

BODYCOTE TESTING LIMITED STANDARD CONDITIONS OF CONTRACT (“the Conditions”)

1. Interpretation

In the Conditions the following expressions shall (unless the context requires) have the following meanings:

“Client” means the person, firm or company to whom a Quotation is addressed or for whom a Test or any Services is carried out;
“Confidential Information” means all information in respect of the business of the Company including but not limited to know-how or other matters connected with the Services and information concerning the Company’s relationships with actual or potential clients, customers or suppliers and the needs and requirements of the Company and any other information which if disclosed will be liable to cause harm to the Company;
“Company” means Bodycote Testing Limited or named operating unit thereof;
“Contract” means the contract for the supply of Services of which the Conditions form part;
“Losses” means all losses, liabilities, claims, costs, expenses, damages, actions, awards, penalties and/or fines, obligations and also includes all losses, liabilities, costs and expenses in relation to or resulting from any demands, claims or proceedings;

2. Quotation

2.1 The Quotation constitutes an offer by the Company to provide Services and/or carry out a Test subject to the Conditions and is open for acceptance for seven days only from the date of the Quotation unless previously withdrawn by the Company. Acceptance is based on the receipt of an instruction in writing or receipt of the Sample by the Company.

2.2 Except in accordance with the Conditions no variation of the Contract will be accepted unless agreed in writing by the Company.

2.3 The Quotation shall prevail over any terms or conditions (whether or not inconsistent with the Quotation and/or the Conditions) contained or referred to in any correspondence, order, documentation submitted by the Client or elsewhere. Further, no condition, statement or representation contained in any advertisement or brochure or in any trade or promotional circular or other literature, nor the terms or conditions of any trade association or other body, or which would or might but for this subparagraph be implied or incorporated by custom or trade, usage, negotiations, course of dealing or otherwise shall be deemed to be incorporated in the Contract and all of the same are hereby expressly excluded from the Contract.

3. Price

3.1 The Price is based on information available to the Company at the date of the Quotation. If during the period of the Contract there shall be any variation in the cost of materials, labour or otherwise to the Company, the Price may, in the absolute discretion of the Company, be adjusted to take account of such variation.

3.2 In addition to the amount specified in the Quotation the following shall be payable if appropriate:

- 3.2.1 any applicable value added tax;
- 3.2.2 package, insurance, freight, travel costs, bank charges, Sample destruction costs, storage charges and disbursements incurred on behalf of the Client, whether on the Company’s premises or elsewhere, and to include storage charges on the Company’s premises, if any Sample or materials supplied by the Client are not removed within seven days of the date of notification to the Client that they are ready for collection;
- 3.2.3 insurance incurred by the Company, in its absolute discretion, in respect of any property belonging to the Client in the possession of the Company;
- 3.2.4 with prior notice, the cost of all sub-contractors employed by the Company unless included in the Quotation;
- 3.2.5 any additional costs incurred by the Company in accordance with the Conditions; and
- 3.2.6 any special standards or specifications required for the performance of the Service.

4. Payment

4.1 The Price shall be paid to the Company in full, in cleared funds, without any deduction, set-off or counterclaim within thirty days of the date of the Company’s invoice. Time of payment is of the essence to the Contract. In default of payment within the thirty days, the Company may: suspend any further Services being carried out for the Client; withhold the provision of Reports, alter or withdraw credit terms; and amend terms, prices or service levels. The amount outstanding from time to time shall bear interest (both before and after any judgment) at the rate of 4% per annum above the Royal Bank of Scotland plc base rate from time to time from the date for payment until payment in full is made.

4.2 All payments due to the Company shall be payable within the specified time irrespective of whether or not the Client has recovered payment from a third party and, for the avoidance of doubt, but without prejudice to the generality of the foregoing, this includes payments of fees due to the Company acting as experts or as expert witnesses when instructed by solicitors acting for a party to a dispute.

4.3 If, in the Company’s view, the Client’s credit-worthiness deteriorates before completion of the Service, the Company may require payment in full or in part of the Price prior to completion, or the provision of security for payment by the Client in such form as is acceptable to the Company.

4.4 The Company has a general lien on all the Client’s property in the Company’s possession in satisfaction of any amount owed by the Client to the Company under the Contract, and may deal with it as it sees fit.

5. Execution of Services

5.1 Tests shall be carried out singly unless prior written instructions from the Client are received for replicates or unless the Company considers replicates are necessary or desirable. The Company reserves the right to charge for replicates even if the original result is confirmed.

5.2 The Client shall supply as much information as possible about each Sample and/or Service requirement in order to assist in achieving an efficient service. Where information relating to the Sample and/or the Service requirements is incorrect and the Company is involved in additional work, the Company reserves the right to charge for such additional work.

5.3 Unless specific prior instructions in writing are received by the Company any Test shall be carried out on the Sample in the state in which the sample is received. The Company reserves the right to charge for any work required to be carried out to the Sample prior to the performance of any Service.

5.4 Methods of carrying out the Service and providing the Report shall be at the sole discretion of the Company unless prior instruction in writing is received from the Client specifying a particular procedure. Charges for such special procedures will be agreed between the Company and the Client prior to carrying out the Service.

5.5 A general description of the method used in the performance of the Service shall be given verbally on request. Where written descriptions of detailed procedures are requested, whether as part of the Report or issued separately, the Company reserves the right to make an additional charge. If the method referenced in the Report represents the end product of development work carried out at the Company’s expense, the method shall only be revealed at the discretion of the Company.

5.6 The Company may, at its sole discretion, undertake to give priority in carrying out a particular Service. A surcharge may be imposed by the Company for the carrying out of priority work. Details of these arrangements will be issued by the Company on request.

6. Samples subject of legal proceedings

If the Sample is, or is potentially, the subject of legal proceedings, this fact must be notified to the Company in writing before the Service is carried out. If that fact is not disclosed to the Company at that stage, the Company may not, in its absolute discretion, be prepared to provide expert testimony.

7. Disclaimer/Liability

7.1 The following provisions of this Condition 7 set out the entire liability of the Company, its employees, agents and sub-contractors to the Client howsoever arising.

7.2 The Company does not exclude its liability (if any) to the Client:

- 7.2.1 for breach of the Company’s obligations arising under section 12 Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- 7.2.2 for personal injury or death resulting from the Company’s negligence;
- 7.2.3 under section 2(3) of the Consumer Protection Act 1987;
- 7.2.4 for any matter which it would be illegal for the Seller to exclude or to attempt to exclude its liability; or
- 7.2.5 for fraud or fraudulent misrepresentation.

7.3 Except as provided in Condition 7.2 the Company shall not be liable to the Client whether in contract, tort (including negligence), breach of statutory duty or otherwise for any loss of profit, loss of business, loss of market, loss of contract, damage to goodwill, loss of anticipated savings, loss of revenue, loss or damage incurred as a result of third party claims or any indirect or consequential loss howsoever caused.

7.4 Subject to Condition 7.2 and Condition 7.3, the Company’s aggregate liability under the Contract (whether in contract, tort (including negligence), breach of statutory duty or otherwise) arising out of or in connection with the performance or

“Price”

“Quotation”

“Report”

“Sample”

“Services”

“Test”

means the price stated in the Quotation, or otherwise agreed with the Client together with all other sums due pursuant to the Conditions;

means the Company’s quotation (whether written or oral) of which the Conditions form part;

means any test certificate, technical report, non-destructive test or inspection record, drawing, spreadsheet, recommendation, advice or the like issued by the Company in respect of a Service;

means any material, item, product or compound supplied by the Client to form the basis of a Test;

means the services specified in the Quotation; and

means any testing, analysis, assay, inspection or the like specified in a Quotation.

publication to third parties. Any such issue of the Report or other reports, results or information is permitted under the Contract only with the prior written consent of the Company who shall have the right to increase the Price where it consents to such advertisement and/or publication.

10.4 The Client hereby undertakes to abide by any regulations imposed by Certification Authorities, Standard Owners, Accreditation Bodies or the Department of Trade and Industry of Her Majesty’s Government relating to marks, emblems or logos attached to the Reports or any other documents issued under the Service.

10.5 All inventions arising from the Contract and any applications for patents or similar protection, whether in the United Kingdom or elsewhere shall be the property of the Client (once all payments due to the Company under contract have been discharged), but the Company is hereby granted an irrevocable royalty free licence, with the right to sub-licence, to apply them or any information gained to work outside the specific field in which the development for the Client took place.

11. Sub-contracting and assignment

11.1 Unless otherwise restricted by the terms of the Contract and/or obligations under any accreditation or governing approval, the Company shall be entitled, in its absolute discretion, to sub-contract the whole or any part of the Service.

11.2 The Company may assign, delegate, licence or hold on trust, all or any part of its rights or obligations under the Contract.

11.3 The Contract is personal to the Client which may not assign, delegate, licence, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Company’s prior written consent.

12. Termination

12.1 The Client shall not terminate the Contract without the written consent of the Company which may be subject to such terms, as in the Company’s absolute discretion, recompense the Company for all loss it may suffer as a result of termination.

12.2 The Company may terminate the Contract and any other contract with the Client forthwith, without prejudice to any other right or remedy available to the Company and without the Company incurring any liability to the Client, in the following circumstances:

12.2.1 if the Client shall commit a breach of any terms of the Contract or any other contract with the Company unless such breach is capable of remedy and the Client has failed to comply with a notice requiring remedy within the period specified in the said notice;

12.2.2 if the Client fails to make payment of the Price within the specified time;

12.2.3 the Client makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or ceases or suspends payment of any of its debts or is unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986;

12.2.4 an encumbrance takes possession, or a receiver or administrator is appointed, over any of the property or assets of the Client;

12.2.5 the Client ceases, or threatens to cease, to carry on business;

12.2.6 the Company reasonably apprehends that any of the events mentioned at Conditions 12.2.3, 12.2.4 or 12.2.5 above is about to occur in relation to the Client and notifies the Client accordingly; and

12.2.7 as provided in Condition 8.3.

12.3 Notwithstanding that the Company terminates the Contract, this shall be without prejudice to the accrued rights and remedies of the parties prior to termination of the Contract and any rights or remedies under the Conditions, which shall remain in force, including the right to suspend all further Services to be made under any other contract with the Client (and in such event the Client shall not be released from any of its obligations to the Company under any other contract) and the right for the Company to receive full compensation for its loss under the Contract or any other contract with the Client.

12.4 On termination of the Contract pursuant to Condition 12.2, any indebtedness of the Client to the Company shall become immediately due and payable.

13. Confidentiality

13.1 All Confidential Information shall be kept by the Client in the strictest confidence. Save for the purposes of fulfilling its obligations under the Contract, the Client shall not, without the prior written consent of the Company, disclose, divulge or grant access to the Confidential Information which it has received and shall not permit any of its employees, agents or officers to disclose, divulge or grant access to such Confidential Information.

13.2 Notwithstanding Condition 13.1, the Client may disclose Confidential Information which it has received if:

13.2.1 it is required to do so by any governmental, local government or regulatory authority or by law (but then only to the extent it is strictly required to do so);

13.2.2 it is strictly necessary for the purpose only of obtaining professional advice in relation to the Contract;

13.2.3 it is already known to the Client prior to the time of disclosure by the Company (where the Client can prove the same with documentary evidence); or

13.2.3 it is information which subsequently becomes public knowledge other than by breach of the Contract by the Client.

13.3 The obligations of the parties under this Condition 13 shall continue to apply without limit of time.

14. General

14.1 Each right or remedy of the Company under any Contract is without prejudice to any other right or remedy of the Company under this or any other Contract.

14.2 Nothing in the Conditions shall create or be deemed to create a partnership between the parties.

14.3 The Conditions, the Quotation and the Contract contain all the provisions which the parties have agreed in relation to the subject matter of the Contract and supersede any prior written or oral agreements, representations or understandings between the parties. The Client agrees that it has not been induced to enter into the Conditions or the Contract by a statement or promise which they do not contain save that the Conditions shall not exclude any liability which the Company would otherwise have to the Client in respect of any statements made fraudulently by the Company.

14.6 In the event of one or more of the provisions of the Conditions being held by a competent authority to be invalid, illegal, or unenforceable, in whole or in part, the validity, legality or enforceability of the remaining provisions of the Conditions and the remainder of the provision in question shall not be affected thereby.

14.7 All notices to be served by one party on the other must be in writing and shall be deemed duly delivered or served at the time of service if delivered personally and forty eight hours after posting if posted by first class or airmail pre-paid post in each case to the registered address, if applicable, or if not applicable the last known address of the other party.

14.8 No failure or delay by the Company to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right, power or remedy.

14.9 For the purpose of the Contracts (Rights of Third Parties) Act 1999, the Quotation and the Conditions do not and are not intended to give any rights or any right to enforce any of its provisions to any person who is not a party to it.

14.10 The Quotation, Conditions and the Contract shall be governed by and construed in accordance with the laws of England and Wales and the Client submits to the exclusive jurisdiction of the English Courts.