

Terms and Conditions

Any supply of services by MSALABS to COMPANY will be subject to the below terms.

1. Definitions

Affiliate means a company in the same corporate group as a party.

Claim means any action, suit, proceeding or demand of any kind.

Confidential Information means: (i) the Agreement; (ii) all information, data and knowledge made available to the Customer by MSALABS in connection with this Agreement including the results of any analysis; and/or (iii) in respect of a Party, information which: (a) is by its nature, confidential; (b) is designated by the disclosing Party as confidential; or (c) the other Party knows or ought to know is confidential.

Law means: (a) the present or future requirements of any statute, directive, regulation, code, order, rule, subordinate legislation, or other document enforceable under any applicable statute, regulation, rule or subordinate legislation, common law, or equity of the jurisdiction in which the Services are performed; (b) the lawful requirements, directions, or instructions of any relevant governmental agency; and (c) the listing rules and procedures of any applicable stock exchange.

Proposal means the description of services and an estimate of charge provided to the Customer by MSALABS in any written quote or estimate.

Sample Submittal Form is the document utilised by the Customer to provide details of the Services to be undertaken by MSALABS including any special instructions.

Services means the services or other works specified in a Proposal, to be performed by MSALABS to the Customer pursuant to this Agreement.

Standards means all standards, specifications, requirements, and rules issued by the various worldwide standards association bodies and identified by the abbreviations assigned to each of those standards.

Taxes means all taxes, fees, levies, duties, withholdings, and charges imposed or assessed in respect of the Services by all governmental agencies including without limitation income tax (including withholding for prescribed payments or group tax), payroll tax, statutory superannuation contributions and workers compensation payments and contributions, value added tax or any other sales tax, customs duty, excise tax and stamp duty.

Term means the time period from the commencement date until the expiry date, unless terminated earlier in accordance with this Agreement.

2. Proposal – Agreement Formation

- 2.1. The Proposal is MSALABS's offer to the Customer for MSALABS to supply the Services described in the Proposal to the Customer on the terms contained in this document.
- 2.2. The Proposal is open for acceptance by the Customer in writing within 30 days from the date issued by MSALABS unless the Proposal specifies otherwise. If the Customer accepts the Proposal in writing it will be bound by these terms.

- 2.3. MSALABS reserves the right to change the quoted pricing at any time prior to the Customer accepting the Proposal.
- 2.4. Acceptance of the Proposal by the Customer is shown by way of a returned signed copy of the Proposal, a return email confirming acceptance of the Proposal or a purchase order sent by the Customer to MSALABS that reflects the contents of the Proposal. Any of the above methods of acceptance will constitute a binding contract between the Parties for MSALABS to supply the Services specified in the Proposal (in addition to any Services described in any document referred to in the Proposal) on the terms contained in this document (the **Agreement**).
- 2.5. This Agreement is the entire agreement between the Parties relating to its subject matter and the Services provided by MSALABS are subject to these terms to the exclusion of anything else, notwithstanding that any such purchase order or Customer provided document suggesting that other terms purport to override these terms. However, if a distinct and fully signed written contract exists between the Parties for the supply of the Services listed on the relevant Proposal, the terms of that contract take precedence over these terms.
- 2.6. MSALABS reserves its right to review these terms at any time. If, following any such review, there is to be a change of these terms, then that change will take effect on the date that MSALABS notifies the Customer of such change. Any proposed change to these terms by the Customer must be requested in writing. MSALABS may refuse any such request without providing reasons and any change requested by the Customer will only be binding on MSALABS if MSALABS accepts them in writing.
- 2.7. In the event of any inconsistency between the terms of this Agreement and the Proposal, the terms of this Agreement shall take precedence.

3. Warranties

- 3.1. MSALABS warrants that the Services:
 - (a) will be carried out with good practice and in accordance with ISO9001 and ISO17025 (or equivalent);
 - (b) will be carried out in a timely manner (noting that the date quoted for completion of the Services is estimated and MSALABS will not be liable to the Customer for any claim, delay, loss, or damage whatsoever arising from the delay in completing the Services);
 - (c) are free from defects in workmanship;
 - (d) do not and will not infringe the intellectual property rights of any third party;
 - (e) comply with the requirements of any relevant statutes, regulations, or legally applicable standards; and

- (f) will be performed in accordance with this Agreement.
- 3.2. The Customer warrants and acknowledges that:
- (a) it has the power and authority to enter into this Agreement and procure the Services;
 - (b) it is securing the Services for its own account and not as an agent or broker, or in any other representative capacity, for any other person or entity;
 - (c) MSALABS will in performing the Services rely solely (without any duty to confirm or verify the accuracy, completeness, integrity etc thereof) on the samples and other items or information provided to MSALABS by it or its agents;
 - (d) any information, samples or other related documents provided by the Customer to MSALABS will not, in any circumstances, infringe any legal rights (including intellectual property rights) of any third party;
 - (e) it will cooperate with MSALABS in all matters relating to the Services including providing instructions and feedback to MSALABS within a reasonable time from being asked to enable MSALABS to perform the Services in a timely manner; and
 - (f) it will not use any reports issued by MSALABS pursuant to this Agreement in a misleading manner.
- 3.3. Unless specified otherwise in the Sample Submittal Form, the Parties agree that upon MSALABS receiving any samples or items from the Customer (or its agents or contractors), the Customer ceases to have any ownership rights over the said samples or items and MSALABS after performing the Services may deal with the samples or items in any manner it determines.
- 3.4. The Customer bears the sole responsibility for the quality of its samples as received by MSALABS. MSALABS will not be responsible for the loss, degradation, and contamination of samples that may occur in the transporting of said samples to its Laboratory. MSALABS is not obligated to assess and report on the fitness of samples for the requested analysis.
- 3.5. The Customer warrants that the samples are non-hazardous and agrees that if MSALABS identifies any hazardous material in the samples, it may return the samples to the Customer at the Customer's cost.
- 4. Price, Invoicing and Payment**
- 4.1 The cost of performing the Service will be the amount invoiced by MSALABS and will be in accordance with the Proposal.
- 4.2 Quoted prices exclude taxes and the amounts of all increases in costs to MSALABS by reason of any change after the date of the Proposal which were unknown to MSALABS at the time of quoting e.g., government-imposed taxes, changes to specifications of the Services, 'batch charges' where an order is for less than 20 samples, manufacturer prices, labour costs, material costs, rates of exchanges etc.
- 4.3 MSALABS will invoice the Customer upon issue of results unless payment is required prior to commencement of work.
- 4.4 In the case of multi-year agreements, all prices in this proposal will be subject to Rise and Fall on each anniversary of renewal.
- 4.5 If invoicing and payment need to be made locally, MSALABS will calculate its invoice based on the USD commercial rates and convert it into the local currency based on the USD ask rate as published by Reuters Ask as at the date of the invoice.
- 4.6 The Customer must pay MSALABS, the amount shown on an invoice within 30 days from the date of the invoice (subject to any other written agreement).
- 4.7 The Parties agree that:
- (a) invoices which are not disputed within 5 days from receipt, are deemed to be accepted by the Customer and will be due and payable to MSALABS within 30 days from receipt of the invoice;
 - (b) if a dispute is raised within 5 days from receipt of an invoice, payment of the disputed portion may be withheld until the dispute is settled in accordance with the dispute resolution provisions in these terms; and
 - (c) if a dispute is raised after 5 days from receipt of an invoice, the Customer is not entitled to withhold the disputed portion but may seek to have the disputed amount settled in accordance with the dispute resolution provisions in these terms and if applicable, receive a credit towards a future invoice(s).
- 4.8 The Customer shall pay MSALABS by electronic funds transfer or bank transfer. MSALABS's preferred method of receipt of invoices is electronically by email to the local finance team unless specified otherwise.
- 4.9 MSALABS may charge, and the Customer must pay, interest on overdue payments at the 3-month US SOFR rate from time to time plus 5% pa.
- 4.10 All sums to be received by MSALABS under this Agreement shall be paid free and clear of all deductions or withholdings unless and to the extent that the deduction or withholding is required by Law, in which event the Customer shall pay such additional amount as shall be required to ensure that the net amount received by MSALABS hereunder will equal the full amount which would have been received by it had no such deduction or withholding been required to be made.
- 4.11 The Customer shall not be entitled to withhold payment or make deduction from any amount owed to MSALABS or the price in respect of any set off or counterclaim.
- 4.12 If either Party discovers or is advised of any errors or exemptions relating to its invoicing for the supply of specified Services, the Parties will jointly review the nature of the errors or exemption, and must, if appropriate, take prompt action to either adjust any relevant invoice or refund any over payment etc.
- 5. Indemnities**
- 5.1 The Parties will indemnify each other from and against all loss, damage, and expense (including legal fees), suffered as a result of:
- (a) any breach of this Agreement by either Party; or
 - (b) personal injury or death of any person, or damage to property caused by either Party;
 - (c) an act or omission of either Party in connection with the performance of the Services,

except to the extent of any gross negligence or wilful misconduct of the Party that suffered.

5.2 All liability of either party is excluded for indirect, incidental, special, or consequential damages including without limitation:

- (a) damages for loss of profits or savings (actual or anticipated), loss of goodwill, loss of market or loss or use; and
- (b) losses suffered by either party due to claims by third parties,

whether or not such party knew of the possibility of such damage, or such damage was otherwise foreseeable.

5.3 Despite anything else in this Agreement, MSALABS's liability in connection with the Services (including any reporting):

- (a) does not extend to any incorrect results in any reports arising from any false, unclear, incomplete, or misleading information provided to MSALABS;
- (b) is limited to the Customer and does not extend to the Customers' successors, assigns, associates, officers, employees, directors, or other third party; and
- (c) is strictly limited to the cost of or the reproduction of a specific analysis or report at the election of MSALABS.

5.4 Any claim for a refund or reperformance must be made by the Customer to MSALABS within 14 days from the date the results of the Service were issued.

6. Insurance

6.1 Each Party will at its own cost effect and maintain until the end of the term, its own applicable insurance policies including Workers' Compensation and Employer's Liability Insurance, Commercial General Liability Insurance (Bodily Injury and Property Damage), Plant and Equipment Insurance and any other insurance that would be reasonably expected to be held by either Party.

7. Termination

7.1 This Agreement will end on the expiry date determined by the Parties in writing or as otherwise agreed between the Parties. Despite any other provision to the contrary, any Agreement made between the Parties has an actual or implied end date.

7.2 Despite any other provision to the contrary and without prejudice to any other rights and remedies MSALABS has under this Agreement or at Law, MSALABS may at any time, terminate this Agreement by giving the Customer 14 days' prior written notice.

7.3 Without prejudice to any other rights and remedies it has under this Agreement or at Law, MSALABS may forthwith terminate this Agreement by notice in writing, if the Customer is in default of any term or condition of this Agreement.

7.4 MSALABS may also forthwith terminate this Agreement by notice in writing if the Customer:

- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (b) is insolvent or is presumed by a court to be insolvent;
- (c) has an administrator, controller or similar officer appointed over all or any of its assets or undertaking; or

- (d) has an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its bankruptcy, winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them and any such application, order or proceeding is not withdrawn within twenty-one (21) days.

8. Timing and Delay

8.1 To the extent that MSALABS is, or is likely to be, delayed or disrupted in the supply of Services because of:

- (a) any circumstance beyond MSALABS's control; or
- (b) any breach, act, or omission of the Customer (including its agents or contractors),

MSALABS is entitled to a reasonable extension of time to supply the Services.

8.2 If a delay or delays under the above clause exceeds a single or combined period of 30 days, either Party may terminate this Agreement by written notice to the other, noting that MSALABS will be entitled to payment for Services performed prior to termination.

8.3 Subject to clause 8.1 above, if a delivery time is stated in a Proposal, then time will be of the essence. If no delivery time is stated, then MSALABS will ensure that Services are performed within a reasonable period of time.

9. Confidential Information

9.1 Neither Party may

- (a) disclose any Confidential Information;
- (b) use any Confidential Information in any manner which may cause or be calculated to cause loss to the other Party; or
- (c) make any public announcement or issue any press release regarding this Agreement or the transactions contemplated by it,

unless:

- (d) the Confidential Information has come within the public domain, or has come within the possession of the disclosing Party otherwise than in the course of dealings between the Parties as contemplated by this Agreement;
- (e) the disclosing Party has obtained the prior written consent of the other Party;
- (f) the disclosing Party is required to do so by Law or by any recognised stock exchange on which it or its parent company or ultimate holding company is listed;
- (g) to the disclosing Party's professional advisers for the purposes of advising it in respect of this Agreement e.g., legal or tax advisers; or
- (h) the disclosing Party is required to do so by a governmental agency.

9.2 This obligation of confidentiality shall survive the ending or earlier termination of this Agreement.

10. General

- 10.1 A notice, consent, approval, or other communication (each a Notice) under this Agreement must be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and sent by electronic mail to that person's email address and is treated as having been given and received on the day of sending if a business day, otherwise on the next business day.
- 10.2 A Party's non-exercise of or delay in exercising any power or right does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right can only be waived in writing, signed by the Party to be bound by the waiver.
- 10.3 If any clauses in this Agreement or its application to any person or circumstances is or becomes invalid or unenforceable, then the remaining clauses will not be affected, and each remaining clause will be valid and enforceable to the fullest extent permitted by law.
- 10.4 This Agreement, as it relates to its interpretation and disputes under it, will be governed by the laws of the Country in which the Supplier is incorporated (or if not registered the location of its operations) and the Parties consent to the jurisdiction of the Courts of that Country.
- 10.5 The Customer shall not directly or indirectly sub-contract or assign this Agreement or any of its rights or obligations under this Agreement or any part of this Agreement without obtaining MSALABS's prior written consent which may be granted unconditionally or upon such conditions as MSALABS thinks fit and may be withheld by MSALABS in its absolute discretion.

The appointment of subcontractors by the Customer shall not relieve the Customer from any liability or obligation under this Agreement. The Customer shall be liable for the acts and omissions of subcontractors and employees, officers, agents, and contractors of subcontractors as if they were acts and omissions

of the Customer. The Customer shall ensure that its subcontractors comply with the terms of this Agreement.

- 10.6 MSALABS is engaged and performs all Services hereunder as an independent contractor and not as an agent or employee of the Customer.
- 10.7 MSALABS will maintain a true and correct set of records in connection with the Work and all related matters for a period of not less than 24 months after the date of completion of the Work.
- 10.8 MSALABS must conform with the provisions of all Laws (Federal, State or Municipal) in any way affecting or applicable to the supply of the Services and must obtain all permits and licenses and give all notices required to be given and must pay all fees, deposits, and taxes in connection therewith.
- 10.9 If MSALABS is restructured, then the rights and obligations of MSALABS under this Agreement are assigned to and assumed by the appropriate legal entity as determined by MSALABS or the successors of MSALABS under the restructure.
- 10.10 If the Parties are in dispute over anything arising out of or in any way connected with an order or this Agreement, and one party requires the dispute to be resolved, then that party must give the other party a written notice of the details of the dispute. Within 14 days of a party receiving the notice, the Parties must meet and attempt to resolve the dispute. If, within 14 days of that meeting, the dispute is not resolved, either party may proceed to litigation.
- 10.11 MSALABS reserves its right to review these terms at any time. If, following any such review, there is to be a change of these terms, then that change will take effect on the date that MSALABS notifies the Customer of such change. Any proposed change to these terms by the Customer must be requested in writing. MSALABS may refuse any such request without providing reasons. Changes requested by the Customer will only be binding on MSALABS if MSALABS accepts them in writing