

## **Standard Terms and Conditions of Business for Mass Spec Analytical Ltd ('Mass Spec') for Supply of Services**

### **1. General**

- 1.1 Any offer by MSA to perform the services ("the Services"), is subject to these Conditions, and such offer and its acceptance by the Client shall form the contract for the supply of the Services by MSA to the Client.
- 1.2 These Conditions in their entirety shall apply to the exclusion of all other terms and conditions (including any terms that the Client purports to apply) to any contract between MSA and the Client unless otherwise agreed in writing by the Commercial Director of MSA.

### **2. Acceptance of Work**

- 2.1 The Client undertakes to disclose to MSA full and accurate information in respect of any material submitted by the Client to MSA.
- 2.2 MSA will supply the Services at the prices listed in the MSA Schedule of Prices published at the time MSA offers to perform the Services. If a quotation is required then MSA may provide a quotation (valid for 30 days from date of issue unless withdrawn earlier) either verbally or in writing and until the quotation has been accepted by the Client, MSA shall not be obliged to carry out any Services so quoted for. MSA reserves the right to give notice to the Client at any time before completion of the Services of any increase in the quotation to reflect the cost of any Services additional to those anticipated at the time of request for the Services. All prices/quotations are exclusive of VAT.

### **3. Cancellation**

- 3.1 MSA has the absolute right to cancel any contract at any time if, in its unfettered opinion:-
  - (i) the packaging or prior handling of any material submitted to MSA has rendered the purpose of the examination invalid or
  - (ii) if the material poses an unacceptable health or safety risk.

### **4. Performance Dates**

- 4.1 MSA will use reasonable endeavours to provide a timely service which meets the Client's requirements. Any date agreed by MSA for supply of Services shall be deemed approximate only and MSA shall not be liable for any delay howsoever caused or for the consequences of any delay. Time for the supply of the Services shall not be regarded as of the essence.
- 4.2 In those instances where MSA agrees in writing to vary Condition 4.1 to provide that the time for supply of the Services shall be of the essence, MSA shall not be deemed in breach of contract by reason of any delay or failure to perform if such delay or failure was due to a cause beyond the reasonable control or foreseeability of MSA.
- 4.3 Following performance of the Services MSA shall notify the Client that the material submitted to MSA in respect of the performance of the Services is ready for collection. If the Client fails to collect such material within fourteen (14) days of such notification by MSA,

MSA may store the material and the Client shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

### **5. Supply of Services**

- 5.1 If MSA fails to supply the Services in accordance with Condition 4 without good reason the Client shall be entitled to serve upon MSA a notice of default and should MSA subsequently fail to remedy its default within fourteen business days of receiving such notice by commencing the supply of such Services, the Client's sole remedy shall be to terminate the contract.
- 5.2 If the Client shall refuse or fail to permit the supply of the Services (other than for reasons beyond the Client's control or MSA's default) then without prejudice to any other right or remedy MSA may charge the Client the full price of the Services.

### **6. Liability**

- 6.1 Any claim by the Client based on a defect in the quality of the Services or a failure to follow the Client's specific instructions shall be notified to MSA within seven days from the date of the completion of the supply of the Services. If the Client does not so notify MSA, MSA shall have no liability for such defect or failure and the Client shall be bound to pay the full price for the Services.
- 6.2 Where any claim is made in accordance with Condition 6.1, MSA shall be entitled to elect either to correct the defect or deficiency free of charge or repay any amount that it has received from the Client for such Services and MSA shall have no further liability to the Client.
- 6.3 MSA shall use all reasonable efforts to ensure the secure storage of material submitted to MSA. However, if material is lost or stolen while in MSA's possession then MSA's liability shall be limited to the open market value of such material or the limit of MSA's insurance cover, whichever is lower.
- 6.4 The Client accepts that unless agreed in writing to the contrary in advance of submitting the material to MSA, any damage, whether as a result of cutting, sampling, extraction or other form of testing to the material forms part of the Services and MSA shall not be liable to compensate the Client or any other third party for any such damage howsoever caused.
- 6.5 Except in the case of death or personal injury caused by the negligence of MSA or fraudulent misrepresentation, MSA shall not be liable to the Client by reason of any express or implied (statutory or otherwise) representation, warranty, condition, or term of the contract nor for breach of any duty, loss of profit, loss of business, depletion of goodwill whether direct, indirect or consequential which arises out of or in connection with this contract save as expressly provided otherwise in these Conditions.

### **7. Payment**

- 7.1 The Client shall pay all invoices within 30 days from the date of the invoice and time of payment shall be of the essence.
- 7.2 Notwithstanding the Client may have arranged for payment by a third party, including the Legal Aid Fund, and have notified MSA of this arrangement the Client shall at all times be primarily

- responsible to MSA for payment of its invoiced charges including invoiced charges in respect of any court attendance.
- 7.3 The Client shall make all payments in full without any deductions whether by set-off, counterclaim, discount or otherwise.

### **8. Property Rights**

- 8.1 All intellectual property rights associated with the supply of Services by MSA shall remain at all times the sole and exclusive property of MSA.
- 8.2 The Client acknowledges that all information it receives relating to the provision of the Services is confidential and agrees not to use, reproduce or disclose it.
- 8.3 MSA undertakes to maintain customer confidentiality at all times, with the exception of disclosure to The Forensic Science Regulator and/or UKAS in the case of any non-conformance or complaint that might lead to a miscarriage of justice or lead to adverse public attention.
- 8.4 The Client undertakes to MSA that it shall not at any time during the term of the contract nor for six (6) months following termination (for any reason) solicit, entice or encourage any employee or sub-contractor of MSA to enter into a contract with it. If any such person enters into a contract with the Client the Client agrees to pay MSA an engagement fee equal to 6 months salary of such person.

### **9. Termination**

- 9.1 MSA may terminate this contract immediately if:
  - (i) the Client is in breach of this contract;
  - (ii) the Client threatens to cease or ceases business;
  - (iii) any event of insolvency occurs including without limitation any arrangement with creditors, of any sort receiver is appointed or a petition for winding up is presented.

### **10. General**

- 10.1 If any of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, such whole or part shall be deemed severable and the remaining Conditions shall not be affected.
- 10.2 These Conditions shall only be varied in writing with the written consent of the Commercial Director of MSA.
- 10.3 Failure or delay by MSA in enforcing any part of its rights shall not be construed as a waiver of any of its rights under these Conditions.
- 10.4 Any rights afforded to third parties by the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.
- 10.5 Any dispute arising under or in connection with these Conditions or the supply of the Services shall be referred to arbitration by a single Arbitrator appointed by agreement or in default of agreement nominated on the application by either party by the President at the time being of the Chartered Institute of Arbitrators.
- 10.6 All contracts shall be governed and construed in accordance with the laws of England and the Client irrevocably agrees to submit to the exclusive jurisdiction of the English and Welsh courts.