

ARC PHARMA (UK) LIMITED – TERM AND CONDITIONS

These terms and conditions will apply to all test and analytical services provided by ARC Pharma (UK) Limited (henceforth know as ARC) from the date below and will replace all earlier terms and conditions. Variations will not be valid unless signed by duly authorised employee of ARC.

1. THE ANALYTICAL SERVICES

- a. All Analytical Chemistry Contracts to analyse goods or materials are accepted by ARC on the basis that full disclosure is made by the Client of all information and documentation which may affect such work, and that ARC will not be liable to the Client unless such full disclosure has been made. All such information shall be maintained by ARC in strict confidence. Upon completing the supply of Services under an Agreement ARC shall, if required, return to the Client any documents that it has received in connection with such Agreement.
 - (i) The Client shall make know to ARC prior to analysis the purpose or purposes, including possible litigation, for which the results of the analysis are to be used. ARC shall bear no duty of care or contractual liability to the Client or to third parties in respect purposes not so disclosed.
 - (ii) The Client agrees to indemnify ARC against any third party claims for any loss or injury arising out of any use of any such goods or materials not disclosed to ARC.
- b. The cost for the agreed work will be confirmed in a written Quotation or Estimate. The cost of obtaining any specific extra items such as Certified Reference Materials, Chromatography Columns etc., will be included in the Quotation or Estimate.
- c. If such work needs to be performed in a shorter time than that specified in the Quotation or Estimate, it is the responsibility of the Client to negotiate whether this is possible with the ARC Analytical Operations Manager. A surcharge will be made for this service, depending upon the degree of urgency. In certain circumstances and with certain samples, a same-duty turnaround time may be available. Appropriate and negotiated surcharges would apply.
- d. ARC will include in Quotations or Estimates, where appropriate, a surcharge for handling materials deemed hazardous. If samples are found to be of a hazardous nature subsequent to quoting for the work, then ARC reserve the right to apply the appropriate surcharge to the subsequent invoice. Details of these charges can be obtained on request. See also Section 4.
- e. All samples will be analysed and reported on an 'As Received' basis, unless otherwise instructed in writing, or documented in the agreed methodology.
- f. ARC will carry out such work as agreed with the Client and shall be entitled to test any samples to destruction. All goods and materials remaining following analysis will be disposed of by ARC one month following the issue of the report containing the analytical results, unless otherwise agreed in writing.
- g. ARC relies upon the information being supplied by the client to be correct. If as a result of a client supplying incorrect information, the equipment or instrumentation used is damaged, or the analytical work is unnecessarily delayed, then ARC reserve the right to seek compensation for the repair or replacement of equipment or instrumentation, or for the additional time taken to perform the testing by the analyst.
- h. Any report issued by ARC will relate only to the goods or materials in respect of which work has been done and not the bulk from which the samples analysed may have been selected (See j.).
- i. Should additional copies of Reports of Certificates of Analysis be requested, these will be supplied at an additional charge.
- j. Where ARC has no direct knowledge of the circumstances in which samples for analysis have been taken it cannot provide any comment or interpretation of analytical results (See 2.).
- k. Whilst every effort is made to answer clients questions on the facts contained within the Report, ARC reserve the right to charge for discussion/consultancy. ARC also reserve the right to charge for electronic communications such as e-mail or fax. In all cases the client be informed that a surcharge will be made.
- l. ARC reports are provided in confidence. Copyright of all written statements, reports, certificates and other information given by ARC in the course of analytical services will remain the property of ARC. They must not be made public (except as required by law), edited or amended in whole or in part without prior written consent. Copies of any such documents must not be given to third parties without ARC's prior written consent.
- m. ARC shall make all reasonable efforts to supply the Analytical Services by the date agreed (if any) but ARC do not guarantee such a date, which is given by way of estimate only.
- n. If samples are submitted for analysis and the work is cancelled before completion for any reason, ARC reserve the right to make an appropriate charge including any administrative costs involves, based on the number of samples submitted and the stage which cancellation occurred.

2. STATEMENT OF LIMITATION

In all matters relating to analytical chemistry services which ARC undertake for its Clients, the Company will limit its activities to fields in which it has direct experience and knowledge. It will adhere strictly to instructions, which must be agreed and fully documented prior to any work being undertaken. All results produced will be presented as a factual report. ARC are not registered as Expert Witnesses and therefore cannot enter into discussions or proffer opinions on the application or consequence of the results, other than those directly relating to the analytical procedures undertaken.

3. QUALITY ASSURANCE, METHODOLOGY AND ARCHIVING

- a. All analytical work will be in compliance with ARC Quality System, which has been approved by the MHRA and regularly inspect the laboratory for GMP purposes.
- b. All work specific analytical Raw Data will be held in the archives of ARC at Unit 3 Curo Park, Frogmore, St Albans, Hertfordshire, AL2 2DD, United Kingdom, unless otherwise requested and agreed with the Client.
- c. If request in writing or detailed in a 'Service/Technical Agreement' the analysis specific Raw Data can be supplied with the Report/Certificate of Analysis. A surcharge of 5% will be added to the invoice value of the work.
- d. Where the ARC Quality Department are required to undertake an audit or investigation resulting in a report, such as in the case of a GMP 'Out of Specification' result, then ARC reserves the right to make a charge.

4. HEALTH AND SAFETY

- a. Clients must inform ARC of hazardous of any kind relating to samples when requesting a Quotation or Estimate. Samples/materials so submitted must be labelled with the appropriate hazard labels, in accordance with the CHIP regulations, and a Material Safety Data Sheet (MSDS) provided. Failure to do is in breach of Health and Safety Regulations and may result in an additional handling charge.
- b. ARC reserve the right to quarantine samples until the aforementioned is provided and to charge for any administration and or specific handling requirements involved.
- c. ARC will hold the Client responsible for any injury/illness that results from handling materials that are not clearly labelled as being of a hazardous nature.

5. PRICE AND PAYMENT

ARC agrees to provide the above Analytical Services on the basis that:

- a. ARC operate a Minimum Sample Submission Invoice charge.
- b. The price stated on the Invoice is the net price of the Analytical Services supplied exclusive of all taxes, duties and any other impositions whatsoever, which if applicable shall be paid by the client in addition.
- c. Should a P/O number or equivalent reference be required for payment of the Invoice, it is the responsibility of the Client to ensure that this is provided at the time of the submission of samples. Any delays in providing these details will be subject to an administrative surcharge, as will the omission of MSDS and other safety data.
- d. If the Client requests any change in the specification of the Analytical Services or any additional Analytical Services and ARC agrees such that the changed or additional Services are supplied, those Services will be invoiced at the rate ruling at the date of the Invoice unless they have been the subject of a further Quotation or Estimate.
- e. Should unexpected or unforeseen scientific problems arise, during the course of the analytical work, which affect the method(s)/technique(s) employed or the time scale of the contract, ARC reserve the right to re-negotiate the quoted or Contract price and the time scale. Failure by the Client to re-negotiate will be taken as a termination of the Contract, when all work done will be reported and Invoiced.
- f. Unless otherwise expressly stated, prices are due and payable into such bank account as may be designated by ARC without sett-off or counterclaim in United Kingdom Sterling in immediately available funds within thirty (30) days from the date on the relevant invoice. Payment by cheque or other negotiable instrument is ineffective until it is honoured and the ARC bank account is credited with the amount due.
- g. ARC reserve the right to forward unpaid accounts at the end of credit period to a debt-collecting agency.
- h. Any other charges stated separately from the price are payable by the Client at the same time, and shall be treated as part of the price.
- i. If the Client pays any amount to ARC without apportioning it between specific debts or liabilities it shall be apportioned as ARC thinks fit. They may attribute a partial payment to one or more specific items, rather than to all the items which are the subject of a particular Agreement.
- j. Where the period for carrying out the work is to exceed one month, payment shall be made on account, Invoiced on a monthly basis at the price quoted by ARC.

6. CLIENT ACCOUNTS

- a. Services to existing account Clients will be provided on the condition that Invoices are paid in full within 30 days of the date of invoice. ARC reserves the right to defer or cancel without liability the provision of any further services if this condition is not complied with unless the Client has given written notice that the sum charged is in dispute.
- b. With services to new clients, ARC will normally require satisfactory recent credit references before accepting a new account Client and pre-payment of the first Contract.
- c. With all Clients, ARC reserves the right to withhold reports and discussions, and to discontinue the provision of services at any time when there are outstanding fees owed by a Client. ARC will accept no responsibility for the consequences of withholding reports or discontinuing work such circumstances.

7. LIABILITIES OF ARC

- a. ARC shall be responsible for any failure to carry out the Services with reasonable care and skill.
- b. ARC's obligations and liabilities to the Client in respect of the Services shall be limited to those set out expressly herein and where the Agreement is not an international supply contract within section 26 (3) of the Unfair Contract Terms Act 1977, to any liability for death or personal injury from negligence (as defined in that Act). The Client acknowledges that this is reasonable and reflected in the price and shall accept the risk and/or insure accordingly.
- c. Subject to and without limiting (a) or (b) above, no collateral contract and no representation, warranty, condition, stipulation or liability obligation whatsoever (without limitation whether arising (i) in contract, or [including negligence] or otherwise; or (ii) expressly, impliedly, at common law, by statute, custom, usage or course of dealing or otherwise) is given, made or undertaken by ARC or its employees or agents in relation to the Services.
- d. Subject to and without limiting (a), (b) and (c) above:
 - (i) ARC shall not be liable for any loss, injury, or damage of any nature whatsoever direct or consequential arising out of or in connection with any Services supplied; and
 - (ii) The Client shall not rely upon any representation concerning any Services supplied unless the same shall have been made by ARC in writing.

8. DEFECTS

- a. The Client shall give ARC notice of any defects in the Service by facsimile as soon as it is aware of them and shall in any event give full details in writing of those defects within three (3) months of the Services being supplied.
- b. The Client may make no claim except when it has given notice as required by (a) above.

9. FORCE MAJEURE

IN THE EVENT THAT PERFORMANCE OF THE Agreement is rendered uneconomic, prevented or delayed as a result of war, hostilities terrorist activities, acts of God, industrial unrest, civil disturbance, the act of any local or national government or authority (whether in the United Kingdom or abroad), shortage or unavailability of raw materials, equipment, labour or fuel or any other cause beyond the reasonable control of ARC. ARC may, by written notice to the Client, either cancel the Agreement or suspend or postpone performance of it with no liability on either side.

10. ASSIGNMENT

The Client shall not assign, mortgage, charge, sub-let or otherwise dispose of any Agreement or any rights thereunder in whole or in part without ARC's prior written consent. Any such action by the Client without such consent shall be void.

11. TERMINATION

Should the Client make default in any payment or otherwise be in breach of its obligations to ARC under this contract or under any other contract with ARC 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 shall or any part of its assets or take or suffer any similar action in consequence of debt or become insolvent or should ARC have reasonable cause to believe that any of these events is likely to occur, ARC may, by notice in writing to the Client and without prejudice to any other rights forthwith suspend or cancel any uncompleted part of this contract or require payment in advance or satisfactory security for further delivery of services under this contract.

12. MISCELLANEOUS

- a. The failure by ARC to enforce at any time any one or more of the terms or conditions of this agreement shall not amount to a waiver by ARC of its right subsequently to enforce such a term or condition.
- b. If any provision of this agreement is declared by any judicial or other competent authority to be voidable, illegal or otherwise unenforceable this shall not affect the remainder of the contract, 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.

13. LAW AND JURISDICTION

The application of the Uniform Laws on International Sale shall be excluded. The construction validity and performance of all Agreements shall be governed by English law and any claim or dispute arising from them shall without prejudice to ARC's other rights be subject to the jurisdiction of and be determined by the English courts.