, applicable law

- 20.1. The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 20.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

Article 21. Translations

- 21.1. In the case of any differences between these Conditions and translations thereof, the English text will prevail.



Article 22. Complaints

- 22.1. If a dispute arises out of or in connection with the Agreement or the performance, validity or enforceability of it ("Dispute"), then, except as expressly provided in these Conditions, the parties shall follow the procedure set out in our Complaints Procedure, as amended from time to time.
- 22.2. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 20.

