

HSE's Standard Conditions of Business
(HSE Con1 Rev 13 April 2019)

Contracts

- 1.1 The Health and Safety Executive is hereby acting through its Science, Engineering and Analysis Division, whose main office is located at the HSE Science and Research Centre, Harpur Hill, Buxton, Derbyshire, SK17 9JN (hereinafter referred to as "HSE").
- 1.2 These Conditions apply to the written agreement ("the Agreement") between HSE and the Client under which HSE is to provide certain works and services (together referred to as "the Work") to the Client.
- 1.3 No variation of or addition to these Conditions or to the Agreement is effective without the written agreement of both HSE and the Client.
- 1.4 These Conditions override and take the place of any other terms or conditions emanating from or referred to by the Client.

The work

- 2.1 HSE shall carry out the work using professional skill and care in the light of information available to HSE at the time.
- 2.2 HSE will use all reasonable endeavours to carry out the Work in accordance with any timetable agreed in writing with the Client. HSE will inform the Client immediately if it becomes apparent that the Work will not be carried out in accordance with the timetable and will seek to agree a new timetable with the Client.

Liability

- 3.1 Where the Work comprises or includes the carrying out of tests undertaken by HSE in conditions controlled by HSE, HSE shall not be responsible for any application of or reliance upon the results of such tests in other conditions.
- 3.2 HSE reserves the right to dispose of unused or remaining post-analysis or post-test sample(s) at HSE's discretion unless otherwise directed in writing by the Client at the point HSE takes delivery of the sample(s). An additional charge may be made by HSE for the return of the sample(s) to the Client.
- 3.3 HSE shall not be responsible for anything caused by reason of any deficiency, insufficiency or inadequacy in the information or materials supplied to HSE by the Client or any other third party.
- 3.4 HSE shall not be responsible for anything outside the control of HSE (including changes in external circumstances) or for any inability or failure on the part of the Client to put any HSE recommendation into effect.
- 3.5 Any liability for damages (except in respect of the death or personal injury of the Client) incurred by HSE to the Client in respect of the Work or arising under the Agreement shall be limited to the amount which the Client has or would have paid to HSE for the carrying out by HSE of the Work in full.

Reports

- 4.1 Any Report produced by HSE for the Client as part of the Work ("a Report") may be freely published by the Client subject to the following provisions of this clause.
- 4.2 The Client shall not without the prior written agreement of HSE:
 - (a) publish a Report in any abridged or altered form;
 - (b) use a Report for the settlement of any civil dispute or action;
 - (c) publish a Report in part or whole in connection with any prospectus, advertisement, sales literature or any similar material.

Intellectual property

- 5.1 A Report shall be the copyright of HSE except to the extent that it contains pre-existing copyright material belonging to the Client or third parties.
- 5.2 Where Intellectual Property Rights arise out of the Work those rights shall belong to HSE but nothing in this clause shall operate to deprive the Client or any third party of pre-existing Rights.
- 5.3 In 5.2 "Intellectual Property Rights" means all patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how and any other intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world.
- 5.4 The Client warrants that any design, documentation, software, or any other material or information provided, produced, or furnished by the Client in connection with this Agreement will not be such as to infringe any intellectual property rights or any other right whatsoever of any third party, and the Client shall fully indemnify HSE in respect of any claims relating thereto.
- 5.5 The Client shall not use the name of the Health and Safety Executive (including its Science Division, the Health and Safety Laboratory or any other associated part or division) in connection with any prospectus, advertisement, sales literature or any similar material unless where expressly permitted under this agreement.

Confidentiality

- 6.1 HSE shall not, subject to the following provisions of this clause, disclose or permit the disclosure by HSE staff of confidential information regarding the Client's business or organisation.
- 6.2 HSE's Science Division may communicate the results of the Work or any information given to it by the Client within other parts of HSE.
- 6.3 Where the results of the Work or any information supplied by the Client indicate that there is or may be a danger to health and safety the Health and Safety Executive may use or disclose such results or such information in connection with the carrying out of any functions under the Health and Safety at Work etc Act 1974.
- 6.4 The Health and Safety Executive may publish factual information arising out of the Work provided that it does not associate such information with the Client. In such a case HSE will consult the Client before publication and will take reasonable account of any objections which the Client may make on the grounds that publication would be prejudicial to the commercial interests of the Client.

Use of HSE's equipment, apparatus and facilities

- 7.1 If HSE is required to loan to the Client equipment, apparatus or facilities which are the proprietary belongings of HSE, and which are to be used outside of HSE's premises, and which shall hereinafter be collectively known as the Kit, the loan of the Kit by HSE to the Client shall be subject to the conditions specified at (a), (b), (c), and (d) as written below:
 - (a) the client shall indemnify HSE against the cost of replacing the Kit if it is lost or stolen during the period of loan;
 - (b) the Client shall indemnify HSE against the cost of repairing any damage caused to the Kit during the period of loan or if the Kit is rendered beyond economical repair, against its replacement value;
 - (c) the Client shall indemnify HSE against any third-party claim brought against HSE unless such claims shall arise by reason of the negligence of HSE;
 - (d) the Client shall have sufficient insurance to cover the costs of any claims which may be made by HSE in accordance with any or all of sub-clauses (a), (b) and (c) as above written.
- 7.2 If HSE is required to loan to the Client equipment, apparatus or facilities for use at HSE's premises, the 'Standard Conditions for the Hire of HSE's Laboratory Facilities' shall apply; a copy of which can be obtained on request.
- 7.3 Ownership of all equipment, apparatus, and facilities utilised by HSE in the performance of the Work shall remain vested in HSE.

Fees

- 8.1 All fees quoted are exclusive of VAT and are valid for 30 days.
- 8.2 HSE will charge no more than the fee quoted unless the written agreement of the Client is given to a higher charge.
- 8.3 HSE may increase its time rates and any fee quotations based upon them by giving at least one month's notice to that effect. Such increases will not apply to work done on current assignments before the notice has expired.
- 8.4 Time rates assume a working day of 7.4 hours excluding travelling time. A proportionate extra charge may be made if longer daily attendances or input are necessary. Where travelling time is to be charged HSE will make this clear in the fee quotation.
- 8.5 Unless otherwise stated fee quotations and time rates include travelling and accommodation expenses in connection with work done at places described in the Agreement as "assignment locations". Work carried out at the Client's request at other places will be subject to travel and accommodation expenses and will be charged to the Client at HSE travel and subsistence rates, appropriate to the grade of officer carrying out the work, prevailing at the time of the performance of the work.
- 8.6 All other disbursements and expenses incurred by HSE on the Work will be charged to the Client except in respect of a Fee which is quoted as fixed.
- 8.7 If, in connection with the Work, any employee of HSE is later called upon to give evidence or expert opinion in Court, the client shall re-imburse HSE with its full costs and expenses.
- 8.8 If, in connection with the Work, HSE is required to assist the Client fulfil the Client's obligations under the Freedom of Information Act 2000, the Client shall re-imburse HSE's actual full economic costs incurred in providing such assistance.

Payment

- 9.1 HSE shall be entitled to invoice monthly for work done whether or not a fixed fee has been agreed for the work.
- 9.2 Invoices will show any amount payable in respect of VAT.
- 9.3 The Client will pay the invoice in full, including any amount shown in respect of VAT, within 30 days of the date of the invoice.
- 9.4 An invoice shall not be regarded as paid until funds are received into a UK sterling account operated by the Health and Safety Executive.
- 9.5 Where payment of any sum has not been made by the Client in accordance with the provisions of this clause interest on that sum shall accrue at eight per cent above the base rate of the Bank of England prevailing during the period the sum in question remains unpaid.

Termination

- 10.1 Either party may by notice in writing terminate the Agreement with immediate effect in the event of a breach of a fundamental term by the other party. A party shall be taken to be in fundamental breach if it fails to remedy a remediable breach within such period as is reasonably stipulated for remedy of the breach in a written notice from the party not in breach.
- 10.2 HSE may by notice in writing terminate the Agreement with immediate effect if the Client becomes bankrupt or insolvent or makes or proposes any composition or scheme of arrangement with its creditors or being a corporation passes a resolution for winding up or a winding-up order is made by the Court (other than a voluntary winding up for the purposes of amalgamation or reconstruction) or if the Court makes an administration order or if a receiver or manager is appointed by the Court or its creditors.
- 10.3 Either party may at any time give notice in writing to the other party that the Work is to be discontinued. In the event of such discontinuance HSE shall, if the Client so requests, provide a report on the work carried out to the time of discontinuance. HSE shall take any reasonable steps to reduce costs in the event of such discontinuance. Where the work is discontinued at the insistence of HSE the Client shall be charged only for such part, if any, of the Work as has been completed by HSE and can be utilised by the Client. Where the Work is discontinued at the insistence of the Client, the Client will be charged in respect of all work carried out and costs incurred by HSE on the Work.
- 10.4 On termination or discontinuance under this Clause these Conditions shall continue to apply except that the duty on HSE to carry out any further part of the Work shall cease.

Appointment of personnel

- 11.1 The Client shall not, without the prior written consent of HSE, during the duration of the Agreement or within a period of six months thereafter appoint, or offer to appoint or approach with a view to making an appointment, to any position with the Client or any undertaking associated with the Client any member of staff of HSE who was involved with the negotiation of the Agreement or the Work carried out under the Agreement.

Arbitration

- 12.1 All disputes, differences or questions between HSE and the Client with respect to any matter or thing arising out of or relating to this Agreement except and in so far as may be otherwise provided in this Agreement shall be referred to the Arbitration of two persons, one to be appointed by HSE and one by the Client, in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof.

Assignment

- 13.1 The Client may not without the prior written agreement of HSE assign, charge or otherwise dispose of all or any of its rights under the Agreement.

Miscellaneous

- 14.1 HSE's rights shall not be prejudiced or restricted by any concession, indulgence or forbearance extended to the Client.
- 14.2 If the Client comprises two or more persons their obligations are joint and several.

Severance

- 15.1 Any complete or partial invalidity or unenforceability of a provision in these Conditions or any relevant contract for any purpose shall not affect its validity or enforceability for any other purpose or the remaining provision but it shall be deemed to be severed for that purpose.

Governing law

- 16.1 These Conditions shall be governed by and construed in accordance with English law and the Client hereby irrevocably agrees (without limiting HSE's rights to bring proceedings in any other courts of competent jurisdiction, whether concurrently or not) that the English courts shall have jurisdiction to settle any claim or dispute in relation to any relevant contract and that their judgements will be binding, conclusive and enforceable by the courts of other jurisdictions.