

LABORATORY ANALYTICAL SERVICES

TERMS OF TRADE

V2025-08-21

1. Definitions and interpretation

(a) Definitions

ACL means the Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

Additional Charge means:

- (i) fees or charges for additional analytical work, sample preparation, or interpretation services performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with the Supplier's then current prices; and,
- (ii) expenses incurred by the Supplier, at the Customer's request or reasonably required as a result of the Customer's conduct.

Analytical Results means both raw analytical data and interpreted results generated through the Services, including measurements, test results, and analytical reports.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided.

Credit Facility means an arrangement approved by the Supplier that allows the Customer to:

- (i) submit Orders without advance payment;
- (iii) receive Deliverables before payment;
- (iv) pay invoices within 30 days; and,
- (v) maintain the minimum monthly commitment specified in clause 10, subject to the Supplier's credit terms and these Terms of Trade.

Customer means the person identified on a Quote or Order as the customer and includes the Customer's agents and permitted assigns.

Deliverables means any outputs provided to the Customer including:

- (i) analytical reports and certificates of analysis;
- (ii) raw data and interpreted results;
- (ii) technical advice and recommendations; and,
- (iii) any incidental materials supplied in connection with the Services, including sampling kits.

Intellectual Property Rights means intellectual property rights at any time protected by statute or common law:

- (i) analytical methods and procedures;
- (iv) testing protocols and validation methods;
- (v) interpretation methodologies and frameworks;
- (vi) algorithms and data processing techniques;
- (vii) quality systems and standard operating procedures;
- (viii) trade secrets and confidential information; and,
- (ix) copyright in reports, documentation and other materials.

Loss includes, but is not limited to, costs (including party to party legal costs and the Supplier's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

Order means:

- (i) a request for Services placed by a Customer using:
 - (A) the Supplier's current version Order form;
 - (B) the Supplier's online store or website ordering system; or,
 - (C) other means agreed to in writing by the Supplier;
- (ii) which must include:
 - (A) clearly identified Services or other Deliverables ordered;
 - (B) references to required tests from the current price list or Quote;
 - (C) all required sample information;
 - (D) any special handling instructions;
 - (E) any special requirements for reporting or delivery; and,
- (iii) and as varied in writing from time to time by the parties.

Quote means a written description of:

- (i) analytical services and testing requirements;
- (iv) applicable prices;
- (v) any special handling or reporting requirements; and,

(vi) other terms specific to the requested Services.

Sample means any material provided by the Customer to the Supplier for analysis, including but not limited to environmental, biological, chemical, or physical specimens, and associated containers or packaging.

Sample Documentation means any documentation required for proper sample handling and analysis, including chain of custody forms, safety data sheets, handling instructions, and any other relevant documentation specified by the Supplier.

Services means:

- (i) analytical testing and laboratory analysis;
- (vii) data interpretation and technical advice;
- (viii) sample handling, preparation and storage;
- (ix) report generation and delivery; and,
- (x) related services to be provided by the Supplier to the Customer.

Supplier means Microbiology Laboratories Australia Pty Ltd and its agents and permitted assigns.

Terms of Trade means:

- (i) these Laboratory Analytical Services Terms of Trade;
- (xi) as published online at <https://microbelabs.com.au/terms-of-trade/>;
- (xii) as updated from time to time; and,
- (xiii) including any schedules or annexures.

Test Agency Agreement means a separate written agreement between the Supplier and the Customer governing the provision of analytical services under specific agency or volume-based arrangements, which may contain terms that differ from these Terms of Trade.

(b) **Interpretation:**

In these terms of trade, unless the context otherwise requires:

- (i) a reference to writing includes email and other communication established through the Supplier's website (if any);
- (ii) the singular includes the plural and vice versa;
- (iii) a reference to a clause or paragraph is a reference to a clause or paragraph of these terms of trade;

- (iv) a reference to a party to these terms of trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (v) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (vi) in the event of any inconsistency in terminology or defined terms, the definitions in clause 1.1 shall prevail;
- (vii) headings are for ease of reference only and do not affect the meaning or interpretation of these terms of trade; and,
- (viii) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
 - (A) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
 - (B) in all other cases, must be done on the next Business Day.

2. General

- (a) These terms of trade apply to all transactions between the Customer and the Supplier relating to the provision of Deliverables.
- (b) Publication and updates:
 - (i) These terms of trade are published online at <https://microbelabs.com.au/terms-of-trade/> ("Published Terms");
 - (ii) The Published Terms are the current version and apply to all transactions;
 - (iii) The Supplier may update the Published Terms at any time by publishing the updated version on its website;
 - (iv) The Supplier will:
 - (A) maintain the Published Terms in a readily accessible format;
 - (B) provide a copy of the current Published Terms upon request;
 - (C) maintain an archive of previous versions with their effective dates; and,
 - (D) notify customers of material changes to the Published Terms, which may be by noting a change in version or date of change, or both, where they are published on the Supplier's website.
- (c) Updates take effect:
 - (i) for new Orders, Quotes or samples - immediately upon publication; or,
 - (ii) for existing Orders - 30 days after the Supplier notifies the Customer of the update;
- (d) The Customer is responsible for:

- (i) checking the current Published Terms before each transaction;
 - (ii) maintaining a valid email address for notifications; and,
 - (iii) ensuring its staff are aware of and comply with the current Published Terms.
- (e) Reference and incorporation:
- (i) These terms of trade are incorporated by reference into:
 - (A) all Order forms issued by the Supplier;
 - (B) all Quotes issued by the Supplier;
 - (C) all sample submission forms;
 - (D) all analytical reports and certificates; and,
 - (E) any other documentation relating to the Deliverables.
- (f) These terms of trade are deemed to be accepted by the Customer upon the earliest of:
- (i) placing an Order using the Supplier's current version Order form;
 - (ii) accepting a Quote from the Supplier;
 - (iii) submitting samples to the Supplier for analysis; or,
 - (iv) receiving Services from the Supplier.
- (g) These terms of trade take precedence over terms of trade contained in any document of the Customer or elsewhere, including any purchase order or other document issued by the Customer at any time. The acceptance of a Customer's Order by the Supplier shall not constitute acceptance of any Customer terms and conditions.
- (h) Any terms or conditions contained in, attached to, or referred to in the Customer's purchase order, specifications, standard terms of purchase or other documents shall not form part of the agreement between the parties and are expressly excluded. No variation to these terms of trade shall be binding unless expressly agreed to in writing by an authorised representative of the Supplier.
- (i) Subject to clause 2(c), the variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.
- (j) The Supplier may amend any details in a Quote or invoice by notice in writing to the Customer. Such amended details supersede any relevant prior detail in dealings between the parties. Orders placed and accepted prior to any amendment shall not be affected unless specifically agreed in writing by both parties.
- (k) These Terms of Trade primarily govern the provision of the Deliverables, including laboratory analytical testing services, associated deliverables, and incidental

consultancy or advice. Deliverables may be ordered using the Supplier's current version Order form with reference to either the current price list or a Quote. Where the Customer requires formal consulting services or research and development project work, such services shall be governed by a separate Consulting Services Agreement which shall take precedence over these terms of trade in relation to those specific services.

- (l) Where incidental consultancy or advice services are provided without a separate Consulting Services Agreement:
 - (i) they shall be considered to be incidental consultancy or advice services and subject to these Terms of Trade;
 - (ii) the Supplier does not warrant any particular outcome or result from consultancy or advice services;
 - (iii) the Customer is responsible for determining the suitability of consultancy or advice for its intended purpose.
- (m) Every order for analytical services must be submitted in writing using the Supplier's current standard Order form (unless otherwise agreed).
- (n) Orders for standard analytical services must reference the required tests from the current price list or as shown in the current Order form.
- (o) Orders for non-standard analytical services must include a description of the work required and reference to a Quote where a Quote has been issued to the Customer by the Supplier.
- (p) An Order will only be deemed to be placed by the Customer if it:
 - (i) clearly identifies the Deliverables ordered;
 - (ii) references the required tests from the current price list or as shown in the current Order form, or Quote (if relevant);
 - (iii) includes all required sample information and handling instructions (if relevant); and,
 - (iv) specifies any special requirements for reporting or delivery.
- (q) For analytical services where results may indicate the need for additional testing (Sequential Analysis):
 - (i) where the potential for additional analytical steps is identified in the price list, Order form, Quote, or other documentation provided or available to the Customer, the Customer pre-authorizes such additional testing and associated charges; or,

- (ii) in other cases, the Supplier will notify the Customer if additional testing is recommended and analysis will proceed only upon authorization from the Customer.
- (r) The Supplier may in its absolute discretion refuse to provide Deliverables where:
 - (i) testing capacity or resources are unavailable;
 - (ii) credit limits cannot be agreed upon or have been exceeded;
 - (iii) samples are unsuitable, unsafe, or inadequately documented;
 - (iv) essential inputs are unavailable; or,
 - (v) payment for previous Services provided to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Supplier, associated with the Customer under the same or another supply contract, is outstanding.
- (s) The Supplier may in its absolute discretion refuse to provide Deliverables or terminate any existing Orders where the Customer or its representatives:
 - (i) engage in abusive, threatening, or inappropriate behaviour towards the Supplier's staff, whether in person, by telephone, in writing, or through any other form of communication;
 - (ii) use offensive language, raise their voice inappropriately, or make threatening statements during telephone or in-person interactions;
 - (iii) create a hostile work environment or compromise staff wellbeing;
 - (iv) repeatedly make unreasonable demands or complaints without justification;
 - (v) fail to maintain professional standards of communication and conduct; or,
 - (vi) otherwise behave in a manner that makes the continued provision of services untenable.
- (t) Where service is refused or terminated under clause 2(s):
 - (i) the Supplier will notify the Customer of the reasons either verbally or in writing, and maintain a record of such notification;
 - (ii) any analyses in progress will be completed if technically feasible;
 - (iii) results for completed analyses will be provided subject to payment;
 - (iv) the Customer remains liable for all Services performed up to termination; and,
 - (v) samples will be disposed of in accordance with clause 5 unless alternative arrangements are agreed.
- (u) Placement of an Order by the Customer signifies acceptance by the Customer of these terms of trade and the applicable prices from either the current price list or Quote.

- (v) Any costs incurred by the Supplier due to incorrect or inadequate information in an Order may result in Additional Charges.

3. Orders

- (a) Every Order for Deliverables must be submitted in writing using the Supplier's current standard Order form or through the Supplier's online store (unless otherwise agreed).
- (b) Orders for:
 - (i) standard analytical services must reference the required tests from the current price list, or as shown in the current Order form, or online store; and,
 - (ii) standard goods, such as sampling kits, must reference the required items from the current price list, or as shown in the current Order form, or online store.
- (c) The Customer may request that its Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect.
- (d) For standard analytical services, the prices listed in the current price list at the time of Order placement will apply, unless:
 - (i) the Supplier notifies the Customer of a price change, including by way of using the changed price in an invoice provided to the Customer; in which case,
 - (ii) the Customer may then cancel its Order by written notice to the Supplier within 24 hours of such notification, without incurring any Additional Charges.
- (e) For specialized or non-standard services:
 - (i) any Quote issued by the Supplier is valid for 30 days from the date of issue;
 - (ii) the Supplier reserves the right to amend any Quote before the Order has been completed to take into account any rise or fall in costs;
 - (iii) the Supplier will notify the Customer of any amendment as soon as practicable, including by way of using the changed price in an invoice provided to the Customer, at which point the amended Quote will apply; and,
 - (iv) if the amended Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote.
- (f) Unless otherwise expressly agreed in writing, Quotes do not include:
 - (i) delivery or transport of samples, materials, or equipment;
 - (ii) special handling for hazardous or temperature-sensitive materials;
 - (iii) rush or priority processing fees;
 - (iv) specialized data formats or custom reporting; and,

- (v) extended sample storage or disposal of hazardous materials.
- (g) Order Cancellation:
 - (i) requires prior written consent of the Supplier;
 - (ii) may incur Additional Charges;
 - (iii) the Customer indemnifies the Supplier against any Losses incurred, including loss of profit from other orders foregone.
- (h) Notwithstanding clause 4(c):
 - (i) an Order cannot be cancelled without the prior written consent of the Supplier;
 - (ii) cancellation of an Order accepted by the Supplier may incur Additional Charges;
 - (iii) where an Order is cancelled, the Customer indemnifies the Supplier against any Losses incurred by the Supplier as a result of the cancellation; and,
 - (iv) this includes, but is not limited to, loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.
- (i) Orders for non-standard analytical services must include a description of the work required and reference to a Quote where a Quote has been issued to the Customer by the Supplier.
- (j) An Order will only be deemed to be placed by the Customer if it:
 - (i) clearly identifies the Deliverables ordered;
 - (ii) references the required tests from the current price list or as shown in the current Order form, online store, or Quote (if relevant);
 - (iii) for online store purchases, includes confirmation of the order through the website checkout process;
 - (iv) includes all required sample information and handling instructions (if relevant); and,
 - (v) specifies any special requirements for reporting or delivery.
- (k) For analytical services where results may indicate the need for additional testing (Sequential Analysis):
 - (i) where the potential for additional analytical steps is identified in the price list, Order form, Quote, or other documentation provided or available to the Customer, the Customer pre-authorizes such additional testing and associated charges; or,
 - (ii) in other cases, the Supplier will notify the Customer if additional testing is recommended and analysis will proceed only upon authorization from the Customer.

- (l) Placement of an Order by the Customer signifies acceptance by the Customer of these terms of trade and the applicable prices from either the current price list or Quote.
- (m) Any costs incurred by the Supplier due to incorrect or inadequate information in an Order may result in Additional Charges.

4. Variations

- (a) The Customer may request that its Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect.
- (b) If the Customer wishes to vary its requirements after an Order has been submitted or a Quote has been prepared:
 - (i) the Supplier reserves the right to vary the invoice or Quote to include any Additional Charge for costs incurred due to the variation;
 - (ii) variations to accommodate matrix effects or sample characteristics may be required to complete the analysis;
 - (iii) a revised invoice or Quote issued by the Supplier supersedes the original invoice or Quote;
 - (iv) if the revised invoice or Quote only specifies additional work, it will be in addition to the immediately preceding invoice or Quote; and,
 - (v) the Supplier has an automatic extension of time for the provision of Deliverables equal to any delay caused by the variation.
- (c) For standard analytical services, the prices listed in the current price list at the time of Order placement will apply, unless:
 - (i) the Supplier notifies the Customer of a price change, including by way of using the changed price in an invoice provided to the Customer; in which case,
 - (ii) the Customer may then cancel its Order by written notice to the Supplier within 24 hours of such notification, without incurring any Additional Charges.
- (d) For specialized or non-standard services:
 - (i) any Quote issued by the Supplier is valid for 30 days from the date of issue;
 - (ii) the Supplier reserves the right to amend any Quote before the Order has been completed to take into account any rise or fall in costs;
 - (iii) the Supplier will notify the Customer of any amendment as soon as practicable, including by way of using the changed price in an invoice provided to the Customer, at which point the amended Quote will apply; and,

- (iv) if the amended Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote.
- (e) Unless otherwise expressly agreed in writing, Quotes do not include:
 - (i) delivery or transport of samples, materials, or equipment;
 - (ii) special handling for hazardous or temperature-sensitive materials;
 - (iii) rush or priority processing fees;
 - (iv) specialized data formats or custom reporting; and,
 - (v) extended sample storage or disposal of hazardous materials.
- (f) The Supplier has an automatic extension of time for the provision of Services equal to any delay caused by the variation.
- (g) If the Customer wishes to vary its requirements after an Order has been submitted or a Quote has been prepared:
 - (i) the Supplier reserves the right to vary the invoice or Quote to include any Additional Charge for costs incurred due to the variation;
 - (ii) variations to accommodate matrix effects or sample characteristics may be required to complete the analysis;
 - (iii) a revised invoice or Quote issued by the Supplier supersedes the original invoice or Quote;
 - (iv) if the revised invoice or Quote only specifies additional work, it will be in addition to the immediately preceding invoice or Quote.
- (h) Order Cancellation:
 - (i) requires prior written consent of the Supplier;
 - (ii) may incur Additional Charges;
 - (iii) the Customer indemnifies the Supplier against any Losses incurred, including loss of profit from other orders foregone.
- (i) Notwithstanding clause 4(c):
 - (i) an Order cannot be cancelled without the prior written consent of the Supplier;
 - (ii) cancellation of an Order accepted by the Supplier may incur Additional Charges;
 - (iii) where an Order is cancelled, the Customer indemnifies the Supplier against any Losses incurred by the Supplier as a result of the cancellation; and,
 - (iv) this includes, but is not limited to, loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

5. Sample management and handling

- (a) The Customer must ensure that all samples submitted for analysis:
 - (i) are accompanied by a completed, current version Order form issued by the Supplier, unless otherwise specifically agreed in writing;
 - (ii) are properly labelled with unique identifiers, sampling date, and any specific handling requirements;
 - (iii) are packaged appropriately for the sample type and analytical requirements in accordance with relevant safety and transport regulations;
 - (iv) are accompanied by a completed, current version Order form issued by the Supplier, unless otherwise specifically agreed in writing;
 - (v) comply with all relevant dangerous goods regulations if applicable;
 - (vi) comply with all applicable interstate quarantine requirements when samples are transported across state borders; and,
 - (vii) are delivered during the Supplier's normal business hours unless alternative arrangements have been agreed in writing.
- (b) Hazardous or regulated samples:
 - (i) The Customer must obtain the Supplier's prior written approval before submitting any sample that is hazardous, regulated, or subject to special handling requirements under applicable law;
 - (ii) The Supplier reserves the right to immediately reject or report to relevant authorities any sample suspected to be hazardous, illegal, or improperly declared, without liability to the Customer; and,
 - (iii) The Customer is responsible for all costs and liabilities arising from submission of hazardous or regulated samples without appropriate disclosure and documentation.
- (c) Sample storage and retention:
 - (i) Unless otherwise specified in writing, samples will be retained for 30 days after results reporting;
 - (ii) Extended storage of samples beyond the standard retention period must be requested in writing and may incur Additional Charges;
 - (iii) The Supplier reserves the right to dispose of samples without notice after the retention period;
 - (iv) Storage of hazardous or environmentally sensitive samples may incur Additional Charges;
- (d) Return shipping of samples:

- (i) must be requested by the Customer in writing before the standard retention period expires;
 - (ii) requires the Customer to arrange appropriate transport that complies with all relevant regulations;
 - (iii) for hazardous materials:
 - (A) must comply with dangerous goods regulations;
 - (B) requires appropriate documentation and declarations;
 - (C) must use approved packaging and labeling; and,
 - (D) may require specialized transport arrangements;
 - (iv) will incur Additional Charges for:
 - (A) packaging and handling;
 - (B) dangerous goods documentation;
 - (C) storage until collection; and,
 - (D) any special handling requirements;
 - (v) is entirely at the Customer's risk and expense; and,
 - (vi) requires the Customer to indemnify the Supplier against any loss or liability arising from the transport of returned samples.
- (e) Sample disposal:
- (i) Disposal of samples will be conducted in accordance with relevant environmental and safety regulations;
 - (ii) Hazardous waste or special disposal requirements must be specified by the Customer at the time of sample submission and may incur Additional Charges;
 - (iii) The Customer indemnifies the Supplier against any costs or liabilities arising from:
 - (A) hazardous, dangerous or unsuitable samples provided without appropriate warning or handling instructions;
 - (B) disposal requirements not disclosed at the time of sample submission; or,
 - (C) any breach of the Customer's obligations under this clause.
- (f) Sample security and chain of custody:
- (i) The Supplier will maintain appropriate security measures to protect sample integrity;
 - (ii) Access to samples will be restricted to authorized laboratory personnel;
- (g) Sample requirements:

- (i) Minimum sample quantities for each analysis type will be specified in the Supplier's sampling instructions documentation or as otherwise specified by the Supplier in writing;
- (ii) Samples received below minimum quantities may result in limited analysis or rejection, in which case Additional Charges may apply;
- (iii) The Supplier reserves the right to reject samples that:
 - (A) are inappropriately packaged or labeled;
 - (B) pose unacceptable safety risks;
 - (C) are unsuitable for the requested analysis;
 - (D) have compromised integrity; or,
 - (E) lack proper documentation.
- (h) Where samples are rejected under this clause, the Customer remains liable for any handling, disposal, or Additional Charges incurred by the Supplier.
- (i) The Customer acknowledges and agrees that:
 - (i) the Supplier's ability to provide accurate analytical results is dependent on the Customer's compliance with this clause 5;
 - (ii) any failure to comply with these requirements may affect the validity of results or cause delays in analysis timeframes; and,
 - (iii) the Supplier is not liable for any Loss arising from the Customer's failure to comply with clause 5 (Sample management and handling).

6. Analytical services

- (a) Testing Services:
 - (i) All analyses will be performed according to documented methods using calibrated equipment;
 - (ii) Method detection limits and measurement uncertainty will be provided upon request;
 - (iii) The Customer acknowledges that results may be influenced by sample matrix effects;
- (b) Method selection:
 - (i) Unless specified by the Customer, the Supplier will select appropriate analytical methods;
 - (ii) Method modifications may be necessary based on sample matrix or other factors;
 - (iii) The Customer will be notified of significant method modifications;
 - (iv) Custom method development services are available upon request.

- (c) Quality assurance:
 - (i) The laboratory maintains a documented quality system;
 - (ii) Internal quality control procedures are implemented including blanks, duplicates, and control samples, where appropriate;
 - (iii) Equipment calibration and maintenance records are maintained;
 - (iv) Staff competency is regularly assessed.
- (d) Subcontracting:
 - (i) the Supplier may subcontract analyses to external laboratories;
 - (ii) Additional Charges may apply for management of external testing; and,
 - (iii) external laboratory terms and conditions may apply to subcontracted work.
- (e) Service levels:
 - (i) standard turnaround times for each analysis type is available on request;
 - (ii) priority service or rush analysis requests are subject to laboratory capacity and attract an Additional Charge;
 - (iii) complex analyses or method development may require extended timeframes; and,
 - (iv) weekend or holiday analysis attract Additional Charges.
- (f) Sequential Analysis:
 - (i) some analytical methods may require additional analytical steps based on initial results; and,
 - (ii) where the potential for additional analytical steps is identified in the price list, Order form, Quote, or other documentation provided or available to the Customer, the Customer pre-authorizes such additional testing and associated charges; or,
 - (iii) in other cases, the Supplier will notify the Customer if additional testing is recommended and analysis will proceed only upon authorization from the Customer; and,
 - (iv) turnaround times may be extended to accommodate additional analytical steps.
- (g) Additional services
 - (i) The following services incur Additional Charges:
 - (A) sample preparation beyond standard protocols;
 - (B) specialized extraction or clean-up procedures;
 - (C) method development or validation;
 - (D) technical consultation or data interpretation;

- (E) witness testing or audit support; and
 - (F) storage of samples beyond standard retention periods.
- (h) The Customer acknowledges that:
- (i) analytical results may be influenced by sample quality, matrix effects, and other factors outside the Supplier's control;
 - (ii) method detection limits and measurement uncertainty may affect the interpretation of results;
 - (iii) variations in sample composition or analytical requirements may necessitate additional work and incur Additional Charges;
 - (iv) the Supplier's liability is limited to performing the analysis in accordance with its documented procedures.
- (i) Re-testing and result verification:
- (i) Notwithstanding the initial review period specified in clause 12(a), the Customer may request re-testing of samples within 14 Business Days of receiving the original results where technical concerns about analytical accuracy arise after the initial review period. Such requests must be submitted in writing and include:
 - (A) specific details of the suspected analytical error;
 - (B) relevant sample information and original test references; and,
 - (C) any supporting documentation or evidence; and,
 - (D) details of sample collection, preservation, and handling prior to laboratory submission.
 - (ii) The Customer acknowledges that unexpected results may arise from:
 - (A) incorrect sample collection, preservation, or handling prior to laboratory receipt;
 - (B) natural variation in sample composition or matrix effects;
 - (C) misinterpretation of normal analytical variation; or,
 - (D) incomplete understanding of method limitations or measurement uncertainty.
 - (iii) Upon receipt of a re-testing request, the Supplier will:
 - (A) review the original analysis documentation;
 - (B) verify sample handling and analytical procedures;
 - (C) assess whether unexpected results may be due to pre-analytical factors; and,
 - (D) determine if re-testing is technically feasible based on remaining sample quantity and condition.

- (iv) Re-testing charges will be allocated as follows:
 - (A) where an analytical error is confirmed, the Supplier will bear all re-testing costs and issue corrected results without charge;
 - (B) where the original results are confirmed accurate or unexpected results are due to pre-analytical factors, the Customer will be charged for re-testing at standard rates;
 - (C) where re-testing is not possible due to sample deterioration or insufficient quantity, no charges will apply; and,
 - (D) where the Supplier determines that unexpected results are likely due to pre-analytical factors, the Customer may be offered technical consultation at standard rates.
- (v) The Supplier's documented quality control procedures and records will be the definitive basis for determining whether an analytical error has occurred.

7. Data and reporting

- (a) Report delivery:
 - (i) Unless otherwise specified, analytical reports will be provided in electronic format via secure transmission;
 - (ii) Reports will be issued only after all quality control criteria have been met;
 - (iii) Preliminary or partial results may be provided upon request but are subject to confirmation in the final report;
 - (iv) Additional charges apply for:
 - (A) interim reports;
 - (B) hard copy reports;
 - (C) specialized data formats;
 - (D) custom reporting templates; or,
 - (E) re-issue of reports due to Customer-requested changes.
- (b) Results and data:
 - (i) All results will be reported with appropriate units and significant figures;
 - (ii) The Customer acknowledges that:
 - (A) results apply only to the samples as received;
 - (B) measurement uncertainty may affect the interpretation of results near specification limits.
- (c) Data retention and confidentiality:
 - (i) Raw data and analytical records will be retained for a minimum of 5 years;
 - (ii) All analytical data and results are treated as confidential information;

- (iii) Results will only be provided to the nominated Customer representative;
 - (iv) Third-party disclosure requires written authorization from the Customer;
 - (v) The Supplier may use anonymized data for method and interpretation development and quality control purposes.
- (d) Data Security:
- (i) The Supplier will implement reasonable security measures to protect the confidentiality and integrity of Customer data during storage and electronic transmission; and,
 - (ii) The Supplier will notify the Customer of any data breach affecting the Customer's confidential information as soon as practicable after becoming aware of the breach.

8. Commercial Terms and Service Levels

- (a) Service commencement:
- (i) Analysis timeframes commence only when:
 - (A) samples meeting all acceptance criteria have been received;
 - (B) a completed Order form has been provided;
 - (C) any required payment has been received (for customers without an effective Credit Facility); and,
 - (D) all necessary sample documentation is complete.
- (b) Credit Facility customers:
- (i) Customers with an effective Credit Facility in good standing:
 - (A) may submit samples with Orders without advance payment;
 - (B) must maintain Credit Facility terms to retain this privilege; and,
 - (C) will have analysis commence upon sample acceptance.
 - (ii) The Supplier reserves the right to suspend Credit Facilities if account terms are not maintained.
- (c) Service level commitments:
- (i) Standard service levels apply unless priority service is specifically requested and agreed;
 - (ii) Priority Service:
 - (A) requests are subject to laboratory capacity and attract an Additional Charge;
 - (B) must be agreed in writing at the time of Order placement; and,
 - (C) weekend or holiday analysis attract Additional Charges.
 - (iii) All service level timing excludes:

- (A) time waiting for customer clarification or additional information;
 - (B) delays due to sample quality or matrix effects;
 - (C) equipment maintenance or breakdown periods; and
 - (D) time spent investigating anomalous results.
- (d) Additional service requirements:
- (i) must be requested at the time of Order placement or in writing thereafter;
 - (ii) are subject to laboratory capacity and capability;
 - (iii) will be confirmed in writing by the Supplier before proceeding; and,
 - (iv) may affect standard service level commitments.
- (e) Additional analytical steps (Sequential Analysis):
- (i) where initial results indicate the need for additional analysis:
 - (A) pre-authorized additional steps will proceed automatically;
 - (B) non-authorized additional steps require Customer approval;
 - (C) Additional Charges will apply as specified in the price list, Order form, Quote or any other documentation provided to or available to the Customer; and,
 - (D) service level commitments may be adjusted accordingly.
- (f) Service modifications:
- (i) The Supplier will notify the Customer if:
 - (A) requested analysis cannot be performed as ordered;
 - (B) additional work is required due to sample characteristics; or,
 - (C) service levels cannot be met.
- (g) The Customer must provide approval before any Additional Charges are incurred.

9. Invoicing and payment

- (a) The Supplier may in its absolute discretion, issue an invoice to the Customer in any one or more of the following ways:
- (i) prior to commencing the provision of the Deliverables, for an amount equal to the invoice or Quote, and Additional Charges where the Supplier has not previously carried out work for the Customer or where the Supplier chooses to do so;
 - (ii) at the end of each week before the Order is completed, the Supplier may issue one or more invoices for a proportion or the whole of the amount of the invoice or Quote (the proportion to be calculated at the Supplier's discretion either for work done to that point, work in the future or both) and require that

- proportion of the invoice or Quote be paid in advance of any further Deliverables being provided; or
- (iii) upon completion of the provision of the Deliverables or any time after such completion, for an amount equal to the invoice or Quote or the balance of the invoice or Quote outstanding, any Additional Charges and any amount not previously invoiced, or if no invoice or Quote was provided, for an amount representing the Supplier's charge for the work performed in completing the Order and for any Additional Charges.
- (b) The amount payable by the Customer will be the amount set out in the invoice. This will be calculated as:
- (i) the amount for the Deliverables as set out in the invoice or Quote and any Additional Charges, or
 - (ii) where no invoice or Quote has been provided by the Supplier, the Supplier's usual charges for the Deliverables as described in the Order.
- (c) For Customers without an effective Credit Facility:
- (i) full payment must be received before:
 - (A) analysis will commence;
 - (B) results will be released; or,
 - (C) any other Deliverables will be provided;
 - (ii) the Supplier will issue an invoice for the full amount of:
 - (A) the standard charges based on the current price list; or,
 - (B) the Quote where one has been provided;
 - (iii) any Additional Charges identified during analysis will be invoiced separately and must be paid before results are released.
- (d) For Customers with an effective Credit Facility:
- (i) the Supplier may issue invoices:
 - (A) when an Order is received;
 - (B) at regular intervals for ongoing Services; and,
 - (C) for any Additional Charges as they arise;
 - (ii) payment must be made within 30 days of invoice date; and,
 - (iii) Credit Facility terms are subject to Section 10 of these Terms of Trade.
- (e) Payment must be made in full without deduction, set-off, or counterclaim.
- (f) Time for payment is of the essence.
- (g) If any invoice is due but unpaid, the Supplier may withhold the provision of any further Deliverables until overdue amounts are paid in full.

- (h) The Supplier may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.
- (i) The Customer is not entitled to retain any money owing to the Supplier notwithstanding any default or alleged default by the Supplier of these terms of trade, including (but not limited to) the supply of allegedly faulty or defective Deliverables, provision of Deliverables to an inadequate standard or a delay in the provision of Deliverables. Nothing in this paragraph affects the Customer's rights for any alleged failure of a consumer guarantee under the ACL.
- (j) The Customer is to pay the Supplier on demand interest at the rate of 12% per year on all overdue amounts owed by the Customer to the Supplier, calculated daily.
- (k) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable under these terms of trade.
- (l) GST and Tax Obligations:
 - (i) unless otherwise expressly stated, all prices quoted are exclusive of GST;
 - (ii) where GST is applicable:
 - (A) it will be clearly identified on all invoices;
 - (B) the amount of GST will be calculated at the prevailing rate;
 - (C) the Customer must pay the GST amount at the same time as payment of the invoice; and,
 - (D) the Supplier will provide a valid tax invoice compliant with GST legislation.
 - (iii) if the GST rate changes between Order acceptance and invoice date:
 - (A) the Supplier will apply the rate applicable at invoice date;
 - (B) any difference in GST amount will be adjusted accordingly; and,
 - (C) the Customer must pay the adjusted amount.
 - (iv) where services are GST-exempt or zero-rated:
 - (A) this will be clearly stated on the invoice;
 - (B) appropriate documentation will be provided if required;
 - (v) The Customer and the Supplier agree to comply with their respective obligations under A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.

10. Credit Facility with minimum monthly commitment

- (a) The Customer may request, and the Supplier may, at its absolute sole discretion, establish a Credit Facility for the Customer subject to the terms and conditions set out herein.
- (b) The provision of a Credit Facility is subject to:
 - (i) the Customer's completion of a Credit Facility application;
 - (ii) the Supplier's approval of such application;
 - (iii) ongoing compliance with the Supplier's Credit Facility terms; and,
 - (iv) maintenance of the minimum monthly commitment.
- (c) Where a Credit Facility account is established:
 - (i) the Customer agrees to a minimum monthly spend of \$500.00 (excluding GST) ("Minimum Monthly Amount");
 - (ii) where the Customer's actual purchases in any calendar month fall below the Minimum Monthly Amount, the Customer will be charged the difference to meet the minimum commitment;
 - (iii) this minimum charge will appear in a separate invoice and the Customer's monthly statement;
 - (iv) samples may be submitted with Orders without advance payment, subject to Credit Facility limits; and,
 - (v) analysis will commence upon sample acceptance, subject to compliance with Order requirements and the good standing of the Credit Facility account.
- (d) Where the Customer has entered into a Test Agency Agreement:
 - (i) the Minimum Monthly Amount specified in clause 10(c)(i) is superseded by the Credit Facility terms in the Test Agency Agreement;
 - (ii) only those specific terms in the Test Agency Agreement that directly conflict with these Terms of Trade take precedence;
 - (iii) all other provisions of these Terms of Trade continue to apply in full force;
 - (iv) where the Test Agency Agreement is silent on any matter, these Terms of Trade govern that matter.
- (e) Minimum Monthly Commitment Exceptions:
 - (i) the Supplier may, at its absolute discretion, waive or modify the Minimum Monthly Amount for Customers who are infrequent or low-volume purchasers, provided such waiver or modification is confirmed in writing by the Supplier; and,

- (ii) any waiver or modification granted under this clause applies only for the period specified by the Supplier and may be withdrawn at any time by written notice.
- (f) The Customer must not exceed the approved Credit Facility limit without prior written consent from the Supplier.
- (g) Credit Management:
 - (i) The Supplier will monitor credit utilisation and payment performance;
 - (ii) Account reviews will consider:
 - (A) payment history and trends;
 - (B) credit utilisation patterns;
 - (C) financial position changes; and,
 - (D) market conditions and industry factors.
 - (iii) The Supplier may adjust credit terms based on review outcomes.
- (h) Recovery terms:
 - (i) For overdue accounts:
 - (A) 7 days: written reminder
 - (B) 14 days: formal demand
 - (C) 21 days: credit suspension
 - (D) 30 days: debt collection referral
 - (ii) Recovery costs including legal fees will be charged to the Customer;
 - (iii) Payment plans require written agreement and strict compliance.
- (i) Credit Insurance Claims:
 - (i) The Customer must cooperate with insurance claims including:
 - (A) providing required documentation;
 - (B) attending meetings or examinations; and,
 - (C) assisting with recovery actions.
 - (ii) Insurance claim costs will be allocated as specified in the policy.
- (j) The Supplier reserves the right to:
 - (i) review a Credit Facility account at any time;
 - (ii) vary or withdraw a Credit Facility account and Credit Facility limits without notice;
 - (iii) require immediate payment of all outstanding amounts if Credit Facility terms are not maintained;
 - (iv) withhold analytical results until overdue payments are received; and,
 - (v) suspend analysis of new samples while payments are overdue.

11. Additional Charges

- (a) The Supplier may require the Customer to pay Additional Charges in respect of:
 - (i) cancellation of Orders where analysis has commenced or an invoice has been issued, notwithstanding clause 4(c);
 - (ii) management of subcontracted testing;
 - (iii) storage or disposal of samples beyond standard periods;
 - (iv) courier, packing, transport or special handling requirements;
 - (v) Government or council taxes or charges not included in a Quote.
- (b) The imposition of Additional Charges will be:
 - (i) notified to the Customer as soon as practicable;
 - (ii) detailed separately on invoices;
 - (iii) calculated according to the Supplier's current prices and rates; and,
 - (iv) payable in accordance with the payment terms in clause 9.
- (c) The Customer acknowledges that:
 - (i) Additional Charges may be necessary to complete requested analysis;
 - (ii) authorization for Additional Charges may delay completion of analysis; and,
 - (iii) refusal to authorize Additional Charges may result in incomplete analysis or qualified results.

12. Acceptance of Deliverables

- (a) If the Customer fails to advise the Supplier in writing of any fault in Deliverables or failure of Deliverables to accord with the Customer's Order within 48 hours of delivery, the Customer is deemed to have accepted the Deliverables and to have accepted that the Deliverables are not faulty and accord with the Customer's Order. This includes but is not limited to:
 - (i) analytical results and reports;
 - (ii) data interpretation and technical advice; and,
 - (iii) any incidental services or materials supplied in connection with the Deliverables.
- (b) The Customer acknowledges that:
 - (i) results are specific to the samples provided;
 - (ii) acceptance of results does not imply acceptance of any interpretation or advice provided unless specifically agreed;
 - (iii) the 48-hour review period is provided to verify:
 - (A) sample identification and traceability;

- (B) that the requested analyses have been performed;
- (C) that results are presented in the required format; and,
- (D) that any specific reporting requirements have been met.
- (iv) notwithstanding this initial review period, technical concerns about analytical accuracy may be raised through the re-testing process detailed in clause 6(i).
- (c) Nothing in this clause affects the Customer's rights for any alleged failure of a consumer guarantee under the ACL.

13. Samples, results and usage rights

- (a) Physical samples:
 - (i) remain the property of the Customer at all times;
 - (ii) are handled and stored by the Supplier with reasonable care, but the Supplier is not liable for any loss or deterioration;
 - (iii) may be consumed or altered during analysis;
 - (iv) will be disposed of in accordance with clause 5 (Sample management and handling).
- (b) Analytical Results:
 - (i) raw analytical data is factual information about the Customer's samples;
 - (ii) interpreted results incorporate the Supplier's proprietary methods and knowledge;
 - (iii) are provided subject to payment of all amounts owing to the Supplier;
 - (iv) are specific to the samples provided and testing conducted.
- (c) Usage rights and restrictions:
 - (i) prior to payment in full:
 - (A) results are provided for verification purposes only;
 - (B) results must be kept confidential;
 - (C) no usage rights are granted; and,
 - (D) the Supplier may notify third parties that results are unauthorized.
 - (ii) upon payment in full
 - (A) the Customer may use results for regulatory compliance and internal business purposes;
 - (B) any commercial exploitation requires written agreement from the Supplier; and,
 - (C) all usage remains subject to the intellectual property provisions in clause 14 (Intellectual Property Rights).

- (d) The Customer acknowledges that:
- (i) analytical results and reports are specific to the samples provided and testing conducted;
 - (ii) interpreted results incorporate the Supplier's proprietary methods, processes, and knowledge; and,
 - (iii) any advice, interpretation, or analysis provided with analytical results remains the intellectual property of the Supplier while granting the Customer a perpetual license to use such interpretations for their intended purpose, subject to the limitations in clause 19 (Exclusions and limitation of liability).

14. Intellectual Property Rights

- (a) The Customer warrants that:
- (i) it has all necessary rights and authorities to provide samples for analysis and request the Services;
 - (ii) any information, data, or materials provided to the Supplier do not infringe any third party's Intellectual Property Rights; and,
 - (iii) it will indemnify the Supplier against all Losses incurred due to any breach of these warranties.
- (b) Unless specifically agreed in writing between the Supplier and the Customer, the Supplier retains all Intellectual Property Rights in:
- (i) its analytical methods, procedures, and techniques;
 - (ii) its quality systems and standard operating procedures;
 - (iii) its testing protocols and validation methods;
 - (iv) its data processing and analysis techniques;
 - (v) its interpretation methodologies and analytical frameworks;
 - (vi) any improvements or modifications to its methods developed during the provision of Services; and,
 - (vii) any other technical or operational knowledge developed or used in providing the Services.
- (c) The Customer retains ownership of:
- (i) its confidential information and trade secrets disclosed to the Supplier;
 - (ii) the raw analytical data generated from testing its samples;
 - (iii) any pre-existing Intellectual Property Rights in materials provided to the Supplier.

- (d) For interpreted results that incorporate the Supplier's proprietary methods or knowledge:
 - (i) the Customer receives a perpetual, non-exclusive licence to use such interpreted results for their intended purpose;
 - (ii) the Supplier maintains ownership of the interpretation methodologies and frameworks used;
 - (iii) the Customer may use the interpreted results for regulatory compliance and internal business purposes; and,
 - (iv) any commercial exploitation of the interpreted results requires written agreement from both parties.
- (e) The Customer must not, without the Supplier's prior written consent:
 - (i) reverse engineer or attempt to derive the Supplier's analytical or interpretation methods;
 - (ii) use the results or interpretations for method development or validation purposes;
 - (iii) publish or commercially exploit the results or interpretations in a way that reveals the Supplier's confidential methodologies;
 - (iv) allow any third party to access or use the interpreted results except as permitted under these terms; and,
 - (v) modify or create derivative works from the Supplier's interpretations or analytical frameworks.
- (f) The Supplier may use anonymized and aggregated data derived from services provided to the Customer for internal research, quality assurance, and marketing purposes, provided that such use does not identify the Customer or disclose confidential information.

15. Warranties

- (a) The Supplier warrants that all Services will be performed:
 - (i) in accordance with documented quality systems and standard operating procedures;
 - (ii) by qualified personnel in a professional manner; and,
 - (iii) in compliance with relevant industry standards and accreditation requirements where applicable.
- (b) The Customer acknowledges that:

- (i) analytical results may be subject to measurement uncertainty and method limitations;
 - (ii) any advice, interpretation or recommendations provided are based on analytical results and professional expertise but should be validated by the Customer for their specific application; and,
 - (iii) variations in sample composition, matrix effects, or analytical requirements may affect results and may incur Additional Charges.
- (c) The Customer warrants that:
- (i) all samples provided for analysis are representative, properly labeled, and safely packaged;
 - (ii) all necessary safety information and handling instructions are provided with hazardous or dangerous samples; and,
 - (iii) it has all necessary rights and authorities to request the Services and provide the samples for analysis.
- (d) The Customer indemnifies the Supplier against any loss, damage or liability arising from:
- (i) hazardous, dangerous or unsuitable samples provided without appropriate warning or handling instructions;
 - (ii) use of analytical results or recommendations in a manner not intended or advised by the Supplier; and,
 - (iii) any breach of the Customer's warranties under this clause.
- (e) Nothing in these warranties excludes, restricts or modifies any consumer guarantee, right or remedy conferred on the Customer by the Australian Consumer Law or any other applicable law that cannot be excluded, restricted or modified by agreement.

16. Agency and assignment

- (a) The Customer agrees that the Supplier may at any time appoint or engage an agent to perform an obligation of the Supplier arising out of or pursuant to these terms of trade, including but not limited to:
- (i) subcontracting specific analytical tests to approved external laboratories;
 - (ii) engaging specialist consultants for technical interpretations;
 - (iii) arranging sample transport or storage services; and,
 - (iv) utilising third-party quality assurance services.
- (b) The Supplier has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these

terms of trade provided that the assignee agrees to assume any duties and obligations of the Supplier owed to the Customer under these terms of trade.

- (c) The Customer is not to assign, or purport to assign, any of its obligations or rights under these terms of trade without the prior written consent of the Supplier. This includes, but is not limited to:
- (i) the right to receive analytical results;
 - (ii) licenses to use interpreted results;
 - (iii) access to the Supplier's analytical methods or processes; and,
 - (iv) ongoing service arrangements or credit accounts.

17. Default by Customer

- (a) Each of the following occurrences constitutes an event of default:
- (i) the Customer breaches or is alleged to have breached these terms of trade for any reason (including, but not limited to, defaulting on any payment due under these terms of trade) and fails to remedy that breach within 14 days of being given notice by the Supplier to do so;
 - (ii) the Customer, being a natural person, commits an act of bankruptcy;
 - (iii) the Customer, being a corporation, is subject to:
 - (A) a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
 - (B) a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the Customer's property and undertaking;
 - (C) the entering of a scheme of arrangement (other than for the purpose of restructuring); and
 - (D) any assignment for the benefit of creditors;
 - (iv) the Customer purports to assign its rights under these terms of trade without the Supplier's prior written consent; or
 - (v) the Customer ceases or threatens to cease conduct of its business in the normal manner.
- (b) Where an event of default occurs, except where payment in full has been received by the Supplier, the Supplier may:
- (i) terminate these terms of trade;
 - (ii) terminate any or all Orders and Credit Facilities (if any) with the Customer;
 - (iii) refuse to provide further Deliverables;

- (iv) withdraw any certification, analytical results, or compliance statements provided; and,
 - (v) retain (where applicable) all money paid by the Customer on account of Deliverables or otherwise.
- (c) In addition to any action permitted to be taken by the Supplier under clause 17(b), on the occurrence of an event of default all invoices will become immediately due and payable.

18. Termination

- (a) In addition to the express rights of termination provided in these terms of trade, a party may terminate these terms of trade by giving 30 days written notice to the other party.
- (b) Upon termination:
 - (i) any analyses in progress will be completed if technically feasible;
 - (ii) results for completed analyses will be provided subject to payment;
 - (iii) the Customer remains liable for Services performed up to the termination date;
 - (iv) samples will be disposed of in accordance with clause 5 unless alternative arrangements are agreed.
 - (v) any ongoing service arrangements or credit facilities cease; and,
 - (vi) new Orders will require new acceptance of these terms of trade and are subject to the Supplier's acceptance.
- (c) Termination does not affect:
 - (i) the validity of any analytical results previously provided;
 - (ii) any intellectual property rights under clause 14 (Intellectual Property Rights);
 - (iii) confidentiality obligations;
 - (iv) payment obligations for Services or other Deliverables rendered or provided.
- (d) Following termination:
 - (i) any new Order constitutes an offer to enter into a new agreement on these terms of trade;
 - (ii) the Supplier may accept or decline any new Order in its absolute discretion;
 - (iii) no new Orders will be processed until these terms of trade are expressly accepted again by both parties; and,
 - (iv) previous termination may be considered in determining whether to accept new Orders.

19. Exclusions and limitation of liability

- (a) The Customer expressly agrees that use of the Deliverables is at the Customer's risk. To the full extent allowed by law, the Supplier's liability for breach of any term implied into these terms of trade by any law is excluded.
- (b) All information, specifications and analytical results provided by the Supplier in relation to the Services are approximations only and, subject to any guarantees under the ACL, small deviations or variations from them which do not substantially affect the Customer's use of the Deliverables will not entitle the Customer to reject the Deliverables upon delivery, or to make any claim in respect of them. This includes but is not limited to:
 - (i) measurement uncertainty inherent in analytical methods;
 - (ii) variations due to sample matrix effects;
 - (iii) minor deviations in detection limits;
 - (iv) normal analytical variation between duplicate analyses.
- (c) Subject to any non-excludable guarantees, conditions, warranties or rights under the ACL or other applicable law, and subject to the limitations in clause 15 (Warranties), the Supplier excludes all other guarantees, conditions, warranties or rights which might otherwise be implied. Where permitted by law, the Supplier's liability for any breach of a non-excludable guarantee, condition, warranty or right is limited, at the Supplier's option, to:
 - (i) in the case of Services:
 - (A) supplying the Services again; or
 - (B) payment of the cost of having the Services supplied again; and,
 - (ii) in the case of goods:
 - (A) replacement of the goods or supply of equivalent goods;
 - (B) repair of the goods;
 - (C) payment of the cost of replacing the goods or acquiring equivalent goods; or,
 - (D) payment of the cost of having the goods repaired.
 - (iii) Any advice, recommendation, information, assistance or service given by the Supplier in relation to the Deliverables is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. The Supplier does not accept any liability or responsibility for any Loss suffered as a result

- of the Customer's reliance on such advice, recommendation, information, assistance or service.
- (iv) Where the Customer is acquiring Deliverables for business purposes, the Customer acknowledges that the provisions of the ACL do not apply to the supply of Deliverables that are not of a kind ordinarily acquired for personal, domestic or household use or consumption.
 - (v) Notwithstanding the above limitations, nothing in these Terms excludes, restricts or modifies any consumer guarantee, right or remedy conferred on the Customer by the Australian Consumer Law or any other applicable law that cannot be excluded, restricted or modified by agreement.
- (d) Any advice, recommendation, information, assistance or service given by the Supplier in relation to Deliverables, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. The Supplier does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- (e) To the fullest extent permissible at law, the Supplier is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Deliverables, whether based on terms of trade, negligence, strict liability or otherwise, even if the Supplier has been advised of the possibility of damages.
- (f) Exclusion of Liability for Customer Decisions:
- (i) The Supplier shall not be liable for any Loss arising from the Customer's use or interpretation of analytical results, Deliverables, or consultancy advice, except to the extent required by law; and,
 - (ii) The Customer acknowledges that decisions based on results or advice provided by the Supplier are made at the Customer's sole risk.
- (g) The Customer acknowledges that:
- (i) analytical results are specific to the samples provided and testing conducted;
 - (ii) the Supplier makes no warranty about the suitability of results for any particular purpose;
 - (iii) interpretation and application of results or other information is the Customer's responsibility;

- (iv) regulatory compliance decisions based on results are the Customer's responsibility.
- (h) The Customer acknowledges that the Deliverables are not for personal, domestic or household purposes.
- (i) The ACL may give to the Customer certain consumer guarantees which cannot be excluded, restricted or modified. Nothing in these terms of trade excludes, restricts or modifies any such consumer guarantee, right or remedy.

20. Indemnity

- (a) The Customer indemnifies and keeps indemnified the Supplier, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against the Supplier or, for which the Supplier is liable, in connection with any Loss arising from or incidental to:
 - (i) the provision of analytical Services;
 - (ii) hazardous or dangerous samples submitted without appropriate warnings or documentation;
 - (iii) use of results for purposes not disclosed to or approved by the Supplier;
 - (iv) regulatory decisions or actions based on the analytical results; and,
 - (v) any breach of these terms of trade by the Customer.
- (b) This includes, but is not limited to, any legal costs incurred by the Supplier in relation to meeting any claim or demand or any party/party legal costs for which the Supplier is liable in connection with any such claim or demand.
- (c) This provision remains in force after the termination of these terms of trade.

21. Force majeure

- (a) If circumstances beyond the Supplier's control prevent or hinder its provision of the Services, the Supplier is free from any obligation to provide the Services while those circumstances continue. The Supplier may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
- (b) Circumstances beyond the Supplier's control include, but are not limited to:
 - (i) unavailability of essential testing equipment or materials;
 - (ii) equipment breakdown or malfunction;
 - (iii) failure or malfunction of laboratory information systems;
 - (iv) strikes, lockouts, riots, natural disasters, fire, war, acts of God;
 - (v) government decrees, proclamations or orders;

- (vi) transport difficulties;
- (vii) power, water or other utility disruptions; and,
- (viii) loss of laboratory accreditation or licensing.

22. Dispute resolution

- (a) If a dispute arises between the Customer and the Supplier, the following procedure applies:
 - (i) A party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in clause 22 (Dispute resolution).
 - (ii) A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with clause 22 (Dispute resolution).
 - (iii) A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in clause 22 (Dispute resolution).
- (b) If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within 30 Business Days (or other period as agreed).
- (c) Unless otherwise agreed by the parties, any dispute that cannot be settled by negotiation between the parties or their representatives, the parties expressly agree to endeavour to settle the dispute through the South Australian Small Business Commission, and if subsequently required, by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation which operate at the time the matter is referred to ACDC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into these terms of trade. This paragraph survives termination of these terms of trade.
- (d) The parties must commence mediation within 14 Business Days of referral to ACDC. The mediator's fees, venue costs, and other direct mediation expenses shall be borne equally by the parties unless otherwise agreed in writing. The selection of the mediator shall be made within 7 Business Days of the referral through the following process:

- (i) ACDC shall nominate three qualified mediators from their panel;
 - (ii) each party may strike one nominee from the list within 3 Business Days;
 - (iii) if more than one nominee remains, ACDC shall make the final selection.
- (e) The mediation shall take place in the capital city of the state or territory where the Supplier's registered office is located, unless otherwise agreed by both parties.
- (f) The parties may agree to conduct mediation or other dispute resolution proceedings by electronic means, including video conference or other online platforms, in lieu of attending in person at the location specified in clause 22(e).
- (g) Despite the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these terms of trade.
- (h) The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

23. Miscellaneous

- (a) These terms of trade are governed by the laws of the state or territory where the Supplier's registered office is situated and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state or territory.
- (b) These terms of trade and any Quotes and written variations agreed to in writing by the Supplier represent the whole agreement between the parties relating to the subject matter of these terms.
- (c) These terms of trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (d) In entering into these terms of trade, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of these terms of trade.
- (e) If any provision of these terms of trade at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.

- (f) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (g) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote (or as varied pursuant to this paragraph) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Quote; sent by fax to the fax number of the addressee specified in the relevant Quote, with acknowledgment of receipt from the facsimile machine of the addressee or sent by email to the email address of the addressee specified in the relevant Quote with acknowledgement of delivery.
- (h) A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by fax or email before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- (i) A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.
- (j) Privacy and data protection obligations between the parties are governed by the Supplier's Privacy Policy, available at <https://microbelabs.com.au/privacy/>. The Privacy Policy forms part of these terms of trade and should be read in conjunction with them. In the event of any inconsistency between the Privacy Policy and these terms of trade regarding privacy and data protection matters, the Privacy Policy will prevail to the extent of the inconsistency.