

# BUTTERWORTH LABORATORIES LIMITED - TERMS & CONDITIONS

## 1 INTERPRETATION

- 1.1 **Advance Payment Invoice:** an invoice payable before the completion of the Services to which it relates;
- 1.2 **Business Day:** a day (other than a Saturday, Sunday or public holiday in England or any day falling in the period between Christmas Day and the New Year's Day);
- 1.3 **Butterworth:** Butterworth Laboratories Limited (Company no. 1185121), 54/56 Waldegrave Road, Teddington, Middlesex, TW11 8NY;
- 1.4 **Client:** the company or firm who purchases Services from Butterworth;
- 1.5 **Client Materials:** all documents, information, Samples, items, substances and material which are provided by the Client to Butterworth in connection with the Services;
- 1.6 **Conditions:** these terms and conditions as amended from time to time;
- 1.7 **Confidential Information:** Shall mean information relating to the business products technical and analytical processing affairs and finances of either party for the time being confidential to it and trade secrets (including without limitation technical data, documentation and know-how) relating to the business of either party or of any of its suppliers clients or customers including in particular (by way of example only and without limitation) technical and analytical processes financial or marketing forecasts, details of suppliers and their terms of business, details of customers and their requirements, the prices charged to and terms of business with customers, marketing plans and sales forecasts, financial information, results and forecasts (save to the extent that these are included in published audited accounts), any proposals relating to the acquisition or disposal of a company or business or any part thereof or to any proposed expansion or contraction of activities, details of employees and officers and of the remuneration and other benefits paid to them, information relating to research activities, trade secrets, inventions, secret processes, designs formulae and product lines any information which either party is aware is or should reasonably be aware is or has been told is confidential and any information that has been given in confidence by customers, suppliers or other persons;
- 1.8 **Contract:** the contract between Butterworth and Client for the supply of Services in accordance with these Conditions;
- 1.9 **Data Pack:** Supporting information relating to the analysis for a job that is compiled and provided to the Client with the Certificate of Analysis or Report. The Raw Data Pack (or Data Pack for short) consists of Analytical Raw Data, Certified Copies or a combination of both depending on the origin and format of the Analytical Raw Data. Electronic versions of Raw Data Packs, which are essentially a Certified Copy, may also be produced for sending to the client electronically
- 1.10 **Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- 1.11 **Interim Invoice:** Invoices produced where work is carried out over a longer period, requiring reporting on an ongoing basis as and when agreed phases of the work are completed, to the satisfaction of both Butterworth and the Client,
- 1.12 **Order:** the Client's order for Services as set out in the Client's written acceptance of a Quotation, or the Client's purchase order form, or completed sample submission form/instruction, as the case may be;
- 1.13 **Quality Management System (QMS):** Butterworth's system of documented policies, programmes, procedures and instructions to assure the quality of the Services provided. The QMS incorporates the requirements of the Good Laboratory Practice (GLP), Good Clinical Practice (GCP) and Good Manufacturing Practice (GMP) regulations along with those for ISO17025.
- 1.14 **Quotation:** the cost for the Services and scope of the Services, as anticipated by and provided in writing by Butterworth;
- 1.15 **Raw Data:** A documented record of the original observations and activities relating to the Service(s). This may be in the format of hand written notes and calculations, instrument print-outs or as electronic records;
- 1.16 **Report:** the document signed on behalf of Butterworth by any authorised signatory containing results and outcomes relating to the Service(s). Reports may be in the form of a certificate of analysis, a validation report or such other form as Butterworth determines unless stated in the Quotation or agreed between the parties in writing;
- 1.17 **Samples:** goods, substances or materials provided by the Client to enable the Services to be performed;
- 1.18 **Service(s):** any analytical testing or consulting provided by Butterworth for the Client.

## 2 BASIS OF CONTRACT

- 2.1 The Quotation constitutes an offer by Butterworth to provide the Services in accordance with these Conditions.
- 2.2 The Quotation shall only be deemed to be accepted when one of the following occurs:
- 2.2.1 the Client signs the Quotation and it is received by Butterworth;
- 2.2.2 the Client provides the Order and it is received by Butterworth; or
- 2.2.3 Butterworth receives the Samples;
- at which point and on which date the Contract shall come into existence.
- 2.3 The Contract and Quotation constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Butterworth which is not set out in the Contract.
- 2.4 Any descriptive matter or advertising issued by Butterworth, are issued for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force nor amount to a representation.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Where a valid written and signed agreement between the Client and Butterworth exists which governs the supply of Services as part of an ongoing arrangement for the provision of services by Butterworth and has not terminated or expired, the terms of that contract shall apply to the exclusion of these Terms and Conditions save where that contract expressly adopts these Terms and Conditions, whether with or without variation, in which case these Conditions shall apply subject to such variation (if any).

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- 2.7 Quotations issued by Butterworth are marked with a clear expiry date and are only valid, and therefore may be accepted, before this date.
- 2.8 Butterworth shall make all reasonable efforts to supply the Services by any provisional completion date but Butterworth do not guarantee such a date, which is given by way of estimate only. Time shall not be of the essence of the Contract in relation to the performance of the Services.

## 3 CONFIDENTIALITY

- 3.1 Subject to any independent formal and written confidentiality agreement entered into by the parties and condition 3.2:
- 3.1.1 each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, products, processes, trade secrets, know how, finances, affairs, customers, clients or suppliers of the other party;
- 3.1.2 the Client agrees to treat the Report as confidential and not to make it public nor disclose it to any third party without Butterworth's consent, save to the extent that disclosure is made to those third parties referred to in condition 13.4 (provided that the Client requests that those third parties treat the Report as confidential).
- 3.2 Each party may disclose the other party's confidential information:
- 3.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall use reasonable endeavours to ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this condition 3; and
- 3.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 3.3 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations or exercise its rights under the Contract.

## 4 THE ANALYTICAL SERVICES & REPORTS

- 4.1 Contracts to perform Services are accepted by Butterworth on the basis that full disclosure is made by the Client of all information and documentation which may affect Butterworth's ability to correctly perform the Services in a safe manner and that Butterworth will not be liable to the Client for any delay, failure to perform or for defective Services unless such full disclosure has been made.
- 4.2 If the results of the Services are to be used for litigation or possible litigation this must be made known to Butterworth when requesting a Quotation. Butterworth employees will not act as expert witnesses, nor enter into discussions nor offer opinions on the application or consequence of the results provided in the supply of the Services.
- 4.3 If the Client requires Butterworth to perform the Services in a shorter time than that specified in the Quotation, it is the responsibility of the Client to negotiate whether this is possible with Butterworth. If Butterworth (in its absolute discretion) agrees a shorter time Butterworth will issue a revised Quotation to incorporate the changes to the Services. The Client should not assume such revision can be accommodated without accepting the revised Quotation.
- 4.4 The Client must inform Butterworth of hazards of any kind relating to Samples when requesting a Quotation. Samples submitted should be labelled with the appropriate hazard labels and safety data sheets; failure to do so may result in a delay in the start of Services and an additional handling charge.
- 4.5 Where hazards are not universally known as inherent in the Sample or advised in writing to Butterworth prior to the issue of the Quotation, Butterworth may raise an additional charge for handling or disposing of any Sample as appropriate.
- 4.6 Work carried out by Butterworth will be in accordance with the description set out in the Quotation and Butterworth shall be entitled to test any Samples to destruction. All Samples remaining following analysis will be disposed of by Butterworth no earlier than one month following the date of the Report. If requested in writing, all Samples remaining after analysis will be returned by courier and charged to the Client at cost plus Butterworth's standard administration charge in force at that time.
- 4.7 Any Report issued by Butterworth will be factual and will relate only to the Samples in respect of which the Services have been performed and not to the bulk from which the Samples analysed may have been selected. All results reported will relate to the Samples on an 'as received' basis, unless otherwise instructed in writing, or documented in an agreed methodology.
- 4.8 The Client is responsible for the transportation and delivery of Samples to Butterworth and Butterworth accept no responsibility for Samples received in a condition which may affect the Services or the results or outcome contained in any Report. If any Sample is received in a damaged condition, Butterworth reserve the right to charge for the time taken to dispose of the Sample in a safe manner.
- 4.9 Butterworth reserves the right to withdraw provision of the Services to the Client after their acceptance of a Quotation but prior to commencement of the Services, in which case Butterworth will (save as provided by condition 4.5) at its own cost return any Samples to the Client and neither party will have a claim against the other.

## 5 QUALITY ASSURANCE, METHODOLOGY AND ARCHIVING

- 5.1 Unless stated otherwise in the Quotation, Butterworth shall perform the Services in compliance with its Quality Management System (details of which are available on request).
- 5.2 Requirements for the Service to be performed to any specific regulations or standards must be requested by the Client at the time of requesting a Quotation
- 5.3 Methods forming part of Butterworth's ISO17025 Accreditation Schedule which are to apply to the Services will be clearly indicated in the Quotation.
- 5.4 Applicable administration charges associated with Services performed in compliance with GCP or GLP will be detailed in the Quotation.
- 5.5 Butterworth shall be entitled to charge for additional work, whether at the Client's request or not, which is carried out:

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5.5.1 in performing investigations in respect of results which are out of specification, out of trend or unexpected; and/or

5.5.2 in repeating analysis of a Sample

in each instance where such additional work is a consequence of a defective, incorrect or out of specification Sample or incorrect information supplied by the Client.

- 5.6 Butterworth are not responsible for final release or acceptance of any products based upon any Service(s) provided by Butterworth and Butterworth does not provide the services of a Qualified Person (QP). It is the responsibility of the Client to ensure that the Service(s) meet the Client's quality and compliance requirements including any needed for manufacturing or marketing authorisations.
- 5.7 The hard copy Data Pack and other records shall either be retained at Butterworth's Archive facility or on arrangement with the Client transferred when the Report is issued. Electronic Raw Data and electronic copies of the Data Pack will be transferred electronically to the Client at the time of reporting and a copy stored in Butterworth's Electronic Document System in accordance with Butterworth's archiving policy, after which they will be destroyed.

## 6 INVOICE AND PAYMENT

- 6.1 In the case of supplying the Client with the Service(s) for the first time and in cases where Butterworth considers the Client to be a credit risk or which has a late payment history, Butterworth reserves the right to require payment in advance. In this case an Advance Payment Invoice will be submitted to the Client before the Service(s) are commenced. The Report will not be issued until the Advance Payment Invoice has been paid.
- 6.2 In all cases not falling within condition 6.1 and subject to condition 6.12 Butterworth will submit an invoice to the Client in respect of the Service(s) on completion of the Service(s).
- 6.3 For invoices submitted by Butterworth in accordance with conditions 6.2 or 6.12 the Client shall pay the invoice no later than the end of the month following the month in which the invoice is dated, or such other date as specified in the Quotation.
- 6.4 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by Butterworth to the Client, the Client shall, on receipt of a valid VAT invoice from Butterworth, pay to Butterworth such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 6.5 If the Client fails to make any payment due to Butterworth under the Contract by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 4% per cent per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.
- 6.6 The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).
- 6.7 If the Client requests any change in the specification of the Service(s) or any additional Service(s) and Butterworth agrees to such changed or additional Service(s) being supplied, those Service(s) will be invoiced at Butterworth's then current standard charges unless they have been the subject of a further Quotation.
- 6.8 Additional Services including (but not limited to) provision of the original Report and Data Pack if not requested at the time of reporting, further copies of the Report, or Raw Data. These Additional Services will be subject to an additional charge as detailed in a separate Quotation.
- 6.9 Butterworth reserves the right to make an appropriate charge to the Client for Service(s) which are cancelled by the Client after receipt of Samples, for whatever reason.
- 6.10 All payments by the Client shall be in £ GBP, unless payment in € Euro or \$ USD has been previously agreed in writing by Butterworth or where the Quotation is in such currency. Payment shall be by way of electronic funds transfer to such account as Butterworth may notify the Client.
- 6.11 If the Client pays any amount to Butterworth without apportioning it between specific debts or liabilities it shall be apportioned as Butterworth thinks fit.
- 6.12 In instances where the Services may take longer than one month to complete, Butterworth shall have the right to submit interim invoices either after the completion of a distinct phase of the work or at the end of each month and calculated on a work performed basis.
- 6.13 Butterworth reserves the right to withhold Reports and to discontinue provision of the Service(s) at any time or during any period during which any amounts are owed by the Client to Butterworth and are overdue. Butterworth accept no responsibility for the consequences of withholding Reports or discontinuing work in such circumstances.
- 6.14 Butterworth shall provide such co-operation and assistance to the Client as Butterworth in its absolute discretion considers reasonable in matters relating to the Service(s), the Reports and Raw Data up to 30 days after completion of the Service(s), but otherwise Butterworth reserves the right to charge for any additional consultation which will be subject to its current standard charges in force from time to time or otherwise agreed with the Client in writing.

## 7 LIABILITIES

- 7.1 Nothing in the Contract shall limit or exclude either party's liability for:
- 7.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 7.1.2 fraud or fraudulent misrepresentation; or
  - 7.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 7.2 Subject to condition 7.1, Butterworth shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 7.2.1 loss of profits;
  - 7.2.2 loss of sales or business;

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- 7.2.3 loss of use or corruption of software, data or information;
- 7.2.4 loss or damage to goodwill; and
- 7.2.5 any indirect or consequential loss.
- 7.3 Subject to condition 7.1 and 7.7, each party's total liability to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to £1,000,000.
- 7.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.5 Butterworth shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Butterworth's failure or delay in providing the Services, where such failure or delay is caused by the Client's failure to perform any of its obligations under the Contract.
- 7.6 The Client shall indemnify and hold Butterworth harmless from any and all losses, claims, actions, damages, liabilities, costs and expenses, (including reasonable legal fees and court costs) (collectively "Losses") that arise as a result of:
  - 7.6.1 the Client supplying incomplete, inaccurate or incorrect information concerning the Samples;
  - 7.6.2 any use of Samples, where full disclosure of all information and documentation referred to in condition 4.1 has not been made which may affect such use;
  - 7.6.3 any Sample received by Butterworth from or at the direction of the Client which is not clearly labelled with the correct hazardous nature of the Sample or accompanied by a Safety Data Sheet (SDS).
- 7.7 The indemnity in condition 7.6 shall:
  - 7.7.1 not be subject to the terms of condition 7.3; and
  - 7.7.2 include (without limitation) any losses incurred because Butterworth is obliged (or it is otherwise prudent) to quarantine or shut down part or the whole of its premises or curtail normal operations or the use of any instrumentation as a result of the circumstances referred to in condition 7.6.1 to 7.6.3.
- 7.8 This condition 7 shall survive termination of the Contract.

## 8 DEFECTS AND TIME LIMITS

- 8.1 Butterworth's policy is to retain Samples for no longer than one month after completion of the Services. Accordingly the Client agrees to give Butterworth notice of any defects in the Services in writing within one month after completion of the Services or as soon as is reasonably practicable after it becomes aware of any such defects.

## 9 FORCE MAJEURE

- 9.1 Neither party shall be liable for any delay in performing or for failure to perform its obligations under the Contract if the delay or failure results from any cause or circumstance whatsoever beyond its reasonable control, (hereinafter "event of force majeure"), provided the same arises without the fault or negligence of such party. If an event of force majeure occurs, the date(s) for performance of the obligation affected shall be postponed for as long as is made necessary by the event of force majeure, provided that if any event of force majeure continues for a period of or exceeding three (3) months, either party shall have the right to terminate the Contract forthwith by written notice to the other party. Each Party shall use its reasonable endeavours to minimise the effects of any event of force majeure.

## 10 TERMINATION

- 10.1 Should the Client make default in any payment due to Butterworth or otherwise be in breach of its obligations under these Conditions or under any other contract with Butterworth or compound with or execute an assignment for the benefit of its creditors or commit any act of bankruptcy or being a company enter into voluntary or compulsory liquidation or suffer a receiver, administrative receiver or administrator to be appointed over all or any part of its assets or take or suffer any similar action in consequence of debt or become insolvent or should Butterworth have reasonable cause to believe that any of these events is likely to occur, Butterworth may, by notice in writing to the Client and without prejudice to any other rights forthwith suspend or cancel the whole or part of the Services or require payment in advance or satisfactory security for further delivery of the Services or otherwise terminate the Contract with immediate effect.
- 10.2 On termination of the Contract:
  - 10.2.1 the Client shall immediately pay to Butterworth all of its outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Butterworth shall submit an invoice, which shall be payable by the Client immediately on receipt;
  - 10.2.2 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
  - 10.2.3 conditions which expressly or by implication have effect after termination shall continue in full force and effect.

## 11 DATA PROTECTION

- 11.1 In the course of its dealings with clients, Butterworth receives and processes information about Clients including:
  - 11.1.1 contact details of the Client;
  - 11.1.2 credit references;
  - 11.1.3 name and contact details of the person requesting the Services;
  - 11.1.4 details of the Client's requirements for the Services.
- 11.2 All such information will be retained in confidence (subject to condition 3.2) and will only be used for the following purposes:
  - 11.2.1 for proper performance of the Services and exercising Butterworth's rights under the Contract;
  - 11.2.2 to assess whether and how the Services be provided and at what cost;
  - 11.2.3 to report to the Client on the Services;
  - 11.2.4 to forward to the Client information regarding services provided by Butterworth and general marketing material;

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- 11.2.5 to share the information with associated and group companies and professional advisers for administrative purposes;
- 11.2.6 disclosure to a transferee (or proposed transferee) of the whole or a material part of Butterworth's business;
- 11.2.7 to retain a record of the supply of the Services; and
- 11.2.8 to comply with any law or regulatory requirement.

In consenting to these terms the Client consents to this use of such information.

- 11.3 In all other respects the information will not be shared without the Client's prior consent unless required or permitted by law.
- 11.4 Butterworth's full Privacy Policy (which may otherwise be referred to as a Privacy Statement) can be found on the website: [www.butterworth-labs.co.uk/company-privacy-policy/](http://www.butterworth-labs.co.uk/company-privacy-policy/).

## 12 LAW AND JURISDICTION

- 12.1 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 12.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

## 13 INTELLECTUAL PROPERTY

- 13.1 In relation to the Client Materials, the Client:
  - 13.1.1 and its licensors shall retain ownership of all Intellectual Property Rights in the Client Materials; and
  - 13.1.2 grants Butterworth a fully paid-up, non-exclusive, royalty-free, non-transferable, revocable, limited licence to copy and modify the Client Materials for the term of the Contract solely for the purpose of providing the Services and associated Report to the Client. The Client warrants that the receipt and use of the Client Materials in the performance of the Contract by Butterworth, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party.
- 13.2 All Intellectual Property Rights in the Report, any development or method conceived or reduced to practice by Butterworth, written statements and other information provided by Butterworth in connection with the Services (other than the Client Materials) shall be owned by Client.
- 13.3 Butterworth name and logos are trademarked and therefore cannot be used or reproduced without permission
- 13.4 The Client agrees not to publish any Report or results without Butterworth's written consent, which will not be unreasonably withheld.

## 14 NOTICES

- 14.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its address stated in the Quotation, in the Order (in the case of the Client) or registered office (if applicable) or such other address as that party may have specified to the other party in writing in accordance with this condition 14, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or email.
- 14.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in condition 14.1; if sent by pre-paid first class post or other next working day delivery service, at 10.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- 14.3 The provisions of this condition 14 shall not apply to the service of any proceedings or other documents in any legal action.

## 15 ASSIGNMENT & SUBCONTRACTING

- 15.1 The Client shall not, without the prior written consent of Butterworth, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.
- 15.2 Butterworth will notify the Client in advance if the whole or any part of the Services is to be sub-contracted by Butterworth.

## 16 MISCELLANEOUS

- 16.1 Under no circumstances will any terms introduced by the Client (whether in the Order or otherwise) take priority over these Conditions unless Butterworth agrees in writing.
- 16.2 The failure by Butterworth to enforce at any time any one or more of these Conditions shall not amount to a waiver by Butterworth of its right subsequently to enforce such Conditions.
- 16.3 The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 16.4 If any provision of these Conditions is declared by any judicial or other competent authority to be voidable, illegal or otherwise unenforceable this shall not affect the remaining Conditions, which shall continue in full force and effect. Any such provisions as shall be declared to be voidable, illegal or otherwise unenforceable shall be amended so that the amended provision achieves the intention of the parties.
- 16.5 No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## 17 ENTIRE AGREEMENT

- 17.1 The terms of this agreement are subject and subsidiary to the terms of any Service Agreement and in the case of any conflict or contradiction between the terms of this Agreement and any service agreement, the terms of the Service Agreement shall have precedence and prevail, unless the parties expressly agree in writing to the contrary in respect of each conflict or contradiction. The

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failure by Butterworth to enforce at any time any one or more of these Conditions shall not amount to a waiver by Butterworth of its right subsequently to enforce such Conditions.

- 17.2 Subject to 1.15 above, this agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances, and understandings between them, whether written or oral, relating to its subject matter.
- 17.3 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 17.4 Nothing in this clause shall limit or exclude liability for fraud.

## 18 DISPUTE RESOLUTION

- 18.1 Nothing in clauses 18.2-18.7 below shall operate to prevent Butterworth from issuing and/or continuing proceedings in the courts of England and Wales to recover fees properly due to it from the Client for the provision of Services to Client under this Contract
- 18.2 Subject to 18.1 above, in the event of a dispute arising out of or relating to the Contract, including any question regarding its breach, existence, validity or termination, and including any non-contractual claims (whether in tort or otherwise) (Dispute), the parties shall endeavour to reach a resolution of the dispute satisfactory to both parties. Either party may commence such process by requesting a meeting with the other party, which may take place in person, or remotely. Each party shall nominate a representative or representatives (not to exceed two) who shall meet to try to resolve the dispute within 14 days of commencement of this process.
- 18.3 If the dispute is not resolved within five business days of the meeting between the party representatives taking place (or if, for any reason, such meeting does not take place within 14 days of either party requesting the meeting (or such longer period as may be agreed between the parties)), then:
  - 18.3.1 The dispute may, at either party's request, be referred to mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure, and informal negotiations need not continue. Either party may initiate the mediation process by giving notice in writing to the other party requesting mediation (Mediation Notice).
  - 18.3.2 If there is any aspect of the form or conduct of the mediation (including the identity of the mediator to be appointed) on which the parties cannot agree within 14 days from the date of delivery of the Mediation Notice, CEDR shall, at the request of either party, decide that point, having first made reasonable efforts to consult with each of the parties on the issue.
  - 18.3.3 The mediation shall start not later than 56 days from the date of delivery of the Mediation Notice.
  - 18.3.4 The mediation shall take place in London and the language of the mediation shall be English.
  - 18.3.5 The Mediation Agreement referred to in the CEDR Model Mediation Procedure shall be governed by the substantive law of England and Wales.
  - 18.3.6 CEDR's fees, and those of the mediator together with other expenses of the mediation, will be borne equally by the parties, unless the parties agree otherwise at the mediation.
  - 18.3.7 Each party will bear its own costs and expenses of its participation in the mediation, unless the parties agree otherwise at the mediation.
- 18.4 If either party refuses or fails to participate in the mediation process or if a resolution of the dispute is not reached within 63 days from delivery of the Mediation Notice, either party may refer the dispute to arbitration in accordance with the provisions of clause 18.5 below.
- 18.5 Despite the provisions of clauses 18.1 to clause 18.4 above, in the event of a dispute arising, the dispute shall be referred to and finally resolved by arbitration by the London Court of International Arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause.
  - 18.5.1 The number of arbitrators shall be one.
  - 18.5.2 The seat, or legal place, of arbitration shall be London.
  - 18.5.3 The language to be used in the arbitral proceedings shall be English.
- 18.6 Despite the above clauses 18.2-18.5, Butterworth, at its sole option (and regardless of whether Butterworth is claimant or respondent), may choose to submit a Dispute to the courts of England and Wales, which in that case will have exclusive jurisdiction to determine the dispute. This clause 18.6 is for the benefit of Butterworth.
- 18.7 If Client has already commenced arbitration proceedings in relation to a dispute before Butterworth has commenced court proceedings, it is agreed that, on the demand of Butterworth, the arbitration proceedings are to be discontinued within 7 days after Butterworth has commenced court proceedings in respect of the dispute. Butterworth must deliver the demand for discontinuance within 7 days of receipt by Butterworth from Client of the request for arbitration initiating that arbitration and must commence the court proceedings within 28 days of the demand for discontinuance. It is agreed that, on commencement of the court proceedings by Butterworth, any arbitral tribunal already appointed, or to be appointed, will have no jurisdiction in respect of the dispute. Each party will bear its own costs in connection with the arbitration proceedings.