1. **Area of Application**
	1. All Orders accepted by Technical Materials Laboratory Ltd (Thereinafter referenced to as “TML”) will be governed by these General Terms and Conditions of Sales (the “Terms and Conditions”), including orders placed by telephone which have been confirmed in writing, placed by email and orders made by delivery of samples. A contract with these Terms and Conditions comes into being when an order that has been placed with TML is accepted by TML. An order placed with TML is considered as accepted by TML when (a) TML proceeds to fulfil that order, without need for any written confirmation to the customer or (b) TML accepts the order in writing.
	2. These Terms and Conditions supersede and replace all prior verbal or written price quotations, terms and conditions set forth on any Customer purchase order and any other agreements between the parties and take precedence over all conflicting or inconsistent provisions of subsequent written agreements between the parties.
	3. No officer (other than the authorised signatory), employee, agent or subcontractor of TML has the authority to alter or waive any of the provisions of these Terms and Conditions or to make any representation which conflicts with or purports to override these Terms and Conditions; and no such alteration, waiver or representation shall be binding upon TML, unless it is in writing and signed by an authorised signatory of both Parties.
	4. TML shall perform the Services at the facility set forth on the order. The Customer is responsible for providing the necessary materials, as identified in an order, prior to TML initiation of any Services.
2. **Placement of Order**

2.1 An order placed with TML will be deemed valid and accepted by TML only if all of the specific terms of the order, including, but not limited to, price, estimated turnaround times, and delivery date are agreed upon in writing by the parties by: (i) the delivery by Customer to TML of a fully-executed written order; (ii) the written acceptance by Customer of a quote issued by TML; (iii) the receipt by TML of a purchase order from Customer specifically referencing the proposed order; or (iv) receipt of any order by TML testing request forms or electronic order forms. TML is not obligated to start any analytical work unless the order is clear and it has received all required information from Customer.

2.2 Unless specifically accepted in writing and signed by the authorised signatory any terms proposed or submitted by a Customer at any time (including, but not limited to, terms or provisions in the Customer’s purchase order, instructions or other document) which differ from this Agreement are rejected as a material alteration of this Agreement and shall be of no force or effect. Furthermore, special terms or conditions of prior orders, including special pricing, will not automatically apply to subsequent orders. Each order accepted by TML will be treated as a separate contract between TML and the Customer.

2.3 TML is entitled to charge management and administrative fees of up to Twenty Five Pounds (£25) as amended in latest pricing in connection with the request for additional services to an existing order.

2.4 A request for additional services on samples that have entered the TML’ laboratory will be treated as a new order and may postpone the estimated delivery date accordingly.

**3. Fees and Terms of Payment**

3.1. Prices are exclusive of all applicable taxes (including sales, use and VAT) and are based on tariffs in force at the day of the remittance of the offer to the Customer. Applicable taxes are those in force at the date of invoicing.

3.2 Payment of all invoices is due strictly within thirty (30) days of the invoice date. Any dispute about invoices must be raised within thirty (30) days of the invoice date. The challenge of an analytical result will not entitle a Customer to defer payment. TML reserves the right to charge interest on any overdue payments at a rate of 1.5% per month accruing on a daily basis from the date the invoice is due until the date cleared funds are received.

3.3 TML is entitled to require payment of up to one hundred percent (100%) of the quoted order price as a condition of acceptance. Where the provision of Services is subject to a proforma invoice then TML shall not be obliged to start work until after payment in full has been made as cleared funds to TML.

3.4 All invoices issued by TML are payable in full. The Customer is responsible for payment of withholding and any other taxes and all import duties. Payments made to TML shall not be reduced by such amounts.

3.5 The invoice settlement method is cheque, bank transfer or direct debit. Any other method of payment must receive prior agreement from TML. Each Party shall provide to the other Party its bank account detail and pay their own bank charges, as needed.

3.6 TML reserves the right to charge for any and all expenses incurred as a result of performing the Services required by the Customer. Although TML will try and provide an estimate of such expenses these may change as a result of circumstances out of TML’s control.

3.7 Unless otherwise agreed in writing, the price for the Goods or Services shall be the price set in the order acknowledgement. TML shall not be bound by any price quoted which is not in writing. Prices for the sale of Goods include packing cases and materials but not carriage or installation which will be quoted separately and as agreed with the Customer.

3.8 Quotations are valid from the date of issue for a period of 90 days unless otherwise specified or agreed in writing.

3.9 Should the Customer become insolvent, bankrupt, subject to an administration order, enter into liquidation or receivership, or make arrangements with creditors TML reserves the right to cancel the Contract and terminate the Services. Where the Contract with TML is terminated all outstanding monies due from the Customer to TML shall be immediately payable. Termination of the Contract shall be without prejudice to any of TML’s accrued rights.

3.10 The Customer shall not be entitled to withhold or defer payment due to TML as a result of any dispute or counter claim that it may allege against TML.

3.11 TML reserves the right to bring action against the Customer in order to collect unpaid invoices and fees, including court action. All fees associated with such actions shall be paid for by the Customer including legal fees and related costs.

**4. Suspension or Termination of Services**

4.1 Cancellation by the Customer of Services will only be acceptable by prior agreement with TML and a charge will usually be made.

4.2 TML shall not be liable for any delay or failure in providing the Services due to circumstances beyond its reasonable control (including any failure by the Customer to comply with its obligations). If any such circumstances arise which prevent TML from completing the Services, then TML will be entitled to cancel or reschedule the Services at its discretion. In the event of cancellation TML will be entitled to retain all fees paid by the Customer for Goods or Services already supplied but will refund to the Customer any fees paid by the Customer for Services which have not yet incurred any costs or been supplied.

**5. Duties of Customer in Delivering Samples or Materials**

5.1 The Customer must always inform TML in writing prior to the shipment of any samples or materials, The Customer hereby warrants and represents to TML that all samples or materials provided to TML by Customer for analysis are: (i) organized and ready for analysis; (ii) free of foreign materials or substances that were not previously reported by the Customer; (iii) safe and in a stable condition and shall not pose any danger to its site, during transportation, in the laboratory or otherwise to TML’s premises, instruments, personnel or representatives; (iv) labelled appropriately if they contain dangerous or hazardous materials; and (v) delivered to TML for the purposes set forth in this Agreement or any order free of any third party intellectual property claims. It is the Customer’s responsibility to ensure compliance with hazardous waste regulations, including regarding information, transportation and disposal, and it must inform TML’s personnel or representatives about sample or material health and safety concerns, including any known or suspected toxic or other contaminant that may be present in the sample or material, its likely level of contamination, and the risks to TML’s premises, instruments, personnel and representatives. The Customer shall be responsible for, and indemnifies TML against, all costs, damages, liabilities and injuries that may be caused to or incurred by TML or its personnel or representatives including during the transportation or in the laboratory by the Customer’s sample or material or by sampling conditions for its failure to comply with this Section 5.1. The Customer shall bear all extraordinary costs for adequate disposal of hazardous waste resulting from the sample or material, whether or not described as hazardous waste. At TML’s request, the Customer must provide TML with the information required to ensure safe handling, disposal and testing of the sample or material.

**6. Provision of Services**

6.1 TML shall provide Services using reasonable care, skills and knowledge in accordance with the Customer specific instructions/requirements and as confirmed by TML as part of the Contract review process.

6.2 Estimates for completion of the Services are made as best estimates and date from receipt of a written order, payment of a proforma invoice if required, full information and samples to enable TML to proceed. While TML will make every effort to fulfil them, such estimates are subject to unforeseen events and if not achieved, cannot give rise to any claim. Time will not be of the essence in relation to the performance of the Services. Notwithstanding, specific turnaround time guarantees may be implemented by TML for specific services.

6.3 Promptly after the analysis and/or Services have been performed, the results shall be sent to the Customer by email or other electronic means, or by regular mail, post or courier, to the attention of the persons indicated by the Customer in the order. An additional charge may be made for the provision of a hard copy of the results.

6.4 Results given in test reports refer only to samples submitted for analysis to TML. A satisfactory test report in no way implies that the product tested is approved by TML and no warranty is given as to the performance of the product tested.

6.5 TML may delegate all or part of the Services to a subcontractor and the Customer authorises TML to disclose all information required to undertake the Services.

6.6 Where the Customer requests TML to witness testing of other services being undertaken by a third party the Customer agrees that TML’s sole responsibility is to be present at the time of the work and to forward the results or confirm that the service has been undertaken. The Customer agrees that unless otherwise agreed TML is not responsible for the condition or calibration of any equipment unless provided by TML.

6.7 Where TML receives documents reflecting engagements between the Customer and third parties or documents belonging to third parties, such documents shall be considered as being for information only and shall not release the Customer from any or all obligations to TML.

6.8 TML reserves the right to make changes to the Services, provided that such changes do not materially affect the nature or quality of the provision of these Services or where they are necessary in order to ensure that any applicable laws or safety requirements are complied with.

6.9 The Customer acknowledges that TML by providing the Services, neither takes the place of the Customers or any third party or releases them from any of their obligations.

**7. Confidentiality**

7.1 Unless specifically excluded in the terms of an individual contract between TML and the Customer, the following shall apply to all deliverables including, reports, advice, drawings, photographs, specifications, data or other forms of media.

7.2 Deliverables referred to in clause 7.1 shall not be disclosed to third parties or used in litigation without the consent of TML.

7.3 Where TML has given consent to disclosure of any service deliverables referred to in clause 7.1, the Customer shall draw the attention of the third party to these terms of business and the basis on which TML undertakes testing, reporting and advising. The Customer shall indemnify TML for any failure to do so.

7.4 The service deliverables referred to in clause 7.1 are submitted to the Customer as confidential documents. Confidentiality shall continue to apply after completion of the Contract, but shall cease to apply to information or knowledge which has come into the public domain through no breach of this Contract by the Customer.

**8. Property Rights on Sample Material and Sample Storage**

8.1 Customer hereby authorizes TML the right to use the samples or material to the extent necessary for the performance of the order. Unless the storage requirements are agreed in writing by TML in any order, TML shall have no obligation or liability for samples sent to TML for storage. Notwithstanding the above, TML will take commercially reasonable steps to store the samples according to professional practice.

8.2 Unless the Parties hereto have agreed in writing regarding the disposition, destruction or storage of samples, TML shall have the ability to dispose of or destroy samples 4 weeks from the date of the final report. TML also can dispose of or destroy the samples after the agreed upon retention period, without further notice and at Customer’s cost, should an extra cost for TML arise to comply with any regulation (for example, with respect to disposal of hazardous waste). Where practical and agreed in advance, samples may be returned at the Customer’s expense. However, samples are in most instances partially or fully destroyed as part of the work undertaken

**9. Transfer of Property**

9.1 Title in any analysis results or similar supplied by TML to the Customer will remain with TML until all invoices in respect thereof have been paid by the Customer in full, and until such full payment, the Customer shall have no ownership or property rights therein. In addition, even if TML has accepted and begun to fulfil an order, TML has the right at any time to stop processing that order and to stop doing any work for a Customer if that Customer is late in paying any amount due to TML, whether for that or any other order.

9.2 TML will retain electronic copies of all written and recorded information produced from any Services, including but not limited to laboratory notebooks, descriptions, methods and procedures on-site for a period of at least six (6) months following completion of the Services. After this time period, TML may destroy any records pertaining to completed Services or store the information for an additional fee.

**10. Limited Warranties and Responsibilities**

10.1 Orders are handled in the conditions available to TML in accordance with the current state of technology and methods developed and generally applied by TML. Analyses, interpretations, assessments, consulting work and conclusions are prepared with a commercially reasonable degree of care but TML cannot guarantee that these will always be correct or absolute. This limited warranty expires six months after the delivery date of the final report or completion of study, if the acknowledgement of the order does not specifically state otherwise. In all cases, the Customer must independently verify the validity of any results, interpretations, assessments and conclusions supplied by TML, if it wishes to rely on the same in respect of matters of importance and shall do so at its own risk.

10.2 Each analytical report relates exclusively to the sample analysed by TML. If TML has not expressly been mandated and paid for the definition of the sampling/testing plan (including which samples of which raw materials and finished products and at which frequency should be analysed) and the definition of the precise range of analysis to be performed, or if the Customer has not followed TML recommendations, TML shall not bear any responsibility if the sampling plan and/or the range of analysis to be performed prove to be insufficient or inappropriate.

10.3 The Customer is responsible for the proper delivery of samples sent to TML for testing. Unless otherwise specifically agreed in writing by TML, TML accepts no responsibility for any loss or damage, which may occur to any sample or material in transit. The Customer will at all times be liable for the security, packaging and insurance of the sample or material from its dispatch until it is delivered to the offices or the laboratories of TML. TML will use commercially reasonable care in handling and storing samples or material, but TML shall not be held responsible for any loss or destruction of samples or material even after their receipt at its laboratories.

10.4 Unless explicitly agreed in writing by all parties, the contractual relationship shall be exclusively between the Customer and TML. There shall be no third party beneficiary or collateral warranty relating to any order, and the Customer shall indemnify and hold TML harmless from and against any and all third party claims in any way relating to the Customer or to the order by the Customer.

10.5 TML will permit Customer’s representatives to examine or audit the Services under the applicable order and the TML facilities where such Services are provided, upon prior notice, at reasonable times and frequency during normal business hours and provided TML normal activities are not disrupted. During such examination, Customer’s representatives may verify documents, facilities, records and results of quality assurance inspections performed by TML regarding the order, as well as methodology, procedures and any other relevant item relating to the order. TML shall require representatives not covered by confidentiality agreements to sign a document protecting TML’ or Customer’s Confidential Information prior to (a) access to TML facility and/or (b) access to any Confidential Information.

**11. Limitation of Liability**

11.1 To the maximum extent permitted under applicable law: (a) TML (together with all its employees, representatives, managers, directors, agents and consultants) shall be liable only for the proven and direct damage caused by the TML Indemnifying Party’s gross negligence and wilful misconduct in connection with the performance of an order and then, only if TML has received written notice thereof not later than six (6) months after the date of the Customer’s knowledge of the relevant claim (unless any longer period is prescribed under applicable law and cannot be contractually limited), and (b) in all cases (whether arising under contract, tort, negligence, strict liability, through indemnification or otherwise), the TML Indemnifying Parties’ liability per claim or series of related claims, and the Customer’s exclusive remedy, with respect to TML’s Services which fall under this Agreement, shall be limited to the lesser of: (i) the direct and proven loss or damage caused by the TML Indemnifying Party’s gross negligence and wilful misconduct in connection with the performance of the order and (ii) the amount TML actually received from the Customer in relation to the order.

11.2 The TML Indemnifying Parties shall not be liable for any of the following: (i) loss of business profits; or (ii) depletion of goodwill or other similar losses; or (iii) loss of business opportunities; or (iv) loss of contracts; or (v) loss of revenue; or (vi) loss of anticipated savings; or (vii) loss of or damage to data; or (viii) for any special indirect or consequential losses, costs, charges, expenses or damages incurred by the Customer or by any third party.

11.3 It is a condition of TML’s acceptance of an order that the Customer indemnifies the TML Indemnifying Parties for any losses, injuries, claims and costs which the TML Indemnifying Parties may suffer as a result of arising from or in any way connected with its role under or services or products or software provided pursuant to these Terms and Conditions except to the extent that the TML Indemnifying Parties are required to bear them according to these Terms and Conditions, and by placing an order the Customer agrees to provide that indemnification.

**12. Repeated Analysis**

12.1 Objections to test results must be made within ten (10) business days after the Customer receives the final results If the test results warrant repeat of the test, then the Customer must formally document such request in writing, which must be agreed to by TML before repeated analysis will be conducted. The cost incurred for the repeated analysis will be documented in separate order or other appropriate contract before the work will be conducted. Furthermore, a repeated analysis will be possible only if TML has a sufficient amount of the original sample or material on hand when it receives the Customer’s objection. Otherwise the Customer will be required to pay all costs, including sampling, transportation, analytical and disposal costs for the repeat analysis.

12.2 Additional charges will apply if classification is required but variation in the results of three test specimens vary by more than 20% from the average (A1) for that set of data, i.e. the individual results are not within the range (0.8∙A1,1.2∙A1).

**13. Term, Termination and Amendment**

13.1 No addition to or modification of these Terms and Conditions shall be effective unless made in writing and signed by authorized representatives of both parties. These Terms and Conditions shall commence on the date an order is accepted by both parties and shall continue until the order is completed. TML or the Customer may terminate an order upon thirty (30) days written notice to the other party for any reason. If the Customer exercises this early termination right, the Customer agrees that TML will be paid for all portions of the order actually performed up to the date of termination. If TML exercises this early termination right, then it will refund any monies paid to it for the order.

**14. Force Majeure**

14.1. TML shall not be held liable for delays, errors, damages or other problems caused by events or circumstances which are unforeseen or beyond TML’ reasonable control, or which result from compliance with governmental requests, laws and regulations.

**15. Confidentiality, Intellectual Property & Processing of Customer Data**

15.1 All confidential and/or proprietary information and materials which are disclosed by one party to the other hereunder, including but not limited to, scientific, technical, financial, trade or business information in verbal, written, graphic, electronic, photographic, recorded, prototype, sample, data, analysis results, service reports, or composition of products and software will be considered “Confidential Information”. The parties acknowledge that an exchange of Confidential Information is necessary in order to enable them to engage in the order. With respect to such Confidential Information, the receiving party agrees to direct its officers, employees, agents, or other representatives to hold in strict confidence all Confidential Information obtained from the disclosing party and/or its officers, employees, agents and representatives, and not to use, disclose, or permit access to such Confidential Information for any purpose other than as may be required or permitted to perform any obligation under these Terms and Conditions.

15.2 The obligations of confidentiality will not apply to Confidential Information which the receiving Party can demonstrate falls within any of the following categories: (a) Information that is or becomes available to the public at or after the date of the acceptance of this order by both parties through no fault of the receiving Party; (b) Information that as of the time of disclosure to the receiving Party was already known to and in the lawful possession of the receiving Party as evidenced by written records; (c) Information obtained by the receiving Party after the date of the acceptance of this order by both parties from a third party lawfully in possession of and having the right to disclose the same; (d) Information which is independently developed by the receiving party without use of or reference to the disclosing party’s Confidential Information; or (e) Information that is required to be disclosed pursuant to operation of law provided, however, that the receiving party shall notify the disclosing party of such request prior to disclosure and allow the disclosing party to take appropriate action as the disclosing party deems necessary.

15.3 The receiving party shall return or destroy, at the disclosing party’s option, all Confidential Information disclosed by the disclosing party, provided, however that the receiving party may retain one (1) copy of any such Confidential Information for legal archival purposes.

15.4 Notwithstanding the above, TML’s obligation to keep Customer’s Confidential Information secret is subject to TML’s rights set forth in Section 9.2 and the right to use it in order to demonstrate its entitlement to payment for services rendered.

15.5 Analysis results are not to be publicly disclosed or exploited by the Customer without the prior written consent of TML. Even if such written consent is given by TML, the Customer (a) remains responsible for any consequences due to the divulgence of such results to a third party and any reliance of such third party on such results and (b) hereby agrees to indemnify the TML Indemnified Parties against any liability which the TML Indemnified Parties may incur as a result of such divulgence or any such third party reliance. Neither party will use the other party’s name in connection with any publication or promotion without the other party’s prior written consent. However, Customer shall have the right to disclose and use TML’s name in order to satisfy regulatory requirements.

15.6 TML will acquire no rights of any kind whatsoever with respect to any information, know-how, materials and/or compounds (“Customer Materials”) provided by the Customer to TML under the terms of these Terms and Conditions. In consideration of the fees paid to TML for the Services, the Customer shall own all rights in any results, including any reports, generated by TML that are derived from the Services. The Customer acknowledges that TML owns, licenses or controls pre-existing intellectual property such as standard operating procedures, screening protocols, testing materials and laboratory methodologies that are used by TML to perform the Services and not developed solely for or provided by the Customer (“TML Intellectual Property”). TML may, whether alone or in conjunction with third parties, develop improvements, processes and methods that improve TML Intellectual Property which can be used by TML at any time without disclosing the Customer’s confidential information or Customer Materials (“Improvements”). TML shall own all such Improvements.

15.7 The parties agree that each shall obtain the other’s prior written approval before using the other’s name, logos and/or marks in any form of publicity. Such obligation shall not apply to disclosures which either party is required by applicable law to make, provided that the disclosing party shall notify the other Party of any such disclosure prior to such disclosure.

**16. Representations and Warranties.**

16.1 Each party hereby represents and warrants to the other party that: (i) it has full power and authority to enter into the order; (ii) the order and these Terms and Conditions have been duly authorized; (iii) the order and these Terms and Conditions are binding upon it; and (iv) it is not subject to any conflicting obligation or legal impediment that might preclude or interfere with its performance of its obligations under the order or these Terms and Conditions and that no such obligations will be incurred or permitted in the future without the prior written approval of the other party.

**17. Disclaimer and Miscellaneous**

17.1 Should a court waive, limit or hold to be invalid, illegal or unenforceable any part of these Terms and Conditions, all other parts shall still apply to the greatest extent possible.

17.2 Failure by either TML or the Customer to exercise the rights under these Terms and Conditions shall not constitute a waiver or forfeiture of such rights.

17.3. Except as provided in Section 6.5 above, neither party shall assign or subcontract its rights or obligations under these Terms and Conditions, in whole or in part, or any interest therein, without prior, written consent of the other party; provided however, that such consent shall not be unreasonably withheld, conditioned or delayed. In addition, neither party may assign the order to any affiliated party or to the purchaser of all or substantially all of its business related to the performance of the order without such prior consent. Subject to the forgoing, the order and these Terms and Conditions shall be binding upon and inure to the benefit of the successors in interest of TML and the Customer.

17.4 Any notice required or permitted to be given hereunder by either party shall be in writing and shall be deemed given on the date received if delivered personally, by reputable overnight delivery service, electronic delivery or facsimile, or three days after the date postmarked if sent by registered or certified mail, return receipt requested, postage prepaid to the such party.

**18. Governing Law/ Jurisdiction**

18.1 Any contract subject to these Conditions shall be governed in all respects by the law of England and any dispute or difference between the Supplier and the Purchaser shall be submitted to the Courts of England to the jurisdiction of which the Purchaser hereby submits.