

## **Terms and Conditions**

### **Analytical Service**

McLaren Vintners Pty Ltd (ABN 63 111 089 528) of Douglas Gully Rd, McLaren Flat SA 5171 ('Laboratory') offers our Analytical Service under the following Terms & Conditions:

#### **1. Term**

These Terms & Conditions take effect from the date of service request and remain in force unless terminated in writing by either party.

#### **2. Customer Obligations**

You, the Customer, agrees with the Laboratory:

1. That you will indemnify the Laboratory against any claim or proceedings made, threatened or commenced and any costs, liability, loss (including consequential loss), damage or expense (including legal and other professional costs on a full indemnity basis) that the Laboratory incurs or suffers as a direct or indirect result of a breach of this Agreement by the Customer; and
2. Without limiting what is covered by this indemnity, the indemnity extends to the Laboratory's liability to third parties arising out of the analysis of the samples, including liability to governmental or regulatory authorities and consumers for unsafe or defective products; and
3. The indemnity applies whether or not the Laboratory has been negligent or is at fault, and does not limit any further compensation or rights of the Laboratory.

This clause survives the termination of this agreement.

#### **3. Uncertainty of Measurement**

The uncertainty of measurement is available and advised for all results.

#### **4. Freight and Couriers**

The Customer covenants and agrees with the Laboratory that all costs of transporting the Samples shall be borne in full by the Customer.

#### **5. Payments**

The Customer covenants and agrees with the Laboratory that:

- The Customer will pay the Laboratory for analytical services provided;
- The Customer will make all payments to the Laboratory within 7 days of invoice date, unless otherwise agreed in writing;
- The Laboratory reserves the right at any time before the samples are analysed to increase the price of the Service to reflect any increase in the cost to the Laboratory which is due to:
  - any factor beyond the Laboratory's control, such as but not limited to alternation of duties, change in taxation laws;
  - any changes in the Customer's instructions to the Laboratory.

#### **1. GST**

All amounts stated in relation to our Laboratory are GST exclusive. If any GST is chargeable in respect of all or any of the amounts paid to the Laboratory the Customer will, upon receipt of an appropriate Tax Invoice, pay to the Laboratory such GST at the rate properly chargeable in respect of the relevant supply of goods or services by the Laboratory.

#### **2. Default Payment**

If the Customer fails to make payment within the time required by this Agreement, the Customer shall pay interest from the due date for payment on any amount outstanding calculated at the Commonwealth Banking Corporation standard business banking overdraft rate plus 5% per annum for the full duration of such default. Time shall be of the essence for the purposes of this clause.

#### **6. Miscellaneous**

##### **1. Approvals and consent**

Except as otherwise set out in this Agreement, a party may give or withhold an approval or consent to be given under this Agreement in that party's absolute discretion and subject to any conditions determined by the party. A party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

##### **2. Assignment**

A party must not assign any of its rights or obligations under this Agreement without the prior written consent of the other parties.

##### **3. Entire agreement**

This Agreement contains everything the parties have agreed in relation to the matters it deals with. No party can rely on an earlier Agreement, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this Agreement was executed, except as permitted by law.

##### **4. Execution of separate Agreements**

This Agreement is properly executed once the Customer signs our Analysis Request Sheet.

#### **7. Governing law and jurisdiction**

This Agreement is governed by the law of South Australia. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

#### **8. Severability**

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

#### **9. Variation**

No variation of this Agreement will be of any force or effect unless it is in writing and signed by the parties to this Agreement.

## 10. Waiver

The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion

## 11. Confidential information

Neither party may during the continuance of this Agreement or thereafter use, divulge or communicate to any person, any confidential information concerning the other party or the processes, dealings, transactions or affairs of the other party which may have been acquired by the party pursuant to the performance of this Agreement except as is required by mandatory operation of law or by the proper performance of its obligations under this Agreement.

## 12. Intellectual Property

Intellectual property of results will pass to the Customer on payment; however as part of our ongoing quality assurance program, results and samples may be used for validation tests, method reviews and processes reports. Unidentified information may also be used to assist with projects, for example district averaging or typical value studies.

## 13. Force majeure

No party is liable for any failure to perform or observe any term of this Agreement if performance has been delayed, hindered, restricted or prevented by any circumstance not within the reasonable control of the parties including, without limiting the generality of the foregoing, acts of God, strikes, lockouts or other industrial disturbances or hostilities, or compliance with any valid order of any government or public authority. The time and times of the performance of the obligation on the respective parties' part to be performed in this Agreement shall be extended by the period equal to each such period of delay provided that such party must promptly give notice to the other party in accordance with the provisions of this Agreement and must use reasonable endeavours to remove or remedy the cause thereof with all due diligence and expedition.

## 14. Termination

Without limiting the Laboratory's other rights under this Agreement, the Laboratory may terminate this Agreement with immediate effect by notice to the Customer if:

- the Customer breaches any material term of this Agreement capable of remedy and fails to remedy the breach within 14 days after receiving a notice requiring it to do so;
- the Customer breaches any material term of this Agreement not capable of remedy;
- the Customer repeatedly breaches any term of this Agreement and, within 14 days after receiving a

notice requiring it to do so, fails to satisfy the Laboratory that a breach of the term will not recur;

- the Customer is subject to any form of insolvency administration.
- Termination of this Agreement will not affect any accrued rights or remedies a party may have as at the date of termination unless explicitly stated otherwise in the Agreement.

## 15. Disputes

If a dispute arises under this Agreement, either party may at any time give written notice to the other requesting that a meeting take place to seek to resolve the dispute. Nominated senior representatives of both parties must meet within 5 business days of the notice and endeavour to resolve the dispute in good faith.

If the parties are unable to reach agreement on any matter contained in this Agreement, such dispute shall be referred to an independent person acting as an expert and not as an arbitrator and appointed by written agreement between the parties.

Nothing in this Agreement shall prejudice the right of either party to institute proceedings to enforce payment due under this Agreement or to seek injunctive or urgent declaratory relief in respect of a dispute under this clause or any matter arising under this Agreement.

The existence of a dispute does not relieve either party of its obligations under this Agreement.

The costs of such dispute resolution must be borne as the expert shall direct and in default of any direction by the expert then such costs shall be borne in equal shares.

## 16. Scope of liability

Notwithstanding anything to the contrary, the Laboratory will not be liable for a failure to comply with its obligations under this Agreement to the extent that the Laboratory's failure to perform such obligations, or any resulting loss, cost or expense, is caused by or is a result of:

- compliance by the Laboratory with any instruction, direction or parameter given by the Customer or any constraint imposed by the Customer upon the Laboratory, if the Laboratory has first informed the Customer in good faith that, in its opinion, that instruction, direction, parameter or constraint will inhibit the Product or may result in a third party claim; or
- the failure by the Customer to perform any of its obligations under this Agreement.