

ALS Environmental Ltd - Terms and Conditions for the Sale of Services

"ALS Environmental Ltd is the contracting party under these terms and conditions and is referred to in them as "ALS".
ALS Environmental Ltd (registered number 02148934) is registered in England and Wales, and its registered office is at
ALS Environmental Limited, Torrington Avenue, Coventry, CV4 9GU



(1) GENERAL

- (a) In these terms and conditions of sale ("Conditions") "ALS" means ALS Environmental Ltd, "the Customer" means the person, firm or company named in the quotation or order acknowledgement. These Conditions shall form part of every agreement for the provision of services by ALS ("Contract"). Any variation of the Conditions shall only be effective if mutually agreed in writing and signed by a duly authorised representative of ALS.
- (b) Every Contract between ALS and the Customer shall be subject to English Law. The Customer hereby submits to the exclusive jurisdiction of the English Courts for the determination of any question or dispute.

(2) QUOTATIONS AND ACCEPTANCE OF ORDERS

- (a) Any tender or quotation given by ALS shall, unless otherwise stated, remain valid for acceptance for a period of 60 days from the date of the tender or quotation.
- (b) A Contract between ALS and the Customer shall not arise until such time as the parties have agreed in writing the services to be provided, the timescale for the performance of the services and the charges to be levied, or, ALS commence performance of the services (whichever is the earlier).
- (c) If ALS commence the services before an agreement in writing is in place then the document ordering the services and these Conditions shall together form the Contract and in the event of any discrepancy between the two, these Conditions shall prevail.

(3) DESCRIPTION, DRAWINGS AND SPECIFICATION

All descriptions, drawings, specifications, representations and other particulars furnished by ALS in catalogues, price lists and elsewhere (whether verbally or in writing) are given for general information only and are not binding upon ALS.

(4) PRICE AND PAYMENT

- (a) Charges are exclusive of Value Added Tax.
- (b) A separate invoice may be issued for each item listed in the quotation.
- (c) Liability for payment of the Charges shall arise upon completion of the whole or part of the services provided under the Contract (or as otherwise agreed in writing between ALS and the Customer), whether pursuant to a written order or pursuant to submission to ALS of a sample or any document whatsoever. ALS will issue invoices in respect of the Charges payable by the Customer prior to the relevant payment date.
- (d) The services or an item of the services will be deemed to be completed and the relevant element of the Contract price ("the Charges") to be due and payable forthwith:
- (i) when ALS issues a written notice to the Customer confirming such completion; or
- (ii) if ALS is available to perform the services under this Contract but is prevented from doing so at the time agreed for the provision of the services by reason of the lack of relevant assistance from the Customer (such as lack of availability of test components from the Customer) and/or by reason of the condition or accessibility of the Customer's premises on the site at which the services are to be provided and/or the facilities at or the services available therein.
- (e) Payment of the Charges shall be made by the Customer within 30 days after the earlier of the date of invoice or the provision of the services (or item of services). No payment shall be deemed to have been received until ALS has received cleared funds. Time for payment shall be of the essence.
- (f) Charges remaining unpaid after the due date shall bear interest from the due date for payment until the day payment is received at the statutory rate of interest for late payment from time to time, such interest accruing from month to month. Without prejudice to any other rights or remedies of ALS any default by the Customer in making payment on the due date shall entitle ALS to suspend services under this or any other contract so long as the default

continues and to treat this Contract as repudiated by the Customer if the Customer has not within 14 days of receiving written notice from ALS paid all sums due to ALS.

- (g) No payments may be withheld nor any counterclaims of the Customer be set off against any payment due hereunder without the written consent of ALS.

(5) SERVICE LEVELS

- (a) ALS will use reasonable endeavours to:
- (i) ensure that all samples are analysed and the results of such analysis notified to the Customer;
- (ii) ensure that all samples are analysed in accordance with best analytical practices;
- (iii) ensure that its staff whilst on premises under control of the Customer will act responsibly and in accordance with safe working procedures;
- (iv) ensure that commercially sensitive information relating to the business and activities of the Customer which are known to ALS and the staff of ALS as a consequence of the services provided by ALS are not divulged to any third party without prior written approval from the Customer;
- (b) Any special analytical procedures set out in ALS's quotation shall not be varied without the prior written agreement between the Customer and ALS.
- (c) ALS reserves the right to reject any samples which in its opinion by reason of its nature, volume or presentation is not such as to permit ALS to conduct an adequate analysis.

(6) CUSTOMER'S OBLIGATIONS

- (a) The Customer shall:
- (i) take, bottle, store and transport samples prior to delivery to ALS in accordance with BS EN ISO 5667 and ALS shall deem that this obligation has been met unless it becomes aware of facts to suggest otherwise;
- (ii) unless otherwise agreed be responsible for the delivery of all samples and materials to the laboratory specified by ALS;
- (iii) clearly and accurately label all samples and materials delivered to ALS with the analysis required, a unique identification reference and the time and date on which the sample was taken;
- (iv) if notified of a failure to meet the standard set out in subsection (i) above, confirm to ALS whether the Customer wishes to proceed with the analysis within the time specified for a response, in default of which, ALS will proceed with the analysis and the results of the analysis will contain a notification that the result may not be reflective of concentration present at the time of sampling.
- (v) ensure that reasonable notice of bottle requirements/collection arrangements is given during normal working hours;
- (vi) notify ALS if the analysis is required for legal proceedings prior to ALS carrying out the analysis. For such purposes, the Customer should prepare a chain of custody document (in a form agreed by ALS) to be signed by ALS as acknowledgement of receipt;
- (vii) provide ALS with such quantities of samples for analysis and in such forms as ALS requires. The Customer shall submit a full schedule with the samples together with any other relevant information likely to be useful during analysis, in particular, without limitation, where the Customer has any suspicion that there may be present in the sample substances hazardous to health or dangerous to employees, servants or agents of ALS.
- (b) The Customer fully indemnifies ALS against all claims, demands, actions, proceedings and all damages, losses, costs and expenses which are made or brought against or incurred or suffered by ALS directly or indirectly and whether wholly or partly resulting from the Customer's failure to comply with its obligations under these Conditions or under the Contract.
- (c) If access to the Customer's premises is necessary for the fulfillment by ALS of its obligations under the Contract, the Customer shall allow ALS full access and if such access is hindered or prevented, then ALS shall have the right to terminate the Contract immediately without prejudice to its rights to charge in

respect of services rendered up to the date of such termination.

- (d) If the Customer, acting reasonably, suspects that any samples may contain substances hazardous to human health, it shall take steps to notify ALS of its suspicions prior to delivery of any such samples. This clause will not operate to override any specific instructions stipulated by ALS and is meant to act as a failsafe mechanism.

(7) WARRANTY AND LIABILITY OF ALS

- (a) All Conditions and warranties whether expressed or implied by statute or otherwise shall be construed subject to these Conditions and insofar as they are inconsistent therewith, shall be excluded to the fullest extent allowed by law.
- (b) If ALS fails to perform the services (or any part thereof) due to a breach of its obligations under this Contract, the Customer shall be entitled to require ALS to remedy such breach by re-executing the relevant part of the services without additional charge up to the amount of the charges received by ALS for the provision of such services.
- (c) ALS will use reasonable endeavours to meet any date quoted by ALS for completion of services but any date named by ALS for completion is given and intended as an estimate only and is not to be of the essence of the contract. ALS shall not be liable in any way in respect of late completion of the services howsoever caused, nor shall such late completion be deemed to be a breach of contract.
- (d) Any exclusion or limitation of liability in these Conditions or the Contract shall not apply in the case of liability for fraudulent misrepresentation, death or personal injury resulting directly from ALS's negligence.
- (e) Save for any liability for death or personal injury arising from ALS's negligence or fraudulent misrepresentation (which is not excluded), ALS's total aggregate liability in respect of any loss or damage sustained by the Customer, whether for negligence or breach of contract or otherwise, shall in no event exceed the value of the services provided under this Contract as set out in the quotation for the provision of services. ALS confirms and the Customer acknowledges that the services are specifically costed on the basis that this clause applies.

(8) BREACH BY OR INSOLVENCY OF THE CUSTOMER

ALS shall have the right forthwith to terminate this and any other Contract with the Customer but without affecting any other claim, right or remedy of ALS against the Customer, if:

- (a) the Customer fails to comply with any of its obligations to ALS under this or any other Contract; or
- (b) upon the occurrence of any of the following events:
a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer; or an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the Customer; or a floating charge holder over the assets of the Customer has become entitled to appoint, or has appointed, an administrative receiver; a person becomes entitled to appoint a receiver over the assets of the Customer, or a receiver is appointed over the assets of the Customer; or the Customer commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors; or the Customer, (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or is made bankrupt or (being a partnership) has any partner to whom any of the foregoing apply.

(9) CANCELLATION, SUSPENSION AND TERMINATION

Subject only to clause 9 (a) below, the Customer can only terminate a Contract (or any part of a Contract) with ALS's prior written agreement. The Customer shall be liable to indemnify ALS in full in respect of any direct or indirect losses (to include but not be limited to economic loss including loss of profits) it incurs as a result of such termination.

- (a) If for any cause beyond its control, ALS is unable to perform any of its obligations under the Contract ALS may by notice in writing to the Customer terminate the Contract or suspend the Contract in respect of any one or more part or parts of its obligations without

liability for any loss or damage thereby incurred by the Customer.

(10) DESIGN IMPROVEMENTS, CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- (a) ALS reserves the right at any time without prior notice to make such changes in design, construction, composite materials layout or equipment as it in its absolute discretion deems appropriate.
- (b) All intellectual property rights (including, without limitation, patents, registered and unregistered designs, trade marks and service marks (registered or not) and copyright and any applications for them) ("Intellectual Property") created by ALS in the course of the performance of the Contract or otherwise created or used in the provision of the services shall remain ALS's property.
- (c) Subject to the payment of all Charges under the Contract, ALS agrees to grant to the Customer an irrevocable, royalty free copyright licence to use and reproduce the Intellectual Property contained within the analytical results provided to the Customer as part of the Contract. ALS shall not be liable for the use of such documentation other than for the purposes intended under the Contract, or for any use or reliance by third parties.
- (d) ALS shall have no liability to the Customer in respect of any actual or alleged infringement of any intellectual property right of third parties in relation to the services specified in the order or their testing, except to the extent (if any) that such infringement occurs by reason of the design of ALS.
- (e) Both parties shall keep and procure to be kept secret and confidential all information disclosed or obtained as a result of the relationship of the parties under the Contract and shall not use or disclose the same save for the purposes or the proper performance of the Contract or with the prior written consent of the other party; except that this obligation of confidentiality shall not extend to any matter which can be shown to be part of the public domain other than as a result of a breach of the obligations of confidentiality under this Contract; or where any applicable law requires the disclosure of the relevant matter.

(11) RECOMMENDED THIRD PARTIES, SUB-CONTRACTING AND THIRD PARTIES' RIGHTS

- (a) If ALS recommends that the Customer should engage other laboratories to carry out particular services, then ALS shall not be held liable for the performance of such services by such recommended parties.
- (b) ALS shall be entitled to sub-contract any of the services under the Contract if it anticipates that it will be unable to meet the timescale set out in the Contract or if a particular determinand cannot be analysed in-house. In any other circumstances, ALS will not sub-contract any of the services without the Customer's written agreement (such agreement not to be unreasonably withheld or delayed). The Customer is not entitled to assign the benefit of any Contract.
- (c) The Contract (Rights of Third Parties) Act 1999 shall not apply to any Contract and no third party shall have the benefit of the right to enforce these Conditions.

(12) FORCE MAJEURE

- (a) Neither ALS nor the Customer shall be liable for a failure to perform arising from any causes or events beyond the control and without the fault or negligence of ALS and/or the Customer and without prejudice to the generality of the foregoing to include acts of God or a public enemy, acts of the Government of ALS's or Customer's country or any public authority or governmental agency in either country, acts of any person engaged in subversive activity or sabotage, fires, floods, explosion or other catastrophes, epidemics or quarantine restrictions, power outages, major equipment failure, strikes, slowdowns, lockouts, or labour stoppages or disputes of any kind, freight embargoes, unusually severe weather or delays of the Customer due to any of the above causes or events.
- (b) In the event of a failure by the Customer to perform arising under sub-paragraph (a) of this clause, ALS shall be entitled to delay its obligations of supply for a period up to and including 30 days in which case all obligations including payment provisions under this Contract shall apply.