

Terms and Conditions for the Supply of Export Health Certificates Services

1 April 2025 – 31 March 2026

Agreed Terms

Your attention is particularly drawn to the provisions of clause 9 (Limitation of liability).

1. About us

1.1 Torbay Council

The Food and Safety Team, Community Safety, Torbay Council, Town Hall, Castle Circus, Torquay, Devon TQ1 3DR (we and us)

1.2 Contacting us

To contact us, telephone 01803 208025 or the export office land line on 01803 208015 or email food.safety@torbay.gov.uk. How to give us formal notice of any matter under the Contract is set out in clause 13.2.

2. Our contract with you

2.1 Our contract

These terms and conditions (Terms) apply to the order by you and supply of Services by us to you (Contract). They apply to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.2 Entire agreement.

The Contract is the entire agreement between you and us in relation to its subject matter. You acknowledge that you have not relied on any statement, promise or representation or assurance or warranty that is not set out in the Contract.

3. Our services

3.1 Services

We will use reasonable endeavours to provide the Services in accordance with the service description as detailed in the Schedule.

3.2 Reasonable care and skill

We will provide the Services with reasonable care and skill.

3.3 Compliance

We will comply with all applicable laws, statutes, regulations and codes from time to time in force; provided that we shall not be liable under the Contract if, as a result of such compliance, it is in breach of any of our obligations under the Contract.

4. Your obligations

4.1 It is your responsibility to ensure that:

- a) you cooperate with us in all matters relating to the Services;
- b) you provide us, our employees, agents, consultants and subcontractors, with access to your premises, office accommodation and other facilities as we may reasonably require;
- c) you provide us with such information we may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- d) you comply with all applicable laws, including health and safety laws;

4.2 If our ability to perform the Services is prevented or delayed by any failure by you to fulfil any obligation listed in clause 4.1 (Your Default):

- a) we will be entitled to suspend performance of the Services until you remedy Your Default, and to rely on Your Default to relieve us from the performance of the Services, in each case to the extent Your Default prevents or delays performance of the Services. In certain circumstances Your Default may entitle us to terminate the Contract under clause 11 (Termination);
- b) we will not be responsible for any costs or losses you sustain or incur arising directly or indirectly from our failure or delay to perform the Services; and
- c) it will be your responsibility to reimburse us on written demand for any costs or losses we sustain or incur arising directly or indirectly from Your Default.

5. Charges

5.1 In consideration of us providing the Services you must pay our charges (Charges) in accordance with this clause 5.

5.2 Please refer to our website for details of the current charges. From the 1 April 2025 to 31 March 2026 – the charge will be £140.00 per certificate.

This charge also applies if a new certificate has to be re-issued because new information has to be included after the original certificate has been processed by the Food Competent Certifying Officer (FCCO).

The charge for an Attestation certificate from the 1 April 2024 to 31 March 2025 will also be £140.00.

5.3 If the draft export certificate is submitted for certification after 1pm, a late payment charge of £187.00 per certificate will be charged (except for circumstances out of the control of the business).

5.4 Our Charges are exclusive of VAT. Where VAT is payable in respect of some or all of the Services you must pay us such additional amounts in respect of VAT, at the applicable rate, at the same time as you pay the Charges.

6. How to pay

- 6.1 Payment for the Services will be invoiced monthly.
- 6.2 If you fail to make a payment under the Contract by the due date, then, without limiting our remedies under clause 11 (Termination):
- a) you will have to pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.2 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.; and
 - b) we may suspend the provision of the Services for up to one week following payment of any overdue invoices in full.
- 6.3 You shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7. Complaints

- 7.1 If a problem arises or you are dissatisfied with the Services, we have a comprehensive complaints policy, see <https://www.torbay.gov.uk/council/get-in-touch/feedback/complaints/>

8. How we may use your personal information

- 8.1 We will use any personal information you provide to us to:
- a) provide the Services; and
 - b) process your payment for the Services.
- 8.2 We will process your personal information in accordance with our data protection policy, a copy of which is available here: <https://www.torbay.gov.uk/council/information-and-data/data-protection/> the terms of which are incorporated into this Contract.

9. Limitation of liability: YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 9.1 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- a) death or personal injury caused by negligence; and
 - b) fraud or fraudulent misrepresentation.
- 9.2 Subject to clause 9.1, we will not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- a) loss of profits;
 - b) loss of sales or business;
 - c) loss of agreements or contracts;
 - d) loss of anticipated savings;
 - e) loss of use or corruption of software, data or information;
 - f) loss of or damage to goodwill; and
 - g) any indirect or consequential loss.

- 9.3 Subject to clause 9.1, our total liability to you arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will be limited to a maximum of £187.
- 9.4 We have given commitments as to the provision of the Services in in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.5 This clause 9 will survive termination of the Contract.

10. Confidentiality

- 10.1 We each undertake that we will not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning one another's business, affairs, customers, clients or suppliers, except as permitted by clause 10.2.
- 10.2 We each may disclose the other's confidential information:
- a) to such of our respective employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of exercising our respective rights or carrying out our respective obligations under the Contract. We will each ensure that such employees, officers, representatives, subcontractors or advisers comply with this clause 10; and
 - b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.3 Each of us may only use the other's confidential information for the purpose of fulfilling our respective obligations under the Contract.

11. Termination, consequences of termination and survival

11.1 Termination

Without limiting any of our other rights, we may suspend the performance of the Services, or terminate the Contract with immediate effect by giving written notice to you if:

- a) you commit a material breach of any term of the Contract and (if such a breach is remediable) fail to remedy that breach within 14 days of you being notified in writing to do so;
- b) you fail to pay any amount due under the Contract on the due date for payment;
- c) you take any step or action in connection with you entering administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of your assets or ceasing to carry on business;
- d) you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business; or
- e) your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy.

11.2 Consequences of termination

- a) You shall immediately pay to us any outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, we may submit an invoice, which shall be payable immediately on receipt; and
- b) termination of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

11.3 Survival

Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination will remain in full force and effect.

12. Events outside our control

- 12.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under the Contract that is caused by any act or event beyond our reasonable control (Event Outside Our Control).
- 12.2 If an Event Outside Our Control takes place that affects the performance of our obligations under the Contract:
 - a) we will contact you as soon as reasonably possible to notify you; and
 - b) our obligations under the Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. We will arrange a new date for performance of the Services with you after the Event Outside Our Control is over.
- 12.3 You may cancel the Contract affected by an Event Outside Our Control which has continued for more than 30 days. To cancel please contact us. If you opt to cancel we will refund the price you have paid, less the charges reasonably and actually incurred us by in performing the Services up to the date of the occurrence of the Event Outside Our Control.

13. Communications between us

- 13.1 When we refer to "in writing" in these Terms, this includes email.
- 13.2 Any notice or other communication given by one of us to the other under or in connection with the Contract must be in writing and be delivered personally, sent by pre-paid first class post or other next working day delivery service, or email.
- 13.3 A notice or other communication is deemed to have been received:
 - a) if delivered personally, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second working day after posting; or
 - c) if sent by email, at 9.00 am the next working day after transmission.
- 13.4 In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee.
- 13.5 The provisions of this clause will not apply to the service of any proceedings or other documents in any legal action.

14. General

14.1 Assignment and transfer

- a) We may assign or transfer our rights and obligations under the Contract to another entity.
- b) You may only assign or transfer your rights or your obligations under the Contract to another person if we agree in writing.

14.2 Variation

Any variation of the Contract only has effect if it is in writing and signed by you and us (or our respective authorised representatives).

14.3 Waiver

If we do not insist that you perform any of your obligations under the Contract, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you or that you do not have to comply with those obligations. If we do waive any rights, we will only do so in writing, and that will not mean that we will automatically waive any right related to any later default by you.

14.4 Severance

Each paragraph of these Terms operates separately. If any court or relevant authority decides that any of them is unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.

14.5 Third party rights

The Contract is between you and us. No other person has any rights to enforce any of its terms.

14.6 Governing law and jurisdiction

The Contract is governed by English law and we each irrevocably agree to submit all disputes arising out of or in connection with the Contract to the exclusive jurisdiction of the English courts.

Schedule 1: The Services

Export health certificates

We will provide export health certification ('EHC'), which according to the certificate/relevant guidance can be signed by a Food Competent Certifying Officer (FCCO) who has been adequately trained by us and correctly authorised for that purpose. Such products include live crustaceans, fishery products, fish and shellfish. Additionally, where a central government certificate doesn't exist and receiving countries require confirmation of registration/authorisation and/or compliance with domestic food law, we can provide certification/attestations to this effect for all premises within the Torbay Council area.

However, any non-Governmental templates that are drawn up will be at your own risk as to whether they get through any Border Inspection Post of that country and there will be no liability on us for this.

The Service will be available from Monday to Friday (not Bank Holidays). There may be exceptional circumstances where the Service will not be available, however, we will ensure that the Customer is given as much warning as possible so that an alternative certifier may be found from the national list of Official Veterinarian's (OV's).

For same day processing of the EHCs the duty FCCO will be available from 9.30am and the EHCs will need to be with the duty FCCO by 1pm. After 1pm, we cannot guarantee the EHC will be processed the same day. If a draft EHC is required to be emailed to you for use the next day, it must be received by us (via the GOV Gateway) by 4pm the day before.

Please note it is your responsibility to ensure the accuracy of the EHC prior to it being printed, stamped and signed. We cannot be held responsible for any inaccuracies.

If you notice any errors at any stage report these to the duty FCCO as soon as possible.

Errors on the EHC may result in the consignment being rejected at the Border Control Post.

You should be aware that it is not for us or the duty FCCO to check the EHC for errors.

By signing the EHC that duty FCCO is simply confirming that the consignment meets EU regulations and has been produced at an 'Approved Establishment' subject to Official Controls.

Inspection of premises and/or consignments

We have an obligation to ensure that all products of animal origin (POAO), including fish and fishery products, satisfy stringent EU requirements for the placing of food on their market. In signing an EHC, the duty FCCO is confirming that products have been handled and processed hygienically, processed in approved premises only and satisfy a range of legislative requirements.

To comply with EU requirements, we may apply a risk-based approach to the inspection of premises. Broadly speaking, businesses with higher levels of compliance will require their premises to be inspected less frequently. Businesses with lower levels of compliance will have their premises inspected more frequently. We will use the risk rating (produced in accordance with the Food Law Code of Practice) following the businesses routine food hygiene inspection to determine the frequency of the export inspection processes.