

## **TERMS & CONDITIONS OF BUSINESS**

### **BETWEEN**

**"The Supplier"** : Pathogen Prevention Ltd, with a trading style of "PPL-Biosafety", a Company Registered in England & Wales No.12572823, of 38 Handley Street, Sleaford, Lincolnshire, NG34 7TQ (us, we, our)

### **AND**

**"The Client"** : (you, your, yours)

### **IT IS HEREBY AGREED AS FOLLOWS**

#### **1. Interpretation**

- 1.1. Except where the context requires otherwise words importing the masculine shall include the feminine; words importing the singular shall include the plural; words importing natural personage shall be equally applicable to corporate personage and vice versa.
- 1.2. References to any statutory provision, authority, rule or code of practice shall be deemed to include the amended versions, replacements or successors of such.

#### **2. Relationship Between the Parties**

- 2.1. The Client engages the Supplier to provide the goods, products and/or professional or other services which are all here-in to be defined as "the Services" specified in these terms and conditions, attached schedules or quotations.
- 2.2. No term of this agreement or course of dealings between the Parties shall operate to make the Supplier an employee or agent of the Client.
- 2.3. Neither Party shall assign or transfer any of their rights, liabilities or obligations arising under this agreement without the prior written consent of the other Party.

#### **3. The Quotation**

3.1. The Supplier shall provide to the Client a proposal for the "Services" to be provided ("the Quotation") which shall set out:

- a) The Services which the Supplier will undertake for the Client
- b) The date or time period within which the Service will be performed
- c) The costs which the Client shall be charged for the performance of the Services including
  - i. Any fees which the Supplier shall charge for consultancy an/or products, etc
  - ii. Any disbursements or expenses which the Supplier will require the Client to meet (including but not limited to the costs of insurances, materials, plant or labour)
  - iii. Any VAT or tax element which will be payable by the Client
  - iv. Shipping costs

The Quotation shall be attached to these terms and conditions and if accepted or where a contract is entered into between the Supplier and the Client, the Client will be deemed to have accepted these terms and conditions in full.

3.2 Quotations shall remain open and valid for 21 days from issue date.

#### **4. The Services and the Time and Manner of their Delivery**

- 4.1. The Supplier will provide such services to the Client as are set out in the Quotation.
- 4.2. The Services will be provided to the Client generally within the timeframes specified in the Quotation.
- 4.3. Any programme with the quotation, time frames and dates of delivery are provided for guidance only, see below. For the purposes of this agreement, and unless otherwise agreed in writing, time shall not be of the essence and the Supplier shall not be liable for any loss or damage suffered by the Client as a result of the delivery of services being delayed or postponed for any reason.
- 4.4. The Client may from time to time request the Supplier, in performing the Services, to meet a required programme and completion dates and subject to the client making such requests in a realistic timeframe and all necessary information and unencumbered access being available to the Supplier in all reasonable time and in the proper form and subject to the Supplier promptly making known to the Client any reasonable objections to such dates, the Supplier shall use reasonable endeavours to proceed with the performance of the Services to achieve such dates, subject always to matters within his reasonable control and the continued performance of other parties who interface with the Supplier's work continuing to meet their deadlines to allow the Supplier to meet these revised time constraints.
- 4.5. The Client shall provide the Supplier without charge and in such reasonable time so as not to prevent, delay or disrupt the performance of the services all data, information, records, designs, goods and safe unencumbered access and such other which are necessary and reasonably requested from time to time by the Supplier. The Client shall give the Supplier such assistance and accommodation as the Supplier may reasonably require in connection with the performance of the services.
- 4.6. If any work is carried out or additional costs are incurred by the Supplier because of:
  - (i) any variation to the services by the Client;
  - (ii) any delay by the Client;
  - (iii) any delay by third parties;
  - (iv) other reasons beyond the reasonable control of the Supplier;
  - (v) any unknowns arising from assumptions made for the items in clause 4.5 being inaccurate or not provided

the Supplier shall be entitled to charge for additional time and additional payment, if it is reasonable to do so and if he so elects.

#### **5. Payments**

- 5.1. The contract price is set out in the Quotation, which includes details of the charges which the Supplier will make for the specified consultancy, labour, plant, materials and parts, as well as any insurances, taxes or additional costs or expenses or disbursements which the Supplier may reasonably need charge to the Client.
- 5.2. The intervals at which the Supplier may invoice the Client in respect of the whole or an instalment of the contract price are set out in the Quotation and failing that, interim valuations and invoices shall be monthly.
- 5.3. Notwithstanding 4.1 and 4.2 above, the Supplier may vary the contract price from the amount set out in the Quotation where he has provided services which are different or in addition to those set out in the Quotation either at the specific request of the Client or because he has been required to complete additional work which was not anticipated at the time the Quotation was made, or because of market fluctuations in the price of materials.
- 5.4. When we are contracting with the Client, the normal terms are payment in full, in advance to our account. But is for whatever reason terms are otherwise ie not full or part payment upfront, the Client agrees that no later than three days after a payment becomes due, the "Due Date", (Invoice Date), the Client shall notify the Supplier of the sum that the Client considers to have been due at the payment due date ("the Payment Notice") in respect of the payment and the basis on which that sum is calculated. For ease of administration, unless otherwise advised by us, our VAT Invoice and the "Payee Notice" represent the one and the same document. If the Client wishes to withhold any payment it shall give a "Pay Less Notice" to the Supplier not later than 7 days prior to the Final Date for Payment of the Notified Sum (Invoice Amount) specifying the amount to be paid, its calculation and the ground or grounds for not paying the Notified Sum.
- 5.5. The Final Date for Payment for all payments/invoices due shall be no less than 10 days after the Due Date for Payment (Application Date or Invoice Date) unless otherwise stated in the Quotation, after which they shall become a debt which is fully recoverable by whatever means the Supplier deems appropriate and this may

include entering the premises and taking back the "Services" provided or other recognized recovery or enforcement mechanism,

5.6 The interest due on late payment of invoices is 12% charged on a compounded daily accruing basis at 1/12 of 1/30 of said rate per day. The parties agree that this provision shall constitute a "substantial remedy" for the purposes of The Late Payment of Commercial Debts (Interest) Act 1998.

5.7 If the Supplier is required to undertake day works, additional works over and above an approved budget or outside the scope of the Services, we will notify this to the Client and we reserve the right to charge for this additional work. Unless we elect to confirm a lump-sum, our costs for these additional works will be calculated on a time, materials, plant and expenses basis or on a lump-sum basis if the Supplier deems this appropriate. In calculating our additional costs, the following are applicable in respect of staff allocation and charge-out rate.

Director	£295/hour
Senior Consultant Advisor	£285/hour
Technical/Manager/Surveyor	£ 95/hour
Technician	£ 55/hour
Skilled Operative	£ 40/hour
General Labour/Unskilled Operative	£ 25/hour
Administrator	£ 20/hour

5.8 At the point that any account becomes overdue for payment, we shall notify you in writing and refer you to this clause 5. and specifically, we notify you that when an account is 7 days or more overdue for payment, then, at our discretion or without any further notice because it is explicit here-in, we reserve the right to suspend the performance of all or part of the Services at that instance; and/or access site and recover work or materials or installations or Services that have not been paid for yet; and/or to seek injunctive relief preventing further use of the Supplier's materials and the use of any form of our works designed, created, installed or moral property or intellectual property owned by us for use by you, your customer, your contractors, your other suppliers or other professional advisors, funders, tenants, local authorities or any other interested parties until such time that the commercial matters are resolved to our satisfaction. We may also issue further notices or undertake formal enforcement proceedings as we deem appropriate. The Client shall pay the Supplier a reasonable amount in respect of costs and expenses, reasonably incurred by the Supplier as a result of any exercise of its right referred to in this clause including its time referred to in 5.7 in doing so.

5.9 Subject to our absolute discretion and conditions prevailing we may agree to issue interim invoices and credit facilities in which case we will allocate you a credit limit at our discretion on the specific contract and indeed, your credit account as a whole, if we are working with you on multiple contracts which we can confirm upon request. In the event that you exceed your allocated overall Credit Limit or fail to adhere to any terms agreed between us,, we reserve the right to cease provision of services on that and indeed, all contracts with you and your total Credit Facility may be withdrawn entirely until such time as balances are corrected within the account(s) concerned to our satisfaction.

5.10 At the point of notification that an account is 7 days or more overdue, the Supplier reserves the right to charge administration fees at £150 per statement, per reminder or each and every item of correspondence relating to your late payment You agree that such charge is reasonable as representing a genuine pre-estimate of our loss and expenses and does not constitute a penalty.

## **6. Termination or Suspension of Performance**

6.1 The Supplier may immediately elect to suspend performance of the services or terminate its engagement under this Agreement by giving written notice to the Client, if;

- (i) the Client is in material breach of its obligations under this Agreement and fails to remedy that breach within seven business days of receiving written notice from the Supplier requiring it to do so; or
- (ii) the Client becomes insolvent
- (iii) Force Majeure

- (iii) Following a cessation instruction from the Client to the Supplier requiring the Supplier to materially stand down/pull off site for a period exceeding five business days or an unspecified period; or if unforeseen events or circumstances arise such that there are difficulties in determining how to proceed with the works at any given juncture; Client is late paying or has difficulty paying or in raising funds to pay for the work; or cannot provide reasonable access or safe working environment for the Supplier to perform the services; the Client is repeatedly unable to provide sufficiently adequate or workable or accurate responses to reasonable information requests from the Supplier necessary for the performance of the services in a reasonably timely manner or is unable to proceed at the speed anticipated by the contract.
- 6.2 On suspension of performance or termination in accordance with this agreement, the Client shall forthwith pay the Supplier on demand:
- (i) any amount due for payment under this agreement at the date of suspension or termination
  - (ii) a fair and reasonable proportion of the next instalment of the quotation or works commensurate with the services properly performed at the date of suspension or termination
  - (iii) any costs, expenses, disbursements or losses
  - (iv) any loss of profits, loss of chance or other similar losses; and
  - (v) any indirect losses or consequential losses
- 6.3 The Supplier will not be liable to the Client for any liabilities, claims, or expenses arising out of the suspension of the Supplier's performance under this agreement.
- 6.4 In accordance with the *Cancellation of Contracts Made in a Consumer's Home or Place of Work etc Regulations (2008)*, and where the Client is a consumer within the meaning of section 12 of the *Unfair Contract Terms act 1977*, the Client may cancel this contract within 7 calendar days of signing this agreement or accepting the quotation (or within whatever extended period the Supplier may specify in the Quotation) and shall be entitled to a full refund of any monies paid to the Supplier, less an amount representing any reasonable administration costs which the Supplier has incurred. Any cancellation outside this period will not entitle the Client to a refund of any monies paid.

## **7. Client's Obligations**

- 7.1 The Client shall be responsible for the correctness and accuracy of all measurements for products or materials which he gives to the Supplier. Where these measurements are not correct an accordingly materials or products which are ordered or provided by the Supplier are the wrong size, the Client shall bear the expense of rectifying this.
- 7.2. The Client shall co-operate with the Supplier as may be necessary to facilitate this agreement, including but not limited to:
- a) Permitting the Supplier access to the property or location in which services are to be supplied ("the site") and assuring that such access is safe, unencumbered, appropriate and adequate
  - b) Providing for the Supplier such facilities as necessary in order to allow him to complete the services
  - c) Following the supplier's reasonable instructions relating to safety and the state of work which has recently been completed by the Supplier or is in the process of being completed or to the state of the Site in general, including directions and restrictions on appropriate usage, care and maintenance.
- 7.3. Unless the Quotation specifies otherwise, the Client will be responsible for any cleaning and redecorating which is necessary to the Site after the Supplier has completed the agreed services (with the exception of the removal of waste materials, which shall be the responsibility of the Supplier as set out in 7.4, below).
- 7.4. Where the Supplier stores or keeps any materials or equipment on Site, the Client shall be responsible for the security and safety of such and shall account to the Supplier for any loss or damage.
- 7.5. Unless otherwise agreed as part of the Services to be performed by the Supplier, the Client shall be responsible for any notifications (F10 etc.), permissions, licenses or consents which are necessary in order for the services to be provided. The Client warrants that he has made, applied-for and obtained all such necessary permissions, license or consents prior to contracting the Supplier.
- 7.6. Unless otherwise agreed as part of the Services to be performed by the Supplier, the Client is responsible for providing suitable and accurate information.
- 7.7. Responsible for any risks, hazards or other material considerations known by or within the reasonable contemplation of the Client which, unless otherwise communicated to the Supplier, might reasonably impact

on the performance of the services, safety, welfare, methodology, sequence, resources or other commercial considerations which formed the basis of the Quotation

- 7.6. For all non-residential projects, the Client's statutory duties under the Construction (Design & Management) Regulations 2015, also known as the CDM Regulations, are to make suitable arrangements for managing their installation project, enabling those carrying it out to manage health and safety risks in a proportionate way.

Subject to duration and 7.6.1 below, these arrangements normally include:

appointing the contractors and designers to the project (including the CDM Principal Designer and CDM Principal Contractor on projects involving more than one contractor) while making sure they have the skills, knowledge, experience and organizational capability;

allowing sufficient time and resources for each stage of the project;

making sure that any principal designer and principal contractor appointed carry out their duties in managing the project;

making sure suitable welfare facilities are provided for the duration of the construction work;

maintain and review the management arrangements for the duration of the project;

provide pre-construction information to every designer and contractor either bidding for the work or already appointed to the project;

ensure that the principal contractor or contractor (for single contractor projects) prepares a construction phase plan before that phase begins;

ensure that the principal designer prepares a Health and Safety File for the project and that it is revised as necessary and made available to anyone who needs it for subsequent work at the site;

- 7.6.1 For notifiable projects (where planned construction work will last longer than 30 working days and involves more than 20 workers at any one time; or where the work exceeds 500 individual worker days), commercial Clients must:

notify HSE in writing with details of the project;

ensure a copy of the notification is displayed in the construction site office.

***(For more information, visit the HSE site <https://www.hse.gov.uk/pubns/indg411.htm>)***

## **8. Supplier's Obligations**

- 8.1. The Supplier shall perform all duties, services and obligations under this contract with reasonable care and skill and to a reasonable standard. He shall comply with all relevant codes of practice and statutory or regulatory requirements.
- 8.2. The Supplier, when undertaking installation, shall take all reasonable care with the Client's property, including taking reasonable steps to protect the Client's furnishing's and wall and floor coverings during the provision of the services.
- 8.3. The Supplier shall at all times be registered and remain in good standing with such organizations as may be relevant for the purposes of undertaking the Services, being SQEP recognized: Suitably Qualified and Experienced Professional persons.
- 8.4. The Supplier shall be responsible for managing and arranging the safe and lawful disposal of any waste materials which are generated or removed from the Client's property as a result of the provision of the services where we are required to undertake maintenance or installation or decommissioning works.
- 8.5. The Supplier shall at all times hold a valid Employer and Public Liability Insurance policy and shall hold and keep up to date any and all licenses or permits as may be required in order to provide the Services.
- 8.6. The Supplier shall also comply with all of his obligations under the CDM Regulations and any other relevant statutory regulatory duties.

## **9. Property Rights and Assumption of Risk**

- 9.1. Any property rights, title or ownership in any property or materials which are created, designed or used by the Supplier in providing or delivering the services shall remain vested with the Supplier until the Client has made payment in full in accordance with these Terms and Conditions and the Supplier reserves position to retrieve works undertaken or materials provided as part of the services that have not been paid for at any time after payment terms have been breached.
- 9.2. Risk in and responsibility for any products or materials which are used in the supply, performance or delivery of the Services shall pass from the Supplier shall pass from the Supplier to the Client:
  - a) Where the Supplier is responsible for delivering the products or materials to the Client, upon delivery, or
  - b) Where the Supplier is not responsible for delivery, at the moment the products or materials leave the Supplier's premises.
- 9.3. The Supplier's liability under this agreement for any claim or claims shall be limited to that proportion which is or are just and equitable for it to have to pay with due note of the extent Supplier's responsibility for the same loss or damage suffered by the Client as a result of an occurrence or series of occurrences on the basis that:
  - a) All other suppliers, contractors and consultants shall have provided contractual undertakings on terms no less onerous than the duty of care specified here-in; and
  - b) There are no exclusions of or limitations of liability nor joint insurance nor co-insurance between the Client or any other party referred to in this agreement and any such other party who is responsible for any extent for the loss and damage is contractually liable to the Client for the same; and
  - c) All other suppliers, contractors and consultants shall have paid to the Client such proportion of the loss and damage which it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage.

## **10. Guarantees**

- 10.1. The Supplier provides to the Client, in addition to any statutory rights which the Client may have, a guarantee that the Services provided under this contract shall be free from defective or flawed materials or workmanship for a period of 12 months from the completion of the Services, provided always that this guarantee shall not apply to:
  - a) Defects or flaws which are as a result of any misuse, failure to adequately and properly maintain, neglect or failure to follow instructions or recommendations on the part of the Client.
  - b) Any defect or flaw which is caused by mechanical or chemical damage (which is not in itself a result of some defect in the workmanship or materials) and which arises after risk in the property has passed to the Client.
- 10.2. The Supplier shall, at our sole discretion, determine the manner in which he will satisfy this guarantee, whether by repairing re-performing or replacing the Services or by refunding to the Client all or part of the monies which have been paid.
- 10.3. Where the Client considers that the Services are defective upon delivery or performance, then he shall notify the Supplier of this within 7 days, failing which he shall not be entitled to claim the benefit of this guarantee.
- 10.4. This guarantee shall not become effective until the Client has paid the Supplier in full, failing which the Client shall not be entitled to claim the benefit of this guarantee.

## **11. Disclaimers and Exclusions**

- 11.1. The Supplier shall not be responsible in any circumstances to the Client or any third party for any loss of profit or indirect or consequential economic damage or loss, howsoever caused, whether as a result of negligence, misrepresentation, breach of contract or otherwise.
- 11.2. Nothing in the forgoing shall be read as restricting or limiting in any way the Supplier's liability for death or personal injury.

## **12. Indemnity**

The Client shall fully and effectually indemnify the Supplier against any loss or damage which results from the Client's breach of this agreement or failure to abide by any of its terms.

## **13. Force Majeure**

Neither Party shall be liable for any delay or failure in performing its obligations or duties under this agreement which results from circumstances outside his reasonable control including but not limited to acts of God, pandemic, flooding, severe or adverse weather, industrial action, war, fire, threat of terrorism, civil disturbance or rioting, government or regulatory action, breakdown in plant or machinery or severance of utilities supply or shortage of units, raw materials or shortage of suppliers or transport or other exceptional circumstances of any kind whatsoever which may occur or an event which stops the Supplier completing the works by the date shown on the Programme" and which neither party could reasonably prevent.

## **14. Warranty of Contractual Capacity**

Both Parties and all signatories to this agreement warrant that they are authorised and permitted to enter into this agreement and have obtained all necessary permissions and approvals.

## **15. Whole Agreement, Governing Law, Severability and Miscellaneous Provisions**

- 15.1. This document constitutes the entirety of the agreement between the parties. It supersedes any prior representations which may have been made, whether orally or in writing. Any modification to this agreement must be made in writing and signed by and authorized signatory of both Parties.
- 15.2. This Agreement shall be governed by the Law of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English Courts.
- 15.3. All clauses, sub-clauses and parts thereof shall be severable and shall be read and construed independently. Should any part of this agreement be found invalid this will not affect the validity or enforceability of any other provision or of this agreement as a whole.
- 15.4. All terms, conditions and covenants contained in this agreement shall bind the parties and their heirs, legal representatives, successors to title and permitted assignees.
- 15.5. Nothing in these terms and conditions shall incur any rights on a third party and no third party may enforce any provision of this contract under the *Contracts (Rights of Third Parties) Act 1999*.
- 15.6. The failure by either Party to enforce any provision of this agreement shall not be deemed a waiver or limitation of that part's right to subsequently compel and require strict compliance with every provision of this agreement.
- 15.7. If a dispute or disagreement arises out of this agreement that Parties cannot resolve by normal commercial negotiations between them, a recognized dispute resolution method shall be adopted via adjudication, mediation, arbitration or through the English Courts depending upon which is deemed to be proportionate, timely or economic and appropriate.
- 15.8. No assignments or warranties beyond that guarantee stated in clause 10 above are included.
- 15.9. Liability shall not exceed insurance (save in respect of death or personal injury) and be limited to the lesser of the relevant insurance or 1/10<sup>th</sup> of the contract sum or the total value of the quotation.
- 15.10. No claims or proceedings arising out of the services provided under this agreement shall commence after expiry of 6 years after Practical Completion/use/ or possession of the works by the Client.
- 15.11. Any initial materials such as feasibility studies, cost plans or programmes of works and all other pertinent documents, media whether electronic or hard copy designed, created or developed by the Supplier for the Client pre-appointment are indicative only and could change by matters such as development of the Client's scope, the design development, the final surveys, testing, or opening-up or other disclosure/discovery of information until such time as the final design and scope can be finalized and as such, no reliance can be assumed on these initial materials. Copyright shall apply to all materials and property in such respects also shall remain vested with the supplier until properly paid for. Where such services shall have been provided prior to formalization of this agreement or acceptance of quotation with an instruction to proceed, these terms and conditions shall be deemed to have applied and being performed from the outset of the provision of such pre-contract/ pre-appointment assistance in respect of the works.