

**General Terms & Conditions of Sale (Eurofins Agrosience Services NZ Ltd / Eurofins Agrosience Testing NZ Ltd)**

**1. Area of Application**

1.1. All orders accepted by Eurofins Agrosience Services NZ Ltd / Eurofins Agrosience Testing NZ Ltd (Eurofins | agrosience services / Eurofins) or any of its subsidiaries or affiliates (collectively "EA") will be governed by these General Terms and Conditions (the "Terms and Conditions"), including orders placed by telephone which have not been confirmed in writing and orders made by delivery of samples. A contract with these Terms and Conditions comes into being when an order that has been placed with EA is accepted by EA. An order placed with EA is considered as accepted by EA when (a) EA proceeds to fulfil that order, without need for any written confirmation from EA or (b) EA accepts the order in writing.

1.2 These Terms and Conditions supersede and replace all prior verbal or written price quotations and agreements between the parties and, unless specifically indicated otherwise therein, take precedence over all conflicting or inconsistent provisions of subsequent written agreements between the parties. No officer, (other than the Chief Executive Officer of EA), employee, agent or subcontractor of EA has the authority to alter or waive any of these Terms and Conditions or to make any representation which conflicts with or purports to override any of these Terms and Conditions; and no such alteration, waiver or representation shall be binding upon EA, unless it is in writing and signed by the Chief Executive Officer of EA.

**2. Placement of Order**

2.1 A customer's order will be valid only if it is sent by mail, e-mail or fax or other electronic message on the letterhead of the customer or by using an EA approved project acceptance form or sample dispatch sheets or electronic order forms. The customer must confirm in writing orders given by telephone immediately after they are made and will be deemed to have placed an order if the customer sends samples to EA quoting the customer reference. EA is not obligated to start any work unless the order is clear and it has been provided all required information.

2.2 Unless specifically accepted in writing and signed by the Chief Executive Officer of EA, any terms and conditions of purchase proposed or submitted by a customer at any time (including, but not limited to, terms or provisions in the customer's purchase order, instructions or other document) which differ from these Terms and Conditions are rejected as a material alteration of these Terms and Conditions and shall be of no force or effect. Furthermore, special terms or conditions of prior orders, including special pricing, will not automatically apply to subsequent orders. Each order accepted by EA will be treated as a separate contract between EA and the customer. A request for additional services will be treated as a new order or an order extension and may postpone estimated delivery or reporting date accordingly.

2.3 EA may employ any sub-contractor for the purpose of fulfilling any agreement entered into by EA. Where any such sub-contracting outside the EA group is proposed, EA will inform the customer in writing.

**3. Price and Terms of Payment**

3.1 If the acknowledgment of an order does not state otherwise, EA' prices are inclusive of

all amounts including disbursements as are necessary to fulfil the order, but do not include variable or additional costs or disbursements listed in the quotation or arising during the study and following agreement with the customer, which will be invoiced and must be paid in full by the customer.

3.2. Prices are exclusive of all applicable taxes (including sales, use and goods and services tax) and are based on tariffs in force at the day of the remittance of the offer to the customer. Applicable taxes are those in force at the date of invoicing.

3.3 Unless specifically agreed otherwise by EA in its acceptance of an order, payment of all invoices is due strictly within 30 days of the invoice date. Any dispute about invoices must be raised within 30 days of the invoice date. The challenge of an analytical result or study will not entitle a customer to defer payment. Any invoice which remains outstanding after the due date, may be additionally charged with an administrative fee of Seventy Five Dollars (\$75) and may carry interest at the rate of two percent (2%) per month calculated on a daily basis.

3.4 In case of the cancellation of an order by the customer, the value of works that have already been performed and inevitable cancellation charges shall be paid by the customer. The minimum cost of the cancellation of an order shall amount to 10% of the value of the order if no test or study plan has been prepared; at least 25% if a plan has been prepared and the experimental phase is yet to commence, between 25 and 75%, regarding the progress and scope of the test plan (as determined by EA in its absolute discretion), in case of cancellation during the experimental phase and a minimum of 75% in case of cancellation after the completion of the experimental phase.

3.5 The invoice settlement method is cheque, bank transfer or direct debit. Any other method of payment must receive prior agreement from EA. The customer undertakes to provide bank account details.

3.6 EA is entitled to require payment of up to 100% of the quoted order price as a condition of acceptance.

#### **4. Duties of Customer in Delivering Samples or Materials**

4.1 The samples or materials must be in a condition that allows the performance of the study or test technically and legally, and makes the service possible without difficulty.

4.2 The customer must ensure, and hereby warrants, that EA is informed in advance if any sample or materials poses any danger, including on its site, during transportation, in the laboratory or otherwise to EA premises, instruments, personnel or representatives. In case of default, the customer shall be responsible for, and indemnifies EA against, all costs, damages, liabilities and injuries that may be caused to or incurred by EA or its personnel or representatives if the information was not available or otherwise in relation to any breach of this clause by the customer.

#### **5. Property Rights on Sample Material and Storage**

5.1 All samples become the property of EA to the extent necessary for the performance of the order. Unless the customer pays for storage, EA shall have no obligation or liability for samples sent to EA for storage. If the customer pays for storage, EA will take commercially reasonable steps to store the samples, according to professional practice.

5.2 EA can dispose of or destroy samples after the analysis has been performed, unless EA and the customer have agreed in writing on the terms of further EA retention of the sample. EA can dispose of or destroy the samples in case of outstanding payments or study finalisation 1 month after customer notice. Should an extra cost for EA arise to comply with any regulation (for example, with respect to disposal of hazardous waste) this will be charged to the customer. If the customer requests the return of unneeded sample material, EA will return them to the customer, at the customer's cost and risk.

## **6. Delivery Dates, Turnaround Time**

Delivery dates and turnaround times are estimates and do not constitute a commitment by EA. Nevertheless, EA shall make commercially reasonable efforts to meet its estimated deadlines.

## **7. Transfer of Property**

7.1 Title in any analysis results, products, equipment, software or similar supplied by EA to the customer will remain with EA until all invoices in respect thereof have been paid by the customer in full, and until such full payment, the customer shall have no property rights or other rights to use them. In addition, even if EA has accepted and begun to fulfil an order, EA has the right at any time stop processing that order and to stop doing any work for a customer if that customer is late in paying any amount due to EA, whether for that or any other order.

7.2 Even after payment in full by the customer, EA shall retain the right to store data files (as copies or originals) in order to fulfil legal requirements (e.g. Good Laboratory Practice (GLP) or Good Experimental Practice (GEP) archiving).

## **8. Limited Warranties and Responsibilities**

8.1 Orders are handled in the conditions available to EA in accordance with the current state of technology and methods developed and generally applied by EA and the results may not always be 100% exact and/or relevant. Analyses, interpretations, assessments, consulting work and conclusions are prepared with a commercially reasonable degree of care but EA cannot guarantee that these will always be correct or absolute. This limited warranty expires six months after the delivery date of the result, report or other agreed product, if the acknowledgement of the order does not specifically state otherwise. In all cases, the customer must independently verify the validity of any results, interpretations, assessments and conclusions supplied by EA, if it wishes to rely on the same in respect of matters of importance and shall do so at its own risk.

8.2 Each report relates exclusively to the phase performed by EA. If EA has not expressly been mandated and paid for the definition of the study plan, but has carried out the phases commissioned in accordance with the design of the customer or a third party, EA shall not bear any responsibility if the study performed prove to be insufficient or inappropriate.

8.3 The customer warrants and represents to EA that all samples sent to EA for analysis are safe and in a stable condition and undertakes to indemnify EA for any losses, injuries, claims and costs which EA, or its personnel, may suffer as a result of any sample not being in a safe or stable condition, notwithstanding that the customer may have given an indication on the sample or any order form of any perceived problem with the sample. The customer must always inform EA in writing prior to shipment and label the packaging,

samples and/ or containers appropriately, if the samples are dangerous or otherwise of a hazardous nature.

8.4 Unless explicitly agreed in writing by all parties, the contractual relationship shall be exclusively between the customer and EA. There shall be no third party beneficiary or collateral warranty relating to any order and the customer shall indemnify and hold EA harmless from and against any and all third party claims in any way relating to the customer or to the order by the customer.

## **9. Limitation of Liability**

9.1 Except to the extent that such limitations are not permitted or void under applicable law: (a) EA (together with its workers, office clerks, employees, representatives, managers, officers, directors, agents and consultants and all EA partners and affiliates, the "EA Indemnifying Parties") shall be liable only for the proven direct and immediate damage caused by the EA Indemnifying Parties' wilful misconduct in connection with the performance of an order and then, only if EA has received written notice thereof not later than six (6) months after the date of the customer's knowledge of the relevant claim (unless any longer period is prescribed under applicable law and cannot be contractually limited), and (b) in all cases (whether arising under contract, tort, negligence, strict liability, through indemnification or otherwise), the EA Indemnifying Parties' liability per claim or series of related claims, and the customer's exclusive remedy, with respect to EA' services which fall under these Terms and Conditions, shall be limited to the lesser of: (i) the direct and immediate loss or damage caused by the EA Indemnifying Parties' wilful misconduct in connection with the performance of the order and (ii) ten times the amount EA actually received from the customer in relation to the order up to fifteen thousand dollars (\$15,000).

9.2 The EA Indemnifying Parties shall not be liable for any indirect, direct or consequential loss or damage (including, but not limited to, loss of business, profits, goodwill, and business opportunities or similar) incurred by the customer or by any third party.

9.3 It is a condition of EA' acceptance of an order that the customer indemnifies the EA Indemnifying Parties for any losses, injuries, claims and costs which the EA Indemnifying Parties may suffer as a result of arising from or in any way connected with its role under or services or products or software provided pursuant to these Terms and Conditions, except to the extent that the EA Indemnifying Parties are required to bear them according to these Terms and Conditions, and by placing an order the customer agrees to provide that indemnification.

9.4 If delivery is not refused or/and the customer does not notify EA of refusal of delivery or rejection of service, the customer shall not be entitled to reject the service and EA shall have no liability for such defect or failure, and the customer shall be bound by the results of the service supplied by EA. Where any valid claim in respect of the service which is based on any defect in the quality or condition of the service or any failure to meet specification is notified to ES in accordance with these conditions, EA shall be entitled to replace the service (or the part in question) free of charge or, at the EA' sole discretion, refund to the customer the price of the service (or a proportionate part of the price), but EA shall have no further liability to the customer to pay the price as if the service had been delivered in accordance with the contract. In case of multidisciplinary projects or services only the affected segment needs to be repeated or refunded.

## **10. Repeated Testing or Analysis**

Objections to test validity or results have to be made within thirty (30) days after the

customer receives the relevant information or results. EA has the right to repeat the affected phase of a study for the same conditions. However, unless it would appear that the results of the repeated analysis do not match those of the first one, the customer shall bear the costs of the repeat testing or review. Where a study is rejected by authorities for non-compliance with regulations or any guidelines which were not in force at the time EA was instructed to carry out the services, EA may agree to repeat the study but shall be entitled to charge additional costs.

## **11. Force Majeure**

11.1 EA cannot be held liable for delays, errors, damages or other problems caused by events or circumstances which are unforeseen or beyond EA's reasonable control, or which result from compliance with governmental requests, laws and regulations.

11.2 EA shall also be at liberty to cancel or suspend the contract without incurring any liability to the customer or being deemed to be in breach of the contract by reason of any delay in performing, or failure to perform, any of EA's obligations in relation to the service if the delay or failure was due to any cause described below:

- physical conditions adversely affecting crop growth
- secondary weed/pest/disease problems
- nonoccurrence of subject matter of the study (e.g. the pest, beneficial)
- unforeseen activities of the grower or his agents
- acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority
- import or export regulations or embargoes

## **12. Confidentiality**

12.1 EA shall be entitled to save and process personal or commercial data received from the customer, no matter whether such data stem from the customer directly or from a third party and shall use all commercially reasonable efforts to keep such data confidential, in compliance with applicable law.

12.2 Methods and reports contain intellectual property of EA. They are prepared and supplied exclusively for the use of the customer to achieve the customer's objectives and should not be divulged to a third party (competitors, press) for other purposes without the prior written agreement of EA. In addition, the customer is required to maintain secrecy concerning all services provided by EA and their results as well as the composition of products and software delivered by EA. Analysis results are not to be publicly disclosed or exploited without the prior written consent of EA. Even if such written consent is given by EA, the customer (a) remains responsible for any consequences due to the divulgence of such results to a third party and any reliance of such third party on such results and (b) hereby agrees to indemnify the EA Indemnified Parties against any liability which the EA Indemnified Parties may incur as a result of such divulgence or any such third party reliance.

## **13. Disclaimer and Miscellaneous**

**13.1 ALL TERMS, CONDITIONS AND WARRANTIES (INCLUDING ANY IMPLIED WARRANTY AS TO MERCHANTABILITY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE) AS TO THE MANNER, QUALITY AND TIMING OF THE TESTING SERVICE AND RESULTS, EQUIPMENT, PRODUCTS OR SOFTWARE SUPPLIED BY EA ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE**

**WARRANTIES, OBLIGATIONS AND LIABILITIES OF EA CONTAINED IN THESE TERMS AND CONDITIONS ARE EXCLUSIVE.**

13.2 These Terms and Conditions may be modified in writing from time to time by EA and orders will be governed by the most recent version of these Terms and Conditions that is in effect at the time EA accepts the order.

13.3 Should a court waive, limit or hold to be invalid, illegal or unenforceable any part of these Terms and Conditions, all other parts shall still apply to the greatest extent possible.

13.4 Failure by either EA or the customer to exercise the rights under these Terms and Conditions shall not constitute a waiver or forfeiture of such rights.

**14. Governing Law/ Jurisdiction**

14.1 The provisions of the Consumer Guarantees Act 1993 shall not apply to the services provided by EA to the customer.

14.2 The construction, validity and performance of these Terms and Conditions shall be governed by the laws and the courts of New Zealand (including in cases involving multiple counsels for the defence or third-party respondents), which shall have exclusive jurisdiction.