



APEM LIMITED – CONDITIONS OF BUSINESS

1. INTERPRETATION

- 1.1 **Definitions.** In these Conditions, the following definitions apply:
Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.
Conditions: these terms and conditions and any amendment thereto agreed between Supplier and Customer in writing.
Contract: the contract between the Supplier and the Customer for the supply of Services as set out below or as the case may be incorporating these Conditions.
Customer: the person or firm who purchases Services from the Supplier.
Customer Materials: has the meaning set out in clause 4.1 (c)
Deliverables: the deliverables produced by the Supplier for the Customer pursuant to the Contract.
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 right, 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.
Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Contract.
Specification: the description or specification of the Services in the Contract.
Supplier: APEM Limited registered in England and Wales with company number 2530851.
Supplier Materials: has the meaning set out in clause 4.1(d).

2. BASIS OF CONTRACT

- 2.1 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
2.3 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 60 Business Days from its date of issue.

3. SUPPLY OF SERVICES

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
- ensure that the terms of the Contract and the Specification are complete and accurate;
 - co-operate with the Supplier in all matters relating to the Services;
 - provide the Supplier with such information and materials (**Customer Materials**) as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects; and
 - keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
 - the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. CHARGES AND PAYMENT

- 5.1 The Charges for the Services shall be set out in the Contract:
- Charges for additional work or deliverables not covered in the Contract shall be calculated in accordance with the Supplier's standard daily fee rates;
 - the Supplier's standard daily fee rates for each individual are calculated on the basis of a 7.5 hour day from [9.00 am to 5.00 pm] worked on Business Days;
 - the Supplier shall be entitled to charge an overtime rate as agreed with the Customer for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 5.1(b); and
 - the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, any associated expenses, mobilisation expenses, for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 5.2 The Supplier reserves the right to increase its standard daily fee rates, provided that such charges cannot be increased more than once in any 12 month period. The Supplier will give the Customer written notice of any such increase 8 weeks before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 4 weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving 4 weeks' written notice to the Customer.
- 5.3 The Supplier shall invoice the Customer as set out in the Contract or, if not specified, monthly in arrears.
- 5.4 The Customer shall pay each invoice submitted by the Supplier:
- as set out in the Contract or if not specified, within 30 days of the date of the invoice; and
 - in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract
- 5.5 All amounts payable by the Customer 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 the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.6 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 8 per cent per annum accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment.
- 5.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- ### 6. LABORATORY SAMPLES
- 6.1 Unless otherwise agreed prior to commencement of the contract APEM will retain and store client samples without charge for a period of 2 months following processing and the production of a raw data Excel report;
- 6.2 At the end of the agreed storage period, APEM will dispose of samples unless already instructed by the customer to be returned or retained subject to payment in advance;
- APEM's storage fees which as of 1st January 2017, and unless otherwise stated in our quote/tender, are £1.50 per ≤2 litre pot per month or part month or £2.50 per >2 litre pot per month or part month;
- 6.3 If an external audit is required the Customer must arrange for this to happen within 2 months of processing and the production of the raw data Excel report;
- 6.4 APEM will retain specimens and images of specimens for scientific research but specific details of the origin of the samples or the Customer will not be released without the prior agreement of the Customer;
- 6.5 The cost of external audit will be paid by the Customer.
- 6.6 A handling and transport charge for samples sent for external audit and/or those samples instructed by the client to be returned to the client will be paid for by the Customer.
- 6.7 Should any samples be lost or damaged for whatever reason, APEM's liability will be limited to the cost of analysis of the lost or damaged samples.
- 6.8 Samples for processing by APEM must be appropriately preserved by client and all fixatives or preservatives used on the samples provided must be clearly indicated in the chain of custody. Should APEM find inappropriate concentrations of fixative (e.g. >4% Formaldehyde solution), APEM will not process the sample, will not be liable for failure to process and will invoice client an additional £50 dangerous goods handling fee per sample. Any next steps required will be discussed.

7. **INTELLECTUAL PROPERTY RIGHTS**
- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 7.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 7.3 All Supplier Materials are the exclusive property of the Supplier.
- 7.4 The Customer grants to the Supplier a sub-licensable, non-exclusive, royalty free licence to use any Intellectual Property Rights in the Customer Materials to the extent necessary for the Supplier to perform the Services.
8. **CONFIDENTIALITY**
- A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 8 shall survive termination of the Contract.
9. **LIMITATION OF LIABILITY:**
- THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 9.1 Nothing in these Conditions shall limit or exclude the Supplier'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).
- 9.2 Subject to clause 9.1:
- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss or special damages arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the greater of:
- (i) the Charges payable under the Contract; and
- (ii) the amount set out in the Contract as the Supplier's Maximum Liability .
- 9.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 9.4 This clause 9 shall survive termination of the Contract.
10. **TERMINATION**
- 10.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 10.2 the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing of the breach;
- 10.3 the other party 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) 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;
- (a) the other party 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];
- (b) 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;
- (c) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (d) a creditor or encumbrancer of the other party 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;
- (e) 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 other party (being a company);
- (f) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1(b) to clause 9.1(g) (inclusive);
- (g) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (h) the other party (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.
- 10.4 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 10.5 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party 3 months' written notice.
- 10.6 Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 10.3 (a) – (h) or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
11. **CONSEQUENCES OF TERMINATION**
- On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials;
- (c) 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
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
12. **GENERAL**
- 12.1 Work under this Contract is not subject to the Construction Industry Scheme; Supplier is not registered.
- 12.2 Force majeure:
- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, adverse weather conditions or default of suppliers or subcontractors.
- (b) The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 12 weeks, either party shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the other party.
- 12.3 Assignment and subcontracting: The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent in agreement with the Customer.
- 12.4 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.5 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Supplier.
- 12.6 Governing law and jurisdiction: This Contract, 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.