

Shetland Seafood Quality Control Ltd
Terms & Conditions for Provision of Services –
Microbiology, Chemistry and Marine Farm Services.

1 Interpretation

1.1 In this Agreement, unless the context requires otherwise, the following words and phrases shall have the meanings set opposite them:

"the Agreement"	means the Agreement concluded between SAS and the Customer pursuant to the quotation, booking form, sample request form or estimate issued by the Supplier to the Customer, endorsed and returned by the Customer and accepted by the Supplier for the supply of Services incorporating the Agreement Terms;
"the Agreement Terms"	means the terms and conditions set out below, to the exclusion of any other terms and conditions (except those implied in favour of SAS, which are not inconsistent with the Agreement Terms), whether or not the same are endorsed upon, delivered with or referred to in any purchase order or other document delivered or sent by the Customer to SAS;
"the Customer"	means the purchaser of Services under the Agreement;
"the Customer's Goods"	means all goods, free issues, samples, equipment, materials or information of the Customer upon which or in connection with which the services are carried out;
"Intellectual Property Rights"	means any and all intellectual property or industrial rights of any description anywhere in the world (whether registered, unregistered, registrable or not and any applications or rights to apply for registration of any of them) including, without limitation to the foregoing generality, all copyrights, database rights, patents, trade marks (whether registered or unregistered), domain names, design rights (whether registered or unregistered) trade secrets, database rights, know-how and all other similar proprietary rights together with all renewals, revivals and extensions;
"the Price"	means the price payable to SAS by the Customer under the Agreement;
"Quotation"	means SAS's quotation to which the Agreement Terms are attached and/or in which the Agreement Terms are referred to;
"the Report"	means the Report to be supplied to the Customer as part of the Services, and includes all or any part thereof;
"the Services"	means the services to be supplied under the Agreement;
"SAS"	means Shetland Analytical Services Limited.

1.2 In this Agreement, except where the context otherwise requires, any reference to the words "include" or "including" are to be construed as meaning without limitation.

1.3 Clause headings are for ease of reference only, and shall not affect the construction of interpretation of any clause.

1.4 Words importing the singular shall include the plural and vice versa and words changing any gender shall include all genders.

2 Quotations, Booking Forms and Sample Request Forms

2.1 Any quotation, booking form, sample request form or estimate is given by SAS on the basis that no Agreement will come into existence until the Customer has endorsed and returned the quotation, booking form, sample request form or estimate and SAS has accepted it.

2.2 Any quotation, booking form, sample request form or estimate is valid for a period of one calendar month only from the date of issue, provided that SAS has not previously withdrawn it.

2.3 If the Customer does not provide suitable samples for use by SAS in the performance of the Services in accordance with Clause 9 of this Agreement, SAS shall have the option to withdraw from the Agreement at any time without penalty or other consequence.

3 Delivery

3.1 SSQC will endeavour to carry out the Services within the time agreed, and if no time is agreed, within a reasonable time, but in no circumstances will SAS be liable for loss or damage of any kind whatsoever caused directly or indirectly by any delay in the performance of the Services.

3.2 SSQC may make delivery of the Services by instalments.

3.3 Notwithstanding clause 3.1 and without prejudice to clause 17, where the Customer is in delay in performing its obligations under the Agreement SAS will use reasonable endeavours to perform the Services in accordance with any delivery date, or as soon as reasonably practicable thereafter. SAS shall not be liable to the Customer for any delay in delivery in these circumstances nor will the Customer be entitled to terminate or rescind the Agreement provided SAS delivers the Service in accordance with its obligations in this clause 3.3.

4 Liability and Indemnity

4.1 Subject always to the remaining provisions of this Clause 4, Clause 5 and Clause 6.6, except to the extent that SAS can be shown to have been negligent in carrying out the Services, SAS accepts no responsibility for the use made of any information or advice arising from the Services by either the Customer or any third party.

4.2 Subject to clause 4.4, the aggregate liability of SAS under this contract in contract, delict or otherwise (including negligence) shall be limited to 125% of the Price paid by the Customer and in no event shall SAS have any liability for loss of profits, loss of business or any indirect or consequential loss whatsoever.

4.3 SSQC hereby excludes all conditions, warranties and stipulations express or implied, statutory or otherwise which but for such exclusion would or might subsist in favour of the

Customer except insofar as these are expressly provided for in this Agreement or where the Customer is by law deemed to be a consumer.

4.4 Nothing in this Agreement shall exclude or limit either party's liability for death or personal injury caused by any breach of duty by such party, its employees or agents or for fraudulent misrepresentation.

5 Indemnity

5.1 Save insofar as SAS can be shown to have been negligent under Clause 4.1 the Customer shall fully indemnify SAS against all losses, costs, claims, demands or liability (including professional costs) suffered or incurred by SAS as a result of, or in connection with any third party claim brought against SAS resulting from death, injury, damage or loss occasioned by the use, operation, methods or other results of the Services.

6 Reports

6.1 SAS shall provide a Report to the Customer on completion of the Services for the benefit of the Customer only and not for any third party.

6.2 The Customer shall not, without the prior written consent of SAS (save where such disclosure is required by law or by a Local Authority) use, exploit, divulge or disclose to third parties any SAS proprietary material contained in the Report including, but not limited to, business or other systems, methodologies, testing techniques and applications, programmes, marketing or technical information or any other Intellectual Property Rights, which may be communicated to or gained by the Customer in connection with or as a result of SAS providing the Services. The results and/or conclusions contained in the Report may be disclosed by the Customer to any third party without the prior written consent of SAS.

6.3 All right title and interest in and to any Intellectual Property Rights of any nature owned by SAS or to which SAS has rights including but not limited to rights in the Reports and all rights arising as a result, directly or indirectly of the provision of the Services shall remain the absolute property of and vest in SAS.

6.4 The Customer shall not use SAS's name in any way to imply endorsement by SAS of any process or product.

6.5 The Customer shall fully indemnify SAS against all losses, costs, claims, demands or liability (including professional costs) suffered or incurred by SAS arising out of or in connection with any claim of infringement or alleged infringement of any Intellectual Property Rights or misuse of a third party's confidential information, in connection with the provision of the Services hereunder or for any breach of this Clause 6 by the Customer.

6.6 Any statements (whether written or oral) as to the results of the Services carried out and all/any opinions in any Report or letter are made in good faith and on the basis of the samples, materials, equipment and information provided to SAS by the Customer. The Customer warrants, in respect of each of the samples, materials, information, and equipment provided to SAS by the Customer, that it is correct and in good order and has not to the best of the Customer's knowledge been tampered with, altered, added to or substituted in any way whatsoever.

7 Actual or Contemplated Proceedings

7.1 Where the Services are required in connection with actual or contemplated civil dispute or criminal proceedings this must have been disclosed to SAS in writing by the Customer.

7.2 A Report must not be used by the Company or any third party for the purpose of any actual or contemplated legal or arbitration proceedings without the prior written consent of SAS.

8 Health and Safety

8.1 The Customer shall ensure that all appropriate safety measures and relevant health and safety Legislation are observed when sending any material to SAS and ensure that any hazardous material is clearly marked as such.

8.2 Where the Customer knows or suspects that any substance or procedure it is providing, making available or requesting may give rise to a hazard of an unusual nature the Customer will make SAS aware in writing of the nature of that hazard before arranging for the delivery (or collection) of the materials to (or by) SAS or before exposing any SAS employee, agent or subcontractor to the materials.

8.3 The Customer acknowledges that in providing the Services SAS may be required to use equipment and materials (including without limitation the use of a boat) supplied by the Customer. The Customer agrees that it shall be responsible for complying with all requirements relating to health and safety and that it shall be liable for injury to persons arising as a result of the use of such equipment or materials.

9 Customer's Goods

9.1 The Customer shall ensure that the Customer's Goods are tested or inspected and are found to be suitable for use by SAS in the performance of the Services.

9.2 The Customer shall arrange, at his expense and risk, the delivery of the Customer's Goods to SAS unless otherwise agreed between the Parties.

9.3 The Customer hereby agrees to allow SAS to use the Customer's IPR as is necessary in the performance of the Services including but not limited to SAS using or referring to the Customer's IPR in any Report.

10 Price

10.1 SAS reserves the right to amend the price either by letter, fax or electronic mail to take account of any necessary variations in the Services as a result of additional information or a request in writing by the Customer. SAS will, where practicable, obtain the Customer's prior approval before performance of any additional work or variations in the Service.

10.2 Unless expressly stated otherwise all prices are exclusive of V.A.T, which shall be charged at the rate and in the manner prescribed by law from time to time.

11 Payment

11.1 The Customer shall pay the Price in accordance with SAS's invoice.

11.2 Interest at an annual rate of 5% above Clydesdale Bank plc Base Rate from time to time will accrue and be calculated on a daily basis on overdue accounts from the date of invoice until payment.

11.3 Notwithstanding any Agreement Term, payment shall become due and payable to SSQC immediately upon the termination of the Agreement.

11.4 Where the Customer defaults under the Agreement, or any other agreement with SSQC, in payment on the due date of any sum due to SAS, SAS may without liability:-

- postpone any analysis or delivery; or
- cancel the Agreement or any other agreement between the SAS and the Customer

but without prejudice to any right or remedy which SAS may have against the Customer in respect of such default.

11.5 SAS will be entitled to payment for all installments of Services part supplied to the Customer whether under a blanket order or otherwise.

12 Intellectual Property

12.1 Unless otherwise agreed in writing, all IPR arising from SAS providing the Services other than third party rights shall remain vested in SAS and the Customer shall be granted a non-exclusive, non-transferable licence to use such IPR solely in accordance with these terms and conditions.

13 Laboratory Access

13.1 Some or all of the Services will be carried out in SAS's Laboratories. Visits by Customers to the laboratory areas are not normally permitted when confidential work is in progress. Therefore Customer access to the laboratory areas is strictly controlled and is available only by prior arrangement.

14 Confidentiality

14.1 Subject to clause 14.2 both parties will take reasonable measures to keep confidential for a period of five calendar years from the date of acceptance of the Quotation: -

14.1.1 any information provided (whether oral or written) by or on behalf of the other party;

14.1.2 any information acquired as a result of visiting the other party's premises.

14.2 There is no obligation on either party to observe confidentiality on:-

14.2.1 any information which at the time of disclosure is (or subsequently becomes) published or generally available to the public (other than as a breach of the receiving party's obligation under this clause);

14.2.2 any information which at the time of disclosure was already in the possession of the receiving party (other than under an obligation to the disclosing party), or subsequently legally comes into their possession from another source;

14.2.3 any information, which the disclosing party has expressly permitted the receiving party to disclose to third parties.

15 Destruction of Material

15.1 Subject to Clause 15.2 on completion of the Services or termination of this Agreement SSQC shall, at its option, either store or destroy the Customer's Goods. Such storage shall be subject to terms and conditions to be agreed including any charges therefor.

15.2 SAS shall, at any time following testing of the Customer's Goods and where requested by the Customer, return the Customer's Goods to the Customer at the Customer's expense.

16 Publicity

16.1 SSQC reserves the right to announce publicly that it is providing the Services to the Customer with the prior written agreement of the Customer, such agreement not to be unreasonably withheld or delayed.

17 Cancellation

17.1 If the Customer cancels, extends or delays or purports to cancel, extend or delay the Agreement or part thereof, or fails to accept supply of the Services at the time agreed (if any) or if no time is agreed within a reasonable time, then the Customer will be liable (without prejudice to any other rights of SAS to claim damages) to indemnify and keep indemnified SAS against any resulting loss, damage or expense incurred by SAS in connection with the supply or non-supply of the Services including the cost of any services, material, plant or tools used or intended to be used therefor and the cost of labour and other overheads including a percentage in respect of profit.

18 Termination

18.1 SSQC may terminate this Agreement forthwith by notice in writing if the Customer is in breach of this Agreement and (where such breach is remediable) has failed to remedy the breach within 30 days of the receipt of a request in writing from SSQC to remedy the breach, such request indicating that failure to remedy the breach, may result in termination of this Agreement.

18.2 The Agreement will terminate immediately on notice in writing upon the happening of any one or more of the following namely;

18.2.1 that either party has had a bankruptcy order made against him or has made an arrangement or composition with his creditors or otherwise taken the benefit of any Act for the time being in force for the relief of insolvent debtors or (being a body corporate) has had convened a meeting of creditors (whether formal or informal) or has entered into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation or has a receiver manager administrator or receiver appointed of its undertaking or any part thereof or a resolution has been passed or a petition presented to any Court for the winding-up of the party or for the granting of an administration order in respect of the party or any proceedings have been commenced relating to the insolvency or possible insolvency of the party; or

18.2.2 on the happening of any one or more of the following:

- either party suffering or allowing any execution to be levied on his/its property or obtained against him/it;
- either party failing to observe or perform any of its obligations or duties under the agreement or any other agreement between SAS and the Customer; or
- either party being unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or
- either party ceasing to trade.

18.3 The termination of this Agreement howsoever arising will be without prejudice to the rights and duties of either party accrued prior to termination. Clauses 1, 4, 5, 6.5, 6.6, 7,

11, 14, 15 and 17 will continue to be enforceable notwithstanding termination. Without prejudice to the generality of the foregoing the Price in respect of any Services (or part thereof) supplied prior to termination shall remain payable regardless of the reason for termination.

19 Force Majeure

19.1 If SAS is unable (whether temporarily or permanently) to procure any services or goods necessary to enable it to supply the Services or if the supply of the Services is prevented or hindered by reason of any cause beyond SAS's reasonable control which for the avoidance of doubt and without prejudice to the generality of the foregoing shall include governmental action, war, riot, civil commotion, fire, flood, epidemic, labour disputes including labour disputes involving the work force or any part thereof of SAS, restraints or delays affecting shipping or carriers, currency restrictions and Act of God, SAS may cancel the Agreement by notice in writing to the Customer so far as it relates to the Services not then supplied or work not then done and such cancellation shall not give rise to any claims by the Customer. The Customer shall remain liable to pay for the Services delivered prior to the date of such cancellation.

20 Variation

20.1 Without prejudice to Clause 10.1, this Agreement can only be varied by agreement in writing between the parties.

21 Subcontracting/Assignment

21.1 SAS will be entitled to assign, sub-contract all or any part of the Agreement on the terms and conditions hereof.

22 Waiver

22.1 Failure by SAS to enforce any of the Agreement Terms will not be construed as a waiver of any of its rights hereunder.

23 Set Off

23.1 The Customer will have no right of set - off, statutory or otherwise.

24 Applicable Law and Jurisdiction

24.1 The Agreement will be subject to Scots Law and the parties submit themselves to the exclusive jurisdiction of the Scottish Courts.