

ENVIRONMENTAL ANALYSIS LABORATORY (EAL)

TERMS AND CONDITIONS

The Environmental Analysis Laboratory, Southern Cross University, ABN 41 995 651 524, of Military Road, East Lismore NSW 2480, Australia (“the Contractor”) agrees to provide Services to the Client (as named on the EAL Sample Submission Form) on these terms and conditions.

1. Relationship

- 1.1 The Contractor is an independent contractor and is not for any purpose a partner, joint venturer, employee or agent of the Client.
- 1.2 These Terms and Conditions apply whenever the Contractor supplies Services to the Client.

2. Services

- 2.1 The Contractor will use its reasonable endeavours to:
 - (a) perform the Services with due care, skill and diligence in accordance with accepted industry practices and standards;
 - (b) provide the Services in accordance with these Terms and Conditions and the Sample Submission Form unless otherwise agreed in writing with the Client; and
 - (c) subject to any of the Contractor’s disclaimers set out in any reports.
- 2.2 use reasonable endeavours to provide the Services within any timeframe specified in writing by the Contractor If ethics/and or bio safety approvals (or similar approvals) are required in relation to the Services, the Contractor is not required to commence the Services until such approvals are obtained.
- 2.3 Unless the Client specifies any test variations, methods, reporting units or detection limits on the Quote or the Sample Submission Form, then the Contractor will

conduct the testing according to the test variations, methods, reporting units or detection limits it determines appropriate.

- 2.4 It is the Client’s responsibility to interpret and determine the significance of the results provided by the Contractor and the Contractor disclaims any liability in relation to reliance on the results for any purpose.
- 2.5 The Client may request re-testing by written request to the Contractor. The Contractor will then advise of additional Fees and revised Completion Date.
- 2.6 Samples are tested on an “as received” basis, and the Contractor disclaims all liability in relation to the suitability of the samples.
- 2.7 Any cancellation of Services must be notified to the Contractor in writing and Client will pay for any costs incurred by the Contractor for analyses conducted or partially conducted up until the time of cancellation.
- 2.8 The Contractor will retain or dispose of samples at its discretion, unless specified by the Client on the Sample Submission Form.

3. Confidentiality

Each party must keep the Confidential Information of the other party absolutely confidential and must not communicate, publish or release, or permit the communication, publication or release of any Confidential Information except:

- (a) as is necessary for the parties to perform their obligations under this Agreement; or
- (b) as required by law.

4. Insurance

- 4.1 The Contractor will maintain during the delivery of the Services: public liability protection and professional indemnity protection \$10 million (AUD\$) on any one

claim but limited to \$20 million (AUD\$) in the aggregate.

- 4.2 The Client will take out and maintain during these Terms and Conditions at its own cost all necessary and sufficient insurances to cover for any loss, costs, damages, expenses or Claims that the Contractor suffers, incurs or becomes liable for (for example claims arising out of the Contractor's attendance at the Client's premises in connection with the provision of Services) arising from any acts or omissions of the Client in connection with these Terms and Conditions.

5. Contractor Warranties

- 5.1 The Contractor warrants to the Client that it:
- (a) is properly constituted and has the right and authority to enter into these Terms and Conditions;
 - (b) has the necessary Intellectual Property Rights to grant to the Client the right to use any of the Deliverables in accordance with these Terms and Conditions; and
 - (c) will perform the Services in accordance with all statutes, acts, by-laws or regulations which affect or relate in any way to the performance of the Services.

6. Client's Warranties

- 6.1 The Client warrants that it:
- (a) will supply any Client Supplied Items in accordance with these Terms and Conditions and will notify the Contractor if any Client Supplied Material contains material of a hazardous nature;
 - (b) has the necessary Intellectual Property Rights and procured the necessary Moral Rights consents to grant the Contractor access to its Client Supplied Items for the sole purpose of performing the Services;
 - (c) will perform its obligations under these Terms and Conditions to the extent that it is reasonably possible to do so to enable the timely progress of the Services; and

- (d) ensure that any Contractor personnel attending any premises of the Client's in connection with the provision of Services will be provided with a safe place of work in accordance with any relevant occupational health and safety legislation requirements.

7. Liability

- 7.1 The Contractor will not be responsible for any delay or deficiency in the performance of the Services or the suitability of a Deliverable attributable to a breach by the Client of its obligations under clause 7.
- 7.2 The Contractor excludes from these Terms and Conditions all conditions, warranties and terms implied by statute except those Statutory Terms which cannot be excluded, restricted or modified by law. If so, and to the full extent permitted by law, the Contractor's total liability from a breach of any Statutory Terms is limited, at the option of the Contractor to one or more of the following: the supplying of the Services again, or the payment of the cost of having the Services performed again.
- 7.3 Subject to clause 8.2, the total liability of the Contractor to the Client for any loss, costs, damages, expenses or Claims however arising from or in connection with the Services is limited to two times the Fees.
- 7.4 The Contractor's liability to the Client under these Terms and Conditions shall be reduced to the extent that any loss, damage or cost arises from or is attributable to any act or omission of the Client, their employees, students, contractors, or agents.

8. Mutual warranties

- 8.1 Each Party warrants that it will not:
- (a) use the name or any trademark, logo, business or company name of the other Party (whether with or without graphic or photographic or other visual material) without the prior written consent of the other Party; or
 - (b) apply for or register any trademark or business name containing the business or company name of the other Party.

9. Intellectual Property Rights

- 9.1 The Contractor retains title to and Intellectual Property Rights in all Deliverables and Services.
- 9.2 For the avoidance of doubt, unless expressly agreed in writing by the Parties to the contrary, a Party's ownership of any of its Background Intellectual Property that existed at the Commencement Date is not affected by providing the Background Intellectual Property to the other Party in connection with these Terms and Conditions.

10. Fees

The Client must pay the Fees in the manner and in the times specified by the Contractor, and if not specified, then prior to release of the Deliverables to the Client. If the Client has an account with the Contractor (as determined by the Contractor) then the Client must pay the Fees upon receipt of a Correctly Rendered Invoice, on the terms specified on that Correctly Rendered Invoice.

11. Privacy

- 11.1 The Contractor may collect necessary personal information about the Client and its officers, employees and Third Parties whilst performing the Services.
- 11.2 The Contractor will use the personal information it collects for the sole purposes of the administration and management of these Terms and Conditions and in accordance with any Obligations that requires it to use or disclose the personal information.

12. Access to Information

The Client acknowledges that Division 5 of the *Government Information (Public Access) Act 2009* (NSW) requires the Contractor to maintain a publicly available register of government contracts that records information about certain contracts between the Contractor and private sector bodies. The Client acknowledges that where applicable, details of these Terms and Conditions (excluding any commercial-in-confidence provisions) may be lawfully published by the Contractor.

13. Termination

- 13.1 These Terms and Conditions may be mutually terminated at any time by written agreement of the Parties.
- 13.2 Without prejudice to its rights at common law, a party ("First Party") may immediately terminate these Terms and Conditions if the other party ("Other Party"):
- (a) suffers an Insolvency Event;
 - (b) assigns these Terms and Conditions or any of the benefits or purports to assign, subcontract or otherwise divest itself of any of its obligations under these Terms and Conditions without the First Party's written consent;
 - (c) commits a breach of a material term of these Terms and Conditions which cannot be remedied;
 - (d) commits a breach of a material term of these Terms and Conditions capable of remedy and fails to remedy the breach within thirty (30) Business Days after receiving written Notice requiring it to do so;
 - (e) has not made a payment of Fees that it has not disputed fourteen (14) Business Days after being provided with Notice of the failure to pay; or
 - (f) fails to perform an obligation due to an event of Force Majeure that exceeds thirty (30) Business Days.
- 13.3 If these Terms and Conditions are terminated early under clauses 14.1 or 14.2 the Parties agree that:
- (a) the Contractor will be entitled to payment for the Services carried out in accordance with these Terms and Conditions prior to the date of termination, the amount that would have been payable upon submitting a Correctly Rendered Invoice for the Services;
 - (b) each Party will return all property in their possession belonging to the other party, including Confidential Information; and

- (c) each Party will be relieved from future performance, without prejudice to any right of action that has accrued at the date of termination.

13.4 If the Client wishes to terminate or suspend the Services in accordance with this clause 14, then it will give the Contractor written notice by email.

14. Subcontracting

The Contractor may subcontract the whole or part of the contractor's obligations at its discretion. Subcontracting the whole or part of the Contractor's obligations under these Terms and Conditions will not relieve the Contractor from any of its obligations under these Terms and Conditions.

15. GST

If the supply of any Services is a taxable supply for which GST is payable within the meaning of the GST Law, then the Contractor must pay any GST that is recoverable in respect of the taxable supply in addition to the cost of the Services.

16. Notices

Any Notice under these Terms and Conditions will be effective if it is in writing and delivered to the other Party at their postal address or email address.

17. Entire Agreement

These Terms and Conditions comprise of:

- (a) clauses 1 to 21 inclusive and the definitions and interpretations (clause 25); and
- (b) The Sample Submission Form.

18. Waiver

A Party's non-exercise or delay in exercise of a right, power or remedy does not prevent the exercise of that right, power or remedy by that party. A failure or delay to exercise a right or power arising from these Terms and Conditions does not amount to a waiver of that right or power.

19. Governing Law

These Terms and Conditions is governed by the laws of the State of New South Wales. The Parties irrevocably and unconditionally submit to the non-

exclusive jurisdiction of the courts or tribunals exercising jurisdiction in that state.

20. Definitions and Interpretations

20.1 Definitions

The following words have these meanings in this agreement:

AUD means the currency from time to time of the Commonwealth of Australia.

Background Materials means any software or other Intellectual Property Rights owned or licensed by the Contractor that is developed prior to the Commencement Date or independently of these Terms and Conditions and that are necessary for the performance of the Services or are necessary for the Client to use the Deliverables.

Business Days means a day which is not a Saturday, Sunday or public holiday in New South Wales.

Client means the person or body corporate specified in the Sample Submission Form. The term shall include its employees, agents, servants, and its sub-contractors and sub-contractors.

Client Supplied Item means the samples, equipment and materials (if any) to be supplied by the Client to the Contractor.

Confidential Information means any information or data, including Personal Information, whether or not in a material form, which is confidential to the party, including confidential information created, acquired, collected or developed for the purpose of or during delivery of the Services, but not information in the public domain other than as a result of breach of these Terms and Conditions.

Contractor means The Environmental Analysis Laboratory, Southern Cross University including its employees, agents, servants, and if applicable its sub-Contractors and sub-contractors.

Correctly Rendered Invoice means a tax invoice that is rendered in the form of a tax invoice where:

- (a) the amount claimed is due for payment and correctly calculated in Australian dollars;
- (b) the invoice is set out as an itemised account to enable the Client to ascertain what the invoice covers and the amount claimed; and
- (c) the invoice identifies the GST exclusive amount and includes additional information required by law or pursuant to Australian Taxation Office guidelines to qualify as a tax invoice.

Deliverables means any document, results or report to be provided to the Client.

Deposit means a payment to be made to the Contractor by the Client.

Disclosing Party means a Party including its officers, employees, students and Third Parties which discloses Confidential Information to the Recipient under these Terms and Conditions.

Expenses means any approved.

Fee/s means the fees for the Services set out in the Quote.

Force Majeure event means anything outside a Party's reasonable control, including, without limitation, fire, storm, earthquake, explosion, accident, enemy acts, war, rebellion, insurrection, terrorism, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, transportation embargo or failure or delay in transportation, act or omission (including laws, regulations, disapprovals or failures to approve) of a third person, including, without limitation, governments or government agencies.

GST means goods and services tax as imposed by GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* as amended or replaced from time to time.

Intellectual Property Rights or Intellectual Property means all legal and beneficial rights resulting from intellectual activity whether capable of protection by statute, common law or equity including patent rights, copyright, database rights, registered design rights, utility model, trade mark (whether registered or not) brand name, service mark, trade name, plant varieties, circuit layouts, eligible layout rights, chip topography right, product formulations, processes, devices, methods, formulae, graphs, drawings, discoveries, inventions and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields but excludes Moral Rights.

Moral Rights means a person's moral rights as defined in the Copyright Act 1968 (Cth) including:

- (a) the right of attribution of authorship;
- (b) the right of integrity of authorship; and
- (c) the right not to have authorship falsely attributed.

Notice means any notice, demand, consent, approval or other communication in connection with these Terms and Conditions.

Parties means the Contractor and the Client.

Quote means the Quote issued by email by the Contractor to the Client.

Sample Submission Form means the form required to be completed and signed by the Client accompanying any sample for analysis.

Services means the laboratory analysis services including any Deliverables set out in the Quote and the Sample Submission Form.

Third Parties means an agent, advisor, sub-contractor or sub-Contractor.

20.2 Interpretations

In these Terms and Conditions, unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of these Terms and Conditions;
- (b) a reference to a clause, schedule or recital is a reference, respectively, to a clause of, schedule to or recital of these Terms and Conditions; and
- (c) a reference to a statute or regulation includes an amendment or re-enactment to that legislation and includes subordinate legislation in force under it;
- (d) the singular includes the plural and vice versa;
- (e) a reference to a gender includes reference to every gender;
- (f) a provision of these Terms and Conditions will not be interpreted against a Party just because that Party prepared the provision;
- (g) the rights, obligations, representations, warranties and indemnities of a Party are given, undertaken, made or offered (as the case may be) jointly and separately by each of the parties who together constitute that Party under these Terms and Conditions and each of the rights, obligations, representations, warranties and indemnities of that Party is to be read accordingly;
- (h) the expression "person" includes an individual, a body corporate, a joint venture, a trust, an agency or other body; and
- (i) the expression "days" means a day which is not a Saturday, Sunday or public holiday in Lismore New South Wales