



**STANDARD TERMS & CONDITIONS OF PURCHASE**

**PREAMBLE**

Each Order placed with SMS will be deemed to constitute acceptance of these Standard Terms and Conditions of Purchase

**1. DEFINITIONS**

- 1.1 "Customer" means any person, firm, company, organisation or agent who contracts SMS to supply Products, Services, Consultancy and Research.
- 1.2 "SMS" means Stonehaven Microbiology Services Limited, Units 1 & 2, Oldmeldrum Business Centre, Colpy Way, Oldmeldrum, Aberdeenshire, AB51 0BZ.
- 1.3 "the Service" means the provision of analysis, consultancy, research, and the supply of products and materials by SMS to Customers.
- 1.4 "these Terms" means these Terms and Conditions of Purchase.
- 1.5 "in writing" includes electronic communications.
- 1.6 The singular includes the plural and *vice versa* and any gender includes all genders.
- 1.7 The clause headings are given for ease and convenience only and shall not affect the interpretation of these Terms & Conditions.

**2. SCOPE OF THESE TERMS**

2.1 These Terms shall govern any or all contracts or agreements entered into between SMS and the Customer. These Terms take precedence over any Terms & Conditions put forward by the Customer, unless SMS expressly agrees to them in writing. No conduct either on the part of SMS, its officers, employees or agents shall be deemed to constitute acceptance of any Terms & Conditions put forward by the Customer.

2.2 No officer, employee or agent of SMS has any authority to vary these Terms either orally or in writing. No addition(s) to or change(s) in these Terms shall be binding on SMS unless agreed in writing and signed by the Directors of SMS.

**3. FORM OF AGREEMENT**

3.1 Unless otherwise specified in writing in advance of work being undertaken, SMS shall not be prepared to proceed on the basis of verbal instructions received by SMS from the Customer. Official Purchase Orders from the Customer must be received prior to work commencing. There is no minimum order value, but SMS reserves the right to place a handling charge on orders of less than £50.00. SMS reserves the right to charge a minimum monthly invoice charge of £50.00.

3.2 All changes to any contracts or agreements in respect of the Service provided shall be in writing and shall be agreed between SMS and the Customer. In addition the Customer shall be required to allow SMS a period of two months notice in respect of any or all changes which in the opinion of SMS acting reasonably, are material changes and which are requested at the insistence of the Customer.

3.3 In circumstances where the requirements of the Service are beyond the supply of general materials, support, analysis, consultancy and research then, based on a written statement of requirements provided to SMS by the Customer, the requirements of the Service will be developed and a programme together with any or all draft documentation in connection therewith shall be provided to the Customer before any action is taken by SMS. In such circumstances SMS shall not be prepared to proceed without the receipt of an official Purchase Order from the Customer.

3.4 The Customer shall not at any time whatsoever make use of or disclose for his own benefit or for or to or on behalf of any other person, firm or company, any confidential information which he now possesses or may possess relating to the business of SMS or its affairs or of any suppliers, customers or other persons having dealings with SMS. The Customer shall at all times use his best endeavours to prevent the publication or disclosure of any such confidential information.

3.5 Due to the potentially varied nature of the work being undertaken, all quotations for work made by SMS are based on SMS's best estimate of the time required. However, should the work originally quoted for be modified as a direct result of Customer requirements, then SMS reserves the right to request a price increase to cover extra work requirements.

**4. DELIVERY OF SAMPLES AND OTHER GOODS**

4.1 Unless expressly provided otherwise, the place for delivery of samples and other goods is to SMS's premises at Units 1 & 2, Oldmeldrum Business Centre, Colpy Way, Oldmeldrum, Aberdeenshire, AB51 0BZ.

4.2 When goods are ready for delivery by SMS to the Customer, SMS will give the Customer notice in accordance with these Terms to collect the goods. It is a condition of these Terms that the Customer will then either (a) collect the goods, or (b) give SMS instructions for their delivery, within seven days commencing on the day of service to the Customer of that notice. SMS will charge for delivery of goods to the Customer at a rate agreed in writing prior to delivery the Customer. If the Customer fails to collect or give instructions for delivering the goods within the period of seven days, SMS may exercise either of the following rights:

4.2.1 Treat the failure by the Customer to collect or give instructions for delivery of the goods as a repudiation of the contract between SMS and the Customer and terminate the contract with immediate effect, in which case, SMS may also do any or all of the following:

4.2.1.1 Dispose of the goods as SMS thinks fit;

4.2.1.2 Retain all payments made by the Customer prior to termination;

4.2.1.3 Recover damages from the Customer in respect of (i) the costs of storing the goods, (ii) the costs of arranging for their disposal, and (iii) any other losses suffered by SMS as a result of the Customers breach of these Terms or as a result of termination of the contract.

4.2.2 Arrange for storage of the goods, in which case:

4.2.2.1 The goods shall be at the Customers risk as regards loss or damage;

4.2.2.2 The Customer will be responsible for the costs of storing the goods and will reimburse SMS forthwith and upon demand in respect of all expenses incurred by SMS in connection with such storage.

4.2.3 If SMS agrees with a Customer to arrange for the samples and other goods to be delivered to some place other than SMS's own premises for delivery, the following provisions shall apply:

4.2.3.1 SMS will make such arrangements for carriage and insurance of the samples and other goods as SMS shall deem necessary in the circumstances and SMS shall not be liable to the Customer in any way whatsoever for the arrangements so made;

4.2.3.2 The Customer will indemnify SMS against any costs or expenses which SMS may incur in making such arrangements;

4.2.3.3 The samples and other goods shall be treated as having been delivered to the Customer as soon as they are delivered to any carrier;

4.2.3.4 The samples and other goods shall be at the Customers risk as soon as the samples and other goods are delivered to the carrier and the Customer will insure the samples and other goods accordingly.

4.3 The date for delivery of any samples and other goods in accordance with these Terms is not a contractual commitment, but an estimate only. In the event that the Customer incurs loss as a direct consequence of the late delivery of any samples and other goods based on estimated delivery dates SMS will not provide compensation to the Customer.

4.4 Subject to Clause 4.6, if SMS delivers less than the contract quantity, SMS shall undertake to make good the shortfall to the Customer within 48 hours of being notified of the shortfall by the Customer, all at the cost of SMS.

4.5 If SMS delivers more than the contract quantity, the Customer shall either accept and pay for the quantity actually delivered or accept the contract quantity and return the excess of goods as soon as reasonably practicable, at the cost of SMS.

4.6 The Customer shall inspect the goods as soon after delivery as is reasonably practicable and shall notify SMS of any shortages, defects in the goods or any other complaint in respect of them within seven days from delivery. If the Customer fails to comply with this clause, SMS shall be under no legal liability in respect of any alleged shortfall, defect or complaint.

4.7 SMS shall not (except where the Customer undertakes to pay any restocking costs incurred by SMS) accept the return of the goods from a Customer unless the goods are defective or SMS have delivered the wrong goods to a Customer.

**5. PAYMENT**

5.1 In the event of any increase in the cost to SMS of any raw materials, labour, overheads, or any increase in any taxes or duties payable by SMS in connection with its business, or any variation of exchange rates, SMS shall be entitled to increase the price payable for the Service. The Customer will be advised one month in advance of proposed price increases in writing.

5.2 The Customer will pay all sums due under these Terms in full within thirty days of the date of SMS's invoice.



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5.3 All prices quoted by SMS to the Customer shall be exclusive of Value Added Tax which shall be charged thereon at the applicable rate from time to time.

5.4 The Customer's obligations to make payment under the terms of Clause 5 shall not be satisfied until SMS is in the receipt of cleared funds.

5.5 SMS shall not offer any Customer any discounts and the Customer shall pay all monies due to SMS under these Terms without any discount, deduction, set-off or abatement on any grounds.

5.6 All monies due by the Customer to SMS under these Terms shall be paid to SMS in pounds sterling unless otherwise expressly agreed between SMS and the Customer.

5.7 It is a requirement that all new Customers make payment initially on a pro-forma basis. New Customers will be required to provide credit information in order to determine their credit worthiness. A credit account will not be opened until this is received and accepted.

5.8 In the event that the Customer fails to pay any sums due to SMS under these Terms timeously, SMS shall be entitled to charge interest on the whole monies or any balance thereof outstanding from the date such monies fell due until the date such monies are paid in full by the Customer to SMS at the rate of 4% per annum above the base lending rate from time to time of SMS's bankers (the Royal Bank of Scotland plc). Overdue interest will be applied on a daily basis. Failure to pay on time will necessitate all work and orders being put on hold until outstanding debts are cleared.

5.9 Any sample reports and other goods shall remain SMS's property until the Customer has paid for them in full. Until that time, the Customer shall hold them as bailee and shall store them in such a way that they can be identified as SMS's property and keep them separate from the Customer's own property and the property of any other person. If for, whatever reason, the Customer requests replacement reports, then SMS will charge a handling fee of £25.00 per replacement report required.

5.10 Although the goods remain SMS's property until paid for, they shall be at the Customer's risk from time of delivery and the Customer shall insure them against loss or damage accordingly and in the event of such loss or damage shall hold the proceeds of such insurance on behalf of SMS as trustee for SMS.

5.11 The Customer's right to possession of the goods shall cease if:

5.11.1 The Customer has not paid for the goods in full by the expiry of any credit period permitted by SMS; or

5.11.2 The Customer is declared bankrupt or makes any proposal to his creditors for a composition or other voluntary arrangements; or

5.11.3 A receiver, liquidator or administrator is appointed in respect of the Customer's business.

5.12 On cessation of the Customer's right to possession of the goods in accordance with clause 5.11 the Customer shall, at his own expense, make the goods available to SMS and allow SMS to repossess them.

5.13 The Customer hereby grants SMS, his agents and employees an irrevocable licence to enter any premises where the goods are stored in order to repossess them or inspect them at any time.

5.14 The Customer shall be entitled to receive a written quote from SMS, upon request, in respect of the cost to SMS providing the Service.

### 6. LIABILITIES

6.1 Any or all statements, recommendations, advice and opinions made or expressed during the period of the Service including any statements referred to or contained in any SMS brochures, catalogues, correspondence and the like are in good faith and on the basis of information available to SMS at the time. In consequence, no statement, recommendation, advice or opinion or any other communication whatsoever is deemed to be representation, undertaking, warranty, guarantee or contractual obligation and SMS will not be liable to compensate the Customer for any loss of anticipated profits, damage to the Customer's reputation or goodwill, loss of expected future business, damages, costs of expenses payable by the Customer to any third party, or any other indirect or consequential losses.

6.2 Where SMS delivers any goods to a Customer which goods have been supplied via a third party, SMS shall not be liable to the Customer for any losses suffered by the Customer as a result of the goods proving to be defective and in such event, SMS's liability is limited to a refund of all payments made by the Customer to SMS.

6.3 SMS has no duty of care to a Customer to report any matter whatsoever and howsoever arising in respect of or derived from the Services provided to any local authority, government department or government agency. The onus of reporting any matter or findings in respect of or derived from the Services is upon the Customer.

### 7. FORCE MAJEURE

7.1 If performance of SMS's obligations are delayed or hindered by circumstances outside SMS's control amounting to force majeure the following provisions shall apply:

7.1.1 SMS will as soon as reasonably practicable give the Customer notice of the reasons for the delay or hindrance. However, failure to give such notice will not prevent SMS relying on the remaining provisions of this clause, and SMS will incur no liability for failure to give such notice.

7.1.2 SMS's duty to perform the Service shall be suspended for as long as the circumstances amounting to the force majeure continue, and the time for performance of SMS's obligations shall be extended by a period equal to the duration of those circumstances.

7.2 Without forming an exhaustive list, the following events constitute force majeure: war, civil war, declared or not, legislation, regulations, state decisions, legal decisions, embargos, export restrictions, import restrictions, on sending or delivery, strikes, lockouts, accidents, fires, delays or defaults of transporters, floods, government controls or quotas.

### 8. ARBITRATION

8.1 Any question concerning the construction, meaning or effect of these Terms, or any dispute concerning the rights or liabilities of the parties under these Terms, or any other dispute connected with or arising out of the performance of any contract or agreement hereunder shall be referred to arbitration.

8.2 In the event that SMS and the Customer cannot agree upon the appointment of an arbiter, the arbiter shall be appointed by the then President of the Institute of Chartered Accountants for settlement on the application of either SMS or the Customer. The costs of the arbitration shall be borne equally between SMS and the Customer.

### 9. NOTICE

9.1 Any notice required to be given by any party hereto to the other shall be deemed validly serviced if served by:

9.1.1 Prepaid registered letter post to the address of the recipient given herein or such other address as may from time to time be notified in writing for this purpose and in the case of SMS marked "Private and Confidential" and for the attention of the Directors; or

9.1.2 Personal delivery by hand; or

9.1.3 By e-mail or facsimile transaction;

and any notice so served shall be deemed to have been served:

9.1.4 In the case of 9.1.1 above forty-eight hours after posting the same; or

9.1.5 In the case of 9.1.2 above upon delivery; or

9.1.6 In the case of 9.1.3 above upon transmission.

9.1.7 In proving service it shall be sufficient to prove that the notice was properly addressed and posted, or that delivery took place, or that the notice was e-mailed or faxed to the then correct e-mail address or facsimile number of the party.

### 10. SEVERABILITY

Each provision of these Terms shall be construed separately and (save as otherwise expressly provided therein) none of the provisions hereof shall limit or govern the extent, application or construction of any one of them and notwithstanding that any provision of these Terms may prove to be illegal or unenforceable the remaining provisions of these Terms shall continue in full force and effect.

### 11. WAIVER

No waiver by any party of any of the requirements hereof or of any of their rights hereunder shall be effective unless given in writing and signed by or on behalf of that party and no forbearance, delay or indulgence by any party in enforcing the provisions of these Terms shall prejudice or restrict the rights of that party nor shall any waiver by any party of any of the requirements hereof or any of its rights hereinafter release any other party from full performance of their obligations stated hereafter.

### 12. TERMINATION

Any contract or agreement entered into between SMS and the Customer may be terminated at any time and by either party provided always that two months written notice is afforded.

### 13. APPLICABLE LAW

These Terms shall be construed and receive effect in accordance with the law of Scotland and the parties agree to prorogate the exclusive jurisdiction of the Scottish Courts.