

TERMS AND CONDITIONS

The parties agree as follows:

1. DEFINITIONS

1.1. In this Agreement unless the context otherwise requires:

Agreement means this testing agreement between FLP and the Customer, including any Special Terms

Business Day means any day that is not a Saturday, Sunday or statutory holiday in Hamilton, New Zealand.

Confidential Information shall include technical and commercial information not available in the public domain. It shall include without limitation, technical know-how, inventions, discoveries, methodologies, processes, financial data, customer and supplier information, commercial terms, pricing, and business plans

Customer means the person purchasing goods and services from FLP, or any person acting on behalf of and with the authority of the Customer.

Goods means any goods supplied by FLP to the Customer

GST means goods and services tax chargeable under the New Zealand Goods and Services Tax Act 1985.

FLP means Food Lab Pacific Limited

Price means the price payable for the Services and Goods as set by FLP.

Results means all information, notes, reports, analysis, conclusions, recommendations or other work produced by FLP in relation to the Services.

Sample(s) means samples provided by the Customer to FLP for testing in accordance with this Agreement.

Services means all Sample testing services, laboratory activities, and associated support functions, that FLP agrees to provide to the Customer

Special Terms means any deletion, addition, or modification to this Agreement as agreed by FLP in writing. Unless agreed in writing by FLP, Special Terms shall apply to a specific order.

2. SERVICES

In consideration of the Customer paying the charges payable under this Agreement to FLP, FLP shall carry out the Services and provide the Results to the Customer, in accordance with the terms of this Agreement.

3. PAYMENT

3.1. The Price for the Goods and Services will be set by FLP. All Prices will be expressed as exclusive of GST, and GST will be payable by the Customer in addition to such payments. The Price for any additional Goods and Services provided by FLP will be as quoted by FLP to the Customer from time to time. Prices may be subject to change without notice.

3.2. Payment for all Goods and Services must be made by the Customer to FLP on the 20th of the month following the date of FLP's invoice.

3.3. If the Customer fails to make payment to FLP on the due date then interest calculated at 5% above the average monthly base commercial lending rate from time to time charged by FLP's bank,

will be payable by the Customer in respect of the unpaid amount from the due date for payment until payment is made in full. Interest will be calculated monthly and payable on demand.

3.4. The Customer indemnifies FLP for and against any expenses incurred by FLP in the enforcement of any rights under this Agreement or at law, including any reasonable solicitor's fees or debt collection agency fees.

3.5. FLP will not be obliged to provide the Customer with Results, Goods or any other services if the Customer has failed to make payment of an invoice within 14 days of the due date for payment of an invoice.

3.6 FLP will retain title to the Results until all fees have been paid by the Customer.

4. PROVISION OF SERVICES

4.1. FLP will:

- (a) Use all reasonable skill and care in providing the Services and Goods (if any) in a timely and efficient manner.
- (b) Not be liable to the Customer for any delay or non-performance in providing Services if the delay is attributable (directly or indirectly) to circumstances beyond its reasonable control.
- (c) Not be obliged to accept any order for Services made by the Customer.

4.2. FLP may withdraw a quotation for the provision of Goods or Services at any time before it is accepted by the Customer. All quotations will lapse without notice after 30 days.

4.3. The Customer cannot cancel any order for Goods or Services (in full or in part) without first obtaining the written consent of FLP.

4.4. The Customer acknowledges that FLP is a related corporate body to Analytica Laboratories Limited ("Analytica") and to MilkTest NZ LP ("MTNZ") and these parties may perform some of the Services for and on behalf of FLP. Subject to this agreement, FLP may delegate the performance of part or all of the to third parties, and the Customer authorises the release of information necessary for the performance of the Services.

5. DELIVERY

5.1. Samples must be delivered to a specified FLP address.

5.2. FLP will not be responsible or liable for the condition of Samples before they are received by FLP. The Customer shall ensure the Sample is of adequate quantity, identified correctly, and packaged and transported appropriately with regard to sample integrity and any hazardous nature.

5.3. FLP will test Samples as received if no customer specific requirements have been defined and agreed to by both parties.

5.4. The results for the Sample(s) are on an "as received" basis and do not necessarily represent the composition of the material the sample was drawn from.

5.5 The Customer shall inform FLP in writing prior to Sample delivery of any hazard or danger associated with the Samples.

6. FORCE MAJEURE

6.1. No party shall be liable to the other party for any failure or delay in complying, wholly or in part, with any obligation imposed on such party under this Agreement if:

- (a) the failure or delay arises from a cause beyond that party's reasonable control and without that party's fault and such party

could not take reasonable measures to prevent or mitigate the effects of such cause ("Force Majeure Event");

(b) that party promptly gives the other party written notice providing details of the nature, expected duration and effect of the Force Majeure Event and keeps the other party informed of any changes in the nature of the Force Majeure Event and of the cessation of the Force Majeure Event; and

(c) that party uses reasonable endeavours to mitigate the effects of the Force Majeure Event on that party's obligations under this Agreement.

6.2. Nothing in clause 6.1 shall excuse a party from any obligation to make a payment when due under this Agreement.

6.3. Subject to clause 6.4, no Force Majeure Event will operate to extend or to terminate this Agreement. Performance under this Agreement will resume as soon as possible to the greatest extent possible following the end or amelioration of the Force Majeure Event.

6.4. If a party is unable to comply with any obligation imposed on it under this Agreement as a result of a Force Majeure Event for 20 consecutive Business Days or for an aggregate of 45 Business Days in any six-month period, the other party may cancel this Agreement by giving written notice to the other party. Cancellation of this Agreement under this clause shall not prejudice the rights of any party against the other party in respect of any matter or thing occurring under this Agreement prior to cancellation.

7. RISK AND TITLE

7.1. All Goods will remain at FLP's risk until delivery to the Customer.

7.2. Delivery of Goods will be deemed to be complete when FLP gives possession of the Goods directly to the Customer or via a courier, carrier or other bailee for the purpose of transporting the Goods to the Customer.

7.3. The Customer acknowledges and agrees that ownership of Sample(s) transfers to FLP upon delivery to the FLP address.

7.4 FLP will store the Samples for not less than two weeks following reporting of Results. Thereafter samples may be disposed or upon rearranged request returned to the Customer for a fee.

8. LIABILITY AND INDEMNITY

8.1. With the exception of express warranties contained in this Agreement, all warranties and representations in respect of the Services and Goods supplied are excluded to the maximum extent permitted by law.

8.2. Notwithstanding any other term in this Agreement:

(a) the parties agree and acknowledge that the Services and/or Goods supplied by FLP and acquired by the Customer are supplied or acquired in trade within the meaning of the Fair Trading Act 1986, and that sections 9, 12A, and 13 of the Fair Trading Act 1986 will not apply to this Agreement or as between the parties, and that it is fair and reasonable to exclude their application;

(b) the parties agree and acknowledge that they are both in trade, and that the Products and/or Services supplied by FLP and acquired by the Customer are supplied and acquired in trade, that the provisions of the Consumer Guarantees Act 1993 will not apply to these Terms or as between the parties, and that it is fair and reasonable to exclude their application;

(c) the parties agree and acknowledge that the provisions of the Part 3 of the Contract and Commercial Law Act 2017 will not apply; and

(d) for the purposes of this clause, the Customer acknowledges that it had a reasonable opportunity to review this Agreement, discuss the Agreement with FLP and receive advice from its legal advisor if it

wished to do so.

8.3. To the extent permitted at law FLP will not be liable to the Customer or any other party for any indirect or consequential loss or damage arising in connection with this Agreement, or FLP's performance of or failure to perform the Services, including (but not limited to) any loss of profit, business, revenue, goodwill or anticipated savings and whether arising in contract, tort (including negligence), equity, breach of statutory duty or otherwise.

8.4. To the extent that the liability of FLP is not otherwise limited or excluded, and to the extent permitted by law, FLP's total liability to the Customer, in connection with this Agreement or the Services, arising in contract, tort (including negligence), equity, breach of statutory duty or otherwise for any kind of loss or damages is limited to an amount equivalent to the total Price paid by the Customer to FLP for the affected testing provided by FLP under this Agreement for 1 month period prior to the date giving rise to the Customer's claim.

8.5 In the event of any claim, the Customer must give written notice to FLP within 60 days of discovery of the facts alleged to justify such claim and, in any case, FLP shall be discharged from all liability for all claims for loss, damage or expense unless proceedings are brought within 6 calendar months from:

The date of performance by FLP of the Service which gives rise to the claim; or the date when the Service should have been completed in the event of any alleged non-performance.

8.6 Unless FLP 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 FLP harmless against any and all third-party claims relating to the provision of the Services to the Customer.

8.7 The Customer shall be responsible for and indemnifies FLP against all costs, damages, liabilities, and injuries that may be caused to or incurred by FLP or its personnel or representatives including during transportation or in the laboratory by the Customer's Sample.

9. TERMINATION

9.1. This Agreement may be terminated as follows:

- (a) The parties agree to terminate the Agreement;
- (b) One party gives six months prior written notice of termination (which may be without cause) to the other party;
- (c) The parties, upon a dispute arising pursuant to this Agreement and following exercise of the dispute resolution procedure set out in clause 12, cannot reach an agreed solution; or
- (d) One party is in default of this Agreement for a period of 30 days after receiving written notice of such default by the other party; or
- (e) One party goes into liquidation either compulsorily or voluntarily (save for the purposes of reconstruction or amalgamation) or a receiver or manager is appointed in respect of the whole or any part of the party's assets or the party makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of these things.

9.2. Termination will not affect the rights of either party in respect of any breach of these Terms in existence prior to termination.

10. INTELLECTUAL PROPERTY

10.1. The Customer agrees and acknowledges that FLP is the owner of the intellectual property rights in the Results systems, know-how and other intellectual property which may be utilised by FLP in the provision of the Services, and that the Customer will not obtain any rights and/or interests in FLP intellectual property by virtue of purchasing Services from FLP.

10.2 In the provision of Services FLP may receive the Customer's intellectual property. FLP shall store and utilise such intellectual property so as to maintain and protect the Customer's intellectual property rights.

10.3 FLP retains all copyright on Results provided to the Customer. The Customer may only reproduce or publish the Results in full without alteration. FLP's name, logo, or service marks, or any other identifier, cannot be used in the Customer's publication (or publication authorised by them) without FLP's prior written consent.

11. CONFIDENTIAL INFORMATION

11.1. Neither party will disclose Confidential Information pertaining to the other party's business to a third party unless authorised by the other party or required to do so by law.

11.2 FLP shall hold confidential all Results specific to the Customer other than as required by law. FLP shall store and use Results while maintaining Customer confidentiality. FLP may publish, or utilise Results with third parties, on the condition that the Customer's identity is not directly or indirectly disclosed.

12. DISPUTE RESOLUTION

12.1. If a party has any dispute with the other party in connection with this Agreement:

- (a) That party will promptly give full written particulars of the dispute to the other; and
- (b) The parties in dispute will promptly meet together and in good faith try and resolve the dispute.

12.2. If the dispute is not resolved within 14 days of written particulars being given (or any longer period agreed to by the parties in dispute) the dispute will be referred to mediation.

12.3. A party must use the mediation procedure to resolve a dispute before commencing arbitration or legal proceedings.

12.4. The mediation procedure is:

- (a) The parties in dispute will appoint a mediator and if they fail to agree the President of the New Zealand Law Society or the President's nominee will appoint a mediator skilled in the area of the dispute who is a panel member of LEADR (Lawyers Engaged in Alternative Dispute Resolution).
- (b) The parties in dispute must co-operate with the mediator in an effort to resolve the dispute.
 - i. The mediator, if required by either party in the dispute, will engage an appropriately qualified expert to give an opinion on technical matters. The cost will be at a mediator's cost (clause b (iv)).
 - ii. If the dispute is settled, the parties in dispute must sign a copy of the terms of the settlement.
 - iii. If the dispute is not resolved within 21 days after the mediator has been appointed, or within any extended time that the parties in dispute agree to in writing, the mediation must cease.
 - iv. Every party must pay an equal share of the costs of the mediator's fee and costs including travel, room hire, refreshments etc.

12.5. The terms of settlement will be binding on the parties in dispute.

12.6. The terms of settlement may be tendered in evidence in any arbitration or legal proceedings (whether the subject matter of the proceedings relates to the settlement or not)

12.7. The parties in dispute agree that written statements given to the mediator or to one another and any discussions between the parties in dispute or between the parties in dispute and the mediator during the mediation period are not admissible by the recipient in any arbitration or legal proceedings.

12.8. Any party may commence court proceedings when mediation ceases under this clause.

12.9. Neither party will unreasonably delay the dispute resolution procedures in this clause. This clause does not apply to:

- (a) Any dispute arising in connection with any attempted re-negotiation of this Agreement; or
- (b) An application by either party for urgent interlocutory relief.

13. MISCELLANEOUS

13.1. The Customer may not assign any of its rights or obligations under this Agreement without the prior written consent of FLP. A change in more than 50% of the composition of the person or persons having management or directorial control of the Customer as at the date of this Agreement will be deemed to be an assignment for the purposes of this clause. The person or persons proposing to assign their interest in the Customer will remain liable to FLP pursuant to this Agreement pending the provision by FLP of its written consent to the assignment.

13.2. Every notice given under this Agreement will be sufficiently given if delivered personally, posted or successfully electronically transmitted to the intended recipient at his/her or their last known address or electronic contact.

13.3. Failure by FLP to enforce any of the terms and conditions contained in this Agreement will not be deemed to operate as a waiver of any of FLP's rights.

13.4. If any provision of this Agreement will be deemed invalid, void, illegal or unenforceable then the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.

13.5. Neither party will be liable for any delay or failure for the performance of any of the obligations imposed on them under this Agreement if such failure is beyond the reasonable control and without fault or negligence of that party. This clause will not extend to excuse the consequences of insolvency or financial difficulty.

13.6. This Agreement and any Special Terms constitute the entire agreement between the parties which supersedes any prior arrangement or understanding whether written or oral relating to the subject matter of this agreement. This Agreement may be amended by FLP from time to time and the parties shall be governed by the most recent amendment of the Agreement in effect at the time FLP receives Samples from the Customer.

13.7. This Agreement will be governed by the laws in New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

13.8. The Customer will be deemed to have accepted the terms of this Agreement upon delivering a Sample to FLP.

13.9. Unless FLP specifically confirms acceptance in writing, FLP will not be bound by any terms and conditions set out in the Customer's purchase order or associated communications.