

# Terms & Conditions of Laboratory

## 1. Area of Application

- 1.1 All orders for logistic support for sampling, analysis and reporting accepted by The Jersey New Waterworks Company Limited trading as Jersey Water or any of its subsidiaries or affiliates (collectively, "JW") will be governed by these General Terms and Conditions of Sales (the "Terms and Conditions"), including (without limitation) orders placed by telephone which have not been confirmed in writing and orders made by delivery of samples.
- 1.2 A contract with these Terms and Conditions comes into being when an order that has been placed with JW is accepted by JW. An order placed with JW is considered as accepted by JW when (a) JW commences work in order to fulfil that order, without need for any written confirmation from JW or (b) JW accepts the order in writing.
- 1.3 These Terms and Conditions supersede and replace all prior verbal or written price quotations and agreements between the parties and, unless specifically indicated otherwise therein, take precedence over all conflicting or inconsistent provisions of subsequent written agreements between the parties. No officer (other than the Chief Executive Officer (from time to time) of JW), employee, agent or subcontractor of JW has the authority to alter or waive any of these Terms and Conditions or to make any representation which conflicts with or purports to override any of these Terms and Conditions; and no such alteration, waiver or representation shall be binding upon JW, unless it is in writing and signed by the Chief Executive Officer (from time to time) of JW.

## 2. Placement of Order

- 2.1 A customer's order will be valid only if it is sent by mail on letterhead of the customer or electronic message or by using JW approved sample dispatch sheets or electronic order forms and the commercial aspects of the order which are not specifically set out in these Terms and Conditions (including price, estimated turnaround times and delivery date) must be agreed at the time of the order. JW is not obligated to start any work unless the order is clear and it has been provided all required information.
- 2.2 A quotation that contains testing that will be subcontracted by JW to a third-party laboratory will contain the prefix "SUB" in the Description/ Analysis field of the information submitted in the quotation. JW will notify the customer that tests have been carried out by a third-party laboratory by sending Test Certificates which contain this information to the customer. The customer will be deemed to have been notified and to have accepted that testing will be carried out by a third-party laboratory as indicated by the prefix "SUB" when the quotation for the testing is signed by the customer or when the first sample included in the quotation is submitted to any JW laboratory.

## 3. Price and Terms of Payment

- 3.1 If the acknowledgment of an order does not state otherwise, JW prices apply "ex works", excluding packaging, which is charged separately. Any additional cost or disbursement (e.g. incurred by JW in connection with the order) must be paid by the customer.
- 3.2 Prices are exclusive of all applicable taxes (including GST) and are based on tariffs in force at the day of the remittance of the order to the customer. Applicable taxes are those in force at the date of invoicing.

- 3.3 Unless specifically agreed otherwise by JW in its acceptance of an order, payment of all invoices is due strictly within 30 days of the invoice date. Any dispute about invoices must be raised in writing within 30 days of the invoice date. The challenge of an analytical result will not entitle a customer to defer payment. Any invoice which remains outstanding after due date may be additionally charged with an administration fee of £25.00 in respect of JW's costs in dealing with such outstanding payment and also may carry interest at the rate of one percent (1%) per month on the total value of the invoice or the maximum interest rate permitted by applicable law, whichever is lower and have the right to recover recovery costs.
- 3.4 The invoice settlement method is cheque or bank transfer. Any other method of payment must receive prior agreement from JW.
- 3.5 JW is entitled to require payment of up to 100% of the quoted order price as a condition of acceptance.

## 4. Duties of Customer in Delivering Samples or Materials

- 4.1 The samples or materials must be provided in the appropriate sample container provided by JW and must be accompanied by the appropriate documentation defined in the quotation. JW is entitled to examination of the samples or materials to check their condition before processing the samples. The customer shall bear the costs of this initial examination which shall be not less than £50.00 per sample if the samples or materials do not comply with the requirements described in this clause (4.1). If the result of the initial examination is that an analysis or production is impossible or is possible only under more difficult conditions than originally anticipated – for example, because the samples or materials have been interspersed with foreign materials or substances that were not reported by the customer or are degraded – JW shall be entitled to terminate or interrupt the order and the customer shall bear costs incurred by JW to that point.
- 4.2 The customer must ensure, and hereby warrants and represents, that no sample poses any danger, including on its site, during transportation, in the laboratory or otherwise to JW premises, instruments, personnel or representatives. It is the customer's responsibility to ensure compliance with COSHH regulations, including regarding information, labelling, transportation and disposal and to inform JW personnel or representatives about sample health and safety concerns, including any known or suspected toxic or other contaminant that may be present in the sample and its likely level of contamination as well as the risks to JW premises, instruments, personnel and representatives related to the contamination. It is the responsibility of the customer to provide JW with Health & Safety and security plans and access rules when JW carries out sampling at sites under the customer's management. The customer shall be responsible for, and indemnifies JW against, all costs, damages, liabilities and injuries that may be caused to or incurred by JW or its personnel or representatives including on the sampling site, during the sampling process or transportation or in the laboratory by the customer's sample or by sampling site conditions. The customer shall bear all extraordinary costs for adequate disposal of hazardous waste resulting from the sample, whether or not described as hazardous waste. At JW's request, the customer must provide JW with the exact composition of the samples or any other information required by JW.

## 5. Property Rights on Sample Material and Sample Storage

- 5.1 Unless the customer pays for storage, JW shall have no obligation or liability for samples sent to JW for storage, including samples requiring refrigeration. If the customer pays for storage, JW will take commercially reasonable steps to store the samples, according to professional practice.
- 5.2 JW or their agent may dispose of or destroy samples from immediately after the analysis has been performed, unless JW and the customer have agreed in writing on the terms of JW's or customer's retention of the sample. JW or their agent also may dispose of or destroy the samples after the agreed retention period. If the customer requests the return of unneeded sample material, JW will return them to the customer, at the customer's cost and risk.

## 6. Delivery Dates, Turnaround Time

- 6.1 Delivery dates and turnaround times are estimates and do not constitute a commitment by JW. Nevertheless, JW shall make commercially reasonable efforts to meet its estimated deadlines.
- 6.2 Results are generally sent by email, to the attention of the persons indicated by the customer in the order, promptly after the analysis is completed.

## 7. Transfer of Property

- 7.1 Title in any analysis results or similar supplied by JW to the customer will remain with JW until all invoices in respect thereof have been paid by the customer in full, and until such full payment, the customer shall have no property rights or other rights to use them. In addition, even if JW has accepted and begun to fulfil an order, JW has the right at any time stop processing that order and to stop doing any work for a customer if that customer is late in paying any amount due to JW, whether for that or any other order.
- 7.2 Even after payment in full by the customer, JW shall retain the right to store, use and publish all analysis results in an anonymous form which does not identify the customer.

## 8. Limited Warranties and Responsibilities

- 8.1 Orders are handled in the conditions available to JW in accordance with the current state of technology and methods developed and generally applied by JW. In all cases, the customer must independently verify the validity of any results, interpretations, assessments and conclusions supplied by JW, if it wishes to rely on the same in respect of matters of importance and shall do so at its own risk.
- 8.2 Each analytical report relates exclusively to the sample analysed by JW. If JW has not expressly been mandated and paid for the definition of the sampling plan (including which samples of which raw materials and finished products and at which frequency should be analysed) and the definition of the precise range of analysis to be performed or if the customer has not followed JW recommendations, JW shall not bear any responsibility if the sampling plan and/or the range of analysis to be performed prove to be insufficient or inappropriate.
- 8.3 The customer is responsible for the proper delivery of samples sent to JW for analysis. Unless otherwise specifically agreed in writing by JW, JW accepts no responsibility for any loss or damage, which may occur to any sample in transit or to any facility or site where logistics services are being delivered. The customer will at all times be liable for the security, packaging and insurance of the sample from its dispatch until it is delivered to the offices or the laboratories of JW. JW will use commercially reasonable care in handling and storing samples, but JW shall not be held responsible for any loss or destruction of samples even after their receipt at its laboratories.
- 8.4 The customer warrants and represents to JW that all samples sent to JW for analysis are safe and in a stable condition and indemnifies JW for any losses, injuries, claims and costs which JW, or its personnel, may suffer as a result of any sample not being in a safe or stable condition, notwithstanding that the customer may have given an indication on the sample or any order form of any perceived problem with the sample.
- 8.5 Unless explicitly agreed in writing by all parties, the contractual relationship shall be between exclusively the customer and JW. There shall be no third-party beneficiary or collateral warranty relating to any order and the customer shall indemnify and hold JW harmless from and against any and all third-party claims in any way relating to the customer or to the order by the customer.

## 9. Limitation of Liability

- 9.1 Except to the extent that such limitations are not permitted or void under applicable law and subject at all times to clause 9.2: (a) JW shall be liable only for the proven direct and immediate damage caused by JW's breach of its obligations under these Terms and Conditions in connection with the performance of an order and then, only if JW has received written notice thereof not later than one (1) month after the date of the customer's knowledge of the relevant claim (unless any longer period is prescribed under applicable law and cannot be contractually limited), and (b) in all cases (whether arising under contract, tort, negligence, strict liability, through indemnification or otherwise), JW's liability per claim or series of related claims, and the customer's exclusive remedy, with respect to JW's services which fall under these Terms and Conditions, shall be limited to the lesser of: (i) the direct and immediate loss or damage caused by JW's breach of its obligations under these Terms and Conditions in connection with the performance of the order and (ii) the fee paid for the service.
- 9.2 JW shall not be liable for any loss of business profits, goodwill or business opportunities (whether direct or indirect) or for any indirect or consequential loss or damage incurred by the customer or by any third party. However, JW only excludes and limits its liability as permitted by applicable law. JW does not exclude or limit its liability for death or personal injury caused by its negligence, for its fraudulent misrepresentation or for breach of implied terms under any applicable statute regarding JW's right to transfer good title (subject at all times to clause 7).
- 9.3 By placing an order the customer indemnifies JW for any losses, injuries, claims and costs which JW may suffer as a result of arising from or in any way connected with its role under or services or products or software provided pursuant to these Terms and Conditions, except to the extent that JW is required to bear them according to these Terms and Conditions.

## 10. Follow-up Samples

Any sampling arising from a previous sampling occurrence will be treated as a new order under the terms of this agreement (section 1.1) and all incurred costs will be as stated in this agreement.

## 11. Force Majeure

JW cannot be held liable for delays, errors, damages or other problems caused by events or circumstances which are unforeseen or beyond JW's reasonable control, or which result from compliance with governmental requests, laws and regulations.

## 12. Confidentiality & Processing of Customer Data

- 12.1 JW shall be entitled to store and process data received from the Customer in-line with the Data Protection (Jersey) Law 2018 and other applicable regulations, as outlined in our Privacy Notice, a copy of which can be found at [www.jerseywater.je](http://www.jerseywater.je).
- 12.2 JW shall use commercially reasonable efforts to keep all analysis results and service reports confidential, with the exception of results that fail public health limits and they will be reported to the Director of Environmental Health and subject to JW's rights set forth in clause 7.2 and the right to use them in order to demonstrate its entitlement to payment for services rendered.
- 12.3 In addition, the customer is required to maintain confidentiality concerning all services provided by JW and their results as well as the composition of products delivered by JW. Analysis results are not to be publicly disclosed or exploited without the prior written consent of JW party reliance.

## 13. Disclaimer and Miscellaneous

**13.1 EXCEPT AS EXPRESSLY SET OUT IN THESE TERMS AND CONDITIONS, ALL CONDITIONS, WARRANTIES AND OTHER TERMS (INCLUDING ANY IMPLIED WARRANTY AS TO MERCHANTABILITY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE) AS TO THE MANNER, QUALITY AND TIMING OF THE TESTING SERVICE AND RESULTS AND EQUIPMENT SUPPLIED BY JW ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE WARRANTIES, OBLIGATIONS AND LIABILITIES OF JW CONTAINED IN THESE TERMS AND CONDITIONS ARE EXCLUSIVE.**

- 13.2 These Terms and Conditions may be modified in writing from time to time by JW and orders will be governed by the most recent version of these Terms and Conditions that is in effect at the time JW accepts the order.
- 13.3 Should a court waive, limit or hold to be invalid, illegal or unenforceable any part of these Terms and Conditions, all other parts shall still apply to the greatest extent possible.
- 13.4 Failure by either JW or the customer to exercise the rights under these Terms and Conditions shall not constitute a waiver or forfeiture of such rights.
- 13.5 Except as expressly set out in these Terms and Conditions, a person who is not a party to this contract shall not have any rights under or in connection with it.

**14. Governing Law/ Jurisdiction**

- 14.1 The construction, validity and performance of these Terms and Conditions and any contract which incorporates these Terms and Conditions shall be governed by the laws and the courts of Jersey which shall have exclusive jurisdiction.

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