

These Terms and Conditions shall govern the supply of Services by RSSL’s Product and Ingredient Innovation (PII) and Analytical Departments 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 RSSL.

1. Definitions

“Arising IPR” means Intellectual Property Rights arising from the performance of the Services including, where applicable, the Data, Reports, recipes, products and any other materials developed or prepared for You by RSSL under the Contract; “Charges” means the fees payable in respect of RSSL’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 RSSL;

“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 RSSL and You, formed as set out in Condition 2 a) incorporating these Terms and Conditions;

“Course Materials” means all materials provided by or on behalf of RSSL in connection with any training and/or courses including documents, articles, online and digital content, audio, graphics or any other materials in all formats;

“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, customs and courier fees, equipment hire and any other costs incidental to the performance of the Services which will be charged at cost;

“GMP” means Good Manufacturing Practice

“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 RSSL 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 RSSL for You; and

“Services” means:

- (a) product development services;
- (b) scientific analysis services;
- (c) scientific consultancy services; and/or
- (d) any other services

in each case, supplied to You by RSSL.

2. Quotation, Charges and Expenses

a) A Quotation issued by RSSL shall be deemed to be an offer by RSSL 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 RSSL) within the period of validity stated therein. In addition, a separate Contract shall be formed whenever you submit materials to RSSL for analysis in respect of which no Quotation has been given or where a Quotation has not been countersigned and RSSL’s commencement of performance of the requested Services constituting acceptance). 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 RSSL 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) If ‘out-of-specification’ or ‘out-of-trend’ results are obtained during delivery of the Services, any additional investigation into such results shall be subject to additional Charges, to be agreed between the parties.

d) 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 RSSL’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 RSSL.

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 RSSL). Any other charges referred to in Condition 3 a) shall be invoiced as and when incurred.

c) Except where otherwise agreed with RSSL, 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 RSSL 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 from the due date to the date of actual payment, together with all expenses, including legal fees, which RSSL 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.

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

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

4. Provision of the Services – obligations of RSSL

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

b) RSSL 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 RSSL shall not be liable for any delay in meeting the said timescales.

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

d) RSSL 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, RSSL 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 RSSL’s standard storage rates (available upon request).

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



5. Provision of the Services – Your obligations

a) You warrant that any information provided to RSSL pursuant to a Contract is complete, accurate and not misleading. You acknowledge that, in performing its obligations under the Contract, RSSL 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 RSSL 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 RSSL against all losses, claims, liabilities, damages, costs (including legal costs) and expenses incurred by RSSL 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 RSSL 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 RSSL by promptly responding to requests for such further information or materials in your possession as RSSL 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 RSSL against all losses, claims, liabilities, damages, costs and expenses incurred by RSSL arising from any such infringement

f) In relation to GMP Services provided by RSSL, You are ultimately responsible to ensure a Technical Agreement is in place.

g) You shall deliver any samples and/or materials to the address stated in the Quotation or otherwise to any other address communicated by RSSL. You acknowledge and agree that RSSL shall bear no responsibility in relation to any breach or delay that arises out of or is contributed by delivery to an address other than the one provided by RSSL.

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”). For the avoidance of doubt, RSSL’s Existing IPR shall include any rights in the methodologies generated or adapted in or for the performance of the Services (excluding such methodologies which have been provided by You as part of Your Existing IPR)

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

c) Subject to Conditions 6 (a) and (d), all Arising IPR (but expressly excluding any Arising IPR derived from or based on RSSL’s Existing IPR) shall vest in RSSL upon creation and are hereby assigned to You, by way of assignment of future copyright as of the date upon which You shall have paid in cleared funds all Charges and Expenses relating to the Services performed under the Contract in question; and

d) RSSL retains any and all rights of ownership of:

(i) all Arising IPR derived from or based on RSSL’s Existing IPR; and
(ii) RSSL’s ideas, concepts, know-how, techniques and processes that are applied, discovered, invented, created, conceived, made or reduced to practice by RSSL (a) prior to performing the Services; and (b) upon or after performance of the Services to the extent that such property does not incorporate, in whole or in part, Your Existing IPR.

e) Each of You and RSSL shall do all such things and execute such documents as shall be necessary to ensure that ownership of all Arising IPR is vested in the relevant party. RSSL hereby grants a non-exclusive non-transferable royalty-free licence in its Existing IPR to You only for the purpose of commercially exploiting and/or using the Arising IPR

f) 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.

g) In the event that RSSL 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 RSSL and You shall have the option, at Your expense, to procure thereupon any necessary patents. RSSL and/or its individual employees or agents shall at your cost, 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.

i) Notwithstanding anything to the contrary contained herein, all Course Materials, and including any intellectual property rights contained therein, are owned by RSSL and subject to copyright. No content, in whole or in part, of the Course Materials may be copied, reproduced, uploaded, posted, displayed, linked to, shared or used in any way without the prior written permission of RSSL. Any such use is strictly prohibited and will constitute an infringement of the copyright and other intellectual property rights of RSSL.

j) Unless otherwise agreed in writing, RSSL will keep all Data 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.

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

l) You shall keep confidential and shall not without RSSL’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 RSSL in connection with the Services, or the fact of RSSL’s engagement to provide Services to You.

m) The obligations of confidentiality in sub-clauses (j) and (k) 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.

n) 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 RSSL, directly or indirectly identify or otherwise refer to RSSL 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 RSSL 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 RSSL 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 RSSL’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 RSSL within 14 days of completion of the Services.

c) Without prejudice to Condition 7.b) RSSL’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, up to a maximum cap of £50,000 (fifty thousand pounds sterling).

d) RSSL 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 RSSL’s liability for (i) death or personal injury arising out of the negligence of RSSL or (ii) fraudulent misrepresentation.

f) RSSL 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 RSSL in respect of any claim brought against RSSL 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 RSSL’s negligence and was in the reasonable contemplation of the parties at the time the Contract was entered into.

h) Any Report prepared by RSSL is intended for Your use only and RSSL 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) RSSL 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, RSSL 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 RSSL 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 RSSL) if You do not wish to continue with a project, by giving 14 days’ prior written notice to RSSL , in which event RSSL 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 RSSL.

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 RSSL directly involved in the performance of the Services.

i) RSSL 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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