

# Kiwa Limited T/A Kiwa CMT

## Terms and Conditions

The Terms and Conditions of Kiwa Limited T/A CMT for the performance of services (the “Conditions”).

### 1. Definitions and interpretations.

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, which is in addition to, or supplemental to, the Services;  
**Agreement:** any agreement that is formed with respect to performance of Services by the Contracted Party for the Client (including any subsequent variation thereto) comprising the Quotation and these Terms and Conditions;

**Test Report:** the test report prepared by the Contracted Party and delivered to the Client (in such format as may be updated from time to time), and “**Report**” shall be construed accordingly;

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

**Confidential Information:** all confidential information (however recorded or preserved) disclosed by a party or its representatives to the other party and that party's representatives in connection with the Services, including but not limited to:

- (i) the existence and terms of the Agreement;
- (ii) any information that would be regarded as confidential by a reasonable business person relating to:
  - (a) 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);
  - (b) 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); and
  - (c) any information developed by the parties in the course of carrying out the Agreement;

**Contracted Party:** Kiwa Limited T/A Kiwa CMT;

**Kiwa Mark:** means a specific type of mark or trade mark issued by the Contracted Party;

**Kiwa Policies:** [Policies and Procedures \(kiwa.com\)](https://www.kiwa.com/policies-procedures);

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

**Quotation:** the proposal submitted by the Contracted Party to the Client with respect to the provision of Services to be carried out by the Contracted Party;

**Results:** the outcome of the performance of the Services by the Contracted Party; and

**Services:** the services to be performed by the Contracted Party detailed in the Quotation 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.

### 2. Applicability

- 2.1. Unless agreed otherwise in writing or otherwise stipulated in the Quotation, these Conditions apply to all Agreements 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 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 in 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

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provision or part-provision shall not affect the validity and enforceability of the rest of these Conditions.

- 2.5. All juristic or other acts and actions performed by an officer or employee of the Client in relation to the Agreement 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.
- 2.6. The parties acknowledge and agree that not all terms within these Conditions may apply to every service or engagement. The specific applicability of a Condition herein will be determined at the sole discretion of the Contracted Party, depending on the nature of the Services provided under a particular Agreement.
- 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 Condition 2.7. is a material breach.

**3. Formation of the Agreement**

- 3.1. The Quotation constitutes an offer by the Contracted Party to provide the Services subject always to the Conditions. Quotations will be valid for 1 month from date of issue, unless agreed otherwise in writing.
- 3.2. The Agreement comes into force after the Client places an order in response to a Quotation and either (i) the Contracted Party has issued written confirmation of its acceptance of such order “**Order Acknowledgement**”; or (ii) the Contracted Party commences performance of the Services; whichever occurs earlier.
- 3.3. All images, drawings, statements about measurements and weights, calculations, statements concerning capacities, results and/or expected performance, 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 performed 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 Quotation thereon and to carry out the Services.

**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 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. Any timescales stated by the Contracted Party, including but not limited to the periods for performance of the Services, are indicative only. 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 pursuant to clause 2.2, 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.

- 4.5. The Contracted Party will only be obliged to perform Additional Work if the Contracted Party has provided an Order Acknowledgement to the Client for the performance of such Additional Work and the Contracted Party is satisfied that any payment or provision of security required has been provided by the Client. In the absence of specific agreement in writing between the parties, any Additional Work will be carried out by the Contracted Party at prices that are based on rates equivalent to the Services to which they relate.
- 4.6. 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.
- 4.7. The Client shall arrange for all deliverables required by the Contracted Party for performance of the Services are provided to the Contracted Party in good time. If any deliverables required for the performance of the Services have not been provided to the Contracted Party in good time, the Contracted Party will be entitled to delay its performance of the Services, suspend performance of the Services and/or charge additional costs (ensuing from the delay) to the Client at the Contracted Party’s standard rates.
- 4.8. The Client shall arrange for any facilities to be made available to the Contracted Party free of charge, including auxiliary staff, auxiliary plant and equipment, to enable the Contracted Party to carry out the Services at the Client’s site and/or to the Client’s installations safely and the Client shall 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. .
- 4.9. 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.
- 4.10. Whilst carrying out the Services in the Client’s buildings or at the Client’s sites, the Contracted Party will (where notified in writing) obey the applicable company and other rules and comply with all reasonable directions given by or on behalf of the Client.
- 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 it desirable or necessary, for purposes of the correct or timely performance of the Services, it is authorised to subcontract any of its obligations hereunder to a third party. Should the Contracted Party subcontract any of its obligations hereunder, it agrees to only outsource the Services to a third party that has the accreditation and/or expertise required for the Services.

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- 4.13. The Client will not exert improper pressure on the Contracted Party and employees of the Contracted Party in the performance of the Services. The Contracted Party operates non-discriminatory policies and procedures as part of its activities, thereby making the Services accessible to all applicants.
- 4.14. Any failure in the performance of the 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 the notification to the Contracted Party takes place more than 10 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.
- 4.15. From time to time, the Contracted Party, a regulatory third-party observer, or auditors/inspectors may need to carry out full or part visits of any premises used by the Client in connection with the Services. The Contracted Party is entitled to charge reasonable expenses incurred in arranging and attending such visits. The Client shall be notified (where possible) in advance of the name and status of the representative from the Contracted Party, proposed third-party observer or auditor/inspector (as applicable). If the Client cancels any scheduled visit within 30 days of the agreed date, the Client will be liable for any and all applicable cancellation charges.
- 4.16. No responsibility will be accepted for the disruption to underground services that have not been clearly brought to the Contracted Party's attention by the Client.
- 4.17. Reinstatement completed by the Contracted Party is temporary and should not be considered final. The responsibility for ensuring permanent and satisfactory reinstatement lies with the Client.
- 4.18. Failure to comply with the Contracted Party's health and safety workflow and procedures shall result in the immediate termination of the Agreement, in which case the Client shall pay the full cost of Agreement to the Contracted Party, including any additional costs arising from early termination.

**For Testing Services:**

- 4.19. Notwithstanding the provision of the Services by the Contracted Party to the Client, the Client shall remain responsible for fulfilling any applicable 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 testing of products in ongoing production, the Client shall retain all responsibility for maintaining consistency in the products. Where the Services relate to an on-the-spot inspections, the condition recorded, and any subsequent interpretations relate only to the sample inspected during the time on site.
- 4.20. 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 endeavors 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 or other Reports, 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:**

- 4.21. 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.
- 4.22. The Client acknowledges that the Contracted Party's advice and recommendations are provided in accordance with clause 4.18 and that the Contracted Party does not guarantee any particular outcome or result.
- 4.23. 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.
- 4.24. 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.

**For Training Services:**

- 4.25. The Contracted Party shall perform the Services using reasonable skill and care, ensuring that the training content reflects current industry standards and applicable regulations. The Contracted Party shall make reasonable efforts to ensure that the training provided is up-to-date.
- 4.26. The Contracted Party makes no warranty, express or implied, regarding the applicability, effectiveness, or outcomes of the training provided.
- 4.27. The Client acknowledges that the implementation of the training and any decisions made based on it are the sole responsibility of the Client.
- 4.28. The Client is responsible for how it applies the training, and the materials provided. The Contracted Party shall not be liable for any consequences arising from the Client's use of the training or failure to implement the training correctly.
- 4.29. The Contracted Party retains all rights, title, and interest, including copyright, in any Materials created for training purposes and provided under this Agreement. Where any Materials are owned by a third party, the ownership of such Materials remains with the original owner, and the Client is granted a non-exclusive, non-transferable, revocable license to use the Materials solely for training its employees, subject always to any terms set by the original owner.
- 4.30. The Client shall not reproduce, distribute, modify, create derivative works from, or otherwise exploit the Materials created for training without the prior written consent of

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the Contracted Party. Unauthorized use of any Materials will be considered a breach of this Agreement.

**5. Prices and rates**

- 5.1. All prices are in pounds sterling (unless a different currency is specified in the Quotation) and, unless agreed otherwise in writing, always exclusive of VAT, travelling and accommodation expenses, the production of additional technical documentation (e.g. method statements, risk assessments et cetera), meeting/site consultation fees, and waiting hours/delays beyond the Contracted Party's control. For the avoidance of doubt, any costs relating to work performed or deliveries made by third parties will be charged separately by the Contracted Party to the Client (and not invoiced by the third party directly to the Client) unless otherwise specified in the Quotation.
- 5.2. The Contracted Party shall have the right at any time to increase the prices by any amount attributable to any variation in (i) the cost of materials, labour or production costs, or (ii) exchange rates, and in each case between the date of formation of the Agreement and the date on which the Services commence pursuant to these Conditions.
- 5.3. The Client shall be solely responsible for paying all customs duties, import/export taxes, tariffs, and any other government-imposed fees or charges related to the shipment and delivery of Services under this agreement.

**6. Liability**

- 6.1. Nothing in the Agreement shall limit or exclude the Contracted Party's liability for:
  - 6.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 6.1.2. fraud or fraudulent misrepresentation; or
  - 6.1.3. 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 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:
  - 6.2.1. loss of profits;
  - 6.2.2. loss of sales or business;
  - 6.2.3. loss of agreements or contracts;
  - 6.2.4. loss of anticipated savings;
  - 6.2.5. loss of or damage to goodwill;
  - 6.2.6. loss of use or corruption of software, data or information; or
  - 6.2.7. any indirect or consequential loss.
- 6.3. Subject to clause 6.1 and 6.2, 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 Quotation 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).
- 6.4. 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.

- 6.5. 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.
- 6.6. Unless otherwise agreed in writing, the Contracted Party gives a 1 year warranty in relation to any applicable design or quality of materials of any equipment it supplies, to be counted from the date of delivery. If a third party from whom the Contracted Party purchases all or part of the equipment concerned gives a more limited warranty, the terms of such warranty shall apply to the Agreement and the Contracted Party shall be entitled to notify the Client upon delivery of the equipment concerned that the warranty will be adjusted accordingly.
- 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 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 has no liability whatsoever or howsoever arising as a result of 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 has no liability whatsoever arising out of any claims, actions, proceedings, demands, liabilities, costs, expenses or any other losses incurred by the Client arising from any failure of the Client's products to:
  - 6.12.1. achieve a standard or certification; or
  - 6.12.2. 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

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the Client or its use or for any costs in connection with a product recall.

subject to the same confidentiality provisions as are contained in this clause 7.

**7. Confidentiality**

- 7.1. The Client will only use the Quotation (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 set out in this clause 7, do not apply to Confidential Information that:
  - 7.4.1. was already in the Contracted Party's possession;
  - 7.4.2. is generally known and/or becomes generally known, without this being the result of any imputable acts or omissions of the Contracted Party;
  - 7.4.3. the Contracted Party obtained from a third party in a lawful manner or from its own research, without using data or results that are not accessible to third parties;
  - 7.4.4. have not been or will not be regarded as confidential in consultation with the Client;
  - 7.4.5. must be disclosed pursuant to the law or a regulation based thereon;
  - 7.4.6. is available to the public;
  - 7.4.7. forms part of any testing undertaken by a third-party agent on behalf of the Contracted Party, as required by the Services; or
  - 7.4.8. 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.
- 7.5. The obligations set out in this clause 7 do not apply:
  - 7.5.1. 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;
  - 7.5.2. if confidentiality is prohibited by any applicable statutory regulations;
  - 7.5.3. 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; or
  - 7.5.4. if there is a danger to people or objects.
- 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.
- 7.8. In the case of an audit being conducted pursuant to clause 7.5.3, the Contracted Party shall procure that the auditors observe the same confidentiality obligations as those set out in this clause 7 in relation to the data provided for inspection.
- 7.9. Where clause 4.15 applies, any third parties who are involved in the performance of the Services shall be

**8. Results**

- 8.1. The Client is entitled to the full and free use of the Results. The Contracted Party can at any time refuse to issue a Report or revoke an issued Report if there are any outstanding payments due.
- 8.2. 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.
- 8.3. 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 Quotation. 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.
- 8.4. Any Report provided by the Contracted Party is based solely on local procedures. The Contracted Party expressly disclaims any warranty, whether express or implied, regarding the accuracy, completeness, or reliability of the information contained within the Report. The Contracted Party will not be responsible for any errors, omissions, inconsistencies, or discrepancies that could not have been foreseen or discovered based on the information made available to the Contracted Party at the time of the inspection and/or testing.

**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. use the Material or allow it to be used for instituting claims, conducting legal proceedings, or for recruitment purposes.
  - 9.2.3. .
- 9.3. The provisions of this clause 9 do not apply to quality surveys, test reports or inspection reports. Disclosure of these reports by the Client is permitted, provided they are disclosed in full, without any additions or omissions. Publication in a language other than English shall be subject to the Contracted Party's prior consent in writing.
- 9.4. 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:
  - 9.4.1. the Client discloses Results in a manner that may give rise to an incorrect representation of the facts or any misunderstandings;
  - 9.4.2. the Client refers to the standards and requirements applied by the Contracted Party, such as inspection requirements; or
  - 9.4.3. the Client does anything else within the contemplation of this clause 9.

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**10. Patent**

- 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.

**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 to 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.

**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 last 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.

**13. Payment, retention of title, collection charges**

- 13.1. Payment must be made by the Client to the Contracted Party in pounds sterling (unless a different currency is specified in the Quotation), without deduction or set-off, within 30 days of the invoice date, unless agreed otherwise in writing. Payments can be made by debit card, credit card, or BACS. The Contracted Party does not accept American Express. Any objections to an invoice, must be submitted within this 30-day period but do not override the Client's obligation to make payment in full.
- 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

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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;
  - 13.9.4. notify the Contracted Party immediately if it becomes subject to any of the events listed in clauses 16.1.3 to 16.1.9; and
  - 13.9.5. 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.

**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.

**15. Termination, interruption or extension of the order**

- 15.1. Unless otherwise stated in the Quotation, if any Order Acknowledgement is cancelled by the Client, the Contracted Party will charge the Client cancellation costs as follows:
  - 15.1.1. If the cancellation takes place less than 2 weeks but more than 1 week prior to the start of the performance of the Services: 60% of the total sums as set out within the Quotation;
  - 15.1.2. If the cancellation takes place less than 1 week prior to the start of the performance of the Services: 90% of the total sums set out within the Quotation.
- 15.2. In the event of a cancellation pursuant to clause 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.

- 15.3. The Contracted Party shall be entitled to terminate the Agreement if an interruption by the Client lasts longer than 6 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 describing the interruption.
- 15.4. In the case of a delay, the Contracted Party may charge additional costs if the delay cannot be attributed to the Contracted Party.

**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

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- 16.1.8. 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 Condition 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. Upon termination of the Agreement (for any reason), the Client shall return any materials and equipment provided to it by the Contracted Party and the Client’s license under clause 11.1 shall be expire immediately.
- 16.4. 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.

**17. Data Protection**

- 17.1. The following definitions apply in this clause 17:
- 17.1.1. **Controller, Processor, Personal Data**, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.
- 17.1.2. **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);
- 17.1.3. **Domestic Law**: the law of the United Kingdom or a part of the United Kingdom.
- 17.1.4. **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.

**18. Miscellaneous**

- 18.1. With the exception of statements made fraudulently, the Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all previous agreements between the parties relating to such matters and no party has relied upon any representation save for a representation expressly set out in the Agreement.
- 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 the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.
- 18.4. The rights of the Contracted Party to terminate, rescind or agree any variation, waiver or settlement under the Agreement are not subject to the consent of any other person.
- 18.5. Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party and each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 18.6. No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 18.7. Any notice or other communication given to a party under or in connection with the Agreement shall be in writing and shall be:
  - 18.7.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - 18.7.2. sent by email to the email addresses formally communicated by the respective party.
- 18.8. Any notice or communication shall be deemed to have been received:
  - 18.8.1. if delivered by hand, on signature of a delivery receipt; and

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- 18.8.2. if sent by next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
- 18.8.3. if sent by email, at the time of transmission, or, if this time falls outside Business Hours, at 9.00 am on the next Business Day after transmission.
- 18.9. Clauses 18.6 and 18.7 above do not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution, nor do they apply to the service of any form of notice to terminate the Agreement; and, for the avoidance of doubt, any such notice to terminate the Agreement must be in writing and delivered by mail.
- 18.10. In the case of any differences between these Conditions and translations thereof, the English text will prevail.

**19. Applicable law**

- 19.1. 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.
- 19.2. 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).

**20. Exports**

- 20.1 Export Control Licence for the purposes of this clause 20, 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.
- 20.2 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.
- 20.3 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.

**21. Complaints**

- 20.1. 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.
- 20.2. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 18.

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