

Terms and Conditions for Provision of Measurement Services through
Warwick Scientific Services

The University of Warwick ("Warwick", "we", "us" or "our" in these terms) is the supplier of the Measurement Services (as defined below). Our administrative offices are located at University House, Kirby Corner Road, Coventry CV4 8UW, England. The terms "you" and "your", when used in these Terms, refer to your organisation as the customer.

1. DEFINITIONS AND INTERPRETATION

1.1 When the following words with capital letters are used in these terms, this is what they will mean:

"Investigation Booking Form" means an investigation booking form on our online booking system which you have completed and submitted to us (subject to any subsequent modifications thereto agreed in writing between you and us), or that we have submitted on your behalf following discussion of your requirements.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for business in London (other than solely for trading and settlement in Euros).

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Fee" means the applicable price at the time of placing your order which is dependent on the Measurement Services ordered.

"Measurement Services" means the measurement and analysis services to be provided by us to you in respect of a particular Sample, the details of such services being specified in the Investigation Booking Form.

"Online Booking System" means the online system that we use to log details of the work and generate a contract for your approval:
<https://infinity.ideaelan.com/warwick>

"Results" means the results of the Measurement Services in a format specified in the Investigation Booking Form comprising one or all of: written report, images, raw data, spectra (as required to satisfy the technical requirements of the Measurement Services), in either a Microsoft Word, Excel, PowerPoint, an Adobe-Acrobat file format, or any other format.

"Sample" means a sample or samples to be provided by you to us for measurement and analysis, specified in the Investigation Booking Form.

"Your Account" means the client area unique to you which you access with your username and password via our Online Booking System. 1.2 Clause, schedule and paragraph headings will not affect the interpretation of these Terms and Conditions

2. ELIGIBILITY

2.1 By purchasing the Measurement Services under these terms you warrant that you are legally capable of entering into a binding contract.

3. OUR CONTRACT WITH YOU

3.1 These are the terms and conditions upon which we supply the Measurement Services to you.

3.2 Orders Through Our Online Booking System

3.2.1 Users that are trained and authorised to access equipment independently to conduct their own analysis may place an order through Our Online Booking System by completing the Investigation Booking Form. All orders are subject to our acceptance.

3.2.2 Once you have submitted your Investigation Booking Form, we may contact you requesting further clarification of your requirements. Such contact shall not constitute acceptance of your order, nor shall it constitute a counter-offer. Acceptance of your order will only take place when we send you an email expressly acknowledging acceptance of your order including any amendments thereto as agreed.

3.3 Payment

3.3.1 All Fees stated on Our Online Booking System are exclusive of VAT, with VAT added if appropriate at the prevailing rate at the invoicing stage.

3.3.2 You may pay for the Measurement Services upon submission of an Investigation Booking Form using the secure server, or you may pay not later than 14 days from the date of invoice.

3.3.3 In the event that modifications are made to your order:

3.3.3.1 which necessitate an agreed additional payment then we shall promptly inform you of the procedure and timescales for making such additional payment and you shall make such payment within the stated timescales (which we shall ensure are reasonable in the circumstances) (the "additional payment due date"); or

3.3.3.2 which necessitate an agreed reduction in the payment made, then we shall reimburse you the appropriate sum within 30 days from the date of acceptance of your order pursuant to clause 3.2.3 above.

3.3.4 If any sum is not paid by the due date or the additional payment due date (as the case may be), then without prejudice to any other rights and remedies we may have, we may suspend performance of our obligations under these terms and conditions and/or charge interest on a daily basis at the rate of 4% above Barclays Bank PLC Base Rate from time to time in force, compounded quarterly, from the date for payment of that sum to the date of actual payment.

3.3.5 We may set off against the price (including any applicable VAT payable) amounts due from you, whether under these terms and conditions or otherwise.

3.4 Provision and Condition of the Sample

3.4.1 Once we have accepted your order for Measurement Services you must provide us with the Sample. We cannot commence work until we have received the Sample and we shall have no liability to you for any delay in the provision of the Measurement Services or the Results caused by your failure to provide us with the Sample in a timely manner.

3.4.2 Once we have received the Sample we shall use our reasonable endeavours to send the Results to you by email or by uploading them to a secure file sharing system following completion of the Measurement Services.

3.4.3 You must give us clear instructions about handling and storing the Sample, prior to its delivery to us. Unless clear and explicit written warning to the contrary is provided, you warrant that the Sample is safe to handle under normal laboratory conditions and is not radioactive, explosive, a source of toxic gas or dust, or in any other manner hazardous.

For avoidance of doubt, a hazardous substance is defined as a substance that has the potential to cause harm to health. This includes substances with inherent hazardous properties like flammability, explosiveness, or toxicity, as well as those that can cause harm through contact or exposure, such as chemicals, fumes, dusts, gases, mists, vapours, nanotechnology and biological agents.

The following will not be accepted as Samples (unless otherwise agreed in writing):

- Category 1 Drug Precursors and Schedule 1 Controlled Drugs;
- Class 1 explosives or desensitised explosives (subject to applicable exemptions);
- Ionising radiation sources;
- Biological agents.

3.4.4 You are required to conduct a risk assessment relating to the Sample and advise us of any relevant health and safety implications prior to delivery. You must also provide any applicable risk assessments associated with the Sample. If the Sample you provide to us is in our reasonable opinion:

- (a) not in accordance with the description you have provided;
- (b) hazardous, but such hazard is not adequately identified in written instructions provided by you to us;
- (c) damaged or defective; or
- (d) in the wrong form, concentration or of the wrong dimensions to be compatible with the equipment we use to provide the Measurement Services

then we may elect not to perform the Measurement Services and, at your cost, return the Sample to you. In that event we will refund you any monies paid, less our reasonably and properly incurred costs in administrating the Investigation Booking Form and payment and dealing with the Sample.

3.4.5 The delivery to us of the Sample, and/or the return of it to you, is at your risk. It is also your responsibility to comply with all relevant legislation regarding the

transport of the Sample. We accept no liability for loss or damage caused during transit of the Sample to or from us.

3.5 Your Account

3.5.3 Software Requirements

You may be required to download third party software in order to be able to access Your Account including Adobe Flash Player.

Your use of any third party software is at your own risk. Subject to clause 3.11 we accept no liability for the availability of such software or for any problems that may arise as a result of your downloading or installing any third party software.

3.5.4 Using Your Account

You are responsible for maintaining the confidentiality of Your Account details and password and for restricting access to your computer.

To the extent permitted by applicable law you agree to accept responsibility for all activities that occur under Your Account. You are responsible for ensuring that the details you provide us with are correct and complete, and for informing us of any changes to the information you have provided.

You must not use Your Account: (i) in any way that causes, or is likely to cause, Our Online Booking System, or any access to it to be interrupted, damaged or impaired in any way, or (ii) for fraudulent purposes, or in connection with a criminal offence or other unlawful activity, or (iii) to cause annoyance, inconvenience or anxiety.

We reserve the right to refuse service or terminate Your Account if you are in breach of applicable laws, these terms or any other applicable terms and conditions, guidelines or policies.

3.5.5 Temporary Suspension of Access

Access to Your Account may be suspended temporarily without notice in the case of system failure, maintenance or repairs for reasons beyond our control.

3.5.6 Insurance Requirements

You shall obtain and maintain comprehensive insurance coverage, including public liability cover prior to commencing the Measurement Services, with a cover of at least £5,000,000 per event. Upon request, you shall provide us with a copy of the insurance certificate as proof of cover. We reserve the right to decline undertaking any Work, if you do not comply with this clause.

3.5.7 Disclaimer of Fitness for Purpose

The University makes no warranty that the Equipment is fit for your intended purpose or the Sample. You acknowledge that it is your responsibility to assess the suitability of the Equipment for your specific needs and to rely solely on your own judgment in determining its fitness for your intended use.

3.6 Results

3.6.1 We will use reasonable endeavours to carry out the Measurement Services diligently but we do not undertake that work carried out will lead to any particular result. Accordingly we make no representation or warranty of any kind in relation to, nor do we accept responsibility for, any results (including the Results) or

liability arising from their use and you undertake to make no claim against us or any of our employees in that respect.

3.6.2 Subject to payment of the Fee pursuant to clause 3.3, upon completion of the Measurement Services in relation to each Sample, we will promptly send the Results to you via a secure file sharing system or via email.

3.6.3 It is your responsibility to download and securely store the Results in such manner as you deem appropriate and we accept no liability for loss, degradation or damage to the Results.

3.7 Intellectual Property

3.7.1 Title to all Intellectual Property Rights owned or created or developed by you or us, other than during the course of the provision of the Measurement Services ("**Background Intellectual Property**") shall be unchanged by these terms.

3.7.2 Title to all Intellectual Property Rights created or developed by us during the the provision of the Measurement Services ("**Foreground Intellectual Property**") shall remain with or pass to us and we shall be responsible for its protection and maintenance. Title to the Results will pass to you.

3.7.3 You hereby grant to us a royalty-free, non-exclusive license to use such of your Background Intellectual Property as is necessary for us to perform the Measurement Services.

3.8 Confidentiality

3.8.1 You and we agree with each other to keep and procure to be kept secret and confidential all secret or confidential information belonging to the other disclosed as a result of the relationship created by these terms and shall not use nor disclose the same save as provided for in these terms, or as required by law. Neither you nor we shall disclose such confidential information except to those of our respective employees, consultants or agents who need to know it for the purposes of the Measurement Services or the maintenance of Your Account, provided that the recipient of such information is bound by obligations of confidentiality no less onerous than those provided herein. Each of us shall be responsible to the other in respect of any disclosure to such a person or use of such secret or confidential information by that person.

3.8.2 The obligations of confidentiality in clause 3.8.1 shall not extend to any matter which is in or becomes part of the public domain otherwise than by reason of a breach of the obligations of confidentiality in these terms or which either of us can show was in its written records prior to the date of disclosure of the same by the other of us, or which it receives from a third party independently entitled to disclose it, or which is independently developed by the other of us without recourse to the confidential information.

3.8.3 You acknowledge that we are subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and you agree to provide all necessary assistance to us to enable it to comply with our obligations under those enactments.

3.9 Termination

3.9.1 We may (by written notice to you) terminate our agreement with you immediately if:

- (a) your payment is subject to a chargeback from a credit or debit card company

- (b) you commit any material breach of your obligations under these terms which is incapable of remedy, or if capable of remedy, is not remedied within 10 Business Days of us giving written notice requiring the breach to be remedied; or
- (c) you become insolvent or unable to pay your debts

3.9.2 On any expiry or termination of this agreement:

- (a) all rights, licenses and authorisations granted by us to you under this agreement shall automatically terminate and immediately revert to us;
- (b) we will terminate the performance of the Measurement Services;
- (c) we may destroy or otherwise dispose of each Sample in such manner as we see fit, and charge you for any costs incurred in doing so; and
- (d) your access to Your Account will terminate.

3.10 Data Protection and Privacy

3.10.1 We will use the personal information that you provide to us to:

- (a) process your payment;
- (b) set up Your Account; and
- (c) where you have provided your consent, inform you about similar products or services that we provide, but you may stop receiving these at any time by withdrawing your consent.

3.10.2 Any personal data we collect about you will be treated and used only in accordance with the applicable Privacy Policy available on www.ideaelan.com/privacy-policy.

3.11 Export Control

3.11 You and we agree to comply with all laws, rules and regulations including, without limitation, all UK and foreign export and anti-corruption laws and regulations. In addition, you and we agree that no proprietary information disclosed pursuant to this Agreement, or any revision thereof, shall be exported or otherwise used by the other party or its authorized transferees outside of our or your principal domiciliary country, other than in compliance with applicable UK and foreign export laws and regulations. These obligations shall survive any satisfaction, expiration, termination, or discharge of this Agreement or any other obligations. For the avoidance of doubt, failure to comply with the terms of this provision shall constitute a material breach of this Agreement.

3.12 Liability

3.12.1 Save where expressly provided, all conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into these terms and conditions or any collateral contract, whether by statute, common

law or otherwise, are hereby excluded to the maximum extent permitted by law.

3.12.2 Nothing in these terms and conditions shall operate to exclude or limit our liability for:

- (a) death or personal injury caused by its negligence;
- (b) any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- (c) fraud or any other liability which cannot be excluded or limited under applicable law

3.12.3 Save as provided in clauses 3.12.1 and 3.12.2 we shall have no liability to you or anyone claiming through you for any losses or damages which may be suffered by you (or any other person claiming under or through you) for any loss of profit, loss of business, loss of goodwill, loss of savings, claims by third parties, loss of anticipated savings, indirect loss or consequential loss whatsoever and howsoever caused, suffered indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever.

13.12.4 Subject to clauses 3.12.1 and 3.12.2 our liability to you or anyone claiming through you, whether in contract, tort (including negligence), or otherwise and whether in connection with these terms and conditions or any collateral contract, shall not exceed the monies actually paid by you to us under these terms and conditions.

3.13 General

3.13.1 Written Communications

When using our site, you accept that communication with us will be mainly electronic. We will contact you by e-mail or provide you with information by posting notices on our Online Booking System. For contractual purposes you agree to this electronic means of communication and you acknowledge that all contracts, notices, information and other communications that we provide to you electronically comply with any legal requirement that such communications be in writing. This condition does not affect your statutory rights.

3.13.2 Transfer of Obligations

3.13.2.1 We may transfer our rights and obligations under these terms and conditions to another organisation, but that will not affect your rights or our obligations under this agreement.

3.13.2.2 You will not transfer your rights and obligations under this agreement.

3.12.3 Events Outside Our Control

3.13.3.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these terms and conditions that is caused by an event outside our control (an "**Event Outside Our Control**").

3.13.3.2 An Event Outside Our Control means any act or event beyond our reasonable control including, without limitation, strikes, lock-outs or other industrial action

by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks.

3.13.3.3 If an Event Outside Our Control takes place that affects the performance of our obligations under these terms:

- (a) We will contact you as soon as reasonably possible to notify you; and
- (b) Our obligations under these terms will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects availability of Your Account to you, we will make Your Account available as soon as reasonably possible after the Event Outside Our Control is over.

3.13.3.4 We will only cancel the contract if the Event Outside Our Control continues for longer than 4 weeks.

3.13.4 Severability

If any court or competent authority decides that any of the provisions of these terms is invalid, unlawful or unenforceable to any extent, the term will, to that extent only, be severed from the remaining terms, which will continue to be valid to the fullest extent permitted by law.

3.13.5 Entire Agreement

These terms and conditions and any document referred to in them constitute the whole agreement between us and supersede all previous discussions, correspondence, negotiations, previous arrangement, understanding or agreement between us relating to the subject matter of this agreement.

3.13.6 Law and Jurisdiction

Any dispute or claim arising out of or in connection with these terms and conditions or their formation (including non-contractual disputes or claims) will be subject to the exclusive jurisdiction of the courts of England and Wales.

3.13.7 Third Party Rights

A person who is not party to these terms and conditions shall not have any rights under or in connection with them under the Contracts (Rights of Third Parties) Act 1999.

3.13.8 Modification

We reserve the right to revise and amend these terms and conditions from time to time.

3.13.9 No Waiver

Should we fail to enforce your compliance with these terms this shall not constitute a waiver of any of our rights under these terms or otherwise.

4. CONTACTING US

You may contact us by email at: scientific.services@warwick.ac.uk