



**Analytical Services  
Terms and Conditions – Effective 31 October 2017**

**1. Agreement**

- 1.1. The client wishes to engage Proteomics International Pty Ltd (ABN 78 096 013 455) ('Proteomics International') to provide the services as detailed in the request form or quotation ('Services')
- 1.2. The client and Proteomics International agree that these Terms and Conditions apply to all Services supplied by and/or requests for Services accepted by Proteomics International and/or any of its affiliates (collectively known as 'PI').
- 1.3. Where PI has issued a quotation to the client, these Terms and Conditions and the quotation form the entire agreement between PI and the client.
- 1.4. The client accepts these Terms and Conditions when they submit a signed request form or return a signed quotation to PI.
- 1.5. PI accepts a request for Service:
  - (a) When PI accepts the order in writing, or
  - (b) When PI proceeds to fulfil the request for Services, whether or not PI has confirmed its acceptance in writing.
- 1.6. PI is under no obligation to accept any request for Services.

**2. Prices**

- 2.1. Unless otherwise specified, all prices quoted are for the cost of supplying the Services only and exclude:
  - (a) Any cost of transporting Samples.
  - (b) Subject to clause 6, any storage costs.
  - (c) Any applicable taxes (including but not limited to sales tax, customs fees, and/ or goods and services tax).
- 2.2. Any additional cost or disbursement incurred by PI in connection with supplying the Services must be paid by the client.
- 2.3. If Goods and Services Tax ('GST') [in accordance with the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*] is applicable, GST will be applied to the price of the Services.

**3. Payment**

- 3.1. The client agrees to pay all invoices within thirty (30) calendar days of the date of the invoice.
- 3.2. PI is entitled to require payment of up to 100% of the quoted fee for Services as a condition of accepting a request for Services.
- 3.3. If the client wishes to dispute an invoice, the dispute must be raised within thirty (30) calendar days of the date of the invoice.
- 3.4. A challenge of an analytical result will not entitle the client to defer payment of an invoice.
- 3.5. Any invoice that remains outstanding after the due date may be charged interest at the Australian Tax Office General Interest Charge.

- 3.6. If the client is overdue in paying any amount owed to PI, PI may suspend its work for the client, for that order or any order, until payment for the overdue amount is received.

**4. Client obligations**

- 4.1. The client is responsible for:
  - (a) Providing PI with all the information as may be required by PI to accurately provide the Services to the client.
  - (b) Ensuring that the information supplied is accurate and complete.
  - (c) Providing the samples or materials as specified in the request form or quotation ('Samples') in a timely manner to PI for the purpose of providing the Services.
  - (d) Ensuring that the Samples are of sufficient quantity and condition for PI to accurately provide the Services.
  - (e) Providing adequate information regarding any safety or health hazards, and any special handling procedures required for the proper and safe handling, testing, storage, transport and/ or disposal of the Samples.
  - (f) Unless otherwise specified, all costs and expenses in connection with delivering the Samples to PI.

**5. Samples**

- 5.1. The client warrants and ensures that its Samples and any materials that it delivers to PI do not pose any danger, including during transportation, in the laboratory or otherwise, to PI's premises, instruments, and/ or personnel. It is the client's responsibility to ensure compliance with hazardous waste regulations, including regarding information, transportation and disposal and to inform PI about sample health and safety concerns, including any known or suspected toxic or other contaminant that may be present in the Samples and its likely level of contamination as well as the risks to PI premises, instruments, and personnel related to the contamination.
- 5.2. The client is responsible for and hereby indemnifies PI against all costs, damages, liabilities and injuries that may be caused to or incurred by PI or its personnel by the Samples.
- 5.3. The client shall bear all extraordinary costs for adequate disposal of hazardous waste resulting from the Samples, whether or not described as hazardous waste.
- 5.4. The client acknowledges and agrees that:
  - (a) PI will not in any way be liable for any damage to the Samples;
  - (b) The client grants PI a non-exclusive, worldwide, royalty-free licence to use (and if required, to



sub-license the use of) the Samples and Client Background Technology, for the purpose of performing the Services;

- (c) The Samples may be altered, damaged or destroyed in the course of providing the Services and PI will not in any way be liable for such alteration, damage or destruction; and
- (d) PI is not obliged to return the Samples, whether in their original form or otherwise, to the client, unless otherwise agreed in writing to be returned by PI at the cost and risk of the client.

## 6. Storage

- 6.1 PI shall store the Samples for six (6) months after the Services have been performed.
- 6.2 Unless the client pays for storage and otherwise agreed in writing, PI will have no obligation or liability to store samples for longer than six (6) months after the Services have been performed. If the client pays for storage, PI will take commercially reasonable steps to store the Samples according to professional practice.

## 7. Warranties and Responsibilities

- 7.1 The client acknowledges that the nature of the Services, the testing of samples and materials, is not a field in which accurate or exact results will always be produced. The client also acknowledges that the testing of Samples and the results that may be obtained by the Services may be impacted by a number of factors outside the control of PI. The client acknowledges that these matters all limit the ability of the client to rely upon the results and any reports prepared by PI.
- 7.2 To the fullest extent permitted by law, PI excludes all liability arising out of or suffered in connection with the client's use of the results of the Services and the client acknowledges that any such use is at its own risk.
- 7.3 To the fullest extent permitted by law, PI excludes all terms, conditions, warranties and guarantees either expressed or implied by law or statute.

## 8. Intellectual Property

- 8.1 The client acknowledges and agrees that PI owns the intellectual property rights in any method, process, know-how, confidential information, or other intellectual property used by PI to carry out the Services ('PI Background Technology').
- 8.2 The client owns the intellectual property rights in the Samples and any other intellectual property provided by the client to PI for the purpose of carrying out the Services ('Client Background Technology').
- 8.3 Subject to the full payment of the fees by the client in accordance with clause 3, the client shall own the intellectual property in the analysis results from the Service. Until full payment of fees is received by PI, the intellectual property in the analysis results belong to PI and the client shall have no right to use the analysis results, documents, materials or reports prepared by PI.

## 9. Delivery dates

Unless otherwise agreed in writing, delivery dates and turnaround times are estimates and do not constitute an absolute commitment by PI.

## 10. Repeated Analysis

Any objection to test results must be first made within thirty (30) days after the client receives the results. PI has full discretion to decide whether to repeat the Services in view of an objection to a test result. If PI performs a repeat analysis at the request of the client, the client shall pay for the cost of the repeat test or review, unless the result of the repeated analysis is inconsistent with the results of the first analysis. A repeat analysis will only be possible if PI has a sufficient quantity of Samples on hand when it receives the client's objection. If PI does not have Samples on hand in sufficient quantity and condition for testing, the client will be responsible for paying all costs associated with ensuring that PI has sufficient Samples for the repeat analysis.

## 11. Confidentiality, Publicity and Use

- 11.1 Analysis results are prepared and supplied exclusively for the reasonable commercial use of the client and should not be divulged to any third party for any other purpose without the prior written consent of PI. Analysis results are not to be publicly disclosed or exploited without the prior written consent of PI. Even if such written consent is given by PI, the client remains (a) responsible for any consequences due to the divulgence of such results to a third party and any reliance of such third party on such results and (b) hereby indemnifies PI against any liability which PI may incur as a result of such divulgence or any such third party reliance.
- 11.2 The client must not alter then distribute or publish any documents, materials or reports prepared by PI.
- 11.3 The client must not use PI's name and/ or trademarks in any manner that suggests that PI endorses or is associated with, the client's products, services and/ or business.

## 12. Indemnity

- 12.1 The client releases and indemnifies PI, its officers, employees, contractors and agents against any loss or liability and all claims (including costs and expenses in defending the same):
  - (a) Which may be brought against it or them in connection with the Service.
  - (b) In connection with any failure of the Samples to pass any tests and/ or any consequential loss or liability that may result from any failure of the Samples to pass any test.
  - (c) In connection with any testing of the Samples by the client or any third party which shows a different result to that provided by PI.



(d) In connection with any breach of this agreement by the client.

- 12.2 The indemnity in clause 12.1 will be reduced proportionately to the extent that any negligent act by PI, its officers, employees, contractors and agents contributed to any loss or liability referred to in that clause.

### **13. Limitation of Liability**

- 13.1 To the fullest extent permitted by law, PI excludes all liability for any indirect, direct, or consequential loss or damage, or any loss of profit, business or goodwill.
- 13.2 To the fullest extent permitted by law, PI's liability to the client is limited to, at PI's option, supplying the Services again or paying the cost of having the Services supplied again. PI is not liable to any third party that is not the client and excludes all liability whatsoever to such parties arising out of or in connection with the Services.
- 13.3 The total liability of PI, whether in contract, tort (including negligence), under statute or otherwise, will not exceed the fees paid by the client to PI.
- 13.4 PI will not be liable for any breach, failure to act or omission arising in connection with these terms and conditions to the extent that such breach, failure or other act or omission is caused or contributed to by the client, its employees, agents or contractors.

### **14. Subcontract**

PI may, in its absolute discretion, assign or subcontract the Services or any part thereof.

### **15. Termination**

- 15.1 Either party may terminate this agreement if the other party breaches a term of this agreement and does not remedy that breach within fourteen (14) days of notice in writing to remedy the breach.
- 15.2 PI may terminate the agreement immediately by written notice to the client, if the client becomes, or in the reasonable opinion of PI, is likely to become, subject to any form of insolvency, administration, receivership, bankruptcy or liquidation.
- 15.3 The client acknowledges that costs are incurred when PI begins to perform the Services. Upon termination, the client must pay PI any fees accrued for work already done by PI.
- 15.4 PI may terminate this agreement if, in its reasonable opinion, it is unable to supply the Services to the requisite quality expected of PI's Services. Where PI terminates an agreement for this reason, PI will make a proportional refund of fees to the client.

### **16. Waiver**

Failure by PI to exercise its rights under these Terms and Conditions shall not constitute a waiver or forfeiture of such rights.

### **17. Severance**

If a clause of these Terms and Conditions is found to be unlawful/ unenforceable, but would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant clause will be deemed to be deleted).

### **18. Amendment**

- 18.1 PI may amend these Terms and Conditions in writing from time to time. Notification of any amendment will be made by posting the amended Terms and Conditions on PI's website at [www.proteomics.com.au](http://www.proteomics.com.au). Services will be governed by the Terms and Conditions in effect at the time PI accepts the request for Services.
- 18.2 Notwithstanding clause 18.1, these Terms and Conditions may not be varied unless specifically indicated otherwise and agreed to in writing by PI.

### **19. Force Majeure**

Neither PI nor the client will be liable for failing to perform its obligations under this agreement as long as the failure is triggered by something beyond its reasonable control. This clause does not excuse payment of monies due.

### **20. Governing Law and Jurisdiction**

These Term and Conditions are governed by and are to be construed in accordance with the laws of Western Australia, Australia. The parties submit to the exclusive jurisdiction of the courts of Western Australia, Australia.