

TERMS AND CONDITIONS

CREDIT APPLICATION

Where over 500 samples are to be processed, and for overseas (non-Australian) orders, a **credit application form** is required, or prepayment is required. [Within WA | Labwest](#)

PAYMENT TERMS

Payment is required within **30 days** of invoice.

LabWest reserves the right to request payment prior to commencement of work. Invoice will be sent at Sample Receipt Acknowledgement.

REPORTING OF RESULTS

Results will be reported in standard CSV and PDF file formats.

Results will only be released to the contacts listed on the submission form.

REPORT WITHHOLDING CONDITIONS

LabWest may withhold results where payments are outstanding, including breach of agreed credit limits.

RESULTS ACCEPTANCE

Unless otherwise provided by mutual agreement, the customer shall have thirty (30) days from the date of delivery to accept all results as full and final. After this period, no further warranty claim or request for modification is valid.

ACCEPTANCE OF LABWEST TERMS AND CONDITIONS

The terms and conditions are considered to be accepted on completion of the **sample submission form**: [Within WA | Labwest](#)

Samples will not be processed without receipt of a sample submission form.

See below further terms and conditions of trade

FURTHER TERMS AND CONDITIONS OF TRADE

1. Definitions

In these Terms:

ACL means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended;

Agreement means any agreement for the provision of the services by the Supplier to the Client;

Client means the person, jointly and severally if more than one, services from the Supplier;

consumer is as defined in the ACL and in determining if the Client is a consumer, the determination is made if Client is a consumer under the Agreement;

consumer contract is as defined in the ACL;

Force Majeure Event means a circumstances or event outside the reasonable control of a party, and includes without limitation accident, act of God, act or threat of terrorism or war, breakdown, cyclone, epidemic, export or import restriction, fire, flood, government decree or order, hurricane, industrial dispute, lockout, pandemic, or strike;

GST means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and its associated Regulations as amended;

Quotation means a quotation issued by the Supplier to the Client for the supply of services;

Report means a report prepared and provided by the Supplier to the Client outlining results of testing;

Sample means the sample(s) of materials provided by the Client to the Supplier for the purpose of the services;

services means services provided by the Supplier to the Client;

small business contract is as defined in the ACL;

Supplier means **LabWest Minerals Analysis ABN 16 133 541 670**

Terms means these Terms and Conditions of Trade.

2. Basis of the Agreement

2.1. Unless otherwise agreed by the Supplier in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms.

2.2. Any Quotation provided by the Supplier to the Client for the proposed services is:

- (a) valid for 30 days, unless otherwise specified in the Quotation;
- (b) an invitation to treat only; and
- (c) only valid if in writing.

2.3. The Terms may include additional terms in the Supplier's Quotation and, where terms set out in a Quotation are inconsistent with these Terms, the terms in the Quotation prevail to the extent of any inconsistency.

2.4. The Supplier reserves the right to correct a Quotation in the event of error or mistake.

2.5. An order is accepted by the Supplier when the Supplier:

- (a) expressly accepts an order from the Client in writing or electronic means; or
- (b) provides the Client with the services.

2.6. The Supplier may refuse to accept any order.

2.7. The Client must provide the Supplier with its specific requirements specified in the Quotation, if any, in relation to the services.

2.8. The Supplier may amend or vary these Terms by written notice to the Client at any time, and any such variation or amendment will apply to Quotations provided by the Supplier or orders placed by the Client after the date of variation becomes effective.

2.9. Unless otherwise agreed by the parties in writing, the Client's placement of an order after the date a variation or amendment becomes effective under clause 2.8 constitutes acceptance of the amendment or variation.

3. Pricing

3.1. Unless otherwise expressly stated in a Quotation or agreed by the parties in writing, prices quoted for the supply of services exclude GST and any other taxes or duties imposed on or in relation to the services.

3.2. If the Client requests any variation to the Agreement (including but not limited to variations to sample numbers, analytes requested, desired turnaround timeframes, and reporting requirements, etc), the Supplier may notify the Client of any change to the price to account for the variation, and the Supplier may:

- (a) accept the proposed change to the price and continue with the Agreement; or
- (b) withdraw its request for the variation.

3.3. If the Supplier proposes to vary the price payable by the Client on the basis of a variation in the Supplier's costs of providing the services or a change in legislation, the Supplier may give notice of its proposed variation to the price to the Client, and if the Agreement is:

- (a) a consumer contract or a small business contract, the Client may:
 - (i) accept the variation and continue under the Agreement; or
 - (ii) reject the variation, in which case if the Supplier does not offer to provide the services for the original price the Client may terminate the Agreement;
- (b) not a consumer contract or a small business contract, the Client must pay the varied price.

4. Payment Terms

4.1. Unless otherwise agreed in writing, the Client must pay the Supplier for the services:

- (a) in accordance with the payment terms specified in the Quotation; and
- (b) if no payment terms are specified in the Quotation, within 30 days of the date of the Supplier's invoice.

4.2. Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.3. Where payment is made by credit card, the Supplier may charge the Client a surcharge equal to the amount of the merchant fees charged to the Supplier.

4.4. Payment terms may be revoked or amended at the Supplier's sole discretion immediately upon giving the Client written notice.

4.5. Where analysis has commenced, LabWest reserves the right to request partial or full payment of analysis charges should the Client request to hold or cancel the job.

4.6. The time for payment is of the essence.

5. Payment Default

5.1. If the Client defaults in payment by the due date of any amount payable to the Supplier, then without prejudice to any other remedy available to it:

- (a) charge the Client interest on any sum due at the rate of 2% for the period from the due date until the date of payment in full;
- (b) charge the Client for, and the Client must pay to the Supplier on demand, all reasonable costs and expenses (including without limitation all reasonable legal costs and expenses) reasonably incurred by the Supplier resulting from the default or in taking action to enforce compliance with the Agreement or to recover any sum due;
- (c) cease or suspend supply of services to the Client;
- (d) by written notice to the Client, terminate any uncompleted Agreement without affecting any rights accrued by the parties prior to termination.

5.2. Subject to any applicable statutory stay of proceedings, clauses 5.1(c) and (d) may also be relied upon where the Client becomes bankrupt or insolvent or enters a scheme of arrangement or has a liquidator or similar functionary appointed in respect of its assets.

6. Test Samples

6.1. Unless otherwise agreed by the parties in writing, the Client must provide the Supplier with the Sample(s), and its testing requirements, as set out in the Quotation.

6.2. Where the Client provides the Sample(s) to the Supplier, the Client is responsible for ensuring it packages any Sample(s) in a manner that protects against loss or damage and, without limitation, any Sample(s) over 25 kilograms must be provided to the Supplier on a pallet.

6.3. The Client must provide the Supplier with written notice of any and all known:

- (a) health or safety hazards; and
- (b) special procedures for safe handling, storage, testing and disposal; relevant to the Sample(s).

6.4. To the maximum extent permitted at law, the:

- (a) Client acknowledges that testing the subject of the services may, by its nature, be destructive; and
- (b) Supplier accepts no responsibility for damage caused to any Sample(s) before, during or after testing.

6.5. The Supplier will only schedule testing once the Client has provided its specific requirements via the LabWest Submission Form.

6.6. The Client acknowledges and agrees that, unless otherwise agreed by the parties in writing;

- (a) the Supplier does not, will not, and is not required to conduct any research or independent investigation into the Sample(s) or the nature of the testing requested; and
- (b) will have discharged its obligations if it provides the services in accordance with the particulars set out in the Quotation or as otherwise agreed by the parties in writing,

6.7. Unless otherwise agreed by the parties in writing, if the Sample(s) is or are to be returned to the Client after the completion of the testing:

- (a) the Client must collect the Sample(s) within the period specified in the Quotation; or
- (b) if no period for collection is specified in the Quotation, within 14 days of the Supplier giving notice the Sample(s) is or are ready for collection.

6.8. If the Client fails to collect the Sample(s) within the times set out in clause 6.6, the Supplier may:

- (a) charge the Client for, and the Client must pay the Supplier for, storage of the Sample(s), provided the Supplier has given the Client notice of the storage rates to be charged; or
- (b) lawfully dispose of the Sample(s).

6.9. Where government guidelines or legislation requires disposal of Sample(s) in a particular manner, the Client is liable for and must pay to the Supplier on demand all reasonable disposal costs incurred by the Supplier.

6.10. Unless otherwise agreed by the parties in writing, the Supplier will retain the Client's data for internal auditing and quality assurance purposes following the Report.

7. Risk and Insurance

7.1. The Supplier will take reasonable steps to look after any Sample(s) in its possession.

7.2. To the maximum extent permitted at law, all:

- (a) risk in; and
- (b) insurance responsibility for;

Sample(s) remains with the Client at all times.

7.3. To the maximum extent permitted at law, the Client assumes all liability for damage to or loss of Sample(s), unless recoverable from the Supplier on the failure of any statutory guarantee under the ACL.

8. Performance of Agreement

8.1. The Supplier must exercise the same degree of care, diligence and skill as would reasonably be expected of a professional service provider.

8.2. The Client acknowledges and agrees that:

(a) the services provided by the Supplier are subject to confidence intervals and detection limits inherent in the industry-wide methodology;

(b) where it is reliant upon results for a specific purpose, it is the Client's obligation to make its own investigations and satisfy itself that neither the confidence intervals nor the detection limits referred to in clause 8.2(a) are contrary to its intended purpose.

8.3. Any date for provision of the services stated by the Supplier is an estimate only and not a contractual commitment.

8.4. The Supplier will use its reasonable endeavours to meet estimated dates for provision of the services but will not be liable for any damage or loss suffered by the Client or any third party for failure to meet any estimated date.

8.5. If the Supplier cannot complete the services by an estimated date, it will do so within a reasonable time.

8.6. If the parties so agree in writing, the Supplier may provide the services in part or in full at a location nominated by the Client, and if so, the Client must:

- (a) ensure such location is safe, free of hazard, and in compliance with any relevant laws;
- (b) provide the Supplier with safe and unobstructed access to and from such location;
- (c) ensure such location has any and all equipment or resources the Supplier reasonably requests;
- (d) comply with the Supplier's reasonable requests, where they relate to safety or the services; and
- (e) indemnify and hold the Supplier harmless from and against any and all actions, claims, damages, expenses, fees, liabilities, penalties or suits of any kind brought against, or incurred or suffered by, the Supplier to the extent it arises from the Client's act or omission or failure to comply with this clause 8.6.

8.7. Unless otherwise agreed in writing, the Supplier will provide its Report to the Client once the Supplier has both completed its provision of the services and has received full payment from the Client.

8.8. If a Report prepared and provided by the Supplier has to be re-issued due to an error or errors in the information provided to the Supplier by the Client, a re-issue fee stipulated in the Quotation will be charged.

8.9. Unless otherwise agreed in writing, if the Client does not dispute or reject the results set out in Report within 30 days of receipt of that Report, then to the maximum extent permitted at law it is deemed to have accepted the Report in full.

8.10. If the Supplier reasonably determines that:

- (a) the nature of the Client's Sample(s); or
- (b) the provision of the services in relation to the Client's Sample(s); or
- (c) provision of the services at a location nominated by the Client; or
- (d) the provision of the services generally, or for any other reason: poses a health or safety hazard for the Supplier or a third party, the Supplier may refrain from providing the services and must notify the Client in writing.

9. Liability

9.1. Except as the Terms specifically state, the Agreement does not include by implication any other term, condition or warranty in respect of the performance of the services or any contractual remedy for their failure.

9.2. If the Client is a consumer, nothing in these Terms restricts, limits or modifies the Client's rights or remedies against the Supplier for failure of a statutory consumer guarantee under the ACL.

9.3. If clause 9.2 does not apply, then other than as stated in the Terms the Supplier is not liable to the Client in any way arising in connection with the supply of the services.

9.4. The Supplier is not liable for any consequential or indirect losses or expenses suffered by the Client or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.

9.5. To the maximum extent permitted at law, the Supplier's liability for a breach of a statutory consumer guarantee as set out in the ACL is limited to re-supply of the services or payment of the costs of having the services re-supplied.

9.6. To the maximum extent permitted at law, the Client acknowledges and agrees that:

- (a) other than as specified in a Quotation, it has not made known, either expressly or by implication, to the Supplier any purpose for which it requires the services; and
- (b) it has made its own investigations and has satisfied itself that the services and the Report are suitable for the Client's purposes.

9.7. Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the supply of services which cannot be excluded, restricted or modified.

10. Intellectual Property

10.1. Unless otherwise agreed in writing, the Client and the Supplier each acknowledges and agrees that nothing in an Agreement or these Terms is designed or intended to transfer any intellectual property.

11. Subcontracting

11.1. If the Supplier considers it reasonably necessary to engage the services of a third party to meet the Client's requirements, the:

- (a) Supplier will give notice to the Client of its request to engage a third party for that purpose; and
- (b) Client must not unreasonably withhold consent to such engagement.

12. Termination

12.1. Either party (**Non-Defaulting Party**) may terminate an Agreement immediately upon written notice to the other party (**Defaulting Party**) if the Defaulting Party:

- (a) breaches a provision of these Terms and fails to remedy such breach within 14 days of receipt of notice from the Non-Defaulting Party to do so; or
- (b) subject to any applicable statutory stay of proceedings, becomes bankrupt or insolvent or enters a scheme of arrangement or has a liquidator or similar functionary appointed in respect of its assets.

12.2. Termination of an Agreement does not affect the rights or obligations of a party accrued under that Agreement prior to termination.

13. Force Majeure

13.1. Subject to clause 13.2, neither party is liable to the other party under an Agreement to the extent it is prevented from acting by reason of a Force Majeure Event.

13.2. Nothing in this clause 13 operates to excuse the Client from any obligation to pay money.

13.3. If a party is prevented from fulfilling an obligation under an Agreement, it must:

- (a) promptly give notice to the other party, identifying the nature of the Force Majeure Event;
- (b) take reasonable steps to alleviate or mitigate the impact of the Force Majeure Event; and
- (c) subject to clause 13.4, resume performance of the obligation prevented by the Force Majeure Event as soon as practicable after the Force Majeure Event ceases.

13.4. If a Force Majeure Event prevents performance for a period of 60 days or more, either party may terminate the Agreement.

14. Miscellaneous

14.1. These Terms are governed by the laws of the State of WA, Australia.

14.2. The parties agree to the non-exclusive jurisdiction of the courts of WA, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.

14.3. A party's failure to enforce any of these Terms shall not be construed as a waiver of any of that party's rights.

14.4. If a clause is unenforceable, it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of the remaining terms.

14.5. A notice must be in writing and handed personally or sent by email or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed received upon posting. Notices sent by email are deemed received on successful transmission.

14.6. The Client must comply with the Australian Privacy Principles in connection with any personal information supplied by it or to it in connection with this Agreement.

Date: 22-7-2024