



THE INTERNATIONAL CENTRE FOR NUTRITIONAL EXCELLENCE LIMITED ("ICNE") TERMS AND CONDITIONS

These Terms and Conditions shall govern the supply of Services by ICNE to the exclusion of all other terms, conditions and representatives, including any terms or conditions which You purport to apply under any documentation whatsoever and whenever. No variation of these Terms and Conditions shall be valid unless agreed in writing by ICNE.

1. Definitions

"Arising IP" means Intellectual Property Rights arising from the performance of the Services;

"Charges" means the fees payable in respect of ICNE's performance of services;

"Client" of "You" means the legal person whom a Quotation is addressed or who otherwise submits materials for analysis by ICNE;

"Confidential Information" shall include but not be limited to:

- (a) Information of whatever nature relating to one party which is obtained by the other party, in written, pictorial, electronic or oral form.
- (b) Information of whatever nature relating to ICNE or client information.
- (c) Lists or details in relation to the working of any specification, formula, design, process, prototype, model or invention designed, carried on or used by either party or any invention belonging to either party or in respect of which the party is bound by an obligation of confidence to a third party, or any information that is commercially valuable and secret which affords that party a competitive advantage over its competitors.
- (d) ICNE Information shall include, without limitation information relating to its Standard Operating Procedures, software programs and innovative laboratory methods developed by ICNE.
- (e) Client Information shall include, without limitation, information relating to the compounds including but not limited to data; know-how; technical and non-technical materials; and compound samples and specification, which the Client shall deliver to ICNE pursuant to the purchase order, or which ICNE may develop during the performance of the services.
- (f) Analysis, compilations, studies and other documents prepared by either party which contain or otherwise reflect or are generated from the information specified in the above paragraphs.

The confidentiality obligations shall not apply to Confidential Information or such of it which at the time of the disclosure is already in the public domain; is trivial or obvious, or after disclosure comes into the public domain, other than by reason of breach of a party's obligations of confidentiality or which may (otherwise than through the default of a party) become available to the public generally without requiring a significant expenditure of labour, skill or money.

"Contract" means any contract (also known as a Technical Agreement) for the supply of Services between ICNE 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 Services relating specifically to the materials submitted by You;

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

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

"Quotation" means a written communication from ICNE 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 ICNE for You;

"Services" means:

- (a) Scientific analysis services;
 - (b) Scientific consultancy services; and/or
 - (c) Any other services
- In each case, supplied to You by ICNE.

2. Quotation & Associated Charges

- a) A quotation issued by ICNE shall be deemed to be an offer by ICNE 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 ICNE) within the period of validity stated therein. In addition, a separate Contract shall be formed wherever you submit materials to ICNE for analysis in respect of which no Quotation has been given (your delivery of such materials to ICNE constituting the offer and ICNE'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) A quotation will specify that the Services will be charged at a fixed fee. The Charges will be as specified in the Quotation or otherwise communicated in writing by ICNE to You. Charges set out in the Quotation (or other written communication) include consumables unless specified otherwise but do not include Expenses which will be charged in addition.

- 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

- 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.c), together with the VAT thereon, upon receipt of ICNE's invoice. All invoices are due for payment immediately, and payable within 28 days of the date of the invoice unless otherwise agreed in writing by ICNE.

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

- c) Except where otherwise agreed with ICNE, payment should be made by the method specified on the invoice or remittance advice. You should pay invoices in £GBP.

- d) If you fail to make any payment within 30 days of the date of invoice ICNE 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 2% per annum, together with all expenses, including legal fees, which ICNE 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 ICNE to you.

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

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

4. Provision of the Services – obligations of ICNE

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

- b) ICNE will use reasonable endeavours, but cannot guarantee, to complete contract requests within a 10 working day period (unless otherwise specified in a Contract or Technical Agreement). Completion of contract requests may be extended for certain testing requirements or if a subcontract laboratory is required. Time shall not be of the essence in respect of the provision of the Services and ICNE shall not be liable for any delay in meeting the said timescales.

- c) ICNE shall report results using simplified test reports as defined by ISO17025 International Standard for all analytical reports.

- d) ICNE 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 contract are received from You in writing at the time of delivery of the materials, in which case, ICNE 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 ICNE's standard storage rates (available upon request).

- e) ICNE will assume all samples submitted are homogenous in nature.

THE INTERNATIONAL CENTRE FOR NUTRITIONAL EXCELLENCE LIMITED (“ICNE”) TERMS AND CONDITIONS

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

5. Provision of the Services – Your obligations

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

b) You shall provide all relevant safety data relating to hazardous samples and shall ensure that hazardous samples are supplied to ICNE in appropriate packaging and that these packages and the samples contained therein are identified with the appropriate safety labelling on the outer packaging. **You agree to indemnify ICNE against all losses, claims, liabilities, damages, costs and expenses incurred by ICNE as a result of any failure on your part to attach appropriate safety labelling to any hazardous samples.**

c) You further acknowledge that the evaluation, use and application of the results of Services provided by ICNE 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 ICNE by promptly responding to requests for such further information or materials in your possession as ICNE may reasonably require to enable it to perform the Services.

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 ICNE a royalty-free non-exclusive licence to use Your Existing IPR as necessary to enable ICNE to perform the Services under that Contract.

c) Unless otherwise agreed in writing between the parties, all copyright subsisting in any Report shall vest in ICNE upon creation and is 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.

d) Subject only to Condition 6(c), all Arising IP including, but not limited to, any rights in any methodologies generated or adapted in or for such performance, and all other rights in, or relating to, the Data, shall vest in and belong to ICNE.

e) Each of You and ICNE shall do all such things and execute such documents as shall be necessary to ensure that ownership of all Arising IP is vested in the relevant party in accordance with Conditions 6.c) and 6.d).

f) Unless otherwise agreed in writing, ICNE will keep all Data securely for a minimum period of six 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 six year period.

g) ICNE 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 Your identity as an ICNE client. ICNE shall be entitled to disclose such information on a strictly need to know basis to employees of ICNE and to its professional advisors.

h) You shall keep confidential and shall not without ICNE's prior written consent, disclose to any person (save Your employees, sub-contractors or professional advisors with a need to know) any confidential information acquired from ICNE in connection with the Services, including but not limited to any of the Arising IP referred to in Condition 6.d) and the fact of ICNE's engagement to provide Services to You.

i) 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 come 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.

7. Liability and Indemnity

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 ICNE 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 ICNE 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 ICNE's opinion rectification or re-performance 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 ICNE within 14 days of completion of the Services.

c) Without prejudice to condition 7b) ICNE'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 there under.

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

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

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

h) Any report prepared by ICNE is intended for Your use only and ICNE 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 of Your property or assets or You cease or threaten to cease to carry on business; or (ii) ICNE 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, ICNE shall be entitled to terminate the Contract and/or suspend any further performance of Services under the Contract without any liability to You.

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

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

9. Notices

- (a) All notices given shall be in writing sent to the other's registered office.
- (b) Notices may be sent by hand delivery, by pre-paid first class post, by fax, or (in the case of routine communications relating to orders only) by E-mail.
- (c) Notices will be deemed to have been given:-
 - a. If by hand delivery – at the time of delivery
 - b. If sent by post – on the second business day following the day of posting
 - c. If sent by fax - at the time of transmission and a fax confirmation sheet shall be evidence of transmission
- d. If sent by E-mail (in the case of routine communications relating to orders only) – when the notice is received by the party to whom it is addressed is able to access it in an intelligible form (as defined by S.56(1) of Regulation



**THE INTERNATIONAL CENTRE FOR NUTRITIONAL
EXCELLENCE LIMITED (“ICNE”)
TERMS AND CONDITIONS**

of Investigation Powers Act 1998) and whether the recipient chooses to access it is immaterial.

10. 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 ICNE.
- b) No person who is not a party to a Contract shall have the right, whether under the terms of a Contract which expressly or by implication confers a benefit to that person.
- c) Nothing in a Contract shall be deemed to create any joint venture, partnership or relationship of principle and agent between the parties.
- d) The waiver by either party of any breach of 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 ICNE directly involved in the performance of the Services.
- i) ICNE 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.

IN WITNESS hereof the duly authorised representatives of the parties have executed this Agreement in duplicate originals.

Signed:

Signed:

*Name:

*Name:

For and on behalf of

For and on behalf of
**The International Centre for
Nutritional Excellence Ltd**

Position:

Position:

Date:

Date: