

## **FOOD AND DRUG ASSURANCE LABORATORIES STANDARD TERMS AND CONDITIONS FOR DELIVERY OF SERVICE ("the Conditions")**

### **INTERPRETATION**

1. In these Conditions the following expressions shall (unless the context requires) have the following meanings:
- "Client" means the person, firm or company to whom a Quotation is addressed or for whom a Test or any Services is carried out;
- "Company" means Food and Drug Assurance Laboratories;
- "Contract" means these Conditions including the Quotation or Proposal which refer to these Conditions;
- "Indemnified Persons" means the Company, its affiliates and subsidiaries, and its and their respective directors, officers, employees, agents, contractors and subcontractors;
- "Price" means the price stated in the Quotation, or otherwise agreed with the Client in writing together with all other sums due pursuant to these Conditions;
- "Proposal" means the Company's proposal or quotation of which these Conditions form a part and shall be deemed incorporated by reference as if fully set forth therein;
- "Quotation" means the Company's quotation or proposal (whether written or oral) of which these Conditions form a part and shall be deemed incorporated by reference as if fully set forth therein ;
- "Report" means any report, recommendation or the like issued by the Company in respect of the Services;
- "Sample" means any material supplied by the Client to form the basis of a Test;
- "Services" means the services specified in the Quotation or Proposal;
- "Test" means any testing, analysis, assay or the like specified in a Quotation or Proposal;
- "Test Certificate" means any test certificate, recommendation or the like issued by the Company in respect of a Test and reflecting the results or any part of it.

### **QUOTATION**

- 2.1 The Quotation constitutes a revocable offer by the Company to provide Services and/or carry out a Test subject to these Conditions and is open for acceptance for ninety days only from the date thereof unless stated otherwise on the written Quotation or Proposal or unless revoked prior to acceptance. Acceptance by the Client must include written authorisation, including a Purchase Order, or advance payment.
- 2.2 Except in accordance with these Conditions no variation of the Contract will be accepted unless agreed in writing by the Company.
- 2.3 No condition, statement or representation contained in any advertisement or brochure or in any trade or promotional circular or other literature, nor the terms or conditions of any trade association or other body, or which would or might but for this sub-paragraph be implied or incorporated by custom or trade, usage, negotiations, course of dealing or otherwise shall be deemed to be incorporated in the Contract and all of the same are hereby expressly excluded from the Contract.

### **PRICE**

- 3.1 The Price is based on information available to the Company at the date of the Quotation. If during the period of the Contract there shall be any variation in the cost of materials, labour or otherwise to the Company, the Price may, in the absolute discretion of the Company, be adjusted to take account of such variation.
- 3.2 In addition to the amount specified in the Quotation the following shall be in addition to the Price and payable if imposed on the Company or otherwise appropriate:
- (i) any applicable value added tax, excise tax, goods and services tax, sales tax, use tax or other applicable tax;
  - (ii) all bank charges;
  - (iii) package, insurance, freight and storage charges incurred on behalf of the Client, whether on the Company's premises or elsewhere, and to include storage charges on the Company's premises, if any Sample or materials supplied by the Client are not removed from the Company's premises within seven days of the date of notification to the Client that they are ready for collection;
  - (iv) insurance incurred by the Company, in its absolute discretion, in respect of any property belonging to the Client in the possession of the Company;
  - (v) the cost of all sub-contractors engaged by the Company unless included in the Quotation; and
  - (vi) any additional costs or expense incurred by the Company in accordance with these Conditions.
  - (vii) Replicate testing.
  - (viii) Additional work as a result of incorrect sample description or presentation of samples.
  - (ix) Special procedures or variation of the accepted procedure to be carried out by the Company.

## **PAYMENT**

- 4.1 The Price shall be paid to the Company in full without any deduction, set-off or counterclaim within thirty days of the date of the Company's invoice.

Failing payment within the thirty days the Company may suspend any further Services and/or Tests being carried out for the Client and the amount outstanding from time to time shall bear *mora* interest at a rate of 15.5% per annum from the due date until date of payment. In the case of suspension of service as contemplated the client absolves and indemnifies the Company from any loss suffered or sustained as a result of the suspension.

- 4.2 All and any payments due to the Company is the responsibility of the client and shall not be dependent upon the client first having to be paid or any other future event happening.
- 4.3 The Company reserves the right where applicable to withhold test results until payment has occurred.

## **EXECUTION OF TESTS**

- 5.1 The Test shall be carried out singly unless prior written instructions from the Client are received for replicates or unless the Company considers replicates are necessary or desirable.
- 5.2 The Client shall supply as much information as possible about each Sample in order to assist in achieving an efficient Service.
- 5.3 Unless specific prior instructions in writing are received by the Company and unless such variation is agreed, the Test shall be carried out on the Sample in the state in which the Sample is received.
- 5.4 the Methodology and procedure of carrying out the Testing shall be at the sole discretion of the Company unless specific prior instructions in writing are received by the Client specifying a particular procedure which are agreed to by the Company.
- 5.5 the methods used in any testing shall be in accordance to International accepted best practise and procedures and the exact detail forms the Intellectual Property of the Company which will only be revealed by court order or at the discretion of the Company

## **SAMPLES SUBJECT OF LEGAL PROCEEDINGS**

6. The Client shall notify the Company in writing if the Services to be performed are in support of pending or contemplated litigation or disputes prior to the Company commencing the Services. Non-disclosure will entitle the Company to do retesting at a quoted price and the Company under any circumstances can refuse to provide expert testimony. Where the Company does provide expert testimony the standard hourly rate for such witness will be payable by the client.

## **DISCLAIMER OF LIABILITY AND LIMITATION OF WARRANTY**

- 7.1 All Services and/or Tests are undertaken in good faith, to a reasonable standard of care and on a confidential basis. Test Certificates remain confidential unless written approval is given by the Client to disclose information to a Third Party. Reports and Test Certificates are issued on the basis of information known to the Company at the time the Services and/or the Tests are carried out. Although the Company will use all reasonable endeavours to insure accuracy of test results these results are dependent, *inter alia*, on the effective and timely co-operation of the Client, its staff, and on the accuracy information and quality of materials submitted to the Company.

As a consequence, all Reports and Test Certificates are prepared and provided on the basis that:

- (i) The result is determined by information and sample provided as well as the methodology used;
  - (ii) The result is an indication of the finding and not conclusive proof as the result may differ depending on a different methodology used or information or sample provided.
  - (iii) It may not be used as a means of marketing any consumable product/s or in support of the contents any other processes in the manufacture of consumables.
  - (iv) The client may not use it as a commodity for resale purpose and may not pass off the Companies name or procedure used or disclose any Confidential information received of the Company by the client or use the Companies name in any literature printed or distributed by the client or any of its successors or employees or agents.
- 7.2 The Company shall not be responsible or liable to the Client for the consequences of any delay in carrying out the Services and/or Tests or in delivering the Report and/or Test Certificate for any reason or arising from any strike, lockout, trade dispute, accident, fire, inclement weather, flood, tempest, war, or act of God or any other matter or thing beyond its reasonable control.

## **OBLIGATIONS OF CLIENT**

- 8.1 The Company shall be obliged to inform the Company well in advance of the nature, date, extend and place in the event that the client is required to disclose the test results as a result of any court order as by way of testimony in a court of law.
- 8.2 The Client is duty bound to under all circumstances disclose to the Company if the samples or materials provided is or could be health hazardous and accordingly indemnifies the Company against third party claims of whatever nature from the resultant use of such samples provided.

## **RELATION TO TESTS**

- 9.1 The risk of loss or damage to the Sample shall remain with the Client at all times.
- 9.2 Samples of a stable nature shall be retained for up to thirty days from the date of issuing the Test Certificate/Report and then destroyed, or at the Company's option stored at the Client's expense unless otherwise agreed to in writing. Samples shall be returned to the Client only if prior instructions in writing in that regard are received by the Company and the Client shall be charged for all costs associated therewith (including carriage).
- 9.3 Where Samples are, in the sole opinion of the Company, too bulky or too unstable to allow long storage time, it will be at the absolute discretion of the Company as to the length of time such Samples are kept.
- 9.4 The copyright in and to all chart records, formulae and other scientific, documentary, or primary data produced during any Test.
- 9.5 The Client warrants that it will at all times ensure its own compliance with all applicable laws, including, without limitation, environmental laws, rules and regulations of appropriate governmental authorities in the keeping of samples for whatever purpose.

## **CONTRACT MANAGERS**

10. The parties will each appoint a designated manager to attend to disputes or any other issue a party has in relation to this agreement or the contemplated service or payment. In the case of any dispute between the parties they will endeavour to have these managers liaise in order to settle the matter. This is however not mandatory, and a party has the option of approaching a court of law with the required jurisdiction. The notification of the designated manager will be in writing from time to time.

## **OWNERSHIP, COPYRIGHT AND PATENTS IN RELATION TO SERVICES**

- 11 Ownership and copyright in the results and Report will remain with the Company until such time as the client has discharged its obligation herein. In The event of a dispute between the parties and the client not having discharged his obligations the client shall not be entitled to use the report or results for whatever purpose and the report and results will be kept in Escrow for the duration of the dispute.

## **SUB-CONTRACTING**

12. The Company shall be entitled, in its absolute discretion, to sub-contract the whole or any part of the Services and/or Test, in which case the Company will assume liability as if the Company had conducted the testing itself.

## **TERMINATION**

- 13.1 Without derogating from a foregoing the Client shall be entitled to terminate this agreement in which case the client will be liable to the Company for the amount quoted as contemplated liquidated damages. The quotation will be regarded as a liquid document for the purpose of Summary judgement against the client and a certificate issued by a designated employee of the Company verifying the outstanding amount shall be prima facie proof of such amount outstanding.
- 13.2 The client will only be entitled to return of any samples still in possession of the Company against payment of the outstanding obligation. The Company will endeavour to keep samples for a reasonable time taking into account the storage cost and risk, and the client will notwithstanding not be entitled to retain payment or apply set off of any kind for whatever reason.
- 13.3 The Company may terminate this agreement for reasons contemplated herein without notice (*i.e. illegal samples, hazardous samples, conflict of interest etc*) and without liability to the client for loss of income or reputation or alike.
- 13.4 The Client will be entitled to receive 7 calendar days (excluding Public Holidays) written notice to remedy its breach under circumstances where the client is in default with payment, failing remedy where the Company can either enforce the agreement or cancel the agreement and claim the outstanding amount on the quotation as liquidated damages.
- 13.5 Other than as required by statute, upon termination of this agreement the Company the Company shall have no further obligation to carry out any of its obligations under this agreement and accordingly the Companies obligations will not survive the termination of this agreement.

## NOTICES

14. All notices to be served by one party on the other shall be delivered either by e-mail, by hand or by fax or any other recognized method and shall be deemed to be delivered on the date so indicated as being received.

## GENERAL

15. In the event of one or more of the provisions of these Conditions being held to be invalid, illegal, or unenforceable, in whole or in part, the validity, legality or enforceability of the remaining provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
16. Any indulgence granted by the Company in terms of this agreement shall not be construed as a waiver of any of the Companies rights.
17. This agreement will endure for the duration of the relationship between the parties and will regulate any future services rendered by the Company to the client, save for the change in quotation.
18. Any quotation issued by the Company for the client will be subject to these terms and conditions unless the parties have agreed otherwise in writing.
19. This agreement contains the entire agreement between the Company and the Client with respect to the subject matter hereof and supersedes all prior agreements, Quotations, Proposals, and other communications relating to the subject matter hereof and there are no other understandings or agreements, verbal or otherwise, in relation hereto between the Company and the Client.
20. The signatories' to this agreement confirms having the necessary authority to sign this agreement, and bind the respective parties thereby.
21. Each clause in this agreement is severable from the other and should it be found that any clause or part thereof is unenforceable for whatever reason such finding will not affect the balance of the agreement.
22. Legal disputes relevant to this agreement will be adjudicated through the North Gauteng High court in Pretoria.

## ADDITIONAL REQUIREMENTS ON THE COMPANY'S WEBSITE.

23. The Company's Internet website <http://www.fdalab.co.za> may contain specific additional requirements for certain items covered by this agreement, including specifications, procedures, directions and/or instructions.

Any such requirements are hereby incorporated and shall be deemed to form part of this agreement and are binding on the Client and the Company. The Company may periodically update such requirements by posting revisions thereto on its Internet website and, in such event, the Company will notify the Client of such updates and revisions. In the event of any inconsistency between this agreement and the Company's Internet website, the terms of this agreement shall prevail, unless the requirements specified on such website expressly provide otherwise.

24. The Company may modify these Conditions with respect to future Quotations, Proposals and purchase orders, at any time and from time to time, by posting revised terms and conditions to its Internet website, at <http://www.fdalab.co.za> and such revised Conditions shall apply to all Quotations, Proposals and purchase orders issued thereafter.

**THE COMPANY MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, EXCEPT AS IS EXPRESSLY SET FORTH HEREIN, ALL SUCH OTHER WARRANTIES BEING HEREBY DISCLAIMED.**

\_\_\_\_\_  
**Signed by and on behalf of the Company**

\_\_\_\_\_  
**As witness**

Full name: \_\_\_\_\_

Full name: \_\_\_\_\_

Identity number: \_\_\_\_\_

Telephone no: \_\_\_\_\_

Capacity: \_\_\_\_\_

\_\_\_\_\_  
**As witness**

Full name: \_\_\_\_\_

Telephone no: \_\_\_\_\_

\_\_\_\_\_  
**Signed by Client**

Full name: \_\_\_\_\_

Identity number: \_\_\_\_\_

\_\_\_\_\_  
**As witness**

Full name: \_\_\_\_\_

Telephone no: \_\_\_\_\_

\_\_\_\_\_  
**As witness**

Full name: \_\_\_\_\_

Telephone no: \_\_\_\_\_