

Reading Scientific Services Limited - Product & Ingredient Innovation Department (PIID) Terms & Conditions of supply of 'Product and Ingredient Innovation Services'



These Terms and Conditions shall govern the supply of Services by RSSI's Product and Ingredient Innovation Department (PIID) to the exclusion of all other terms, conditions and representations, including any terms or conditions which You purport to apply under any document whatsoever and whenever. No variation of these Terms and Conditions shall be valid unless agreed in writing by RSSI PIID.

1. Definitions

"Charges" means the fees payable in respect of RSSI PIID's performance of the Services;

"Client" or "You" means the legal person to whom a Quotation is addressed or who otherwise requests a study to be undertaken by RSSI PIID;

"Confidential Information" means the terms of the Contract and any information marked secret or confidential or commercial, financial, marketing, technical or other information that is of value in any form or medium whether disclosed orally or in writing before or after the date of the Contract, together with any reproductions of such information in any form or medium or any part of such information and the work which is the product of the Services.

"Contract" means any contract for the supply of Services between RSSI PIID and You, formed as set out in Condition 2 a) incorporating these Terms and Conditions;

"Data" means the raw data generated in the performance of the Services relating specifically to the materials submitted by You;

"Expenses" means travel, accommodation, packing, transport, materials, equipment hire and any other costs incidental to the performance of the Services which will be charged at cost;

"group" means the RSSI group of companies;

"Intellectual Property Rights" means all forms of intellectual property rights including but not limited to patents, registered and unregistered designs, trade marks and service marks, database rights, copyright and any application or entitlement to make application for Intellectual Property Rights in any part of the world;

"Quotation" means a written communication from RSSI PIID to the Client setting out details of the Services to be performed and the charging basis therefore;

"Report" means any report, certificate of analysis, presentation or other summary (in whatever form) of results or findings generated in the performance of the Services, prepared by RSSI PIID for You;

"Services" means:

- (a) product development services;
 - (b) scientific consultancy services; and/or
 - (c) any other services
- in each case, supplied to You by RSSI PIID.

2. Quotation, Charges and Expenses

a) A Quotation issued by RSSI PIID shall be deemed to be an offer by RSSI PIID to provide the Services subject to the terms therein and to these Terms and Conditions. A Contract will be formed upon acceptance of the Quotation by You (by countersigning and returning the same to RSSI PIID) within the period of validity stated therein. The Contract shall constitute the entire agreement between us for the supply of the Services and You acknowledge you have not relied on any representation, agreement or understanding which is not set out therein.

b) Unless otherwise stated the Charges will be on a time (day rate) and materials basis. The Charges will be as specified in the Quotation or otherwise communicated in writing by RSSI PIID to You. Charges set out in the Quotation (or other written communication) do not include Consumables or Expenses which will be charged in addition. Consultancy advice required over and above that normally included in the Services will be subject to additional charge.

c) All Charges referred to in the Quotation (or other written communication) are exclusive of VAT. VAT, where applicable, shall be listed as a line item in the invoice.

3. Payment Terms and Settlement

a) You shall pay the Charges for the Services and related Expenses (and any other charges for separately quoted consumables or courier or storage charges referred to in Condition 4.d), together with the VAT thereon, upon receipt of RSSI PIID's invoice. All invoices are due for payment immediately, and payable within 28 days of the date of invoice unless otherwise agreed in writing by RSSI PIID.

b) The Charges and Expenses shall be invoiced to you in accordance with the invoicing schedule set out in the Quotation, or, if no schedule is specified (or Services are not based on a Quotation), upon completion of the Services (as determined by RSSI PIID). Any other charges referred to in Condition 3. a) shall be invoiced as and when incurred.

c) Except where otherwise agreed with RSSI PIID, payment should be made by the method specified on the invoice or remittance advice.

d) If You fail to make any payment within 28 days of the date of invoice RSSI PIID reserves the right, without prejudice to its other rights and remedies: (i) upon not less than 7 days written notice to You, to cease to provide the Services;

and (ii) to charge interest (both before and after judgement) on any sum outstanding after the due date for payment at 4% per annum over the HSBC Bank plc base rate for the time being in force from the due date to the date of actual payment, together with all expenses, including legal fees, which RSSI PIID may incur in recovering the outstanding sums.

e) You shall make all payments due without any deduction by way of set off, counter claim, discount, abatement or otherwise, unless You have a valid Court Order requiring an amount equal to such deductions to be paid by RSSI PIID to You.

f) RSSI PIID may set off any sums due from You for Services supplied against any sums which RSSI PIID may otherwise owe to You.

g) If a payment from You is not stated to refer to a particular invoice, RSSI PIID may appropriate such payment to any outstanding invoice addressed to You from RSSI PIID.

4. Provision of the Services – obligations of RSSI PIID

a) RSSI PIID warrants that in performing the Services it shall exercise all reasonable skill and care.

b) RSSI PIID will use reasonable endeavours, but cannot guarantee, to provide the Services within any estimated timescales set out in the Quotation. Time shall not be of the essence in respect of the provision of the Services and RSSI PIID shall not be liable for any delay in meeting the said timescales.

c) RSSI PIID may sub-contract execution of all or part of the Services to a third party at RSSI PIID's discretion.

d) RSSI PIID shall use any materials provided by You only in connection with the provision of the Services and any excess materials shall be destroyed one month after completion of the Services for non-perishable goods and ten days after completion of the Services for perishable goods unless specific instructions to the contrary are received from You in writing at the time of delivery of the materials, in which case, RSSI PIID will at the end of the relevant period stated above either (at Your option) return the materials to You by courier (at Your expense) or store the materials for a further agreed period at RSSI PIID's standard storage rates (available upon request).

e) RSSI PIID may, in the performance of the Services, make statements about or recommendations of third party equipment or services. No warranty shall be attributable to RSSI PIID in respect of such statements, equipment or services.

5. Provision of the Services – Your obligations

a) You warrant that any information provided to RSSI PIID pursuant to a Contract is complete, accurate and not misleading. You acknowledge that, in performing its obligations under the Contract, RSSI PIID will be relying upon information supplied directly or indirectly by You.

b) You shall provide all relevant safety data relating to samples and shall ensure that samples are supplied to RSSI PIID in appropriate packaging and that these packages and the samples contained therein are identified with the appropriate safety labelling including, in particular, appropriate safety labelling on the outer packaging. You shall comply with all relevant legislation in relation to samples You agree to fully indemnify and keep indemnified RSSI PIID against all losses, claims, liabilities, damages, costs (including legal costs) and expenses incurred by RSSI PIID as a result of any failure against samples supplied which are defective or hazardous to health on your part to attach appropriate safety labelling to any hazardous samples or to comply with the relevant legislation.

c) You further acknowledge that the evaluation, use and application of the results of Services provided by RSSI PIID are in your sole discretion and that You shall be solely responsible for such evaluation, use or application and the consequences thereof.

d) You shall co-operate with RSSI PIID by promptly responding to requests for such further information or materials in your possession as RSSI PIID may reasonably require to enable it to perform the Services.

e) You further warrant that the supply of all information and materials by you in connection with the Services and the information and materials themselves do not infringe any third party rights and agree to indemnify and hold harmless RSSI PIID against all losses, claims, liabilities, damages, costs and expenses incurred by RSSI PIID arising from any such infringement.

6. Data, Intellectual Property Rights and Confidentiality

a) Intellectual Property Rights owned by either party as at the date the relevant Contract is entered into shall remain the property of that party (and shall be referred to as that party's "Existing IPR").

b) You hereby grant to RSSI PIID a royalty-free non-exclusive licence to use Your Existing IPR as necessary to enable RSSI PIID to perform the Services under that Contract.

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c) RSSI PIID represents and acknowledges that it does not have and shall not have at any time in the future, any title to ownership or proprietary interest whatsoever in the Products, or the recipes or formulas developed for You in respect of which you have paid the Charges due to RSSI PIID in full.

d) All findings and results generated in the performance of the Services shall, upon you having paid the Charges in full to RSSI PIID, become Your exclusive property. The Products, formulas, specifications, recipes and processing requirements developed in the performance of the Services shall at all times be considered and handled as confidential as hereinafter provided.

e) In the event that RSSI PIID discovers and/or develops any inventions or improvements during the performance of the Services which may relate to the Products or their manufacture, all such inventions or improvements shall become Your exclusive property upon you having paid the Charges in full to RSSI PIID and You shall have the option, at Your expense, to procure thereupon any necessary patents. RSSI PIID and/or its individual employees or agents shall, where necessary, execute all documents required to obtain such patents and to assign the same to You, where these have become your property in accordance with these Conditions.

f) RSSI PIID and its employees and agents shall notify You promptly of any inventions and improvements developed during the performance of the Services which may relate to the Products or their manufacture.

g) Unless otherwise agreed in writing, RSSI PIID will keep all Data securely for a minimum period of four years from completion of the Services to which it relates. Thereafter it will be destroyed. If You require a further copy of the Data, you must request the same in writing before expiry of the four year period.

h) RSSI PIID shall keep confidential and shall not, without Your prior written consent, disclose to any person any confidential information acquired from You in connection with the Services (or such information generated by RSSI PIID as is referred to in Condition 6 d)) or Your Identity as a RSSI PIID client for a period of five years from the date the relevant Contract is entered into. RSSI PIID shall be entitled to disclose such information on a strictly need to know basis to employees of RSSI PIID or other members of the group, sub-contractors and/or other agents involved in providing the Services and to its professional advisors.

i) You shall keep confidential and shall not without RSSI PIID's prior written consent, disclose to any person (save to Your employees, sub-contractors or professional advisors with a need to know) any confidential information acquired from RSSI PIID in connection with the Services, or the fact of RSSI PIID's engagement to provide Services to You.

j) The obligations of confidentiality in sub-clauses (g) and (h) above will not apply to information:-

- (i) which was already in the public domain at the time of disclosure or subsequently comes into the public domain otherwise than through a breach of the obligations hereunder;
- (ii) which was legally in the possession of the receiving party prior to the disclosure by the disclosing party; or
- (iii) which the receiving party can demonstrate by written records was independently developed by the receiving party without reference to the disclosing party's information; or
- (iv) where disclosure is required by law or regulations or by a binding order of a court or regulatory body.

i) Any disclosure by You to any third party or any information or Report arising as a result of the Services shall not, without the prior written consent of RSSI PIID, directly or indirectly identify or otherwise refer to RSSI PIID and no report or information or extract there from shall be used to endorse, or imply approval of, any compound, product or process of Yours or the use, or proposed use, of any compound product or process of Yours. Any extract from the information or Report shall be such as to give a true and fair view of the results as a whole.

7. Liability

Your attention is in particular drawn to the provisions of this Condition 7.

a) The warranty set out in Condition 4 a) is the only warranty given by RSSI PIID in relation to the Services and shall apply to the exclusion of all other warranties conditions and other terms implied by statute or common law to the fullest extent permitted by law.

b) If the Services do not conform to the above warranty then RSSI PIID may at its option (and in full discharge of its liability under the warranty) either

- (i) rectify the defect or re-perform the defective Services free of charge ; or
- (ii) if in RSSI PIID's opinion rectification or reperformance are not possible, refund to You (or issue a credit note in respect of) any amount of Charges already paid by you under that Contract. Provided that You give written notice of any alleged defect to RSSI PIID within 14 days of completion of the Services.

c) Without prejudice to Condition 7.b) RSSI PIID's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance of each Contract shall be limited to 150% of the Charges paid or payable for the Services supplied thereunder.

d) RSSI PIID shall not be liable to You for any (direct or indirect) loss of profit, contract, reputation, goodwill or other economic loss, or any other indirect or consequential loss or damage whatsoever and howsoever arising.

e) Nothing in these Terms and Conditions shall operate to exclude or limit RSSI PIID's liability for (i) death or personal injury arising out of the negligence of RSSI PIID or (ii) fraudulent misrepresentation.

f) RSSI PIID shall have no liability for any inaccuracies in a Report prepared in performance of the Services which are attributable to incorrect information provided by You.

g) You agree to fully indemnify and keep indemnified RSSI PIID in respect of any claim brought against RSSI PIID by any third party arising out of the evaluation, use or application of the results of the Services or any Report, save to the extent that any loss or damage claimed by the third party was caused by RSSI PIID's negligence and was in the reasonable contemplation of the parties at the time the Contract was entered into.

h) Any Report prepared by RSSI PIID is intended for Your use only and RSSI PIID shall have no liability in respect of any reliance placed on such Report by a third party. Any recommendations contained in a Report are made in good faith based on information available at the time and are not a representation as to outcome or achievable results.

8. Termination of a Contract

a) If (i) You enter into a voluntary arrangement with Your creditors or become subject to an administration order or (being an individual or firm) become bankrupt or (being a company) go into liquidation (otherwise than for the purpose of amalgamation or re-construction) or a receiver is appointed in respect of any Your property or assets or You cease or threaten to cease to carry on business; or (ii) RSSI PIID reasonably apprehends that any of the events mentioned in (i) is about to happen and notifies You; or (iii) You fail to remedy a breach of Contract by You within 14 days of receiving notice to do so, then without prejudice to any other right or remedy available to it, RSSI PIID shall be entitled to terminate the Contract immediately and/or suspend any further performance of Services under the Contract without any liability to You.

b) You may terminate a Contract if RSSI PIID fails to remedy a breach of Contract by it within 14 days of receiving notification from You to do so.

c) You may also terminate a Contract at any time (even in the absence of a breach by RSSI PIID) if You do not wish to continue with a project, by giving 14 days' prior written notice to RSSI PIID, in which event RSSI PIID will use all reasonable endeavours to discontinue the Services as expeditiously as possible in accordance with Your instructions.

d) In the event of any termination of a Contract, all Charges, Expenses and any other sums payable by You shall be invoiced and together with unpaid invoices, shall become immediately due and payable.

9. General

a) You shall not be entitled to assign or otherwise transfer any rights or obligations under a Contract or any part of it without the prior consent in writing of RSSI PIID.

b) No person who is not a party to a Contract shall have the right, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise, to enforce any term of a Contract which expressly or by implication confers a benefit on that person.

c) Nothing in a Contract shall be deemed to create any joint venture, partnership or relationship of principal and agent between the parties.

d) The waiver by either party of any breach of a Contract shall not prevent the subsequent enforcement of that breach and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

e) The invalidity or unenforceability of any provisions of a Contract shall not invalidate or render unenforceable the remainder.

f) Each Contract shall be governed by English law and any disputes in relation thereto shall be subject to the exclusive jurisdiction of the English courts.

g) Unless expressly provided otherwise in the Quotation, in the event of conflict between a Quotation and these Terms & Conditions, these Terms and Conditions shall prevail.

h) You shall not either during or for a period of 12 months following completion of a Contract, solicit, entice away or offer employment to any employee of RSSI PIID directly involved in the performance of the Services.

i) RSSI PIID shall not be liable in respect of any failure to perform or delay in performing its obligations under a Contract if the failure or delay is due to causes outside its reasonable control.

j) All notices to be served pursuant to a Contract must be served on the relevant party at its business address stated on its letterhead by registered first class post, facsimile, e-mail or by hand.

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