

To the extent permitted by law, all dealings between the NSW Department of Primary Industries (ABN 72 189 919 072), referred to from here as **DPI**, and any Customer relating to the provision of Services are subject to the following terms and conditions.

1. Definitions

In this agreement:

Claims means any actions, claims, proceedings, demands or other liability.

Customer means the person or entity listed as the "Submitter" on the Specimen Advice/Submission Form and who is liable to pay the Fees for the Services.

Fees means the monies payable for the provision of the Services as set out at www.dpi.nsw.gov.au/labs.

Report means a report prepared by DPI as part of the provision of Services that may set out information in relation to testing methods, tests, results of testing and other information, as specified by DPI from time to time.

Services means the diagnostic and analytical testing services to be provided by DPI as further described in the Specimen Advice/Submission Form.

Specimen Advice/Submission Form means the form signed by the Customer (or a person authorised to do so on behalf of the Customer) and which sets out the Services.

Testing Material means any sample or material, supplied by the Customer to DPI for the purposes of providing the Services specified in the Specimen Advice/Submission Form.

2. Appointment

The Customer appoints DPI, and DPI agrees to be appointed, to provide the Services in accordance with these terms and conditions.

3. Provision of Services

- a) DPI will use reasonable endeavours to provide the Services to the Customer in a timely manner.
- b) The Customer acknowledges that DPI may elect not to supply the Services if DPI considers that the provision of Services may pose a safety or health risk, or where the

Testing Materials are not fit for testing (including by reason of contamination or insufficient sample size).

4. Customer obligations

- a) The Customer must provide DPI with such information as may be required by DPI to provide the Services to the Customer.
- b) The Customer must ensure that all information supplied to DPI is accurate and complete, and agrees that DPI is not obliged to check the accuracy or completeness of any information provided by the Customer.

5. Testing material

- a) The Customer is responsible for the Testing Material, including the sufficiency of its quantity and form, provision of adequate information in respect of any safety or health hazards and any special procedures in connection with the handling, testing, storage, transport, disposal of the Testing Material and all costs and expenses in connection with the delivery of the Testing Materials to DPI.
- b) The Customer acknowledges and agrees that:
 - (i) DPI will not in any way be liable for any damage to the Testing Material;
 - (ii) the Testing Material, once in the possession of DPI, becomes the property of DPI;
 - (iii) the Testing Material may be altered, damaged or destroyed in the course of providing the Services and DPI will not in any way be liable for such alteration, damage or destruction;
 - (iv) DPI is not obliged to return the Testing Material, whether in its original form or otherwise, to the Customer, unless otherwise agreed to be returned by DPI at the cost of the Customer; and
 - (v) DPI may in its absolute discretion, store, experiment upon, destroy or otherwise deal with the Testing Material, as it sees fit.

6. Warranties

- a) The Customer acknowledges that by its very nature the conduct of testing of samples and materials, including the

provision of the Services, is not a field in which accurate or exact results will always be produced. In addition, the testing of Testing Materials, and results that may be obtained from the Services, may be impacted by a number of factors outside of the control of DPI. The Customer acknowledges that these matters all limit the ability of the Customer to rely upon the results and any Reports prepared by DPI. The Customer agrees that it will only rely upon such results and Reports for any specific purpose consented to by DPI in the Specimen Advice/Submission Form.

- b) To the extent permitted by law, DPI excludes all terms, conditions, warranties and guarantees either expressed or implied by law or statute.

7. Intellectual property

- a) All intellectual property rights in any documents, materials or Reports prepared by DPI in the course of providing the Services are owned by DPI.
- b) Subject to the payment of the Fees by the Customer in accordance with clause 11, DPI grants the Customer a perpetual, irrevocable, non-exclusive and royalty-free licence to use the Reports for the Customer's internal business purposes.
- c) If any Report is used in research projects, the Customer must ensure that DPI (including the relevant lab) is acknowledged in any publications.

8. Liability

- a) To the extent permitted by law, DPI excludes all liability for any indirect or consequential loss or damage, or any loss of profit, business or goodwill.
- b) To the extent permitted by law, DPI's liability to the Customer is limited to, at DPI's option, supplying the Services again or paying the cost of having the Services supplied again. DPI is not liable to any third party that is not a Customer and excludes all liability whatsoever to such parties arising out of or in connection with the Services.

- c) The total liability of DPI, whether in contract, tort (including negligence), under statute or otherwise will not exceed the Fees paid by the Customer to DPI.
- d) DPI will not be liable for any breach, failure or other act or omission arising under or 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 Customer, its employees, agents or contractors.
- e) The Customer acknowledges and agrees that DPI may be required to disclose or provide Testing Material, Reports and other materials received or generated by it under or in connection with these terms and conditions to any court, government body or regulator pursuant to any legal or other compulsory process. The Customer consents to such disclosure.

9. Publicity and use

- a) The Customer must not in any way represent that DPI supports, endorses or certifies the Customers' products, services, methods or business.
- b) The Customer acknowledges and agrees that any documents, materials or Reports prepared by DPI are not prepared for use in legal proceedings, arbitration, mediation, expert determination or in any other dispute resolution mechanism in any jurisdiction and the Customer must not use the materials for any such purpose.
- c) DPI cannot warrant that the Report and any test results will be admissible in any court proceedings, nor that any test results or communications as between DPI or the Customer will be protected by privilege for the purposes of any proceedings.
- d) The Customer must not alter then distribute or publish any documents, materials or Reports prepared by DPI.

10. Indemnity

The Customer releases and indemnifies and continues to release and indemnify DPI, its officers, employees, contractors and agents against any loss or liability and all Claims (including the costs and expenses in defending the same):

- a) which may be brought against it or them in connection with the Services;
- b) in connection with any failure of the Testing Material to pass any tests;
- c) in connection with any import or export restrictions, prohibitions, sanctions or governmental action that might apply to the Customer, its goods or services as a result of the Testing Material passing or failing any tests;
- d) in connection with any testing of the Testing Material by the Customer or any third party which shows a different result to that provided by DPI; and
- e) in connection with any breach of this agreement by the Customer.

DPI holds on trust for its officers, employees, contractors and agents the rights under this release and indemnity.

11. Fees and reports

- a) The Customer must pay DPI the Fees.
- b) DPI may provide the Customer with an electronic copy of the Reports upon completion of the Services. The Customer must pay extra Fees for any additional copies of a Report or any additional reports requested by the Customer.
- c) The Customer must pay each DPI invoice within 30 days after receipt of that invoice.

12. Goods and Services Tax (GST)

Unless otherwise advised by DPI, all dollar amounts referred to in this agreement are in Australian currency. GST will be applied in accordance with the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and associated legislation as amended from time to time.

13. Dispute resolution

The parties agree that if any dispute arises between them they will make a genuine effort to resolve it without resorting to litigation. Nothing in this clause will prevent either party from seeking urgent interlocutory relief from any courts.

14. Termination

- a) A party may terminate this agreement if the other party breaches a term of this agreement and does not remedy that breach within 14 days of notice in writing requesting it to remedy the breach.
- b) DPI may terminate this agreement immediately, by written notice to the Customer, if the Customer becomes, or in the reasonable opinion of DPI is likely to become, subject to any form of insolvency, administration, receivership, bankruptcy or liquidation.
- c) On termination, the Customer must pay DPI all Fees for work undertaken by DPI as at the date of termination.

15. General

- a) Neither DPI nor the Customer is liable for any failure to observe its obligations under these terms and conditions where such failure is wholly or substantially due to a force majeure event.
- b) Any notice given or made under these terms and conditions must be in legible writing, signed by the party giving or making it and left at the address or sent by prepaid security post to the address of the recipient party.
- c) DPI may assign or subcontract the Services or any part thereof in its absolute discretion. The Customer must not assign this agreement or any part thereof without obtaining DPI's prior written consent.
- d) The lodgement of a signed Specimen Advice/Submission Form constitutes an acceptance of these terms and conditions by the Customer. This agreement comprises this document and the Specimen Advice/Submission Form.
- e) DPI may amend these terms and conditions at any time and notification will be made by posting the amended terms and conditions on its website: www.dpi.nsw.gov.au.
- f) This agreement is governed by and is to be construed in accordance with the laws of New South Wales. The parties submit to the exclusive jurisdiction of the courts of New South Wales.