



# Terms & Conditions

Standard Terms and Conditions for Laboratory, Field and Product Testing Services

July | 2023

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Experts in medical device evaluation,  
validation and problem solving

# Terms & Conditions

## 1. Application of Terms and Conditions

- 1.1 Test Labs shall supply and the Customer shall purchase the Services in accordance with the Proposal which shall be subject to these Terms and Conditions.
- 1.2 The Contract shall be to the exclusion of any other terms and conditions purported to be incorporated imposed or accepted by the Customer or which may be implied by any custom, course of dealing or otherwise.

## 2. Definition and Interpretation

- 2.1 Test Labs Limited has operating hours of business Monday to Friday between the hours of 08:00 – 17:00.
- 2.2 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:
  - “Business Day” means any day other than a Saturday, Sunday or bank holiday.
  - “Commencement Date” means the commencement date for the Contract as set out in clause 3.2;
  - “Confidential Information” means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
  - “Contract” means the contract for the provision of Services under these Terms and Conditions;
  - “Customer” means the person who accepts a Proposal or offer by Test Labs for the supply of the Services, or whose order for Services is accepted by Test Labs;
  - “Group” means in relation to a company (wherever incorporated), that company, and any company of which it is a Subsidiary from time to time (its holding company) and any other Subsidiary from time to time of that company or its holding company. Each company in a Group is a member of the Group.
  - “Proposal” means the Proposal or order for Services issued by Test Labs;
  - “Services” means the microbiological and material laboratory testing; field testing and product testing services to be provided to the Customer as set out in the Proposal; and
  - “Test Labs” means Test Labs Limited, a company registered in England under Company Number 13378524 of Unit 22 Coningsby Road, Bretton, Peterborough PE3 8SB and includes all employees, agents of Test Labs and any member of its Group.
- 2.3 Unless the context otherwise requires, each reference in these Terms and Conditions to:
  - i “writing”, and any cognate expression, includes a reference to any communication effected by email;
  - ii a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
  - iii Clause or paragraph is a reference to a Clause of these Terms and Conditions.
  - iv a “Party” or the “Parties” refer to the parties to these Terms and Conditions.
- 2.4 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.

## 3. The Services

- 3.1 Acceptance of a Proposal or an Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 3.2 The Proposal shall only be deemed to be accepted when Test Labs issues written confirmation of the Order on which date the Contract shall come into existence (Commencement Date).
- 3.3 Once a Contract is in place, the Customer shall be liable to Test Labs for the costs set out in the Proposal. If the Customer wishes to terminate a Contract, the provisions of paragraph 4 shall apply.
- 3.4 The Customer shall label any sample for testing (Sample) with all necessary safety information and inform Test Labs in writing if a Sample is of a dangerous or unstable nature and of any actual or potential health and safety hazards relating to a Sample or arising from Test Labs’s performance of the Services, and shall provide instruction on the safe handling of the Sample.
- 3.5 The performance of Services involving testing may damage or destroy any and all Samples and any other materials or property delivered by the Customer to Test Labs and Test Labs shall not be liable in respect of any costs or losses resulting

from damage to or destruction thereof. Test Labs will properly dispose of all Samples and other property of the Customer following completion of the Services.

- 3.6 Test Labs will use its reasonable endeavours to complete the Services and provide written information, results, technical reports, certificates, test or inspection records, drawings, recommendations, advice or the like in respect of the Services (Report) to the Customer by the agreed date, but Test Labs shall not be liable to the Customer for any delay in delivering the Services or issuing a Report.
- 3.7 Test Labs's obligations in relation to the Services shall be subject to compliance with all laws and regulation to which is it subject.
- 3.8 A Report is provided to the Customer for internal guidance and information purposes only and on the basis of information known to Test Labs at the time such Report is issued. Each Report is prepared on the basis that:
  - i Test Labs shall have no responsibility to any person or body other than the Customer;
  - ii no warranty is given: (a) in relation to the Services or the Report produced in the course of performing such Services; (b) that any of the intended results or deliverables resulting from such Services can be achieved; or (c) that the Customer can freely make use of the Report or its contents without infringing any third party intellectual property rights and the Customer will be deemed to have satisfied itself in this regard;
  - iii it is not produced for any particular purpose and no statement is to be taken in any circumstances as a representation, undertaking, warranty or contractual condition unless specifically stated;
  - iv no guarantee is given or implied that the Report can be relied upon for compliance with any law, regulation or industry code of practice;
  - v the Report will be kept confidential and shall not be disclosed, distributed or otherwise shared with any third party; and
  - vi any analysis or forecasts by Test Labs within the Report are estimates only.
- 3.9 Where a term or provision of a Proposal conflicts with these Terms and Conditions, these Terms and Conditions shall be deemed to be varied by that term or provision.

#### **4. Cancellation**

- 4.1 If the Customer wishes to cancel the contract or terminate the Services, the Contract Price will be payable in full subject to the following:
  - i a minimum study management fee of £1,250 plus VAT shall be payable;
  - ii where cancellation takes place at least 30 days before testing work commences, no further fee is payable
  - iii where cancellation takes place fewer than 30 days but more than 14 days before testing work commences, the remainder of the Contract Price may, at the sole discretion of Test Labs be reduced by 50%; and
  - iv for cancellation within 14 days of the start of testing work, the remainder of the Contract Price shall be payable in full. Test Labs may, at its sole discretion, offer service credit for up to 50% of the Contract Price to be used by the Customer within 6 months.

#### **5. Payment Terms and Expectations**

- 5.1 The Customer will pay the Contract Price to Test Labs for the services as set out in the Proposal. If there are no payment terms in the Proposal, Test Labs is entitled to invoice you and receive full payment of fees before the work will commence. Payment is required within 30 days of the date on the invoice.
- 5.2 The scope of work will be completed based on the information given at the introductory meeting by the Customer and any changes may incur extra charges.
- 5.3 Monthly services will be invoiced on the last working day of each month and must be paid within 30 calendar days of the date of the invoice.
- 5.4 Annual services which are to be renewed will be invoiced 30 days before the end of the current contract and must be paid within 30 calendar days of the date on the invoice.
- 5.5 Proposals will be considered binding on acceptance, confirmation through email or other form of written communication is considered acceptance. Acceptance of a Proposal means that the customers also accept these terms and conditions. Proposals are valid for a term of 30 calendar days only. Proposals that are out of the 30 day time period may be accepted by Test Labs at its discretion.
- 5.6 There may be a delay in invoicing expenses incurred on your behalf pending our receipt of the relevant invoices from suppliers. Unless otherwise stated, such invoices are not a final invoice in relation to such expenses.

- 5.7 Additional fees may apply. Travel, accommodation and other expenses will be paid by the Customer where required and with prior agreement regarding the cost, between the Customer and Test Labs.
- 5.8 If the Customer does not pay any invoice or the sum requested on account with 7 calendar days (or such longer period as we may specify) of the due date, Test Labs may suspend or terminate the provision of all or any Services (and instruct and third parties engaged by Test Labs to suspend the provision of their services) and may invoice the Customer for all accrued fees and expenses.
- 5.9 Upon termination of the Services, other than early cancellation by the Customer, payments due shall cease; provided, however, that Test Labs shall be entitled to payments for Services performed in periods or partial periods that occurred prior to the date of termination and for which it has not yet been paid.

## **6. Test Labs Responsibility and Performance**

- 6.1 Test Labs does not accept responsibility for non-conformances or questions raised during audits carried out by third parties (such as Accredited Bodies, Notified Bodies or Government Agencies) or inspection of documentation relevant to the work carried out by Test Labs. The Customer has the final responsibility to ensure that they are maintaining their Quality Managements Systems and/or Medical Device/Cosmetic files according to relevant standards and regulations.
- 6.2 Test Labs is acting only in an advisory capacity based on its employee's experience and qualifications within Quality Assurance and Regulatory Affairs within the Medical Device and Cosmetics sectors in the UK and within the EU.
- 6.3 Test Labs will use reasonable care and skills to perform the Services identified in the Proposal or schedule.
- 6.4 Test Labs shall use its reasonable endeavors to complete its obligations in the performance of the Services, but time will not be of the essence in the performance of such obligations.
- 6.5 Test Labs lead times given are estimated and may be extended depending on the project and information, or lack of, supplied by the Customer and any other circumstances outside of Test Labs's control.
- 6.6 Test Labs is not responsible for ensuring Customer deadlines are met. Test Labs will work with the Customer to meet any expected deadline and will discuss expectations at the outset. Test Labs is reliant on the Customer supplying information and carrying out the work suggested by Test Labs.
- 6.7 If the Customer fails to attend meetings or makes changes at short notice, Test Labs reserves the right to deduct the time allocated for the project.
- 6.8 Test Labs will perform those services that are requested by the Customer.
- 6.9 The Customer acknowledges that the fact that other professionals or experts in the same or related fields may disagree with any judgement, conclusion or methodology with respect to the Services, but that no such disagreement or difference of opinion shall relieve or excuse the Customer from making timely payment of any sum due to Test Labs for Services performed under these terms.

## **7. Customer Responsibility**

- 7.1 If the Customer's medical device has been classified as a Class 1 measuring, Class 1 sterile, Class 2a, Class 2b or Class 3, according to EU and UK medical device regulations, it is the legal manufacturers responsibility to secure the services of a relevant notified body, to ensure the certification of their Medical Device product(s).
- 7.2 It is the responsibility of the Customer to ensure certification of their Quality Management System (QMS) by an authorised certification body.
- 7.3 The Parties acknowledge that Test Labs is acting as an independent contractor with respect to the Customer, and not an employee or partner of the Customer. The Customer will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of Test Labs.
- 7.4 Test Labs does not tolerate any abusive behaviour or language towards its staff. Test Labs reserves the right to terminate without a refund if the Customer displays any abusive behaviour.
- 7.5 The Customer will need a sufficient IT infrastructure in place to facilitate a virtual working relationship with Test Labs. The Customer should be aware that delays in providing the required information could result in delay of the work being carried out by Test Labs.
- 7.6 The Customer should be aware that the use of Test Labs logo or any Test Labs branding or trade name is prohibited without the prior permission of Test Labs.

## **8. Assignment**

- 8.1 Test Labs may assign transfer or novate any of its rights and obligations under these Terms and Conditions to any person, firm or company without the prior consent of the Customer.
- 8.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of Test Labs.

**9. Confidentiality**

- 9.1 Subject to 9.2, each of Test Labs and the Customer undertakes that it shall:
  - i at all times during the continuance of the Contract and after its termination, keep the strictest confidence with regards to all Confidential Information, not disclose any Confidential Information to any other person;
  - ii not use any Confidential Information for any purpose other than in connection with carrying out the Services;
  - iii save as required in connection with the Services, not make any copies or record in any way or part with possession of any Confidential Information and ensure that none of its Directors, Employees, Agents of Advisors does any act which, if done by that party would be a breach of the aforementioned subclauses.
  - iv use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Contract, or at any time after that date becomes, public knowledge through no fault of that Party, provided that in doing.
- 9.2 Either party may disclose any Confidential Information to any sub-contractor or supplier of that Party, any governmental or regulatory body to such extent only as is necessary for the purposes contemplated by these Terms and Conditions or as required by law, and in each case subject to that Party first informing the person, party or body in question that the Confidential Information is confidential and is to be kept Confidential and is only for the purpose of which the disclosure if made.

**10. Liability**

- 10.1 Test Labs will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under express terms of these Terms and Conditions, be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims which arise out of or in connection with the Services.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 The Customer shall indemnify Test Labs against all damages, costs, claims and expenses suffered by arising from loss or damage to any equipment, including that of third parties, caused by the Customer, its agents or employees.
- 10.4 Test Labs shall not be liable to the Customer or be deemed to be in breach of these terms and conditions by reason of any delay in performing, or any failure to perform, any obligation of Test Labs if the delay or failure was due to any cause beyond Test Labs's reasonable control.
- 10.5 Nothing in these Terms and Conditions excludes or limits the liability of either Party for death or personal injury caused by that Party's negligence; for any matter which it would be unlawful to exclude or attempt to exclude its liability; or for fraud or fraudulent misrepresentation.
- 10.6 Test Labs shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever which arise out of or in connection with the contract.

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