

# Scientific Services

## Laboratory testing terms and conditions

### 1. Definitions

**Business Day** means a day other than a Saturday, Sunday, or official holiday in the City of Gold Coast.

**Client** means the entity to which the accompanying quotation, email, letter, fax, or tender is addressed.

**Consequential Loss** means any financial, economic or consequential loss (whether direct or indirect) including, but not limited to, special, indirect, exemplary or punitive damage, damage to goodwill, loss of access to markets, loss of actual or anticipated profit, income or revenue, damage to credit rating, loss of business reputation, future reputation or publicity, loss by reason of any shutdown or non-operation, increased cost of borrowing, capital or finance, loss of anticipated savings, pure economic loss, loss of use of productivity, loss of data, loss of opportunity, loss of business or contract, loss of use, expenses, delay, and any other consequential loss, whether caused by a breach of this Contract, or arising from or in connection with warranty, tort (including negligence), equity, strict liability, product liability, contribution, or statutory liability.

**Confidential Information** means all information in relation to a disclosing party, its business, operations, products, processes, customers, suppliers or contractors which is or might reasonably be considered by the disclosing party to be confidential, including all technical data, formulae, specifications, diagrams, plans, drawings, sketches, designs, business plans and reports, business methods and systems, business records, production information, unpublished financial accounts and reports, discount and supply agreements, subcontractor lists, customer lists, except to the extent that such information is lawfully in the public domain.

**Contract** means the contract between the Council of the City of Gold Coast (Council) and the Client for the supply of the Services.

**Date of Receipt** means the date recorded on a chain of custody form for a sample received by Council from a Client at their premises or a sample collected by Council at a Client's site and received at Council premises.

**Intellectual Property** (IP) means all intellectual property and proprietary rights (whether registered or unregistered) owned by Council prior to performance of the Services, developed by Council in performance of the Services, or developed by Council outside of, or after, performance of the Services, and without limitation includes business names, trade or service marks, any right to have information (including Confidential Information) kept confidential, patents, patent applications, drawings, discoveries, inventions, improvements, trade secrets, technical data, formulae, databases, know-how, logos, designs, design rights, copyright and similar industrial or intellectual property rights.

**NATA** means National Association of Testing Authorities, 7 Leeds Street, Rhodes, NSW 2138. ABN 59 004 379 748.

**Order** means a communication issued by the Client to Council either verbally or in writing or from the physical receipt of samples for analysis based on the Services.

**Price** means the price for the Services and any Supplies identified as such in the accompanying quotation, email, letter, fax, or tender or an amount calculated in accordance with the Schedule of Rates.

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**Report** means any report, finding, result, statement, or certification issued by Council and communicated to the Client. Data only relates to the sample tested.

**Schedule of Rates** means the rates for the Services identified as such in the accompanying quotation, email, letter, fax, or tender.

**Scientific Services** means Scientific Services Laboratory, a business unit of the Council of the City of Gold Coast 135 Bundall Rd Bundall QLD 4217. ABN 84 858 548 460.

**Services** means the services provided by Scientific Services on behalf of Council as described in a quotation, email, letter, fax, or tender.

## 2. Provision of Services

2.1 Placement of an Order by the Client will be deemed an acceptance by the Client for Council to perform the Services under these terms and conditions. These terms and conditions override any other terms and conditions issued during the course of the Services including those on any purchase order or document submitted by the Client.

2.2 Council will carry out the Services with suitably qualified and experienced personnel exercising due care, skill and diligence as would be exercised by a professional service provider in similar circumstances to the highest level of safety...

2.3 Unless specified in the Services, the nominal turnaround time for issuing Reports is ten (10) Business Days from the Date of Receipt of a sample received on a Business Day on Monday to Friday between the hours 8:00 to 16:00. Samples received after 16:00 hours Monday to Friday or on weekends and public holidays are deemed to have a Date of Receipt as the next Business Day.

2.4 Results from some Services may be available to the Client at shorter turnaround times before issuing a final Report, and may be released to the Client as an interim Report. Council reserves the right to impose a surcharge for an interim Report.

2.5 In accordance with NATA requirements, records will be kept for a period of three (3) years, unless otherwise requested by the Client and agreed in writing by Council.

2.6 Council may be required to subcontract all or part of the Services. The Client consents to Council disclosing all information (including Confidential Information) of the Client to the subcontractor that is required to carry out the Services. Council reserves the right to automatically insource any subcontracted Services on achieving equivalent reporting parameters and service levels of subcontracted tests.

2.7 Council will strive to ensure any subcontracted work is performed within the agreed turnaround time, but not be held liable for delays involving events that Council has no control over (including but not limited to industrial action, non-supply of analytical consumables, and non-performance of subcontractors).

2.8 The Client accepts that in carrying out the Services samples may be altered, damaged, lost, or destroyed, and that Council is not liable to the Client or any third party for any samples that are altered, damaged, lost, or destroyed in carrying out the Services.

2.9 Council maintains the following insurances: (a) public and product liability insurance; (b) professional indemnity insurance; (c) workers' compensation insurance; and (d) motor vehicle insurance. In performing the Services, Council will not name or note the Client as an additional insured or interested party in any of the policies of insurance maintained by Council and will not waive any rights of subrogation.

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### **3. Client Responsibilities**

3.1 It is the Client's responsibility to ensure that Services provided by Council are representative of the product or material to be analysed and for retaining any duplicate or control samples and make its own assessment of the suitability for any purpose of the Services, Report, or any other information or advice generated as a result.

3.2 The Client at its own risk uses the contents of a Report and any advice or opinions provided by Council, its employees, or agents in carrying out the Services. The Client will not hold Council, its employees, or agents liable for any loss or damage resulting from the conduct of the analytical services or the use of or reliance upon the contents of a Report.

3.2 The Client must ensure that Council has all information, samples, required assistance, records and access to site facilities that are necessary to perform the Services. Council cannot accept any responsibility for delays because information has not been provided by the Client.

3.3 The Client must notify Council in writing of any safety hazards involved in carrying out the Services, including the safe handling, testing, storage, transport, and disposal of samples and hazards related to the Client's site and infrastructure where Council will be involved in carrying out the Services on the Client's site. Council has the right to refuse to provide part or all of the Services where it determines that carrying out the Services poses a health or safety hazard.

3.4 The Client must take all necessary steps to remove or remedy any known safety or health hazard, obstacles to or anything that is likely to interrupt the performance of the Services by Council.

### **4. Payments**

4.1 Payment terms are strictly 30 days from the date of invoice.

4.2 If a Client terminates a Contract, or an Order is cancelled before commencement of the supply of the Services, the Client must pay to Council an amount equal to 10% of the Price. If a Contract is terminated or an Order is cancelled after commencement of the supply of the Services, the Client must pay to Council the amount equal to the Price of the Services unless otherwise agreed by Council in writing.

4.3 Council reserve the right to review and amend its schedule of rates and fees if changes in response to legislative requirements or variations in tax or excise rates impacts Council' costs.

4.4 Variations to an Order by a Client must be in writing to Council, and may result in additional charges being incurred by the Client. Council will inform the Client in writing of any additional charges, which must be agreed by the Client in writing before the amended Services will be carried out.

### **5. Confidentiality**

5.1 Council retains all intellectual property and associated rights in the Services supplied and in any material or documents supplied with the Services. The Client agrees that it has no right, title, licence, or any interest whatsoever in or to any of Council's intellectual property.

5.2 The Client and Council will not disclose Confidential Information of the other party to any third party without the prior written consent of the other party, unless required by law.

### **6. Limit of Liability**

6.1 To the full extent permitted by law, Council exclude all warranties, terms, conditions, or undertakings whether expressed or implied, in relation to the provision of the Services, Reports or their content. Where

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any legislation implies terms in this agreement which cannot be excluded or modified then such terms shall be deemed to be included. However, to the full extent permitted by law, the Client acknowledges that its sole and exclusive remedy for non-conformance or defective Services is the correction of or the reperformance of the non-conforming or defective Services.

6.2 To the full extent permitted by any applicable laws, Council will not be liable to the Client or any other third party for any special, indirect, or Consequential Loss arising from the Client's use of Council Services or Reports produced by Council.

6.3 The Client acknowledges and agrees that any action, inaction, or decision of the Client in response to a Report will be determined by the Client. Neither Council nor any of its officers, employees, agents, or subcontractors will be liable to the Client or any third party for any action or inaction of the Client in response to a Council Report.

6.4 The Client will indemnify and hold harmless Council, its officers, employees, agents, and subcontractors for any claim whatsoever in relation to any Report arising from unclear, erroneous, incomplete, misleading, or false information provided to, or arising from any incorrect or defective materials or samples provided to Council.

6.5 The Client agrees to release and indemnify and shall continue to release and indemnify Council, its employees or agents from or against all actions, claims, proceedings, or demands (including any costs and expenses in defending or servicing same) which may be brought against it or them, in respect of any loss, death, injury, illness, or damage to persons or property, and whether direct or indirect and in respect of any infringement of any industrial or intellectual property rights, or arising out of the use of or reliance upon a Report produced by Council or the Services provided by Council.

6.6 These terms and conditions are subject to Queensland law.