

## **AVALON SCIENCES LIMITED (ASL)**

### **STANDARD CONDITIONS FOR THE HIRE AND USE OF THE ASL BOREHOLE TEST FACILITY ROSEMANOWES CORNWALL**

These terms and conditions shall apply to all contracts for the hire of the ASL Borehole Test Facility at Rosemanowes Quarry, Cornwall (the Site) with or without the provision of services by ASL.

#### **1. RENTAL PERIOD, RENTAL CHARGES AND DEPOSIT**

The Rental Period, Rental Charges, Charges for Services and due dates for payment shall be specified in ASL's quote to the Client.

#### **2. CHARGES AND DEPOSIT**

- 2.1 All Charges shall be paid in sterling and shall be made by BACS to ASL's bank, details of which are set out in the ASL invoice, within the payment terms set out in the invoice and interest will accrue on a daily basis on any overdue amount at the rate of 4% per annum above Lloyds Bank base rate.
- 2.2 The Charges are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Client at the rate and in the manner from time to time prescribed by law.
- 2.3 All amounts due under the agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 2.4 Any deposit required to be paid is a deposit against default by the Client of payment of any Rental Charges or any loss of or damage caused to the Test Facility. If the Client fails to make any Rental Charges in accordance with the Payment Schedule, or causes any loss or damage to the Test Facility (in whole or in part), ASL shall be entitled to apply the Deposit against such default, loss or damage.
- 2.5 In the event that the Client cancels its contract for any reason whatsoever less than 14 days prior to commencement the Client shall pay ASL a Cancellation Charge equivalent to 3 days' hire of the Deep Borehole.

**3. SAFETY AND MONITORING**

- 3.1 The Client shall, no less than fourteen (14) days prior to its entry on Site, provide full details of its intended activities on site (the Project) in order that ASL may assess the safety implications.
- 3.2 ASL shall have the right at any time if, in its reasonable opinion, the Project is potentially damaging to the Site or hazardous to personnel at the Site, to require the Client to modify the Project in such a manner as ASL may reasonably require or to prevent the Client from proceeding or continuing with the Project.
- 3.3 At least seven (7) days prior to its arrival on site, insofar as not already provided and except as otherwise agreed in writing between the parties, the Client shall provide ASL with full details of:
- (a) the number and, wherever possible identities of the Client's personnel who will be involved in the Project and the hours and dates upon which they shall be in attendance at the Site for the purposes of the Project; and
  - (b) the identity of the Client's supervisory personnel who will be involved in the Project and the hours and dates upon which they shall be in attendance at the Site for the purposes of the Project; and
  - (c) all items of plant, equipment and machinery to be brought by the Client to the Site for the purposes of the Project.
  - (d) the names of any persons invited to participate or witness the execution of the Project together with the names and addresses of their employers.
- 3.4 The Client will observe and comply with all instructions given in connection with the conduct of the Project by either the ASL winch driver (in circumstances where the Client has hired the ASL winch and driver) or (where the ASL winch is not being used by the Client) the ASL logging engineer hired by the Client for the duration of the Project to supervise the Project.
- 3.5 If, in the reasonable opinion of ASL, it appears that:
- (a) the level of supervision of the Project by the Client's supervisory personnel is not such as will ensure the safety of all personnel and Test Facility at the Site; or,

- (b) in the performance of the Project the Client is in any way in breach of its obligations hereunder or in breach of any statutory or other legal obligation, whether or not such obligation is owed to ASL or otherwise;

ASL shall, having given notice to the Client and having permitted a reasonable period of time for remedial action to have been taken, be entitled to make such arrangements to provide adequate supervisory personnel or make such other arrangements as it shall think fit to remedy such breach provided that the provision of such personnel or the making of such other arrangements shall be for the Client's account and shall be invoiced to the Client.

- 3.6 ASL reserves the right at any time and from time to time to postpone or suspend the Client's use of the Test Facility if, in the opinion of ASL there is or is likely to be any risk to the safety of personnel or any risk of or damage to any drilling rig, test borehole or any plant, machinery, equipment, buildings or materials in, at or on the Site.
- 3.7 ASL and the Client shall, throughout the duration of the Project have full regard to the safety of all persons entitled to be within the Site and shall keep the Site in an orderly, safe and secure condition at all times.
- 3.8 The Client shall throughout the duration of the Project ensure that all members of the Client Groups whilst at the Site comply in all respects with ASL's safety policies, procedures and regulations applicable to the Site that are made known to the Client or are sign posted at, around or within the Site.

In the event that any such personnel fail or refuse to comply with the instructions of ASL relating to safety and security then ASL shall be entitled to require that such personnel immediately leave the Site.

- 3.9 The Client shall throughout the duration of the Project, provide such items of safety and protective clothing which may be necessary and appropriate for the safety and protection of the Client's personnel, including safety boots, safety spectacles, coveralls and hard hats.
- 3.10 The Client shall ensure that all members of the Client Group comply with all reasonable requirements of ASL with respect to the provision of identity passes and use of the car park and shall ensure that all such personnel shall comply with all safety rules and procedures applicable to the Site.
- 3.11 ASL's decision on any matter relating to the safety, health and welfare or security of all personnel at the Site shall be final and binding on all persons having access to the Site.

**4. TITLE, RISK AND INSURANCE**

- 4.1 The Test Facility shall at all times remain the property of ASL, and the Client shall have no right, title or interest in or to the Test Facility (save the right to possession and use of the Test Facility subject to these terms and conditions).
- 4.2 The Test Facility shall be at the sole risk of the Client during the Rental Period and any further term during which the Test Facility is in the possession, custody or control of the Client (**Risk Period**) until such time as full possession, custody and control thereof is returned to ASL. During the Rental Period and the Risk Period, the Client shall, at its own expense, obtain and maintain the following insurances:
- (a) insurance of the Test Facility to a value not less than its full replacement value comprehensively against its damage or destruction by the Client;
  - (b) insurance for such amounts as a prudent owner or operator of the Test Facility would insure for, or such amount as ASL may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the use by the Client of the Test Facility; and
  - (c) insurance against such other or further risks relating to the Test Facility as may be required by law, together with such other insurance as ASL may from time to time consider reasonably necessary and advise to the Client.
- 4.3 All insurance policies procured by the Client shall if ASL reasonably so requires be endorsed to provide ASL with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon ASL's request name ASL on the policies as a loss payee in relation to any claim relating to the Test Facility. The Client shall be responsible for paying any deductibles due on any claims under such insurance policies.
- 4.4 The Client shall give immediate written notice to ASL in the event of any loss, accident or damage to the Test Facility or any property or equipment on the Site arising out of or in connection with the Client's possession or use of the Test Facility.
- 4.5 If the Client fails to effect or maintain any of the insurances required under the agreement, ASL shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Client.
- 4.6 The Client shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to ASL and proof of premium payment to ASL to confirm the insurance arrangements.

## **5. CLIENT'S RESPONSIBILITIES**

### **5.1 The Client shall during the term of the agreement:**

- (a) ensure that the Test Facility is used and operated only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by ASL;
- (b) take such steps (including compliance with all safety and usage instructions provided by ASL) as may be necessary to ensure, so far as is reasonably practicable, that the Test Facility is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
- (c) maintain at its own expense the Test Facility in good and substantial repair in order to keep it in as good an operating condition as it was on the Commencement Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage caused by the Client or anyone at the Site with the Client's permission to the Test Facility or any property or equipment on the Site;
- (d) make no alteration to the Test Facility;
- (e) keep ASL fully informed of all material matters relating to the Test Facility;
- (f) permit ASL or its duly authorised representative to inspect the Test Facility at all reasonable times;
- (g) maintain operating records of the Test Facility and make copies of such records readily available to ASL, together with such additional information as ASL may reasonably require;
- (h) not, without the prior written consent of ASL, part with control of the Test Facility (including for the purposes of repair or maintenance);
- (i) not use the Test Facility for any unlawful purpose;
- (j) not do or permit to be done anything which could invalidate the insurances covering the Test Facility and its use;
- (k) not issue any publicity about the Site, the Test Facility or the Project without acknowledging ASL's ownership of the Facility and without the prior approval of ASL of the wording of such publicity (such approval not to be unreasonably withheld).

### **5.2 Where services are to be provided by ASL under the terms of the agreement, ASL shall diligently perform the Services in a skilful, safe and workmanlike manner in compliance with all applicable laws, rules and regulations.**

**6. LIABILITY**

- 6.1 Save as hereinafter provided ASL's maximum aggregate liability for breach of the agreement (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed the total amount of the Rental Charges due from and paid by the Client to ASL.
- 6.2 The Client shall indemnify and reimburse ASL in respect of all costs (including third party costs +15%) and expenses incurred by ASL (including payment of ASL rates and charges) in connection with or as a result of recovering property of any kind from the test boreholes or wells forming part of the Site or making good any damage to such test boreholes or any equipment or property on the Site, except to the extent that such loss, damage or impairment arises from the gross negligence or breach of statutory or contractual duty of ASL.
- 6.3 The Client shall assume all responsibility for and shall protect, indemnify and save harmless ASL from and against all loss, costs, charges and expenses resulting from claims, demands and causes of action of every kind and character relating to pollution or contamination arising out of the use of the Test Facility by the Client except to the extent that such pollution or contamination arises from the gross negligence or breach of statutory or contractual duty of ASL.
- 6.4 Nothing in the agreement shall exclude or in any way limit:
- (a) either party's liability for death or personal injury caused by its own negligence;
  - (b) either party's liability for fraud or fraudulent misrepresentation; or
  - (c) liability for any breach of the terms implied by section 8 of the Supply of Goods (Implied Terms) Act 1973 or any other liability which cannot be excluded by law.
- 6.5 The agreement sets forth the full extent of ASL's obligations and liabilities in respect of the Test Facility and its hiring to the Client. ASL makes no implied warranty or representation as to the condition or use of the Test Facility or the design or operation of any equipment, materials or consumables delivered or used in connection with the execution of the Project nor in respect of the results of any services provided to Client. ASL makes no warranty of merchantability or fitness of the Test Facility or equipment for any particular purpose or any other representation or warranty whatsoever. Any condition, warranty or other term concerning the Test Facility which might otherwise be implied into or incorporated within the agreement, whether by statute, common law or otherwise, is expressly excluded.

**7. TERMINATION**

7.1 Without affecting any other right or remedy available to it, ASL may terminate the Client's use of the Test Facility with immediate effect if:

- (a) the Client fails to pay any amount due under the agreement on the due date for payment;
- (b) the Client commits a material breach of any other term of the agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 24 hours after being notified to do and the Client's use of the Test Facility shall be suspended pending completion of such remedy;

The agreement shall automatically terminate if due to the Client's default the Test Facility is, in ASL's reasonable opinion, damaged beyond repair.

7.2 Upon termination of the agreement, however caused the Client shall pay to ASL on demand all Rental Charges and other sums due but unpaid and on demand a sum equal to the whole of the Rental Charges that would (but for the termination) have been payable if the agreement had continued from the date of such demand to the end of the Rental Period together with any costs incurred by ASL in repairing the Test Facility and/or collecting any sums due.

7.3 Termination or expiry of the agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

**8. FORCE MAJEURE**

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 7 days the party not affected may terminate this agreement by serving written notice to that effect on the affected party.

**9. THIRD PARTY RIGHTS**

No one other than a party to the agreement shall have any right to enforce any of its terms.

**10. GOVERNING LAW**

The agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**11. JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the agreement or its subject matter or formation (including non-contractual disputes or claims).