



## 1. GENERAL

- a) ALS will provide the Services described in the accompanying tender, quotation, letter, fax or email to the Client, which together with these terms and conditions will hereafter be called the 'Agreement'.
- b) This Agreement will be binding to the Client from the date the Agreement is accepted by the Client in the Acceptance section below. However, the placement of an order for or receipt of samples for analysis based on this Agreement will constitute acceptance of the Agreement by the Client.

## 2. PROVISION OF SERVICES

- a) ALS will provide the Services by exercising the same degree of skill, care and diligence that would be exercised by professional service providers in similar circumstances.
- b) The Client acknowledges that it is the Client's sole responsibility to make its own assessment of the suitability for any purpose of the Services, detection limits and confidence intervals inherent in ALS's standard testing methodology, the ALS Report and its contents.
- c) If the Client requires the Services to be performed by specific test method or requires detection limits and/or confidence intervals different to those inherent in ALS's standard testing methodology, then the Client must instruct ALS of such a variation prior to ALS performing the Services.
- d) ALS may transfer samples within its laboratory network to maximise efficiencies and improve turnaround of the samples. No additional cost will be charged to the client for this service optimization measure.
- e) ALS may delegate the performance of all or part of the Services to an agent or subcontractor and the Client consents to ALS disclosing all information (including Confidential Information) of the Client to that agent or subcontractor necessary for the performance of the Service by the agent or subcontractor. Such delegation will be clearly communicated to the client.

## 3. FEES AND PAYMENT

- a) ALS reserves the right to review prices at any time if significant changes to ALS's costs are incurred that are beyond ALS's control, such changes may include, but are not limited to, changes in legislative requirements, Client variations to sample numbers, analytes requested, turnaround required, or reporting requirements.
- b) Subject to approved credit, invoices are payable in full thirty (30) days from the date of invoice (**Due Date**), unless otherwise agreed in writing prior to the placement of an order or submission of samples.
- c) All prices quoted by ALS are exclusive of GST (or other value added tax if relevant) unless stated otherwise.
- d) All fees due and payable after the Due Date (**Outstanding Amount**) will be subject to the payment of interest at a rate of 1.5% per month of the Outstanding Amount from the Due Date up to and including the date of payment, unless ALS and the Client otherwise agree in writing.
- e) The Client will indemnify ALS for any fees incurred by ALS to recover the Outstanding Amount, including any solicitor fees, or collection agency fees.

## 4. LIMITATION OF LIABILITY

- a) To the full extent permitted by law, ALS excludes all warranties, terms, conditions or undertakings (**Terms**), whether expressed or implied, in relation to the Services, the ALS Report, or its contents. Where any legislation implies any Terms in this Agreement that cannot be modified or excluded then, such Terms shall deem to be included. However, to the full extent permitted by law, ALS's liability to the Client for any breach of any Terms that cannot be excluded by law is limited at ALS's option to the re-performance of the Services or the refund of the fee for the Services.
- b) The Client hereby releases and indemnifies and shall continue to release and indemnify ALS, its officers, employees and agents from and against all actions, claims (actual or threatened), 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 (including Consequential Loss), death, injury, illness or damage to persons or property, and whether direct or indirect and in respect of any breach of any industrial or intellectual property rights, howsoever arising out of the use of, reliance on, or benefit of, the Services or any ALS Report, except to the extent that the loss, death, injury, illness or damage to persons or property was directly caused by the negligence, willful acts or omissions of ALS or its employees.
- c) Notwithstanding any other provision in this Agreement, the cumulative liability of ALS under this Agreement to the Client and any third party is limited for any claim for loss or damage whatsoever, whether arising in tort or contract or any other cause of action, to the value of the Services provided by ALS to the Client.
- d) Without limiting the generality of clauses 4.a) and 4.b), it is agreed that, to the full extent permitted by any applicable laws having jurisdiction, ALS will not be liable to the Client or any other person for any special, indirect or Consequential Loss arising from the Client's use of, reliance on, or benefit of, the Services or any ALS Report.
- e) The Client acknowledges that during the performance of the Services, any samples supplied by, or on behalf of, the Client or parts thereof may be altered, lost, damaged or destroyed. ALS will not be liable whatsoever to the Client or any third party for any samples so altered, lost, damaged or destroyed.

## 5. CLIENTS OBLIGATIONS

- a) The Client will ensure that all personnel, information, samples, test materials, access to facilities and infrastructure, assistance, records, documentation and facilities needed by ALS to perform the Services, are available when reasonably required by ALS.



- b) The Client will give written notice to ALS of all known safety or health hazards and special procedures applicable to the performance of the Services, and the safe handling, testing, storage, transport and disposal of samples submitted to ALS (including whether or not the disposal of samples may cause contamination) or the Client's facilities or infrastructure in which ALS is partly or wholly performing the Services. ALS may in its absolute discretion, refuse to provide part or all of the Services where it determines that the provision of part or all of the Services may pose a health or safety hazard.
- c) The Client must take all necessary steps to remove or remedy any known safety or health hazards, or any obstacles to or anything that is likely to interrupt the performance of the Services by ALS.

#### 6. TERMINATION

- a) ALS may suspend or terminate its obligations under this Agreement if (a) monies payable to ALS by the client are outstanding 60 days or more (unless otherwise agreed) after the date of invoice, (b) other substantial breach by the Client of their obligations under the Agreement, which breach is not remedied within 30 days of written notice from ALS requiring the breach to be remedied, (c) by giving the Client 60 days written notice of ALS's intention to terminate.
- b) The Client may terminate its obligations under this Agreement in the event of a substantial breach by ALS of its obligations under the Agreement, which breach has not been remedied within 30 days of written notice from the Client to ALS requiring the breach to be remedied.
- c) If ALS, acting reasonably, suspects that the Client is insolvent or is having difficulties paying its debts as and when they become due, or the Client is insolvent, ALS may give written notice to the Client of ALS's intention to immediately suspend or terminate its obligations under this Agreement.
- d) In the event of termination, ALS is entitled to be paid for all work performed before the date of termination and for any unavoidable commitments entered into by ALS before the date of termination.

#### 7. INTELLECTUAL PROPERTY

- a) All ALS Intellectual Property will remain the property of ALS.
- b) ALS grants to the Client a world-wide, non-exclusive, royalty free licence to use ALS Intellectual Property for the purpose agreed to between the Client and ALS to the extent that it is needed for the enjoyment and benefit of the Services.
- c) ALS Intellectual Property means all intellectual property and proprietary rights (whether registered or unregistered) owned by ALS prior to performance of the Services, developed by ALS in performance of the Services, or developed by ALS outside of, or after, performance of the Services, and without limitation includes business names, trade or service marks, any right to have 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.

#### 8. CONFIDENTIAL INFORMATION

- a) Each party undertakes that it shall not at any time disclose to any third party any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 8 b.
- b) Each party may disclose the other party's Confidential Information:
  - i. to Representatives who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 8a; and
  - ii. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- c) No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

#### 9. REPORTS

- a) Any report, findings, results, statement, certification issued by ALS (ALS Report) is issued on the basis of testing of samples or materials, information, or documents provided by, or on behalf of, the Client. The Client will indemnify and hold harmless ALS, its officers, employees, agents and subcontractors for any claim whatsoever in relation to any ALS Report arising from unclear, erroneous, incomplete, misleading or false information provided to ALS; or arising from any incorrect or defective materials or samples provided to ALS.
- b) Each ALS Report is:
  - i. issued on the testing of samples or specific materials using detection limits and confidence intervals inherent in ALS's testing methodology; and
  - ii. contains ALS's results and opinions (if provided) on those samples or specific materials only.
- c) Each ALS Report is solely for the benefit of the Client, its officers and employees, and subject to the following terms:
  - i. the ALS Report has been commissioned by the Client on the terms and conditions contained in this Agreement;
  - ii. moral rights in the ALS Report are owned by ALS;
  - iii. the ALS Report has been prepared at the request of the Client for the purpose agreed between the Client and ALS. The Client may disclose the report to a third party for that purpose only, but ALS does not accept any responsibility or liability (including, without limitation, liability for negligence) to that third party. Any disclosure to a third party must



be of the whole of the ALS Report, including ALS's disclaimer notice which is substantially the same as the terms outlined in this clause 9.c);

- iv. while ALS has taken all due care to ensure that the information contained in the ALS Report is true and correct and is not misleading or deceptive, neither ALS, nor any of its officers, employees or agents make any representations or warranties, express or implied, other than to the Client, as to the accuracy of the information contained therein. Except insofar as liability under any law cannot be excluded, and subject to clause 4, ALS accepts no responsibility arising in respect of the information contained in the ALS Report for errors or omissions (including responsibility to any person by reason of negligence); and
  - v. ALS reserves its right to review, update or supplement any ALS Report. Any further information will be provided subject to the terms of this Agreement.
- d) The Client will not reproduce or publish extracts of any ALS Report without the prior written consent of ALS, and subject to terms outlined in clause 9.c).
  - e) The Client indemnifies ALS, its directors, employees, agents, consultants, contractors, successors in title and assigns against any claim made against any or all of them by third parties arising out of either the disclosure of any ALS Report, whether directly or indirectly by the Client, to a third party; or any reproduction or publication of an extract of any ALS Report.
  - f) The Client acknowledges and agrees that any action, inaction, or decision of the Client in response to the ALS Report will be determined by the Client. Neither ALS 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 any ALS Report.
  - g) ALS will retain Client data and Confidential Information for 3 years from date of the final ALS Report.

#### 10. SAMPLES

- a) Unless otherwise agreed, sample disposal is the responsibility of the Client. Samples may be collected within 90 days of receiving the ALS Report. Uncollected samples may incur a storage or disposal charge.
- b) For samples, pulps and rejects that are in storage at an ALS facility, warehouse, or at a third-party storage facility subcontracted by ALS, the Client should obtain coverage for fire and theft. The responsibility of ALS for client's goods is strictly limited to exercising the reasonable care and diligence as required by statute. All of ALS other obligations, undertakings, covenants, representations, warranties and conditions, are excluded, unless they are expressly agreed to in writing by an authorized representative of ALS.
- c) Except as provided in clause 10.b) above, the Client's goods are stored at the Client's exclusive risk of loss, damage or delay in delivery whatsoever, including, without limitation, loss, damage or delay caused through (a) any action or failure to act beyond the reasonable control of ALS, (b) ordinary wear and tear in handling, (c) natural deterioration of packing material over time, (d) theft, (e) sprinkler or other water damage, (f) fire.

#### 11. FORCE MAJEURE

- a) If ALS is prevented in whole or in part from performing its obligations by a Force Majeure Event, ALS may suspend performance of those obligations by giving written notice to the Client. Any non-performance or delay in performance resulting from the Force Majeure Event will not be deemed to be a breach of this Agreement.
- b) If a suspension under this clause 11 exceeds 90 days, ALS may immediately terminate the Agreement by written notice to the Client. In the event of termination, ALS is entitled to be paid for all work performed before the date of termination and for any unavoidable commitments entered into by ALS before the date of termination.

#### 12. DEFINITIONS

- a) In this Agreement:
  - i. **ALS** means Australian Laboratory Services Pty Ltd. ACN 009 936 029, and each of its related bodies corporate (as defined in the Corporations Act 2001 (Cth)).
  - ii. **ALS Intellectual Property** means all intellectual property and proprietary rights (whether registered or unregistered) owned by ALS prior to performance of the Services, developed by ALS in performance of the Services, or developed by ALS 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.
  - iii. **ALS Report** has the meaning given to it in clause 9.a).
  - iv. **Client** means the entity to which the accompanying tender, quotation, letter, fax or email is addressed.
  - v. **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, the existence of and terms contained within this quotation, and any commercial information contained within this quotation, except to the extent that such information is lawfully in the public domain.
  - vi. **Consequential Loss** means loss or damage from a breach of contract, tort (including negligence), under statute or any other basis in law or equity including, but without limitation loss of profits, loss of revenue, loss of production, loss or denial of opportunity, loss of access to markets, loss of goodwill, loss of business reputation, future reputation or



publicity, damage to credit rating, loss of use, and indirect, remote, abnormal or unforeseeable loss, or any similar loss whether or not in the reasonable contemplation of the parties at the time of this Agreement.

- vii. **Force Majeure Event** means any event or circumstance beyond the reasonable control of ALS, including without limitation any act of God, strike, boycott, lockout or other industrial disturbance, default of suppliers or sub-contractors, lightning, fire, storm, flood, earthquake, inclement weather, pandemic, act of war (declared or undeclared), blockade, insurrection, riot or other civil disturbance, inability to obtain equipment, labour or essential materials, act of any government or authority, including refusal or delay in obtaining any necessary consent, approval or licence, or accident, explosion or breakage.
- viii. **Services** means the services described in the accompanying tender, quotation, letter, fax or email.

### 13. MISCELLANEOUS

- a) ALS may assign or subcontract the storage and handling of pulps and rejects under this agreement without prior written approval of the Client, excluding transport.
- b) Any provision of this Agreement that is illegal, invalid or unenforceable will be severed to the extent that it is illegal, invalid or unenforceable, with the remainder of the Agreement continuing in full force.
- c) This Agreement is governed by the law of the state or territory in which the Services are provided, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place.