

CLIENT - PROJECT TERMS AND CONDITIONS

1. DEFINITIONS

Client means the person(s), organisation, incorporated association or firm identified as the Client on the attached Quotation.

Agreement— refers to the attached Quotation and these terms and conditions constitute the Agreement.

Fee means the total payment to be paid in accordance with the Quotation.

Intellectual Property includes computer programs, copyright, patents, designs, circuit layouts, inventions, confidential information or any other information, document or object which is capable of legal protection.

APAF means Australian Proteome Analysis Facility Ltd.

Services means those services provided by APAF that are described in the attached Quotation.

Quotation means the attached Quotation to this Agreement, containing the quote for the Services, deliverables, milestones if applicable and invoicing schedule.

2. TERM

2.1 In consideration of payment of the total Fee, APAF shall perform the services described in the attached Quotation.

2.2 The Client acknowledges that no contract for the purchase of Services from APAF exists until APAF receives a signed and unaltered Agreement to APAF within 30 days of receiving the Agreement from APAF. Agreements received by APAF after the 30 day period will only be accepted in APAF's sole discretion.

3. FEES & SERVICES

3.1 The parties agree that the Fee listed in the Quotation is an estimate only and may vary. APAF agrees that it will not incur any expenses above the Fee without the prior written permission of the Client. The Client shall pay each invoice within thirty (30) days of the date of invoice as per the payment Quotation outlined in the Quotation.

3.2 The Client further agrees to pay any tax imposed on the supply of goods and services (but excluding income tax) imposed by the Government of Australia ("GST") that may be payable in respect of the Services, the services to be performed or otherwise. APAF shall invoice any GST separately so as to allow the Client to claim a tax credit.

4. PERFORMANCE OF SERVICES

4.1 APAF will, subject to complying with its obligations under this agreement, exercise its reasonable business discretion as to the most appropriate and effective manner of providing the Services.

4.2 APAF will at all times exercise proper or reasonable care in the performance of the Services under this agreement.

4.3 APAF will use suitably qualified staff to undertake the Services.

4.4 The Client must provide all assistance required or requested by APAF in order to allow it to perform the Services including, without limitation:

(a) providing such information or material as APAF may request in relation to the Client in a timely manner; and

(b) ensuring that the staff of the Client co-operate fully with APAF staff in a timely manner to deliver the Services specified in the Quotation.

4.5 The Client confirms and warrants that any information provided to APAF is accurate and complete and acknowledges that APAF will not check the accuracy of information provided by the Client, unless that checking is part of the Services.

4.6 APAF will not be responsible for any delays in provision of the Services which are due to delays or non-provision of required information or material by the Client, including delays in sending samples

4.7 Every endeavour will be made by APAF to adhere to the delivery dates quoted, but such dates are estimates only and are not guaranteed. APAF shall accept no liability of

whatsoever nature for failure to meet such dates and such failure shall not entitle the Client to repudiate or cancel this Agreement.

4.8 Performance of Services and delivery of the report will be subject to equipment availability and scheduling of the Service for the Client.

5. SAMPLES

5.1 The Client shall be responsible for the sampling and provision of samples to APAF with sufficient sample to correctly complete all tests requested. These samples will be labelled with a fully descriptive name, the chemical name (where appropriate) and the batch lot numbers any other pertinent information that may affect the analysis requested.

5.2 The Client will provide APAF with samples packed in their original containers or in suitable containers that will not affect the integrity of the sample.

5.3 The Client is responsible for establishing sampling programs that will provide adequate information in relation to the goods sampled.

5.4 Samples submitted to APAF of a known hazardous nature must be clearly identified and discussed with APAF in advance of shipping.

6. DELIVERY OF SAMPLES

The Client will be responsible for delivering samples to APAF suitably packed in appropriate outer containers and in accordance with any special quarantine, storage or delivery requirements. Furthermore, the Client will be responsible for all freight charges, customs duties and taxes payable arising out of the transport of the samples to APAF.

7. TESTS REQUIRED

7.1 Samples will be delivered accompanied by a written request stipulating the tests required, and where relevant, the method to be used.

7.2 When samples require subcontracted testing, and the Client specifies a laboratory other than those approved by APAF, it is the responsibility of Client to assess the quality assurance compliance of that laboratory.

8. TEST METHODS

8.1 Test methods selected for use by APAF for samples submitted remains the responsibility of APAF. Samples submitted for analysis will normally be tested using standard APAF methods or methods supplied/approved by the Client nominated representative. When other methods are to be used, these will be agreed in writing by both Client and APAF.

8.2 The Client is solely responsible for ensuring test methods selected/supplied/approved are validated for each sample submitted for analysis. Where required by the Client, APAF shall, with prior agreement, perform analytical method validation as specified by the Client. The cost of validation shall be borne by the Client.

8.3 APAF will advise Client of any proposed changes in their test methods and will not change these methods without written authorisation from the Client.

8.4 The Client must advise APAF of any significant product formulation changes or change in production methods so that the test methods used may be validated against the new formulation. Validation expenses will be borne by the Client.

9. REPORTING TEST RESULTS

9.1 APAF will provide the Client with an electronic written report to the nominated representative within ten (10) working days of completion of the Services. Extra charges will be incurred if a non-standard format report, hard copy report, or raw data is required.

9.2 The standard report shall include:

- (a) Date:
- (b) Name of sample
- (c) Batch/Lot number: where applicable
- (d) Project number:
- (e) Date sample received:
- (f) Test Method name:

- (g) Results:
- 9.3 APAF will keep all records of testing for the Client for a **maximum** period of six (6) months from the date of reporting results unless by special arrangement. Within the six month period, the Client may request access to the records which will then be made available on a secure server over a period of five (5) consecutive business days. APAF will provide the Client with access details to the server. After this period APAF will take no responsibility or liability for the storage of information.
- 9.4 Where payment of account is outside agreed terms of contract and following prior communication between APAF and Client, APAF reserves the right to with-hold any outstanding analytical results until payment of outstanding monies has been rectified.
- 10. RETENTION SAMPLES**
- 10.1 Samples submitted for analysis will be stored on-site by APAF until results have been reported and then for a period of thirty (30) days unless prior agreement has been made. The Client will be responsible for any costs incurred in the return of samples to the Client. If the sample is deemed hazardous by international standards it shall be returned to Client or destroyed at their option, at their cost.
- 10.2 The Client will be responsible for keeping of retention samples of all samples submitted for testing.
- 10.3 APAF is not liable for the samples. Client indemnifies APAF from any liability or claims for losses, injury or damage arising from the loss, destruction, contamination or otherwise deterioration of the samples.
- 11. PRODUCT RELEASE**
- 11.1 It is the responsibility of the Client to decide whether a product or raw material is suitable for use based upon the results provided by APAF and any other pertinent information available.
- 11.2 Results provided by APAF pertain only to the sample tested and as received. The statistical relevance of the sample supplied to the entire product batch/lot or other samples is the sole responsibility of the Client.
- 12. OUT OF SPECIFICATION / REPEAT ANALYSIS**
- 12.1 When advised by the Client or considered pertinent by APAF, repeat analysis may be undertaken to confirm validity of a test result. At any point APAF reserves the right to re-confirm any out-of-specification or atypical result.
- 12.2 Where repeat analysis has been requested by Client to confirm an out of specification result and repeat analysis has resulted in a reproducible analytical result compared to the original result, additional analytical charges will be incurred at the cost of Client.
- 13. OWNERSHIP OF SERVICE AND INTELLECTUAL PROPERTY**
- 13.1 Ownership of the test results created by APAF as a result of the performance of the Services shall pass to the Client on payment of the total Fee.
- 13.2 Any Intellectual Property created by APAF in the course of the Services relating to the process, development, method, design plan, calculations, formulae for developing or creating the Services or performing the Services will be owned by APAF.
- 13.3 Both parties agree that nothing in this Agreement provides any rights to either party to the other party's pre-existing Intellectual Property except to the extent required to fulfil the requirements of this Agreement.
- 14. CLIENT PUBLICITY**
- Any use of the names, logos or trademarks of APAF, Australian Proteome Analysis Facility Limited, or Macquarie University in direct or in indirect advertising is forbidden. This clause survives termination or expiry of the Agreement.
- 15. LIABILITY AND WARRANTY**
- 15.1 The *Trade Practices Act* (1974) implies certain non-excludable conditions and warranties into some contracts for the supply of services. To the full extent permitted by the *Trade Practices Act*, APAF limits its liability in relation to the provision of the services under this Agreement to the supplying of the services again or the payment of the costs of having the services supplied again at its option.
- 15.2 To the fullest extent permitted by law, APAF will not be liable for any indirect, incidental, consequential, special or exemplary damages or lost profits arising out of or in connection with this Agreement. In no event shall APAF's total liability for any damages, direct or indirect, in connection with this Agreement in respect of each event or a series of events, exceed the total amount that would be due to be paid to APAF by the Client in connection with this Agreement, whether such liability arises from any claim based upon contract, tort or otherwise.
- 15.3 APAF does not give any warranty, whether express or implied, that the Services are fit for any purpose.
- 16. RELEASE AND INDEMNITY**
- 16.1 The Client hereto agrees to indemnify, hold harmless, and defend APAF, Macquarie University and its respective affiliates, trustees, officers, employees, students, and agents against all actions, claims, proceedings or demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly and whether at common law, in equity or pursuant to statute or otherwise, in respect of any loss, death, injury, illness or damage (whether personal or property, and whether direct or consequential, including consequential financial loss, loss of profits) arising out of:
- use of the Services by the Client, or any person licensed or authorised by the Client;
 - APAF's design, execution or completion of the Services;
 - any modifications, alterations or improvements made by the Client, the Client's employees, agents or subcontractors to the Services;
 - any negligent act or omission of the Client, its employees, officers, agents or contractors;
 - any defects or errors in such part of the design, dimensions, quantities or specifications of the Services provided by the Client;
 - use of hazardous or toxic material supplied by the Client;
- except to the extent that such claims for death, illness, personal injury, property damage arise out of or result from the negligence, recklessness or wilful misconduct of APAF or its respective trustees, officers, employees, licensees, assignees, contractors, consultants, students, and agents, either collectively or individually
- 16.2 APAF accepts no responsibility for loss of or damage in relation to maintenance of confidentiality or secrecy with respect to any plans, services, materials, drawings, samples or other materials supplied by the Client.
- 16.3 The Client's obligations under this release and indemnity clause include payment of all damages, costs and expenses, including solicitor and client legal costs incurred in defending or settling any such action claims proceedings or demands.
- 16.4 Each indemnity or disclaimer of liability in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Agreement.
- 17. SUBCONTRACT**
- APAF may subcontract the whole or part of these Services to Macquarie University at its discretion.
- 18. INSURANCE**
- APAF maintains public liability and professional liability insurance.
- 19. VARIATIONS**
- 19.1 No variation to this Agreement will be agreed otherwise than in writing. Either party may at any time, by written notice propose any variation to the Services.
- 19.2 Upon receipt or issuance of a variation notice, APAF must promptly notify the Client of:
- the feasibility of accommodating the proposed variation;
 - any resulting increase in the payment;
 - any delay in the performance of the Services;

- assessed by the other party in, or in response to, any variation notice.
- 19.3 Upon receipt of information from APAF, the Client must within five (5) Business Days notify the other party that it approves, rejects or requires any variation to or additional information or explanation relative to any proposed variation.
- 19.4 Each party must reasonably consult with and cooperate with the other party to resolve and adopt any variation proposed by the other party. Any variation agreed under this provision must be effected by a variation document created and executed by the parties.
- 19.5 Each party must continue to perform this Agreement in compliance with its then current provisions, in the event of any failure by the parties to agree to any variation proposal or variation document.
- 19.6 In this clause "Business Days" refer to any week day except for a public holiday or bank holiday in New South Wales.
- 20. CONFIDENTIALITY**
- 20.1 All information which APAF obtains in the course of providing the Services is confidential and APAF must not disclose any such information to any person without prior written consent of the Client except when such disclosure is necessary for the purpose of carrying out the Services.
- 20.2 It is acknowledged by each party that the other party may disclose information pertaining to this Agreement or about the other party to any agency or authority to which it is obligatory or customary for that party to disclose such information, including but not limited to, courts of law and auditors.
- 21. DISPUTES**
- 21.1 If a dispute arises out of or relates to this Agreement, its breach validity or subject matter or as to any claim in tort, in equity or pursuant to any domestic or international law, the parties expressly agree to endeavour in good faith to settle the dispute by mediation administered by the Australian Commercial Disputes Centre ("ACDC") before having recourse to arbitration or litigation.
- 21.2 A Party claiming that a dispute has arisen must give written notice to the other party to the dispute specifying the nature of the dispute. On receipt of the notice the parties must within 7 days after receipt of the notice, meet to resolve the dispute. If the dispute is not resolved within 7 days or such further period as the parties agree then the dispute must be referred to ACDC. Any mediation must be conducted in accordance with ACDC Mediation guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved, which terms are deemed incorporated in this clause.
- 21.3 This clause shall survive termination or expiration of this agreement.
- 22. TERMINATION**
- 22.1 A party may terminate this Agreement upon fourteen days (14) day's written notice given to the other party, (the "Defaulting Party") if:
- (a) That party becomes aware of any material misrepresentation made by the Defaulting Party in the course of negotiating, or entering into, or the conduct of this Agreement;
- (b) the Defaulting Party breaches or fails to comply with any provision of this Agreement and, where the breach or failure is capable of being remedied, fails to remedy the breach or failure to the satisfaction of the party seeking to terminate within fourteen (14) days of receiving notice in writing from that party requiring it to remedy the breach or failure; or
- (c) any of the following actions occur in relation to the Defaulting Party:
- i) an order is made for the winding up of the Defaulting Party;
- ii) a receiver or receiver and manager of any property of the Defaulting Party is appointed;
- iii) a provisional liquidator of the Defaulting Party is appointed;
- iv) the Defaulting Party is or is deemed by law to be unable to pay its debts;
- v) the Defaulting Party makes any arrangement or compromise with its creditors or members or with any class of its members or creditors; or
- vi) The Defaulting Party ceases to carry on its business in the areas necessary for the performance of its obligations under this Agreement;
- 22.2 **MUTUAL AGREEMENT** - The parties may, by written agreement, terminate the Services before completion.
- 22.3 In the event of termination of the Services, APAF shall :
- (a) take all actions necessary to minimise any further expenditure on the Services from the date of the notice of termination;
- (b) ensure it does not incur any expenditure on the Services beyond the termination date; and
- (c) where the Client has advanced funds to APAF prior to the notice of termination, repay to the Client any part of the funds advanced and not then applied or appropriated for expenditure permitted under this Agreement or used or applied in closing down the Services by the termination date;
- 22.4 In any termination, APAF shall be paid fees earned and reimbursed all costs and non-cancellable obligations incurred in connection with the Services on or prior to the date of receipt of written notice of termination.
- 22.5 Termination of the Agreement will not affect the accrued rights and obligations of either party.
- 23. FORCE MAJEURE**
- Neither party shall be liable to the other for any default hereunder, if such default is caused by an event beyond such party's control, including without limitation, acts or failures to act of the other party, floods, fires, governmental requirements, strikes, industrial disputes, insurrection, war and acts of God. In the event of a default or a threatened default as a result of the above causes, the defaulting party shall use its best efforts to avoid and remedy such default. Should the default prevent performance hereunder for a period of greater than ninety (90) days, then the non-defaulting party may elect to terminate this Agreement.
- 24. NOTICES**
- Notices under this Agreement shall be delivered by hand or by facsimile to the addresses of the parties specified on the attached Quotation.
- 25. SEVERABILITY**
- If any part of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement shall remain otherwise in full force apart from such provision which shall be deemed deleted.
- 26. WAIVER**
- A waiver by either party of any breach of or failure to comply with the Agreement by the other party is of no effect unless it is in writing and a waiver of any particular breach or failure to comply is not to be treated as a waiver of any other or any continuing or subsequent breach of or failure to comply with the Agreement.
- 27. NEGATION OF PARTNERSHIP**
- Each party is not and agrees not to claim or imply that it is a partner or agent or joint venturer of the other party or otherwise able to bind or represent that party.
- 28. ENTIRE AGREEMENT/VARIATIONS**
- This Agreement and the attached Quotation constitutes the entire agreement between the parties with respect to the subject matter and the scope of the Services, unless agreed otherwise in writing. It supersedes all previous discussions, quotations and agreements between the parties whether oral or in writing. These terms and conditions shall not be varied except by written agreement of the parties.
- 29. APPLICABLE LAW**
- This Agreement is governed by the laws in force in New South Wales