

## TERMS & CONDITIONS OF SERVICES

This is an agreement (the "**Agreement**") between you (as the "**Customer**") and Shell [...] ("**Shell**") for the provision of services for oil analysis ("**Services**").

In this Agreement the Customer and Shell may also be referred to individually as a "**Party**" or together as the "**Parties**".

When you submit an order to Shell (the "**Order**") including but not limited via the associated website <https://www.shell-lubeanalyst.shell.com> the "**Website**"), Shell shall provide Services pursuant to the conditions set out in these "**Terms & Conditions**", the Order, the Services manual ("**Manual**") already supplied to you/available via the Website and the Website that together form the Agreement.

The submitted Order constitutes Customer's acceptance of being bound by this Agreement and of Shell's offer to do business under this Agreement.

In the absence of any other written agreement to the contrary between the Customer and Shell, no other terms and conditions expressed in any of Customer's document(s) shall be a part of this Agreement.

### 1. ORDERS, SCOPE of WORK AND FURTHER INFORMATION

**1.1** The Customer may place the Order by submitting their request to Shell on order form on the Website/post/telephone.

**1.2** The Order shall not be valid unless it contains sufficient information to enable Shell to carry out the Customer's requirements. In particular Customer's Order shall specify the work required from Shell (the "**Scope of Work**"). Shell may need to request from the Customer further information or clarification of the Order and Scope of Work. Where Shell requests such information or clarification, the Customer shall provide Shell the requested information.

**1.3** Shell shall acknowledge the Customer's Order as soon as practicable. [**Manual + Sample bottles + blank Hazard Notice**]

### 2. SAMPLES, HAZARD DISCLOSURES and TURNAROUND TIMES

**2.1** The Customer shall submit to Shell its samples for Services (the "**Samples**") that must be contained in the bottles provided by Shell.

**2.2** The Customer shall provide one week's advance notice to Shell of its Sample delivery schedule and shall deliver its Samples at its own expense to a location specified by Shell. Where there are changes to the delivery schedule, the Customer shall [inform/give [x] written notice] Shell.

**2.3** The Samples must be accompanied by a complete legibly written disclosure notice of the presence of any known or suspected hazardous substances as defined by any relevant and applicable laws (the "**Hazard Disclosure**").

**2.4** Where the Customer fails to provide Hazard Disclosure accompanying its Sample(s), and such Samples cause interruptions to Shell's ability to provide Services due to, but not exclusively, contamination of instruments or work areas, the Customer shall be responsible for the costs of clean up and recovery and Shell shall not be responsible for any delay in the provision of Services and/or mutually agreed Turnaround Time (as defined below).

**2.5** Upon receipt of the Samples by Shell, the Customer and Shell shall agree a mutually acceptable turn-around time for the provision of Services ("**Turnaround Time(s)**") for the submitted Samples. Time shall not be of the essence regarding the Turnaround Time.

All Turnaround Times will be calculated from the point in time when Shell determines that it can proceed with the Scope of Work following receipt and inspection of Samples, and the resolution of any discrepancies in the Scope of Work or Hazard Disclosure. This will be "**Sample Delivery Acceptance**" and Shell shall confirm its date to the Customer.

**2.6** If prior to Sample Delivery Acceptance the Customer changes its Sample delivery times/schedule, Shell reserves the right to modify the Turnaround Time, the date upon which it will accept Samples or refuse to accept the affected Samples.

**2.7** Shell may also at any time refuse to accept Samples that in its sole judgement:

- a) is of unsuitable volume; or
- b) may pose a risk or become unsuitable for handling, transport or processing for any health, safety, environmental or other reason, whether or not due to the presence of any hazardous substance and whether or not such presence has been disclosed by the Customer to Shell or
- c) any other reason [to be specified].

**2.8** Prior to Sample Delivery Acceptance the entire risk of loss or damage to Samples remains with the Customer. Shell shall not be responsible or liable for the action or inaction of any carrier or the shipment or delivery of any Sample to or from Shell. The Customer shall be responsible for assuring that Samples containing hazardous substance sent to Shell shall be packaged, labeled, transported and delivered in accordance with relevant and applicable laws.

### **3. PAYMENT TERMS**

**3.1** Shell shall performed Services in accordance with prices quoted in the Order (the "**Price**").

**3.2** Invoices may be submitted to the Customer upon completion of any Sample batch.

**3.3** Payment in advance is required for all Customers except those whose credit has been established with Shell. For Clients with approved credit, payment terms are net 30 days from the date of invoice by Shell.

**3.4** All overdue payments shall be subject to an interest charge of two percent over the Bank of England's base interest rate applicable from the invoice due date until the date of payment.

**3.5** All fees are charged or billed directly to the Customer. The billing of a third party will not be accepted without a statement, signed by the third party that it acknowledges and accepts payment responsibility. Shell may suspend work and withhold delivery of Results (as defined below) under the Order at any time in the event Customer or its designated third party fails to make timely payment of Shell's invoice(s).

**3.6** Customer shall be responsible for all costs, fees and expenses (legal or otherwise) incurred by Shell for the recovery of any money owed to Shell by the Customer. Shell reserves the right to refuse to undertake Services at any time based upon an unfavorable Customer credit report or history.

## **4. CHANGES TO ORDERS and TERMINATION**

**4.1** Where the Scope of Work conflicts with any routine analytical, quality assurance or other relevant protocols Shell may propose changes to the Scope of Work, Price or Turnaround Time.

**4.2** Until a written agreement with the Customer is reached on the amount of any additional cost, change to the Scope of Work or delivery date, Shell will not proceed with the Services.

**4.3** Shell shall not be responsible for any consequences to the Customer of any delay in Turnaround Time(s) as a result of changes referred to in **Clause 4.1** above.

**4.4** Following Sample Delivery Acceptance, the Customer may request in writing changes to the Scope of Work. Shell's acceptance of such changes is contingent upon technical feasibility of the request and on its operational capacity. Shell may alter the Price and Turnaround Time to take account of such changes.

**4.4** The Customer may request the suspension or termination of all or any part of the Scope of Work. Where the Customer requests suspension, it shall fully compensate Shell for any additional costs incurred by Shell during the suspension period. Where the Customer requests termination, it shall fully compensate Shell for the cost of Services undertaken and costs incurred up until the termination date.

**4.5** Shell shall be paid in full for all completed Services.

## **5. WARRANTIES AND LIABILITY**

**5.1** This **Clause 5** and **Sub-clauses 2.4, 2.8** and **4.3** above set out Shell's entire liability to the Customer whether in contract, tort or otherwise to the extent that nothing in this Agreement shall operate to exclude or limit any liability of Shell for fraud, death or personal injury by the negligence of Shell; this Sub-clause shall not affect the indemnities given in this Agreement.

**5.2** NOTHING IN THIS AGREEMENT SHALL AFFECT YOUR STATUTORY RIGHTS IF YOU ARE A CONSUMER.

**5.3** Shell shall perform the Service with reasonable care and skill and where applicable Shell may use analytical methodologies that are in substantial conformity with published test methods.

**5.4** The Customer's sole and exclusive remedy for the breach of warranty in **Sub-clause 5.3 above** in connection with any Services performed by Shell shall be limited to repeating any Services performed subject to the Customer providing additional Sample(s) where necessary at its expense. If such re-analysis results are consistent with the original Results the Customer shall bear the cost of the re-analysis. If re-sampling is necessary, Shell's liability for re-sampling costs will be limited to actual cost or twenty five Euros per sample, whichever is less.

**5.5** Except in so far as expressly provided in **Sub-clauses 5.3** and **5.4**, the Customer acknowledges that Shell does not represent or warrant the adequacy or suitability of the Results (as defined below) and nothing in this Agreement shall be construed as expressing or implying otherwise.

**5.6** To the full extent permitted by relevant and applicable law Shell excludes any liability to the Customer (including without limitation liability resulting from negligence) for any damage to property, actual or anticipated loss of income, actual or anticipated loss of profit, actual or anticipated loss of use of property or equipment, actual or anticipated loss of product, actual or anticipated loss of production, losses caused by business interruption, loss of goodwill whether direct, consequential or indirect of any kind sustained by Customer and arising out of or in connection with this Agreement even if such cost, expense, loss or damage was reasonably foreseeable or might reasonably have been contemplated by the Parties and

whether arising from breach of contract, tort, negligence, breach of statutory duty or otherwise. To the extent that such loss, damage or injury demonstrably results from negligence on the part of Shell, the aggregate of Shell's liability to the Customer under **Sub-clauses 5.3** and **5.6** shall not exceed £100,000.

**5.7** The Customer shall fully indemnify, defend and hold harmless Shell and pay all costs incurred by Shell in connection with all claims or actions against Shell (including without limitation claims or actions alleging negligence) for loss, damage or injury (including to property, personal injury or death) sustained by Shell or a third party and arising out of or in connection with the Samples.

**5.8** The Customer shall fully indemnify, defend and hold harmless Shell from and against, and pay all costs incurred by Shell in connection with all claims or actions for loss, damage or injury sustained by a third party and claimed against Shell (including without limitation claims or actions alleging negligence or infringement of patents or other intellectual property rights) and arising from or in connection with the use of the Results by the Customer.

**5.9** No representative of Shell is authorized to give or make any other representation or warranty or modify this warranty in any way.

**5.10** To the full extent permitted by relevant and applicable law all claims, including those for negligence, shall be deemed waived unless suit thereon is filed within one year after Shell's completion of the services.

**5.11** In no event shall Shell have any responsibility or liability to the Customer for any failure or delay in performance by Shell that directly or indirectly, in whole or in part result from any cause or circumstance beyond the reasonable control of Shell. Such causes and circumstances shall include, but not be limited to, acts of God, acts of Customer, acts or orders of any governmental authority, strikes or other labour disputes, natural disasters, accidents, wars, civil disturbances, equipment breakdown, matrix interference or unknown highly contaminated samples that impact instrument operation, unavailability of supplies from usual suppliers, difficulties or delays in transportation, mail or delivery services, or any other cause beyond Shell's reasonable control.

## **6. RESULTS and CONFIDENTIALITY**

**6.1** Data or information provided to the Customer or generated by Services performed under this Agreement (together the "**Results**") shall only become the property of the Customer upon receipt in full by Shell of payment for the whole Order.

**6.2** Ownership of analytical method, quality assessment/quality control protocols, software programs or equipment developed by Shell for performance of Services shall be the property of Shell, and Client shall not disclose such information to any third party.

**6.3** Data and Sample materials provided by Customer or at Customer's request, and the result obtained by Shell shall be held in confidence (unless such information is generally available to the public or is in the public domain or if the Customer has failed to pay Shell in full for the Services or is otherwise in breach of these Terms and Conditions, subject to any disclosure required by law or legal process.

**6.4** Shell reserves the right to perform the Services at any laboratory. In addition, Shell reserves the right to subcontract Services to another [provider / laboratory or laboratories], if, in Shell's sole judgment, it is reasonably necessary, appropriate or advisable to do so.

**6.5** Shell may dispose of the Customer's Samples 30 days after the Results are issued, unless instructed by the Customer to store them for an alternate period of time or to return such samples to the it in a manner consistent with all relevant and applicable laws.

Any Samples from cancelled or unaccepted Order(s), or for those which return was requested, shall be returned to the Customer at his own expense.

Shell reserves the right to return to the Customer at any time any Sample or unused portion of Sample that is not within Shell's permitted capability or the capabilities of Shell's designated waste disposal vendor(s).

All dioxin, mixed waste, and radioactive samples shall be returned to the Customer at the Customer's expense, unless prior arrangements for disposal are made.

**6.6** Unless a different time period is agreed to in any order under these Terms and Conditions, Shell agrees to retain all records for five (5) years.

**6.7** In the event that Shell is required to respond to any legal process concerning Services for the Customer, the Customer shall reimburse Shell for all costs and charges not limited to the cost of personnel involved in the response to such legal process, as well as all legal fees reasonably incurred in obtaining advice concerning Shell's response, travel and all reasonable expenses associated with such legal process.

## **7. MISCELLANEOUS PROVISIONS**

**7.1** These Terms & Conditions together with any additions or revisions which may be agreed to in writing by Shell embody the whole agreement of the Parties.

**7.2** There are no warranties, terms, conditions, understandings, obligations or agreements other than those contained herein and these Terms & Conditions shall supersede all previous communications, representations, or agreements, either verbal or written, between the Customer and Shell.

**7.3** The invalidity or unenforceability, in whole or in part of any provision, term or condition hereof shall not affect in any way the validity or enforceability of the remainder to these Terms & Conditions, the intent of the Parties being that the provisions be severable.

**7.4** The section headings of these Terms & Conditions are intended solely for convenient reference and shall not define, limit or affect in any way these Terms & Conditions or their interpretations.

**7.5** No waiver by either Party of any provision, term or condition hereof or of any obligation of the other Party hereunder shall constitute a waiver of any subsequent breach or other obligation.

**7.6** This Agreement and the relationship of the Parties under it shall be exclusively interpreted with and governed by the laws of England and Wales and any dispute arising out of in connection with this Agreement shall be submitted to the exclusive jurisdiction of the courts of England and Wales.