

# TERMS AND CONDITIONS

## 1. GENERAL

- 1.1. All Services to be provided by Eurofins NZ Laboratory Services Ltd (Eurofins) will be governed by these Terms and Conditions (Terms) as varied by any special terms agreed to by Eurofins in writing (Special Terms).
- 1.2. No order for Services or any Special Terms relating to that order will be deemed to have been accepted by Eurofins unless Eurofins has confirmed acceptance of the order or the Special Terms in writing. In these Terms "in writing" means any confirmation by Eurofins in writing delivered personally or sent by post, facsimile or email.
- 1.3. These Terms will prevail over any other terms unless Eurofins specifically confirms acceptance of Special Terms in writing. Unless otherwise agreed to by Eurofins in writing any Special Terms shall apply only to that specific order.

## 2. SERVICES

- 2.1. In these Terms "Services" means food, or pharmaceutical product testing, environmental laboratory testing or audit and assurance services that Eurofins agrees to provide to the Customer in writing.
- 2.2. Eurofins will provide the Services using reasonable care and skill, adopting such methods as Eurofins considers appropriate and in accordance with any Special Terms agreed to by Eurofins in writing.
- 2.3. The Services will be undertaken in the time period agreed to between Eurofins and the Customer and in the absence of agreement within a reasonable time. Eurofins will not be liable for any delay in providing the Services.
- 2.4. Any reports issued by Eurofins relate exclusively to the samples provided by the Customer and do not relate to the lot from which samples have been obtained.
- 2.5. Where Eurofins has agreed to provide audit and assurance services, the audit report issued by Eurofins shall relate only to the scope of services agreed to in writing by Eurofins (either in the quotation, the engagement letter or an agency agreement).
- 2.6. Eurofins may delegate the performance of part or all of the Services to a third party and the Customer authorises the release of all information necessary to the third party for the provision of the Services.
- 2.7. Any reports provided by Eurofins can only be relied upon by the party to whom the report is addressed and cannot be relied on by any other party. By providing the Services (and any reports) Eurofins will not be deemed to have assumed any obligation or liability that the Customer has to a third party.

## 3. OBLIGATIONS OF THE CUSTOMER

- 3.1. To enable Eurofins to provide the Services, the Customer will:
  - (a) ensure that adequate quantities of the samples and materials are provided in a safe condition. Eurofins may (at the Customer's cost) undertake initial tests on the samples, material or the site to ensure that it is safe and appropriate for Eurofins to provide the Services;
  - (b) ensure that sufficient information instructions and documentation is provided;
  - (c) where appropriate provide safe and secure access to the site and access to the Customer's representatives;
  - (d) ensure that all necessary measures are taken to ensure safety in the performance of the Services including (without limitation) complying with all regulations relating to labelling, transportation of the samples and materials, access to the sites, treatment of hazardous materials;

- (e) inform Eurofins in advance of any hazard or danger, actual or potential associated with any samples or testing;
- (f) immediately inform Eurofins of any change that could affect the provision of the Services or the safety of its personnel.

## 4. FEES AND PAYMENT

- 4.1. The Customer will pay the fees agreed between the Customer and Eurofins for the Services. If the parties have not agreed on the fee payable for the Services than the Customer will pay Eurofins standard fees for the provision of the Services.
- 4.2. Fees are exclusive of GST which will be paid by the Customer.
- 4.3. Unless otherwise agreed in writing all fees quoted are exclusive of all expenses such as travelling costs and any disbursements incurred on behalf of the Customer.
- 4.4. The fees will be paid by the 20th calendar day of the month following the issue of a tax invoice for the Services by Eurofins.
- 4.5. Fees will be paid without deduction, set off or counter claim and the Customer cannot retain or defer payment on account of any dispute with Eurofins.
- 4.6. If the Customer fails to pay any fees when due, Eurofins may:
  - (a) charge interest at the rate of 2% per month calculated on a daily basis for any fees or part of fees outstanding at the due date for payment;
  - (b) commence proceedings for the collection of unpaid fees and the Customer will be liable for all costs incurred by Eurofins (including all legal costs on a solicitor – client basis);
  - (c) withhold the release of any reports until all fees have been paid in full by the Customer;
  - (d) require that part or all of the fees be paid in advance of providing the Services;
  - (e) cease providing the Services to the Customer without notice.
- 4.7. In the event that any unforeseen circumstances or expenses arise in undertaking the Services, Eurofins will endeavour to inform the Customer of any additional costs incurred by Eurofins and unless the Customer advises Eurofins not to undertake any further works, the Customer will be responsible for the additional costs.

## 5. SAMPLES

- 5.1. All samples become the property of Eurofins to the extent necessary for the performance of the Services.
- 5.2. Eurofins will not be required to store samples and may destroy or otherwise dispose of the samples or return the samples to the Customer (at the Customer's cost in all respects) immediately following analysis of the samples.
- 5.3. If the Customer pays for storage of the samples Eurofins will take commercially reasonable steps to store the samples for the agreed period in terms of industry practice.
- 5.4. The Customer acknowledges and accepts that:
  - (a) it is solely responsible for the sampling process and warrants that the sample provided to Eurofins is representative of the lot from which the samples were drawn; and
  - (b) Eurofins expresses no opinion and accepts no liability in respect of the Customer's production process or homogeneity of the sample.

## **6. TITLE TO PROPERTY AND REPORTS**

- 6.1. Eurofins will retain title to any analysis, results, reports or software produced by Eurofins until all fees have been paid by the Customer.
- 6.2. Eurofins will be entitled to store, use, publish or otherwise deal with all analysis, results, reports, or software so long as Eurofins does not identify the Customer, except where required by law.
- 6.3. All intellectual property rights created in the course of the provision of the Services by Eurofins pursuant to this agreement will vest in Eurofins immediately upon creation. If required by Eurofins, the Customer will execute all documents and do all acts and things required to enable the rights to vest in Eurofins.
- 6.4. Any report provided by Eurofins and the copyright contained therein shall be and remain the property of Eurofins and the Customer shall not alter or misrepresent the contents of such documents in any way. The Customer shall be entitled to make copies for its internal purposes only.
- 6.5. The Customer may only reproduce or publish any report by Eurofins in full without alteration. Eurofins name, logo or service marks, or any other means of identification cannot be used in any publication by the Customer unless the Customer has obtained the prior written consent of Eurofins.

## **7. LIMITATION OF LIABILITY**

- 7.1. The Customer acknowledges that the Services are provided using the then current state of technology and methods developed and generally applied by Eurofins and involve analysis, interpretations, consulting work and conclusions. Eurofins shall use commercially reasonable degree of care in providing the Services.
- 7.2. Reports are issued on the basis of information, documents and/or samples provided by, or on behalf of, the Customer and solely for the benefit of the Customer who is responsible for acting as it sees fit on the basis of such reports. Neither Eurofins nor any of its officers, employees, agents or subcontractors shall be liable to the Customer nor any third party for any actions taken or not taken on the basis of such reports nor for any incorrect results arising from unclear, erroneous, incomplete, misleading or false information provided to Eurofins.
- 7.3. Eurofins shall not be liable for any delayed, partial or total non-performance of the Services arising directly or indirectly from any event outside Eurofins control including failure by the Customer to comply with any of its obligations hereunder.
- 7.4. The liability of Eurofins in respect of any claim for loss, damage or expense of any nature and howsoever arising shall in no circumstances exceed the lesser of an amount equal to 3 times the fee paid in respect of the Service which gives rise to such claim or \$15,000.00.
- 7.5. Eurofins shall have no liability for any indirect or consequential loss including, without limitation, loss of production, loss of contracts, loss of profits, loss of business or costs incurred from business interruption, loss of opportunity, loss of goodwill or damage to reputation and cost of product recall (including any losses suffered as a result of distribution of the Customer's products subject of the Services prior to the report being released by Eurofins). It shall further have no liability for any loss, damage or expenses arising from the claims of any third party (including, without limitation, product liability claims) that may be incurred by the Customer.
- 7.6. In the event of any claim, the Customer must give written notice to Eurofins within 60 days of discovery of the facts alleged to justify such claim and, in any case, Eurofins shall be discharged from all liability for all claims for loss, damage or expense unless proceedings are brought within six calendar months from:

- (a) the date of performance by Eurofins of the Service which gives rise to the claim; or
- (b) the date when the Service should have been completed in the event of any alleged non performance.

7.7. Unless Eurofins explicitly agrees in writing, the Services shall be provided exclusively to the Customer and cannot be relied on by a third party. The Customer will indemnify and hold Eurofins harmless against any and all third party claims relating to the provision of the Services to the Customer.

7.8. The Customer shall be responsible for and indemnifies Eurofins against all costs, damages, liabilities, and injuries that may be caused to or incurred by Eurofins or its personnel or representatives including on the sampling site, during transportation or in the laboratory by the Customer's sample or by sampling site conditions.

## **8. FORCE MAJEURE**

8.1. If Eurofins is prevented from performing or completing the Services for any cause outside Eurofins' control, including, but not limited to, acts of god, war, terrorist activity or industrial action; electricity outage; failure to obtain permits, licenses or registrations; illness, death or resignation of personnel or failure by Customer to comply with any of its obligations the Customer will pay to Eurofins:

- (a) the amount of all non-refundable expenses incurred by Eurofins; and
- (b) a proportion of the fee equal to the proportion of the Services actually carried out (provided that if the Services cannot be performed as a result of an act or omission on the part of the Customer, the Customer will pay the full fee and all expenses incurred by Eurofins),

and Eurofins will be relieved of all responsibility whatsoever for the partial or total non-performance of the Services.

## **9. MISCELLANEOUS**

- 9.1. If any one or more provisions of the Terms are found to be illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
- 9.2. Except as expressly provided in these Terms or the Special Terms, the Customer may not assign or transfer any of its rights without Eurofins prior written consent.
- 9.3. The provisions of the Consumer Guarantees Act 1993 shall not apply to the Services provided by Eurofins to the Customer.
- 9.4. The parties acknowledge that Eurofins provides the Services to the Customer as an independent contractor and that this agreement does not create any partnership, agency, employment or fiduciary relationship between Eurofins and the Customer.
- 9.5. Any failure by Eurofins to require the Customer to perform any of Eurofins obligations under these Terms or Special Terms shall not constitute a waiver of its right to require performance of that or any other obligation.
- 9.6. This agreement is exclusively governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts.
- 9.7. The Terms may be modified in writing from time to time by Eurofins and the order for Services will be governed by the most recent version of these Terms that are in effect at the time Eurofins accepts the order.
- 9.8. Unless Eurofins specifically confirms acceptance in writing, Eurofins will not be bound by any terms and conditions set out in the Customer's purchase order.