

## TERMS AND CONDITIONS OF SALE

Unless otherwise agreed in writing by Pfizer Animal Genetics, a division of Pfizer New Zealand Limited ("Pfizer"), the following are Pfizer's terms and conditions of sale. These, together with any other terms and conditions agreed upon in writing between Pfizer and the customer ("the Purchaser") apply to all sales of goods by Pfizer to that Purchaser to the exclusion of all other terms and conditions.

## 1. DEFINITIONS AND INTERPRETATIONS

## A Definitions:

(a) Unless the context otherwise requires:

- (1) "Business Day" means a day that is not a Saturday, Sunday or any other day which is a public holiday in Auckland, New Zealand;
  - (i) "Client" means the person who has completed a Sample Submission Form and submitted it to Pfizer Animal Genetics.
  - (ii) "Fee" means the relevant prices on the Sample Submission Form.
- (2) "PAG" means the Animal Genetics business of Pfizer New Zealand Limited.
  - (iii) "Related Companies" has the meaning in section 2(3) of the Companies Act 1993 (read as if the expression 'company' in that subsection included any body corporate of any jurisdiction).
  - (iv) "Samples" means any samples submitted by the Client to PAG for the purposes of the tests described in the Sample Submission Form.
  - (v) "Services" means the services described in the Sample Submission Form.

## B Interpretation:

i) All monetary amounts are in New Zealand dollars, unless otherwise stated.

- (a) The Sample Submission Form and these Terms and Conditions form the agreement between the Client and PAG ("Agreement").
- (b) The term "person" includes an individual, partnership, firm, company, body corporate, corporation, association, organisation, trust, estate, state or government or any agency thereof, municipal or local authority, and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality).

## 2. PERFORMANCE OF SERVICES

A The Client engages PAG to provide the Services as requested by the Client in the Sample Submission Form.

B PAG will carry out the Services as specified in the Sample Submission Form.

## 3. REMUNERATION

A The Client must pay the Fee to PAG for the Services provided as described in the Sample Submission Form.

Payment for Services and other charges associated with the Services is on a cash sale basis only unless PAG has agreed that Services can be paid on credit account. Where PAG has agreed that the Services can be paid on credit account, payment for Services and any other charges associated with the Services, is due on the 20th of the month following delivery of the invoice. All payments shall be made in New Zealand dollars. Payment shall be made in cleared funds. Failure to make payment in full on or before the due date constitutes a default and in addition to its other rights, PAG retains the right to charge a default penalty on such overdue amount calculated on a daily basis at the rate of interest payable on PAG's bank overdraft from time to time. That interest shall be payable on demand by PAG.

- (a) All prices are exclusive of freight, insurance, customs duty, and any other costs; and
- (b) The Fee excludes GST, which is to be added to the Fee and paid by the Client.

B By agreeing to these terms and conditions and by accepting the Services on credit, the Client authorises PAG to make enquiries as to the credit and financial history of the Client, including but not limited to, by obtaining such reports from credit reporting agencies as may be required by PAG from time to time. Any credit offered may be conditional upon the Client's directors giving personal guarantees in relation to the Client's obligations and their consent for PAG to make such enquiries as to their personal and commercial credit and financial history, including, but not limited to, by obtaining such reports from credit reporting agencies as may be required by PAG from time to time.

C The Client shall not be entitled to withhold payment or make any set off or deduction from the price of Services supplied or from any other payment due by the Client.

D PAG reserves the right to terminate the Client's credit account at any time. In the event of such termination, PAG may require security for payment and may suspend performance of its obligations under the Contract until the provision of sufficient security. Such termination shall be without prejudice to any other rights PAG may have, and the Client will not be entitled to any compensation in respect of such termination.

E The Client agrees to pay to PAG, or at PAG's direction, all reasonable collection costs, including commissions and legal charges on a solicitor and client basis, on all moneys outstanding on its credit account should the Client breach any of these terms and conditions and action be taken by or on behalf of PAG to recover the debt.

F PAG shall only be responsible to comply with regulations, bylaws, codes and standards specified in the Sample Submission Form and PAG shall be under no liability whatsoever for any failure to meet any other regulations, bylaws, codes and standards.

G In the event of there being any changes in any regulations, bylaws, codes or standards with which PAG is obliged to comply after the date of the Sample Submission Form, then any additional costs in meeting such changes shall be to the account of the Client.

H Unless otherwise agreed in writing by PAG, Services will be charged at PAG's list prices at the date the Services are provided, PAG's list prices are subject to change by PAG without notice to the Client.

## 4. RISK

A Risk of any loss, damage or deterioration of or to the Samples shall remain with the Client upon acceptance of delivery by PAG. Once delivery has been accepted by PAG, PAG shall take reasonable care of the Samples.

## 5. LIABILITY

A To the fullest extent permissible at law;

- (a) All representations, terms, warranties, guarantees, or conditions whether implied by statute, common law or custom of the trade or otherwise, including, but not limited to, implied warranties, guarantees or conditions of merchantability and/or fitness for a particular purpose, are excluded.
- (b) PAG shall have no liability to the Client or any of the Client's representatives for anything, other than a breach by PAG of an express provision of this Agreement (including but not limited to negligence on the part of PAG or its employees or agents).

Client acknowledges that it does not rely on any representation or statement made by or on behalf of PAG or its employees or agents other than the express provisions of this Agreement. To the full extent permitted by the laws of New Zealand, any conditions or warranties imposed by such legislation are hereby excluded. Insofar as liability under or pursuant to such legislation may not be excluded, such liability is limited at the exclusive option of PAG, to:

- (i) the re-supply of the Services; or
- (ii) the re-payment of the fees paid by the Client for the performance of the Services by PAG.

B PAG shall not be liable for any loss of profits or any consequential, indirect or special damage or loss of any kind suffered by Client or any of the Client's representatives.

C Notwithstanding anything else contained in this Agreement, the liability of PAG to Client shall not in aggregate exceed the invoice price of the fee for the Services in respect of which the liability arises.

D The Client releases and indemnifies and shall continue to release and indemnify, PAG from and against:

- (a) all actions, claims, proceedings or demands by any person (including those brought by third parties) in respect of any loss, damage or injury which may be brought against it, whether on their own or jointly with the Client and whether at common law, in equity or pursuant to statute or otherwise arising out of the Client's exercise of its rights under this Agreement;
- (b) all damages, costs and expenses incurred in defending or settling any such claim, proceeding or demand; and
- (c) any liability or cost incurred by PAG as a result of any breach by the Client of any provision of this Agreement.

E This clause 7 shall survive expiration of this Agreement.

## 6. DEFAULT

A A Default occurs if any one or more of the following occurs:

- (a) The Client defaults in performance of its obligations under this Agreement (including failure to make payment on the date the payment is due).
- (b) The Client defaults in performance of its obligations under any other agreement with PAG.
- (c) The Client becomes insolvent or is adjudicated bankrupt or an application is made for its liquidation or a liquidator or receiver is appointed in respect of its assets.
- (d) The Client enters into, or is likely to enter into, any composition or arrangement with its creditors.
- (e) The Client no longer carries on business or threatens to cease carrying on business.
- (f) A change of ownership or effective control of the Client occurs or the nature of the Client's business is materially altered.
- (g) Any other event which PAG considers may materially adversely affect the ability of the Client to perform any of its obligations under this Agreement

B If a Default occurs, PAG, without prejudice to any other rights or remedies, may at its option do any one or more of the following:

- (a) Require all moneys outstanding to be immediately due and payable.
- (b) Require security for the Client's obligations to PAG's satisfaction.
- (c) Suspend the Agreement in which case PAG shall not be obliged to perform any of its obligations under this Agreement during the period of suspension including, without limitation, provision of the Services ordered by the Client. Any suspension shall not prevent PAG from terminating the Agreement during the period of suspension.
- (d) Terminate the Agreement.

C The Client shall pay all costs incurred by PAG, (including costs on a solicitor/client basis and debt collectors' costs) incurred in the recovery or attempted recovery of outstanding moneys and the enforcement of this Agreement.

D Payments by the Client shall be applied in reduction of amounts owing by the Client in such order as PAG determines.

## 7. INTELLECTUAL PROPERTY

A In this Agreement:

- (a) "Intellectual Property" includes patents, design patents, registered designs, copyrights, trade dress, trade marks, trade and business names and trade secrets, and applications for any of the foregoing as well as rights in and to inventions, discoveries, improvements, look and feel, works and names;
- (b) "Trade Mark" means the registered trade mark(s) used by PAG.

B Unless the parties agree otherwise:

- (a) the Client will own all rights, including Intellectual Property rights, in any material created by PAG, which includes gene test result reports, genetic conditions reports, client reports, profile reports, parentage verification reports, reinterpreted client data reports, sample confirmation reports, sample status reports and SIL reports, for the Client in providing the Services to the Client pursuant to this Agreement (the "Created Material"), provided, however, that Created Material excludes any raw data, which includes genotype data, laboratory results files, marker information, phenotype data and Intellectual Property that PAG is obligated to protect; ("Raw Data"). For the avoidance of doubt, PAG shall retain ownership of all rights, including Intellectual Property rights, in any Raw Data; and
- (b) the Client grants to PAG a perpetual, non-exclusive, royalty-free licence to use all Intellectual Property in the Created Material for such research, development and commercialisation purposes as PAG sees fit.

C PAG licenses the Client to use the Trade Mark in the Client's own promotional and sales materials in connection with the Services carried out by PAG for the Client under this Agreement. PAG will provide the Client upon request with a copy of the Trade Mark of a quality suitable for reproduction.

D The Client must only use the Trade Mark with the prior written approval of PAG for each type of use or application, and PAG will not unreasonably withhold such approval.

E When using the Trade Mark, the Client must not allow the appearance of the Trade Mark to be altered in any way (other than proportional size adjustment) without PAG's prior written approval.

## 8. OWNERSHIP AND USE OF SAMPLES

A The parties acknowledge and agree that all Samples remain the property of the Client.

B Samples will be used only in delivery of the requested Services.

C PAG routinely stores Samples for future use, but makes no commitment that they will be available for further testing.

D The Client is responsible for all costs associated with the freight of DNA test kits and the Created Material.

E PAG will attempt to confirm with the Client the number of Samples received and any Samples that PAG cannot process (for example, due to duplicates or missing information). Any re-sampling required to correct poorly taken, contaminated or incorrectly identified samples is at the Client's expense.

F For the avoidance of doubt, PAG will not reimburse the Client for any Samples that fail to produce a genotype.

## 9. CONFIDENTIALITY

A In this clause 9, unless the context otherwise requires:

- (a) "Approved Purposes" means the purpose of this Agreement;
- (b) "Confidential Information" means information of every kind:
  - (i) concerning, or in any way connected with:
    - (I) either party or a Related Company of either party; or
    - (II) the business, property or affairs of either party or of any officers or employees of either party; or
  - (ii) which is the property of either party or a Related Company of either party; and which:
  - (iii) is disclosed in writing, orally or by any other means by either party or by any person on either party's behalf to the other or an employee, officer or agent of the other; or
  - (iv) comes to the knowledge of either party or an employee, officer or agent of either party by any means; and includes
  - (v) the Intellectual Property and any other intellectual property of either party; and
- (c) "Notes" means notes which relate to, summaries and copies of, and extracts from any Confidential Information whether in documentary, visual, machine readable or other form.

B Each party must:

- (a) maintain and take all steps necessary to maintain all Confidential Information and all Notes in strictest confidence;
- (b) use Confidential Information and Notes solely for the Approved Purposes;
- (c) not make Notes or allow Notes to be made except as necessary in connection with the Approved Purposes;
- (d) not disclose any of the Confidential Information or Notes to any person other than those employees, officers and agents who are required to receive and consider the Confidential Information in the course of (and solely for) the Approved Purposes.

C Clause 9B does not impose obligations on either party concerning Confidential Information which is publicly available.

- D It is not a breach of clause 9B for either party to disclose Confidential Information which it is obliged by law to disclose to the person to whom it is disclosed.
- 10. NO PARTNERSHIP OR EMPLOYMENT**
- A The parties acknowledge that they have no authority to bind each other without the other's specific consent.
- B The parties acknowledge that PAG enters into this Agreement as an independent contractor.
- 11. NO ASSIGNMENT**
- A Neither party to this Agreement may assign or otherwise deal with the whole or any part of it except with the prior written consent of the other party which consent may not be unreasonably withheld; provided, however, either party may, without such consent, assign this Agreement, in whole or in part, to any of its respective Related Companies or successors-in-interest. Any permitted assignee shall assume all obligations of its assignor under this Agreement.
- 12. DISPUTE RESOLUTION**
- A If there is a dispute under this Agreement, the parties must negotiate in good faith to resolve the dispute in a spirit of goodwill and compromise.
- B If there is a dispute under this Agreement that is not resolved in accordance with clause 12A above the parties must participate in a mediation to attempt to resolve that dispute.
- (a) The referral to mediation will be commenced by a party giving notice to the other party stating the subject matter and details of the dispute and requiring the dispute to be referred to a mediator to be appointed by the parties. Failing agreement within 10 Business Days after the date of giving the notice, the mediator will be appointed at the request of a party by the President (or his or her nominee) for the time being of the Arbitrators' and Mediators' Institute of New Zealand Inc ("AMINZ"). The mediation will be conducted in accordance with the AMINZ mediation protocol.
- 13. ANTI-BRIBERY WARRANTIES**
- A The Client warrants, represents and undertakes to PAG that:
- (a) All information provided by the Client during PAG's pre-contractual due diligence, including all information provided in the Third Party Entity FCPA Due Diligence Questionnaire (if completed), is complete, truthful and accurate;
- (b) It has not offered, promised or paid, either directly or indirectly, any money or anything of value to a government official (including, but not limited to, a healthcare professional) to induce such government official to act in any way in connection with his/her official duties or to otherwise obtain an improper advantage for the Client or for PAG and will not offer, promise, pay or authorise such an offer, promise or payment in the future; and
- (c) The Client will at all times comply with the PAG Anti-Bribery and Anti-Corruption Principles available at [www.pfizer.co.nz](http://www.pfizer.co.nz)
- 14. PUBLICATIONS**
- In any publication (including advertising and promotional material) relating to this Agreement or the Created Material, PAG shall not publish individual results from testing without first obtaining the Client's prior written consent.
- 15. FURTHER ASSURANCE**
- Each party must promptly, at its own cost, do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.
- 16. SEVERABILITY**
- If anything in this Agreement is unenforceable, illegal or void, then it is severed and the rest of this Agreement remains in force.
- 17. ENTIRE UNDERSTANDING**
- This Agreement contains the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement.
- 18. VARIATION**
- An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.
- 19. COSTS AND DISBURSEMENTS**
- Each party must pay its own costs and disbursements connected with the negotiation, preparation and execution of this Agreement.
- 20. NOTICES**
- A notice or other communication connected with this Agreement has no legal effect unless it is in writing.
- 21. SPECIAL CONDITIONS**
- This Agreement is subject to any Special Conditions set out in the Fee for Service Agreement. In the event of any conflict between the Special Conditions and another clause of this Agreement, the Special Conditions shall prevail.
- 22. FORCE MAJEURE**
- A Neither party shall be liable for any failure or delay in complying with any obligation imposed on that party under an Agreement if:
- (a) the failure or delay arises directly or indirectly from a cause reasonably beyond that party's control and not due to the default or insolvency, or an intentional act or omission, of that party;
- (b) that party, on becoming aware of the cause, promptly notifies the other party in writing of the nature and expected duration of, and the obligation affected by the cause; and
- (c) that party uses its reasonable endeavours to mitigate the effect of the cause on that party's obligations and to perform that party's obligations on time despite the cause, but nothing in this clause shall excuse a party from any obligation to make a payment when due under the Agreement.
- 23. GOVERNING LAW AND JURISDICTION**
- (a) The law of New Zealand governs this Agreement. The parties submit to the jurisdiction of the courts of New Zealand.