

VLA STANDARD TERMS AND CONDITIONS OR CONTRACT FOR SUPPLY OR SERVICES (STC03)

These Terms and Conditions may only be varied with the written agreement of VLA.
No terms or conditions put forward at any time by the Customer shall form part of the Agreement.

1. Definition and Interpretation

- 1.1 In this Agreement the following words shall have the following meanings:
"Acknowledgement of Order" means the document setting out the Customer's requirements for the supply of Services.
"Agreement" means the agreement between the Secretary of State and the Customer as evidenced by this document and comprising the Order and these terms and conditions.
"Background IP" means any Intellectual Property, excluding Foreground IP, owned or controlled by any party arising before commencement of or acquired in parallel with carrying out of the Services, which is necessary or may be useful in carrying out the Services.
"Confidential Information" means any information given to or obtained by VLA under this Agreement relating to the Services.
"Customer" means the person(s), firm or company to whom this Agreement is issued. Where the Customer consists of more than one person, the obligation of those persons in respect of this Agreement shall be joint and several.
"Foreground IP" means any Intellectual Property as are obtained, found, produced, devised, developed, or generated in the course of the carrying out of the Services.
"Intellectual Property" means any patent, copyright, design right, registered design, trademark or service mark, trade name, know-how, patentable invention for the purposes of the Patents Act 1977, database right for the purposes of the Copyright and Rights in Databases Regulations 1997, domain name or know-how and any application for any of the foregoing and any similar rights in any jurisdiction...
"Secretary of State" means the Secretary of State for Environment, Food and Rural Affairs acting through the VLA.
"The Services" means the services to be supplied by VLA to the Customer as specified in the Acknowledgement of Order and shall, where the context so admits, include materials, articles and goods to be supplied thereunder.
"Know-how" means and includes all information, biological substances, organisms and materials (whether patentable or not), designs, drawings, techniques, processes, formulae, reports, specifications, practices, procedures, instructions, software and other technical information and data of any kind in whatever form.
"VLA" shall mean the Veterinary Laboratories Agency, acting on behalf of the Secretary of State.
- 1.2 Clause headings are included only for the convenience of the parties and do not affect interpretation.

2. The Services

- 2.1 No order for the supply of Services is binding on VLA or the Secretary of State unless and until it has been accepted by VLA in writing.
2.2 The Services to be provided and the dates and amount of payment are set out in the Acknowledgement of Order. In carrying out the Services VLA undertakes to the Customer that it shall:-
2.2.1 use its reasonable endeavours to undertake the Services in accordance with and within the time period set out in the Acknowledgement of Order in accordance with best scientific practice and at all times exercising all reasonable skill and care;
2.2.2 devote the efforts of suitably qualified and trained employees and provide all necessary facilities to carry out the Services;
2.2.3 keep detailed records of all research and other work done in carrying out the Services in accordance with best scientific practice;
2.2.4 provide the Customer with a report of the results of the Services;
2.2.5 keep and maintain in its own archive all data, records and results generated from the Services for a period of one year following completion of the Services.
2.3 VLA cannot undertake to provide services of this type for the Customer alone. All equipment and other accessories (except those owned and provided by the Customer) and all materials used for the purposes of the Services shall remain the property of VLA.

3. Warranties and Indemnities

- 3.1 The Customer warrants that all information provided by it or on its behalf as to the composition of any materials supplied to VLA will be full and accurate. The Customer further warrants that it will give VLA written notice of any hazards, known or suspected, by the Customer in the use of such materials.
3.2 The Customer warrants that it has the necessary rights and is entitled to use or disclose for the purposes of the Services all Intellectual Property supplied by it to VLA for the purposes of carrying out the Services.
3.3 The Customer shall indemnify and keep indemnified on a full and unqualified basis VLA, the Secretary of State and the Crown against any and all actions, claims, demands, costs, charges and/or expenses arising out of any loss or damage or injury to any person or to any property incurred by the reason of:
3.3.1 any infringement or alleged infringement by the Customer of any Intellectual Property right in relation to the Services,
3.3.2 any negligence, breach of Agreement, breach of statutory duty or other wrongful act or omission on the part of the Customer.
3.4 The Customer will hold VLA indemnified against any claim made against it as a result of any tort committed by its employee whilst on VLA premises.
3.5 In the event of any breach or breaches of this Agreement by VLA, the Secretary of State, VLA or the Crown shall not be liable to the Customer in respect of any resulting:-
3.5.1 loss of profit, business, revenue, goodwill or anticipated savings;
3.5.2 indirect or consequential loss or damage.
3.6 The aggregate liability of VLA, the Secretary of State or the Crown to the Customer arising out of any breach or breaches of this Agreement shall not exceed the total amount payable by the Customer to VLA in accordance with the Acknowledgement of Order and in any event shall not exceed £100,000.

4. Insurance

- 4.1 The Customer shall take out and maintain insurances with reputable insurance companies at a level it considers appropriate to cover all risks arising out of its obligations under this Agreement.
4.2 The Customer shall, if required by VLA, produce to VLA evidence that insurance is in force which complies with the requirements set out in this condition.
4.3 Neither this condition nor the terms of any insurance nor the amount of any insurance cover shall relieve or affect any liability of the Customer under or for breach of this Agreement.

5. Confidentiality

- 5.1 VLA shall not without the Customer's written consent disclose to any person other than the Customer or use otherwise than for the purpose of carrying out the Services:-
5.1.1 the nature of the Services or the results obtained; or
5.1.2 any secret or confidential information before or after the date of this Agreement concerning the Services or relating to any products or operations of the Customer providing that the information:
(i) is acquired from the Customer or is specific to the Customer's business; and
(ii) has not been developed or generated independently by VLA; or
(iii) has not been in VLA's possession prior to acquisition from the Customer; or
(iv) is not in the public domain at the time of disclosure to VLA, or at any time after its disclosure to VLA, through no breach of this Agreement by VLA; or
(v) is not required to be disclosed pursuant to any court order or statutory or other legal requirement.
5.2 The parties acknowledge that, in order to be compliant with the Freedom of Information Act 2000, the Environmental Information Regulations 2004, or any other applicable legislation governing access to information, the parties may be obliged to provide information, on request, to third parties that relates to this Agreement.

6. Payments

- 6.1 Payments are the charges payable as are specified in the Acknowledgement of Order, subject to the receipt of a valid VAT invoice. Where the amount of any charge or the times for its payment have not been so specified, payment shall be made within 30 days of the submission by VLA of an invoice for that charge. If any payment is not made by the due date, interest on the amount of that charge shall accrue at the rate equal to two percentage points above the central clearing bank rate from the due date until payment is received by VLA. Without prejudice to the above if any payment is not made on the due date VLA also reserves the right to cease the Services and if it thinks fit terminate the Agreement. The Customer forfeits all rights to the results if payment is not made as agreed. Cheques, drafts or other payment instructions should be drawn on a bank trading in the UK.
6.2 The charges quoted in this Agreement are exclusive of VAT unless specified to the contrary.
6.3 If there is more than one party providing finances for the Services, VLA's agreement to provide the Services is conditional upon agreement being reached with all parties.

7. National Audit Office Access

The Customer shall permit duly authorised agents of the Secretary of State and/or the National Audit Office or European Court of Auditors to examine the Customer's records and documents relating to the Services and to provide such copies and oral or written explanations as may reasonably be required. This clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Customer under section 6(3)(d) and 6(5) of the National Audit Act 1983.

8. Publication and Public Interest

- 8.1 The results of the Services may be freely published by the Customer, but any mention of VLA or the Secretary of State or Defra must be approved in advance in its context by VLA, and the Customer will not make any reference to VLA or the Secretary of State without obtaining such approval. Notwithstanding the provisions of this clause 8, the Customer shall have the right to use and/or publish any reports and results generated in carrying out the Services in support of submissions to the regulatory authorities.
8.2 In the event that the Services yields Foreground IP or other information ("material") that reasonably gives serious concern for public health or animal health or welfare of the UK animal sector then such material shall forthwith be brought to the attention of the Customer who shall, insofar as it is reasonably able, jointly with VLA, do such things as are reasonably deemed necessary to rectify those factors identified by VLA as giving rise to such concern. In the event that VLA is of the opinion that the Customer is not taking all reasonable steps to rectify such factors as aforesaid VLA shall so notify the Customer whereupon the Customer and VLA shall use their best endeavours to agree such reasonable steps as ought to be taken. In the event that VLA and the Customer are unable to agree, VLA shall be entitled to release such information that gives rise to such concern as it deems proper (notwithstanding the provisions of Clause 5 hereof) but shall, prior to such release, give the Customer the option to jointly issue such information with VLA.

9. Intellectual Property Rights

- 9.1 Subject to any third party rights other than by virtue of this Agreement, any Foreground IP, including but not limited to any patentable discovery, shall belong to the Customer. Notwithstanding this, VLA shall retain the right to use any and all test samples and biological isolates obtained from such test samples for further research and development purposes..
9.2 All Background IP shall remain vested in the party to whom it belonged at the commencement of this Agreement. No licence is granted or implied to either Party's Background IP except as explicitly set out in this Agreement.

10. Force Majeure

- 10.1 Force Majeure shall include but is not limited any riot, strike, lockout, national emergency, terrorist event, outbreak of contagious or other notifiable human or animal disease and other events which are beyond the reasonable control of either party.
10.2 Neither party shall be liable for delay in performing or failure to perform obligations under this Licence if the delay or failure results from events or circumstances of Force Majeure. Such delay of failure shall not constitute a breach of this Agreement and the parties may agree on a plan of action to ensure delayed performance or terminate the with immediate effect, whichever is appropriate in the circumstances.

11. Termination

- 11.1 This Agreement may be terminated by VLA or the Customer on giving two months written notice. On receipt of written notice of termination, VLA shall, in the most cost-effective way, cease carrying out the Services unless the Customer shall notify VLA that any part of the Services should be competed. On such a termination, payment will be made in respect of the period up to termination, pro rata on a cost basis or, if necessary, on a time basis.
11.2 Either party may terminate this Agreement forthwith by written notice given to the other where: that other party commits a breach of this Agreement which the party serving the notice reasonably considers is not capable of remedy; or that other party has continued in any breach of this Agreement for more than 30 days after being warned in writing of such breach.
11.3 VLA may terminate this Agreement forthwith by written notice given to the Customer if:-

- 11.3.1 the Customer is a company, and the company passes a resolution or the court makes an order that it should be wound up or that an administrator be appointed, or if the Customer makes a composition or an arrangement with its creditors, or if a receiver or manager or administrator on behalf of a creditor is appointed, or if circumstances arise which entitle the court or a creditor to appoint a receiver, manager or administrator or which entitle the court to make a winding up order; or
11.3.2 the Customer being an individual at any time becomes bankrupt, or has a receiving order made against him or her or makes any composition or arrangement with or for the benefit of his or her creditors, or purports to do so; or
11.3.3 the Customer is a partnership and any partner thereof at any time becomes bankrupt, or has a receiving order made against him or her, or any partner or the partnership makes any composition or arrangement with or for the benefit of their creditors, or purports to do so.

12. Effect of termination

- 12.1 Termination of this Agreement shall not affect:
12.1.1 any obligation or liability of any Party which has accrued at the date of termination; or
12.1.2 any of the provisions of the Agreement which are intended to continue to have effect after the Agreement has been terminated.
12.2 Upon termination of this Agreement VLA or the Secretary of State may set off against any debt owed by the Customer to VLA or the Secretary of State, or the amount of loss and/or damage VLA or the Secretary of State have reasonably assessed as resulting from the termination of the Agreement any sums otherwise due to the Customer.

13. Transfer of rights and obligations

- 13.1 The Customer shall not assign or sub-contract this Agreement or any part of it without prior consent of VLA in writing.
13.2 The Secretary of State and/or VLA may at any time, on written notice to the Customer, transfer or assign all or any rights and/or obligations under the Agreement.

14. Waiver and variation

- 14.1 No delay by the Secretary of State or by VLA in enforcing or expressing any right, either arising out of the Agreement or any right in respect of any breach of the Agreement by the Customer, shall constitute a waiver of such right.
14.2 No waiver by the Secretary of State or by VLA of any breach of the Customer's obligations shall constitute a waiver of any other prior or subsequent breach.
14.3 Any variation of any provision of this Agreement must be effected in writing and issued by VLA. No purported variation by any other means shall bind the Secretary of State or VLA.

15. Subcontracting

VLA shall be free to subcontract or otherwise deal with the whole or any part of the Services.

16. Legal Relationship

- 16.1 Nothing in this Agreement shall be construed so as to create a partnership or joint venture between the parties or have the effect of making any employee of the Customer a servant of the Secretary of State, VLA or the Crown or of making any official of the Secretary of State or VLA an employee or servant of the Customer.
16.2 Neither of the parties shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf.
16.3 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to, and does not give any person who is not a party to it any right to enforce any of its provisions.

17. Severability

If any part of the Agreement is unenforceable, such unenforceability shall not affect the enforceability of the remainder of the Agreement.

18. Notices

Any notices to be issued shall be in writing to the Parties' representatives as identified in Clause C of the Agreement and if sent by prepaid first class post shall be deemed to be served on the second Business Day after posting.

19. Jurisdiction and governing law

This Agreement is subject to English law and to the exclusive jurisdiction of the courts of England and Wales.