

# TERMS AND CONDITIONS

## 1 DEFINITIONS

In these conditions:-

- "Conditions" means the terms and conditions set out in this document and any other special conditions applicable to the relevant Service as notified by IMSL.
- "IMSL" means Industrial Microbiological Services Ltd
- "the Service" means the microbiological testing or consultancy services in respect of the Sample identified on the invoice or contract
- "Contract" means the contract for the supply of the Service made subject to these Conditions
- "the Customer" means the company firm or person to whom IMSL may agree to provide the Service in accordance with these Conditions
- "the Sample" means the sample(s) of any goods, product, material or component supplied by or on behalf of the Customer being the subject of the Service and all ancillary items
- "Report" means a written report, email or electronic data file from IMSL setting out the results of the Service provided in respect of the Sample

## 2 GENERAL

- (a) Except where supplemented by any special conditions negotiated by IMSL the placing of an order by or on behalf of the Customer shall be deemed to be subject to these Conditions which the Customer is deemed to have accepted and which shall apply to the exclusion of any other provisions contained in any other document issued by or on behalf of the Customer and in particular, contained in any purchase order, request for service or acknowledgement sent by the Customer.
- (b) No modification or amendment of these Conditions shall be binding unless agreed to in writing by someone duly authorised on behalf of IMSL.
- (c) All orders are accepted subject to trade references being satisfactory.
- (d) No order which has been accepted by IMSL may be cancelled by the Customer except with agreement in writing of IMSL and on terms that the Customer shall indemnify IMSL in full against all loss (including loss of profit), costs and expenses incurred by IMSL as a result of or prior to cancellation.

## 3 PRICE

- (a) The price is inclusive of postage and carriage within the UK and exclusive of insurance during period of postage and during presence of any Sample at premises of IMSL.
- (b) All prices referred to in the Contract are exclusive of Value Added Tax which shall be payable in addition (if appropriate) at the rate ruling at the appropriate tax point.

## 4 PAYMENT

- (a) All sums due shall be paid nett within 30 days of the date of IMSL's invoice. Unless otherwise agreed in writing payment is to be made in pounds sterling. All payments should be made to Industrial Microbiological Services Ltd and sent to the address on the invoice.
- (b) If payment is not made in accordance with the Condition 4 (a) IMSL, without prejudice to its other rights and remedies hereunder or in contract or tort, reserves the right to charge interest on the outstanding amount at the rate of 8% per annum above the Bank of England Base Rate / Reference Rate from time to time until the outstanding amount is paid (whether before or after judgment) calculated at a daily rate plus compensation entitlement and legal fees in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 revised 2002 / European Directive 2000/35/EC. Time of payment is of the essence.
- (c) Such failure to pay the price or any part thereof and any monies payable by the Customer hereunder or under any other contract with IMSL also entitle IMSL to refuse to provide any further Service under this Contract or under any other contract and without incurring any liability whatsoever to the Customer for any delay.
- (d) The Customer shall pay all accounts in full and not exercise any rights of set-off, deduction, abatement or counter-claim against invoices submitted.
- (e) IMSL shall be entitled to a general lien on the Sample and / or the Report for payment of all monies due and outstanding from the Customer on any account.
- (f) Title and copyright in the Report shall not pass to the Customer until IMSL has received full payment of monies due and outstanding from the Customer in respect of the Service.

## 5 QUOTATIONS

All prices and any payment terms will be notified in writing by IMSL in quotations which will have specified validity periods. Quotations may be withdrawn or amended by IMSL before the end of their validity period.

## 6 RISK

The Sample shall remain at the Customer's risk at all times notwithstanding their presence at IMSL's premises or use by IMSL in the provision of the Service or otherwise and it shall be the sole responsibility of the Customer to insure the Sample.

## 7 SUPPLY OF SERVICE

- (a) IMSL will make all reasonable endeavours to effect supply as soon as reasonably practicable or (where applicable) on the date stated but any time or date (if any) stated of provision of the Service is given and intended as an estimate only and shall not be of the essence. IMSL shall not be liable in any way whatsoever for the consequences of any delay in supply.
- (b) Unless otherwise stated in writing IMSL shall be entitled to make partial provision of the Service.
- (c) Without prejudice to the terms of Condition 7 (a) in any event of any delay in delivery attributable to a cause outside IMSL's control IMSL shall be under no liability whatsoever to the Customer.
- (d) Upon written request of the Customer or notice by IMSL the Sample shall be returned to the Customer, otherwise the Sample shall be disposed of by IMSL (or at IMSL's discretion returned to the Customer at the Customer's expense).

## 8 CUSTOMER'S OBLIGATIONS

- (a) The Customer warrants and represents that:
- (i) the Sample is not dangerous to persons or property and contains no hazardous or contaminating substances, save as has been notified in writing by the Customer to IMSL at the time of or prior to receipt of such Sample by IMSL.
- (ii) the Customer is either the owner of the Sample or is authorised by such owner to provide IMSL with the Sample for the purpose of provision by IMSL of the Service.
- (iii) the Customer is either the owner of, has rights in or is authorised by such owner of all goods, product, material or component forming the Sample or any part of the Sample entitling the Customer to order the provision of the Service in respect of the same.
- (b) The Customer shall indemnify IMSL in respect of any loss, damage, claim, demand, cost or expense (including without limitation legal costs and expense) or liability (including without limitation infringement of any patent, copyright or any other intellectual property of any other person) arising from any breach of this Condition or from the provision of the Service or production of the Report by IMSL.

## 9 TRADEMARKS ETC

The Customer shall not use, remove, alter, obscure or otherwise interfere with or act in any way as may be construed by IMSL as infringing (or being detrimental to) any trademarks, copyright and other intellectual property rights belonging to IMSL (or any third party) relating to the Service or any part thereof without prior written consent of IMSL.

## 10 EXCLUSION OF LIABILITY

- (a) IMSL warrants that the results as stated in the Report are accurate in so far as they relate to that Sample as received in the laboratory of IMSL. Except in respect of death or personal injury caused by IMSL's negligence IMSL accepts no other liability or responsibility to any party whatsoever (whether caused by the negligence of IMSL, its employees, or agents or otherwise) arising out of or in connection with the provision of the Service or performance of a Contract. In particular, but without prejudice in the generality of the foregoing IMSL shall have no liability or responsibility whatsoever in respect of or in any way by reference to:-
- (i) the taking of the Sample (unless this is done by an agent of IMSL), the accuracy of the Sample or its suitability for the purpose(s) for which it is taken or applied, the designation, handling, storage or transport of the Sample prior to its delivery to the laboratory of IMSL or its condition upon such delivery
- (ii) the interpretation of the Report and / or the application of the results as stated and / or the accuracy of any advices based thereon
- (iii) any (or any alleged) lack of competence, negligence, failure or breach of duty on the part of any person engaged in or responsible for any of the activities or functions referred to above whether or not such agent is described as an agent of IMSL or otherwise. All such persons shall be deemed to be agents of the Customer and not to be agents or representatives in any capacity of IMSL
- (iv) incorrect information or data supplied by the Customer relating to the Sample
- (v) loss of or damage to the Sample when in the possession of IMSL
- (vi) delay in provision of the Service or mis-delivery or non-delivery of any Report or Sample.
- (b) In the event of any claim arising against IMSL, IMSL expressly excludes liability for any consequential loss or damage or any loss of value, profit, business, revenue, goodwill, yields, production or anticipated saving which may arise in respect of or in any way by reference to any Report, analysis, advice or information given verbally by any person or contained in any Report, leaflet, book, pamphlet, brochure or any other document, whether prepared, published or issued by IMSL or otherwise.

## 11 TERMINATION

Without prejudice to its other rights IMSL shall have the right to cancel any Contract immediately if:

- (a) the Customer shall default in due performance or observance of any of its obligations under the Contract or any other contract between the Customer and IMSL
- (b) if an interim order is applied from or made, or a voluntary arrangement approved, or if a petition for a bankruptcy is appointed of the Customer's estate or, (the Customer being a company) a voluntary arrangement is proposed or approved or an administration order is made, or a receiver or administrative receiver is appointed of any of the Customer's assets or undertaking or a winding-up resolution or petition is passed or presented (otherwise than for the purposes of reconstruction or amalgamation), or if any circumstances arise which entitle the Court or a creditor to appoint a receiver, administrator or to present a winding-up petition or make any winding-up order or the equivalent as may exist in the relevant.

## 12 FORCE MAJEURE

IMSL shall not be liable for any delay, interference with or failure to provide the Service or any part thereof where such failure results directly or indirectly from circumstances beyond its reasonable control including but not limited to any failure by the Customer, power failure, breakdown or defects of instruments, apparatus and materials or order of any government authority.

## 13 ASSIGNMENT

The Customer shall not assign or transfer or purport to assign or transfer any Contract to which these Conditions apply or the benefit thereof to any other person whatsoever without the consent of IMSL. IMSL reserves the right to transfer, assign or sub-contract the benefit and of burden of the Contract.

## 14 PROPER LAW

All Contracts made between IMSL and the Customer and Services provided by IMSL to the Customer shall be governed by and construed in accordance with English Law and the Customer shall submit to the exclusive jurisdiction of the English Courts