

# BIOBEST LABORATORIES LIMITED

## TERMS & CONDITIONS OF SUPPLY

### 1. Routine Diagnostic Testing Services

We shall conduct diagnostic testing services ("Routine Diagnostic Testing Services") as follows:

- a. We will test a sample following its receipt as per any report or specification provided by us and in accordance with the test schedule and turnaround times published in our current marketing materials or on our website ([www.biobest.co.uk](http://www.biobest.co.uk)). The testing schedule is subject to change by us without prior notification. We will use reasonable endeavours to ensure that tests are completed as per this schedule; however we make no guarantees of test times, unless specifically agreed to by us in writing. In this respect time shall not be of the essence. Upon request urgent tests may at our discretion be conducted outside the normal test schedule. In such circumstances additional charges may be applicable, and these shall be notified to you in advance of setting up the test.
- b. If a sample is received in a condition such that it is considered to be broken or otherwise unsuitable for testing, we will inform you immediately and request submission of a repeat sample. There will be no additional charge in such circumstances. However, we reserve the right to charge for the original and re-test where the unsuitable condition of the sample does not become apparent until during or after test completion.
- c. If we receive a request for test cancellation before we have set up the test, we will provide a full refund. If we receive a request for test cancellation after we have set up the test, we reserve the right to charge an amount to reflect our costs incurred up to the standard test price.
- d. If we receive a request from you to add a test to a sample already received, we will conduct this additional test providing there is sufficient material. The additional charge will be as per the standard test price.
- e. The diagnostic test service includes as standard faxed or posted report, and where specifically requested or required, telephoned or emailed results; interpretation of results by a veterinary surgeon; advice on sampling and submission; and supply of sampling kits where appropriate. We retain ownership of and retain all copyright and other intellectual property rights in all reports, written advice and other materials prepared by us.

### 2. Contract Research, Project Studies, Supply of Goods

We shall conduct contract research, project studies, supply of Goods and any other service or product that we supply which is not classified as a Routine Diagnostic Testing Service (together, "the Services"), as per the scope of work and terms and conditions specified and previously agreed to by us in writing in any tender request, proposal documentation and agreed contract. In the absence of any such agreed contract, these Conditions will apply. Unless otherwise agreed in writing payment terms for such research or study work will be 40% of contract value on signature of the contract by us, 30% on completion of testing and 30% on delivery of final report.

### 3. Samples and Results

- a. Unless otherwise agreed with us in writing, all samples received by us for Routine Diagnostic Testing Services shall become our property upon delivery of the sample to us or collection of the sample by us and, on the completion of Routine Diagnostic Testing Services, may be retained and used for research and development and other purposes. Any data or other results (and all intellectual property and other rights in them) arising from such use shall belong to us and you shall not have any rights in any of them.
- b. Unless otherwise agreed with us in writing, all data, results, reports and advice produced by us as a result of our carrying out the Routine Diagnostic Testing Services shall be our property and may be used for such purpose(s) as we decide from time to time.
- c. If you provide any data or information with, or relating to, the samples, we may use such data and information for our own purposes and may provide it to third parties in an anonymised manner. All personal data is held in full compliance with the General Data Protection Regulations (GDPR) and will only be passed to third parties where it is a legal requirement for us to do so or where we have your informed consent.

### 4. Prices and Payment

- a. Prices are published on our website and in our current marketing materials. We reserve the right to change prices.
- b. All prices for eligible transactions are subject to VAT at the current rate.
- c. For non-account holders and new customers we require payment upon submission of the sample before an order will be accepted. We accept payment in pounds Sterling in the form of a cheque, bankers draft, by an electronic transfer of funds to a bank account of our choosing (with you being responsible for any costs associated with such transfer) or by debit or credit card.
- d. For repeat customers and account holders we will invoice on a monthly basis. You shall pay the full amount of any invoice within 30 days from date of invoice. We will exercise our statutory right to charge interest and compensation for debt recovery costs under late payment legislation if we are not paid according to agreed credit terms.
- e. We will request two trade and one banker's reference in order to set up a new account.

### 5. Delivery

- a. If any Goods are to be delivered by us as part of this Contract then such Goods shall be delivered to a delivery address agreed to by the parties during our normal business hours. If any Goods are to be delivered outside the United Kingdom, such delivery shall be Exworks Incoterms 2000.
- b. We shall make reasonable endeavours to deliver any Goods within timescales notified to you. If no dates are specified, delivery shall be within a reasonable time, however time shall not be of the essence.
- c. The Goods shall remain our property and title in the Goods shall not pass to you until all sums due by you to us have been paid.
- d. Until the transfer of title in terms of Condition 5c above:-
  - (i) you shall store the Goods in a manner which distinguishes them from any other goods and which indicates that the Goods are owned by us;
  - (ii) the Goods shall be kept at your premises and you shall take good care of the Goods and use and maintain them in accordance with good industry practice;
  - (iii) you shall be responsible for loss of, or damage to the Goods; and
  - (iv) you shall not permit any form of security or charge to be created over the Goods.
- e. Until the property in the Goods passes to you in accordance with the provisions of Condition 5c above, you shall keep the Goods insured to their full replacement value with full comprehensive insurance to be approved by us and with our interest noted on the policy. Evidence of such insurance shall be made available to us at any time on request.

### 6. Warranty of Performance

- a. We shall exercise all reasonable skill, care and professional due diligence in the performance of the Services, however we do not guarantee or warrant that any particular result is correct or otherwise.
- b. All conditions, representations and warranties relating to the Goods and/or the Services and their use and receipt and all remedies otherwise available to you are excluded to the fullest extent permitted by law.

## **7. Limitation of Liability**

- a. Under no circumstances shall our liability for any loss or damage suffered by you or any other person as a result of our performance or nonperformance of our obligations under this Contract be greater than £10,000 or the total sums received by us under the provisions of the Contract, whichever is the greater. You shall indemnify us in respect of any loss sustained and any expenses incurred by us arising directly out of or in connection with your breach of this Contract.
- b. We shall not be liable in any circumstances for any indirect or consequential loss or loss of anticipated profits, loss of anticipated savings or any other economic loss of yours.
- c. Notwithstanding the provisions of Condition 7a and 7b above, neither party excludes or limits liability to the other party for death or personal injury arising from the breach of duty of such party.
- d. Our liability to you under this Contract is excluded to the fullest extent permitted by law.
- e. Should any limitation or provision contained in this Condition be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if either party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

## **8. Force Majeure**

- a. Any delay or failure by either party in performance hereunder, other than your obligation to pay us any monies due to us, shall be excused if and to the extent that such delay or failure is caused by occurrences beyond such party's reasonable control including but not limited to, acts of God, decrees or restraints of government, strikes, war, fire, riot, sabotage, terrorism and any other cause or causes whether similar or dissimilar to those already specified which cannot reasonably be controlled by either party. Such performance shall be so excused for the period during which such inability of the party to perform is so caused but for no longer period and shall be remedied as far as possible with all reasonable despatch. Any time period for performance shall be extended by a period equal in duration to any period during which such performance is excused by this Condition.
- b. If any of the events detailed in Condition 8a above prevents either party from performing all of its obligations under the Contract for a period in excess of one month, the party affected by such non-performance may terminate the Contract.

## **9. Termination**

- a. We may terminate this Contract by providing written notice to that effect to you.
- b. In addition to, but without prejudice to our other rights and remedies under and in terms of this Contract, we may terminate this Contract forthwith if:-
  - (i) you fail to pay any part of the price payable to us by the date specified in Condition 4 above;
  - (ii) you become insolvent or enter into any arrangement with your creditors;
  - (iii) a petition is presented, or a resolution proposed, for the winding-up of your business;
  - (iv) any procedure is commenced with a view to the appointment of an administrator, receiver or administrative receiver in relation to you or any other party gives notice of its intention to appoint an administrator to you;
  - (v) you are unable to pay your debts as they fall due;
  - (vi) you cease trading or threaten to cease trading; or
  - (vii) any equivalent event as outlined in Conditions 9b(i) – 9b(vi) occurs in any jurisdiction other than Scotland.
- c. In the event of termination of this Contract you shall pay to us all amounts which remain outstanding for Services performed or Goods delivered by us under this Contract within 10 Business Days of this Contract terminating.

## **10. Assignment**

We shall be entitled to assign, transfer or sub-contract any of our rights or obligations under this Contract. You shall not assign, transfer or sub-contract any of your rights or obligations under this Contract or purport to do so unless you have obtained our prior written consent.

## **11. Dispute Resolution**

Should any dispute arise between us and you, the parties will attempt to resolve the dispute in good faith. If the parties are unable to resolve any such dispute between them, either party may request that the parties seek to resolve the dispute through mediation using the services of the Centre for Dispute Resolution to facilitate the mediation process but this shall not prejudice a party's right to raise court or other proceedings.

## **12. Entire Agreement**

This Contract and any other document referred to herein as being applicable contains the entire agreement of the parties with respect to the subject matter of this Contract and supersedes all prior agreements and arrangements whether written or oral between the parties with respect to the subject matter of this Contract. Nothing in this Condition 12 shall have effect to exclude the liability of either party for fraud or fraudulent misrepresentation.

## **13. Severability**

If any provision of this Contract is held by the appropriate court or other competent authority to be void or unenforceable in whole or in part this Contract shall continue to be valid as to the other provisions of it and the remainder of the affected provision.

## **14. Governing Law**

This Contract shall be governed by and construed in accordance with the law of Scotland and the parties hereby submit to the non-exclusive jurisdiction of the Scottish courts.

## **15. Definitions, Interpretation and Basis of Contract**

- a. In these Conditions, unless the context requires otherwise, the following words and phrases shall have the meanings set opposite them:
  - "Business Day" means any day from Monday to Friday inclusive on which we are open for business;
  - "Conditions" mean the terms and conditions of supply as set out in this document;
  - "Contract" means the agreement incorporating the Conditions concluded between us and you pursuant to Condition 15c for the supply of Goods and/or Services incorporating the Conditions;
  - "Goods" means the goods, if any, to be supplied under the Contract;
  - "Purchaser" shall mean the individual or company to whom we are supplying Goods and/or Services under the Contract;
  - "Services" means the services, if any, to be supplied under the Contract, as more particularly described in Conditions 1 and 2 above; and
  - "VAT" means value added tax.
- b. All references to "us", "our" and "we" shall mean Biobest Laboratories Limited and references to "you" and "your" shall mean the Purchaser.
- c. All purchase transactions between us and you are, unless otherwise agreed to in writing by us, subject to these Conditions which are deemed to be incorporated into any Contract. These Conditions shall apply to the Contract to the exclusion of any other terms and conditions including without limitation, any terms and conditions of yours. No variation to the Contract or these Conditions shall be binding unless accepted in writing by us.