

Terms and Conditions Applying to ACDP's Diagnostic Services.

Signature of submitter (please also print name):

Date of dispatch to ACDP:

Date specimens received at ACDP:

Terms and Conditions Applying to ACDP's Diagnostic Services.

1. Definitions

'ACDP' means the Australian Centre for Disease Preparedness situated at 5 Portarlington Road, Geelong, Victoria, 3220, Australia.

'Client' means the party that is engaging with CSIRO to undertake the test.

'Confidential Information' means all information disclosed in any form or media, which is by its nature confidential or which either of us identify as confidential and all copies, notes and records made of such information.

'CSIRO' means the Commonwealth Scientific and Industrial Research Organisation ABN 41 687 119 230, having its principal office at Limestone Avenue, Campbell, ACT.

'Deliverables' means a report delivering the result of the tests undertaken on the Materials as requested on the front of this page and provided by the Client.

'Materials' means the sample material that needs to be tested, regardless of its form.

'we', 'us' or 'our' means the Client and CSIRO severally.

'you' or 'your' means the Client identified on the cover page.

2. CSIRO Services

2.1 CSIRO will perform the Services to professional standards.

2.2 The knowledge and skills that CSIRO personnel will use to perform the Services have been developed in the course of providing the same or similar services to other clients. CSIRO may develop further knowledge and skills while performing the Services. CSIRO can use such general knowledge and skills for other clients.

2.3 CSIRO will keep copies of any samples reports, computer programs or data that form part of the Deliverables and may reproduce and use such samples, reports, computer programs and data for its own internal research, further test development and record keeping purposes.

2.4 CSIRO will make reasonable efforts to deliver the Deliverables to you by the Delivery Date. If CSIRO is unable to meet the Delivery Date then you will be told of any delay and of the revised delivery date.

3. Your Materials

3.1 You must provide the Materials on time, ensure they are safely transported to and from CSIRO laboratories and are suitable for the Services. If the Materials are damaged, defective, or are otherwise unsuitable and CSIRO performs any part of the Services before discovering the Materials are unsuitable then CSIRO will charge you for any costs it has incurred, including the cost of any additional work required due to the unsuitability of the Materials. The instructions for the correct delivery of the materials are attached to this web Site. Refer- Checklist for submitting blood samples.

3.2 You must ensure that any Materials you provide to CSIRO are: (i) suitably packaged in a container that conforms to IATA Packaging Instruction #650; (ii) labelled with your name and contact details, the contents and the name of the CSIRO Technical Contact; and (iii) labelled with appropriate safety warnings or instructions for their handling, testing, storage, transportation and disposal. You must also advise CSIRO of any hazardous or otherwise dangerous components or properties of the Material.

3.3 If you do not comply with the above and CSIRO has to take measures to safeguard the health and safety of CSIRO staff, CSIRO laboratories or the public, then CSIRO will charge you for the cost of taking these measures.

4. Failure of Material

4.1 Where CSIRO has commenced the Services and determines that it will be unable to complete them using the Materials (for whatever reason, including for example because the Materials are defective, unsuitable or fail any part of any test comprised in the Services) then CSIRO will inform you in writing and may either: i) terminate this Agreement by written notice; or ii) suspend the performance of the Services. In either case, CSIRO may issue an invoice for the work conducted up until suspension or termination which you must pay in accordance with clause 5.

4.2 Where CSIRO suspends performance of the Services, they will remain suspended until: i) you provide CSIRO with replacement Materials; ii) all outstanding invoices issued by CSIRO have been paid; and iii) any additional Fees that will be incurred as a result of the suspension and the need to carry out the Services on the replacement Materials; and any variation to the Delivery Date are recorded between us in writing

5. Payment

5.1 Unless otherwise agreed by the laboratory in advance, you must pay CSIRO the Fee (and any Additional Expenses) in accordance with the Payment Terms. If payment is to be made in full upfront then CSIRO will not start performing the Services until such payment is received. If payment is to be made by instalments following receipt of invoices from CSIRO and you do not pay any invoice on time then CSIRO may stop performing the Services until the outstanding amount is paid.

5.2 The fee does not include any charges that may be imposed on any imported materials by the Australian Quarantine Inspection Service (AQIS) and/or its agents.

5.3 All invoices issued by CSIRO must be paid within 30 days after the invoice date. If an invoice is not paid on time then you must pay interest on the outstanding amount. Interest is calculated daily at the Westpac Bank Indicator Lending Rate plus 2% per annum from the due date until the date the outstanding amount is paid.

5.4 For GST purposes the cover page and any receipts issued by CSIRO are tax invoices. Any additional invoices issued by CSIRO will be in the form of a tax invoice.

5.5 All international conventions that might import contractual terms into this Agreement are excluded, including the United Nations Convention on Contracts for the International Sale of Goods.

5.6 Goods and services supplied to Australian residents or for use in Australia are subject to tax under the GST law. Goods or services supplied to you under this Agreement will be treated as GST-free supplies under the GST law in reliance on your assurances that:

- you are a non-resident for Australian income tax purposes;
- you are not registered or required to be registered for GST purposes in Australia; and
- you require the goods and services solely for use in your business or

operations outside of Australia.

5.7 If goods or services supplied to you are subsequently classified as taxable because any of your assurances are incorrect, you must reimburse CSIRO on demand for the GST payable (including any interest, fine, penalty or other amount imposed upon CSIRO for failing to collect the GST).

5.8 The Fee must be paid to CSIRO in full, without any deduction, withholding, set-off or counterclaim for taxes, excises or duties. If any taxes, excises or duties are imposed then: (i) you will bear and pay all deductions and withholdings of any taxes, excises or duties directly to the relevant authorities; and (ii) separately pay CSIRO enough to ensure that CSIRO receives the full amount of the Fee on the due date.

6. Your Use of Deliverables

6.1 The Deliverables are for the purposes of the providing a diagnostic test result on the Material provided by the Client, and the result of that test is supplied to the Client. CSIRO is not providing the Deliverables or any part of them for any other purpose.

6.2 The test results will relate to the specific sample that is received.

6.3 Except to the extent expressly specified on the cover page, the Application does not include publishing or providing the Deliverables to any third party.

6.4 You use the Deliverables at your own risk.

6.5 CSIRO is not responsible for the consequences of any third party using or relying on the Deliverables.

7. Confidential Information

7.1 Confidential Information must be kept confidential for a period of 5 years commencing on the date you sign this Agreement.

7.2 We must promptly notify the other if either of us: (a) become aware of any unauthorised disclosure of Confidential Information of the other; or (b) are required by law to disclose any Confidential Information belonging to the other.

7.3 We each undertake to implement appropriate security practices to prevent any unauthorised copying, use or disclosure of the other's Confidential Information.

7.4 The obligation to maintain the confidentiality of Confidential Information does not apply to information which either of us can prove was: created by our own officers, employees and contractors independently of each other's Confidential Information;

7.5 rightfully known by any of us as a consequence of the information being disclosed from an independent source without any limitation on its use or disclosure; or

7.6 in the public domain (other than as a result of breach of this Agreement).

7.7 We may each disclose the other's Confidential Information if required by law, but only to the extent of that legal requirement and after appropriate action is taken to protect the form and content of the disclosure.

8. Limitation of Liability

8.1 This Agreement does not exclude or limit any guarantee, condition, warranty, right or liability implied into it by law (including the *Competition and Consumer Act 2010*), the exclusion of which would contravene the law or cause this Agreement to be void ('non-excludable consumer warranties'). This Agreement is at all times to be read subject to such non-excludable consumer warranties.

8.2 CSIRO's liability to you for breach of any term of the Agreement or of any non-excludable consumer warranties is limited, at CSIRO's option, to resupplying the Deliverables or re-performing the Services, or the costs of resupplying the relevant Deliverables or performing the affected part of the Services again.

8.3 CSIRO will not be liable to you for any indirect or consequential damage suffered by you in any way arising from the Services or your use of the Deliverables.

8.4 CSIRO will not be liable to you for any loss of data, information, revenue, profit or business opportunity or for any damage to goodwill or reputation which is suffered by you in any way arising from the Services or your use of the Deliverables.

9. Dispute Resolution

9.1 Any dispute, controversy or claim arising out of or relating to this Agreement or its breach, termination or invalidity ('Dispute') must be dealt with in accordance with this clause.

9.2 If a Dispute is not settled within 30 days of receipt of written notice of the Dispute, the Dispute will be settled by arbitration in accordance with the UNCITRAL Arbitration Rules. The appointing authority will be the Australian Centre for International Commercial Arbitration. There is to be a single arbitrator. The place of arbitration is to be Melbourne, Victoria, Australia. The language of the arbitration is to be English.

9.3 Any arbitration is to be final and binding, including any awards as to costs.

9.4 Offers of settlement or any matter disclosed in the course of arbitration must be treated as without prejudice and not an admission of liability. The arbitration and the decision of the arbitral tribunal will be confidential.

9.5 Nothing in this clause will prevent either CSIRO or you from seeking urgent interlocutory relief.

10. Termination

10.1 If either you or CSIRO breach this Agreement and that breach is not remedied within 30 days after receipt of notice to remedy, then the other may terminate this Agreement by written notice.

11. Use of CSIRO Name

You must not use CSIRO's name or trade marks in a manner that suggests CSIRO endorses or is associated with your business, products or services.

12. General

12.1 This Agreement records our entire agreement and supersedes all earlier agreements and representations that may have been made by CSIRO to you about the Services.

12.2 The terms in this Agreement override any contrary terms contained in any invoice, purchase order or other documentation issued by you to CSIRO for the Services.

12.3 This Agreement is governed by the law applicable to the State or Territory given in the CSIRO address specified at the top left corner of the cover page.

