

# TERMS AND CONDITIONS October 1<sup>st</sup> 2007 FOR THE SUPPLY OF TESTING AND CALIBRATION SERVICES

## BY SHEFFIELD TESTING LABORATORIES LTD (“STL”)

a company incorporated in England and Wales under company registration number 76383

### 1. Formation of Contract.

1.1 These Terms and Conditions (the “Terms and Conditions”) shall apply to all contracts for the supply of testing, calibration and/or other services (the “Services”) by STL to a customer (“the Customer”).

1.2 These Terms and Conditions shall prevail over any inconsistent terms or conditions contained in or referred to in the Customer’s purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.

1.3 The Customer’s purchase order or the Customer’s acceptance of a quotation for Services by STL constitutes an offer by the Customer to purchase the Services specified in it on these Conditions. No offer placed by the Customer shall be accepted by STL other than by a written acknowledgement issued and executed by STL or (if earlier) by STL starting to provide the Services, when a contract for the supply and purchase of those Services on these Terms and Conditions will be established (the “Contract”).

1.4 No acceptance or acknowledgement, even if in writing and signed by STL, of the Customer’s purchase order or any other document pertaining to the Services shall constitute acceptance of any provision of the Customer’s purchase order or any other document that conflicts with or adds to these Terms and Conditions unless STL specifically agrees to such a variation of these Terms and Conditions pursuant to and in accordance with this condition.

1.5 No quotation given by STL shall be an offer to contract with any person and no Contract shall come into existence except in accordance with condition 1.3.

1.6 The delivery to STL by the Customer of any item for testing or calibration by STL (a “Sample”) or the delivery of any request by the Customer to STL for the provision of any similar services shall, upon acceptance of that Sample or request by STL, constitute an “offer” referred to in condition 1.3. If STL begins such testing, calibration or similar services on that Sample, the “offer” shall be deemed to have been accepted by STL and a Contract shall have been formed. These Terms and Conditions shall apply to that Contract.

### 2. Variation

None of these Terms and Conditions may be varied or waived by either party unless the variation or waiver is in writing and is signed by an officer of STL. The variation or waiver must set out the condition or conditions to be varied or waived and the detail of each such variation or waiver. Any variation or waiver made under this clause only applies to the party to whom the variation or waiver is addressed and the circumstances for which it is given.

### 3. Prices & Payment

3.1 The consideration payable by the Customer in respect of Services (“Consideration”) shall be that amount stated in the relevant quotation, proposal or order confirmation issued to the Customer by STL.

3.2 Prices quoted by STL for Services are solely for the performance of the Services and are exclusive of all charges in respect of delivery, insurance, inspection, packaging charges, or storage costs and all other taxes (including, for the avoidance of doubt and without limitation, all value added tax and equivalent taxes and all customs and excise duties) and charges (“Costs”).

3.3 Unless STL expressly agrees in writing to pay any particular Cost, the Customer shall pay all such Costs, none of which shall be included in the calculation of the Consideration and, in the event that STL incurs any such Costs, the Customer shall forthwith on demand indemnify STL in respect of those Costs.

3.4 Subject to express agreement with STL to the contrary, the Consideration payable by the Customer for Services in respect of any Sample delivered to STL shall be not less than such minimum charge as STL may notify to the Customer from time to time.

3.5 Written and oral quotations provided by STL to any Customer in respect of any proposed Services shall be valid for thirty (30) days from the date thereof and STL may withdraw any such quotation at any time.

3.6 The Customer shall pay Consideration to STL by electronic bank transfer in cleared funds as specified in STL’s quotation, proposal or order confirmation and, unless STL expressly agrees otherwise in writing under condition 2, it shall make such payment in pounds sterling only.

3.7 STL may issue invoices in respect of Services either:

- (i) upon completion of the relevant Services; or
- (ii) if the Services comprise a series of elements (each an “Element”), upon completion to STL’s reasonable satisfaction of each such Element. In this case, STL will invoice for that proportion of the total Consideration for the Services to be performed under the relevant Contract that the Element or Elements then completed but not yet invoiced represent.

3.8 If STL’s performance of the Contract is delayed by the Customer or other causes beyond STL’s reasonable control, STL may issue such invoice or invoices which cover the Services already provided, and the Customer shall pay the Consideration stated in such invoice or invoices. If such delay is caused by the Customer, then the Customer shall in addition indemnify STL in respect of all reasonable losses, expenses and Costs of STL arising from the delay including, without limitation, any such expenses arising from storage of any Sample for any time in excess of the date at or before which the parties had previously agreed that the relevant Services were to be completed.

3.9 The Customer shall pay the Consideration stated in any invoice for Services provided pursuant to these Terms and Conditions in full, without deduction or set-off, within thirty (30) calendar days of the date stated on that invoice, unless STL specifically agrees otherwise in writing.

3.10 If the Customer fails to pay the Consideration stated in any invoice in full on the due date as provided under these conditions, simple interest shall accrue on the unpaid balance of that Consideration at the annual rate of 8% above the base rate of the Bank of England, for the time being.

3.11 The Customer agrees to indemnify STL in respect of all reasonable legal and collection fees which it may incur in recovering any sum which is due from the Customer under or in connection with any Contract.

3.12 If STL at any time reasonably believes that the Customer may not pay any Consideration, Costs or other charges which are or may become due to it or, not comply with any other obligation pursuant to or in connection with any Contract, STL may at its sole discretion require the Customer to take such action as STL may reasonably decide to ensure that the Customer will make such payment or comply with such obligation or obligations. This includes, without limitation, the advance payment to STL of any sum on account of fees and/or charges as STL may decide. Until the Customer has complied with any requirement referred to in this condition 3.12, STL may suspend performance of any part of the Contract in respect of which it has not at that date received payment.

### 4. Completion of Services - Limited Warranty.

4.1 STL warrants that it will complete the Services in a satisfactory and workmanlike manner, consistent with industry standards.

4.2 Subject to this condition 4, STL will use its reasonable endeavours to complete Services and provide a report or certificate thereon to the Customer by any date reasonably requested in writing by the Customer, but STL shall not be liable for any delay in the performance of any obligation under any Contract, or for any damages suffered by the Customer by reason of any such delay.

4.3 Time shall not be of the essence as to the performance of STL’s obligations under the Contract.

4.4 STL’s obligation to complete Services under the Contract shall be subject to any obligation it may have to comply with any law or other regulation binding on it which may be in force from time to time.

4.5 STL does not make any warranty in respect of any portion of the Services performed by a party other than STL, except to the extent that any such third party has warranted such performance to STL and is liable to STL under such warranty.

4.6 No employee, agent or other person is authorised to give any warranty or make any representation on behalf of STL in relation to the Contract, or to assume for STL any other liability in connection with the Services, unless that warranty or representation is given to the Customer in writing, signed for and on behalf of STL by an authorised officer of STL.

### 5. Customers’ Property.

5.1 If a Customer provides STL with detailed instructions in writing as to the treatment and handling of particular items of its property, STL will use its reasonable endeavours to comply with such instructions.

5.2 The Customer shall specify to STL in writing the type of material, tolerances and specifications for processing any Sample prior to STL’s commencing testing, calibration or other similar services in relation to that Sample.

5.3 In the event that the Customer fails to provide any such information as is referred to in condition 5.2 before STL begins to undertake Services in relation to the relevant Sample, STL shall not bear any liability arising from those Services which it would otherwise bear as a result of it committing or omitting to commit any act which it might reasonably not have done if the Customer had communicated the relevant information to STL prior to beginning the relevant Services.

5.4 The Customer acknowledges and expressly agrees that testing services carried out by STL may damage or destroy any and all Samples and any other materials or property delivered by Customers to STL in relation to the Contract.

- 5.5 When testing services are carried out, STL shall not be liable in respect of any costs or losses resulting from damage to or destruction of any property belonging to the Customer unless the relevant property and the relevant purchase order in respect of the Services for which the property is delivered to STL is clearly marked "Do Not Destroy". If the Contract and Customer's property are so marked, STL's liability for damage to the Customer's property is limited to the lesser of: (i) the value of Customer's property; or (ii) the cost of the Services performed on the damaged property pursuant to the Contract. Under no conditions will STL be responsible for any additional costs or damages, including consequential damages and indirect costs or losses, resulting from destruction of Customer's property.
- 5.6 When calibration services are carried out, STL's liability for damage to the Customer's property is limited to the lesser of: (i) the value of Customer's property; or (ii) the cost of the Services performed on the damaged property pursuant to the Contract. Under no conditions will STL be responsible for any additional costs or damages, including consequential damages and indirect costs or losses, resulting from damages to and/or destruction of Customer's property.
- 6. Re-Delivery.**
- 6.1 STL will at the Customer's reasonable written request, deliver Customer's property back to the Customer after performing Services relating to that property. STL may use any method of delivery that it reasonably decides and will not have any liability in respect of any such item so delivered. STL may at its discretion instruct any person delivering such property to the Customer to invoice that Customer directly in respect of that delivery and the Customer shall make any and all claims for property damaged in transit directly and solely against such delivery company or other person.
- 6.2 STL may procure insurance in respect of delivery referred to in condition 6.1 if so requested in writing by the Customer and provided that, in such notification, the Customer also notifies the value of that property to STL. Any failure of STL to purchase such insurance shall not result in any liability on the part of STL.
- 7. Title & Security.**
- 7.1 Title to the Customer's property which is delivered to STL and all risk of loss or damage to such property shall remain with the Customer at all times. On delivery of any property of the Customer to STL with a view to Services being carried out in relation to that property, the Customer grants to STL a lien over all such property, as security against payment to STL of the Consideration and any and all other fees or charges due to STL hereunder and shall upon request grant such other security over that property to STL as STL may from time to time require. STL may retain all property delivered to it until all sums due and owing to STL by the Customer have been paid.
- 7.2 The Customer will not be entitled to the return of any of its property which it provides to STL.
- 7.3 The Customer shall execute and deliver any document to STL that STL reasonably requests in connection with STL's security over the Customer's property referred to in this condition 7. The Customer shall do all other acts necessary for the perfection and preservation of that security that STL may reasonably request.
- 8. Customer's Remedies & Limitation of Liability.**
- 8.1 This condition 8 sets out the entire financial liability of STL to the Customer in respect of any breach of the Contract, any use made by the Customer of Samples or any part of them on which Services are carried out and any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 8.2 Other than as expressly set out herein and as specifically warranted in writing to the Customer by an officer of STL, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.3 Subject to this condition 8, STL shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information or any special, indirect, or consequential loss, or any costs, damages, charges or expenses.
- 8.4 The sole and exclusive remedy of the Customer in respect of any claim against STL under the Contract, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise, shall be: (i) upon the return, restoration, or replacement by STL of the Customer's property upon which the Services were performed, the re-performance of any defective portion of the Services; or (ii) at STL's option, a refund or credit to Customer in the amount of the price paid for the defective portion of the Services.
- 8.5 The Customer's remedies hereunder shall only be available if: (i) the Customer has paid all outstanding Consideration owed to STL; (ii) the Customer notifies STL in detail and in writing of the alleged basis for the relevant claim within two months of the Customer's becoming aware thereof and within one year after the completion of the Services to which the claim relates; and (iii) STL is permitted to inspect any and all property with respect to which the relevant Services are claimed to have been defective or to which Customer's claim otherwise relates.
- 8.6 Nothing in these Terms and Conditions limits or excludes the liability of STL for death or personal injury resulting from negligence or for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by STL.
- 9. Cancellations.**
- 9.1 The Customer may only cancel (in whole or in part) an order placed with STL, and which STL has accepted, with the written consent of STL.
- 9.2 If a Contract has been formed and the Customer cancels any order (in whole or in part) being the subject of that Contract without STL's consent, the Customer shall be liable for the full amount of the Consideration agreed under that Contract plus all Costs incurred by STL under the Contract prior to the cancellation.
- 10. Court and Other Proceedings.**
- 10.1 In the event that the Customer requires STL to present the results of findings of Services carried out by STL in witness statements, court hearings or other legal or other proceedings, the Customer shall pay to STL such costs and fees for such presentations and the preparation thereof as STL may charge to Customers generally from time to time for such services and such payment shall be in addition to the Consideration.
- 10.2 If STL is required by a party other than the Customer to provide any evidence in any legal proceedings relating to the Customer, that Customer shall pay the total costs and fees arising from any Services which STL is required to do as a result, including without limitation the preparation of any witness statement and the preparation for and appearance at any court hearing. The Customer shall pay all such costs, whether or not the Customer has paid all outstanding Consideration under the Contract and whether or not STL has closed the Customer's file in respect of the relevant matter.
- 10.3 STL will, at the Customer's written request, use its reasonable endeavours to have the costs and fees referred to in condition 10.2 paid by the party requiring STL to do the services referred to. However, if such party does not pay all those costs and fees to STL within a reasonable period following their becoming due for payment, the Customer shall on demand pay the unpaid balance of all such costs and fees to STL.
- 10.4 The Customer agrees to pay any such costs and fees referred to in condition 10.3 irrespective of whether it is anticipated at the time of the Contract that STL will be called upon to present the results of its findings in any witness statement, court hearing or other proceedings.
- 11. Force Majeure.**
- 11.1 The parties hereto shall not be liable to perform any obligation hereunder if inability to perform is caused directly or indirectly by any act of God, flood, war, riot, accident, explosion, strike or labour dispute, compliance with any law, delay or default by subcontractor or supplier of materials or services, the existence of any circumstance making performance commercially impracticable or any other cause beyond the party's reasonable control; provided, however, that this clause shall not apply to any obligation to make payments due to STL under this agreement.
- 12. Waiver of Compliance.**
- 12.1 Waiver by either party hereto of a breach by the other party of any of the provisions of these terms and conditions shall not be deemed a waiver of future compliance therewith, and such provisions shall remain in full force and effect.
- 13. Severability.**
- 13.1 If any provision or remedy herein provided for be invalid under any applicable law, it shall be deemed severed from the Contract and the remaining provisions of these Terms and Conditions, including any remaining default remedies, shall be given effect in accordance with the intent hereof.
- 14. Third Parties**
- 14.1 The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.
- 15. Governing Law.**
- 15.1 The Contract shall be governed by and construed under the laws of England and Wales.
- 15.2 The parties to the Contract hereby submit to the exclusive jurisdiction of the English courts.
- 16. Arbitration.**
- 16.1 Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause.
- 16.2 The number of arbitrators shall be one.
- 16.3 The seat, or legal place, of arbitration shall be London.
- 16.4 The language to be used in the arbitral proceedings shall be English.
- 16.5 The governing law of the contract shall be the substantive law of England and Wales.