

# Silliker Australia Pty Ltd ACN 006 462 335

## Terms and Conditions for the Supply of Services

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These internet Terms and Conditions for the Supply of Services (**Terms**) are incorporated into any agreement that Silliker Australia Pty Ltd ("**We**", "**Us**") enters into with a client ("**You**", "**Your**") for the supply of Our services (the "**Services**"). You agree that by accepting our offer to supply You with a Service, You have notice of these Terms and We are entitled to assume that You have read them in full and agree to be bound by them.

A "**Service Order**" is any document, in any media, including via the internet, that sets out the Services to be provided to You by Us or our agents.

You agree to check these internet Terms for the Supply of Services from time to time. We reserve the right to change these Terms without reference to You and We are entitled to assume that You have read the new Terms and Conditions and agree to them.

### 1. ACCEPTANCE

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- 1.1 Our agreement is with You and is set out in these Terms and any Service Order (together, this **Agreement**).
- 1.2 You agree that when You sign the Service Order or indicate Your acceptance as the context requires, an agreement will be formed between You and Us for the provision of the Services.
- 1.3 If for any reason the Service Order (and therefore this Agreement) is not signed by You, We are entitled to assume that any conduct by You or Your agent that recognizes the existence of a contract pertaining to the subject matter of the Service Order, including but not limited to You providing samples to Us and/or the performance of any Service by Us for the benefit of You, is acceptance by You of this Agreement and all of its Terms.
- 1.4 In the event of any inconsistency, these Terms will prevail over the Service Order, unless otherwise stated on the Service Order, and over any terms and conditions included in Your purchase order or any other document unless accepted by Us in writing.

### 2. OUR RESPONSIBILITIES

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- 2.1 We shall perform Services in a professional manner, using a degree of care and skill consistent with applicable practices, laws and regulations, and fit for the purpose that You make known to Us, as described in the Service Order.
- 2.2 We will provide You with the outcome of Services performed (**Results**), indicating where applicable, compliance with commercially accepted practices. We will report the Results to You in an agreed form or otherwise at Our discretion, including without limitation, in a certificate of analysis, an audit report, or a professional opinion (**Service Report**). You agree that the Results and any Service Reports will be based solely on the information and

samples You supply to Us, or the facilities or operations You make available to Us to audit or inspect. The Results and Service Reports are intended for use by persons having professional skill and training in the interpretation of such results. Interpretation is at theirs and Your own risk. We assume no responsibility, and You hereby waive all actions, proceedings, suits, causes of action, arbitrations, verdicts and judgments either at law or in equity or arising under a statute, demands, claims of any nature, costs and expenses (**Claims**) against Us, Our employees, agents and representatives, resulting from interpretation and use of such Results or Service Reports.

- 2.3 You acknowledge and agree that any statutory obligation We have to notify a state, federal or local government authority as a result of testing a sample supplied by You, whether or not in connection with the Services, cannot be excluded by this Agreement. We reserve the right to comply with our mandatory reporting obligations without reference to You.
- 2.4 We assume no responsibility, and You waive all Claims against Us, for any consequences or damages or loss in connection with any sample You supply Us.

### 3. YOUR RESPONSIBILITIES

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- 3.1 You warrant that by signing the Service Order You have full authority to enter into this Agreement.
- 3.2 We may require You to designate in writing a person or entity to act as Your authorized representative (**Representative**) with respect to Services to be performed. If so, We are entitled to assume that the Representative has complete authority to transmit instructions, receive information and data, and to order, at Your expense, additional services, which You agree will be Services and the subject of these Terms.
- 3.3 You or the Representative may designate in writing third parties who are authorized to receive copies of Results or Service Reports and We are entitled to assume that they are so authorized.
- 3.4 If necessary, You must allow Our employees, agents and representatives reasonable access to Your facilities as necessary to perform the Services. You are responsible for providing a safe work place and safe working conditions for Our employees, agents and representatives in accordance with the relevant occupational health and safety and workplace legislation. Any hazardous or toxic materials to which Our employees, agents and representatives may be exposed during the performance of this Agreement shall be properly stored and labeled in accordance with applicable laws and regulations, and the appropriate material data safety sheet (MSDS) available to those who may be exposed. As a condition of providing the Services, We may require You to have public liability insurance cover in the amount of \$10,000,000 and You agree to provide Us with a certificate of currency on request.

- 3.5 To the extent practicable, You must give notice to, and consult with, Us prior to implementing a voluntary withdrawal or recall of products or as required under the National Product Safety Regime set out in the *Trade Practice Act 1974 (Cth)* (**TP Act**), as amended from time to time, based on the Results We provide You. You acknowledge and agree that implementing a withdrawal or recall of products based on the Results, including interim or preliminary Results, is Your sole responsibility and at Your risk.

#### 4. PRICE AND PAYMENT

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- 4.1 In this clause words that are defined in *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* have the same meaning as their definition in that Act. The parties must comply with the GST Act.
- 4.2 Unless otherwise stated in the Service Order:
- 4.2.1 the price for the Services (**Price**) is expressed in Australian dollars; and
- 4.2.2 all amounts payable under this Agreement are exclusive of goods and services tax (GST).
- 4.3 If GST is payable on a taxable supply, the taxable supply will be increased by the GST amount and You will pay Us the GST amount.
- 4.4 We will supply You with a Tax Invoice. You must pay Us the Price on the dates set out in the Tax Invoice.
- 4.5 Unless otherwise stated in the Service Order, Our payment terms are generally 30 days from the end of the month of the date of the invoice.
- 4.6 Any balances remaining unpaid after the due date may be subject to a service charge of 1.5% per month until paid, but in no event shall such charge exceed the rate permitted by applicable law.
- 4.7 Failure to make payments within the time specified in the Tax Invoice for payment shall be deemed an event of default under this Agreement. If legal action or collection proceedings are necessary to enforce payment, You agree that You are liable for Our costs of collection, including collection agency and legal fees.
- 4.8 We reserve the right, prior to performing any services, to require from You satisfactory security for performance of Your obligations. If You fail to furnish satisfactory credit information, or if Your account is in arrears, We may, at Our option, defer further performance or terminate this Agreement.
- 4.9 We may require You to provide credit card details for payment on dispatch of the Results. In this case, We agree to comply with the *Privacy Act 1988 (Cth)* to the extent the Act applies to Your personal information.

#### 5. CANCELLATION OR SUSPENSION OF ORDER

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- 5.1 Subject to Condition 5.2, a Service Order placed by You can only be cancelled or suspended where You have made a written request for cancellation or suspension and the request is accepted by Us at our discretion.
- 5.2 Cancellation or suspension will only be accepted by Us if You accept full liability for all fees, evaluation costs, transportation and administration costs and other losses We may suffer up to and including the date of acceptance of the cancellation or suspension, as the case may be.
- 5.3 In addition, We may, at our discretion:
- 5.3.1 charge up to 10% of the Price as an estimate of damages suffered by Us before accepting any cancellation or suspension; or
- 5.3.2 if We receive a written cancellation or postponement notification from You during the ten (business day period preceding the date of a scheduled Service, charge You the equivalent of one day of services for each day cancelled or postponed, plus expenses already incurred by Us.

#### 6. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

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- 6.1 Neither party may disclose confidential information about the other party without its prior written consent, unless required by law to do so.
- 6.2 You agree that any Service Report furnished by Us to You is solely for the benefit of You and solely for the intended purpose. Such Service Report may not be distributed or reproduced except in full and for its intended purpose; it may not be altered, amended or relied upon by any other person or entity without Our prior written consent, such consent not to be unreasonably withheld. You must not at any time misrepresent the content of any Service Report or other information received from or relating to Us or Our work on behalf of You.
- 6.3 All Intellectual Property (**IP**) in the Service Report remains Our property and, subject to You paying the Price, We hereby grant You an exclusive and royalty free license to use the information in the Service Report for its intended purpose.
- 6.4 Unless otherwise required by law, We will provide a Service Report only to those persons or entities specifically designated in writing by You. We may require, as a condition of supplying the Service Report, that the third person give certain covenants for Our benefit and the benefit of our employees, agents and representatives.
- 6.5 You shall not, without Our prior written, use Our name, trademark, logo or any Results or Service Report prepared by Us in connection with any marketing or advertising or in any publication in any manner which may cause harm to Our reputation and/or business. We shall not advertise or publish the fact that You have contracted to purchase the Services from Us, nor shall We advertise or publish

any information regarding any related orders, invoices, acknowledgements or other documents.

6.6 You must not at any time misrepresent the substance or effect of or any material fact, conclusion or finding contained in any Service Report or other information received from or relating to Us or Our work on behalf of You.

6.7 Without limiting the application of clause 6.3, all IP rights in or relating to the Services including without limitation any trade secrets and copyright works, discoveries, technical data, formulae, computer programs, software, know-how, and similar industrial rights or IP belong to Us and You must not copy, reproduce, distribute, publish or communicate to any third party such information without our prior written consent.

## **7. SAMPLE RETENTION**

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7.1 Except where required by law, We do not retain records relating to the Services after the Results or Service Reports have been supplied to You.

7.2 Samples will be retained in accordance with Our quality assurance retention policy unless otherwise agreed. A copy of this retention policy is available on request.

## **8. LIMITATION OF LIABILITY**

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8.1 Except as expressly provided to the contrary in this Agreement and to the fullest extent permitted by the law:

8.1.1 all terms, conditions, warranties or representations, whether express, implied, statutory or otherwise relating to the provision of the Services are excluded;

8.1.2 Our liability for any loss or damage suffered by You or any other person for any damage to property, personal injury or death is in every case limited to the Price; and

8.1.3 We will not be liable for any delay or failure to provide the Services if the delay is due to a an event which renders Us unable to carry out the whole or any part of the Service for any reason beyond our control (frustration event) or something You do or fail to do.

8.2 Certain laws may imply guarantees, warranties or impose obligations upon Us that We cannot exclude, restrict or modify. To the extent to which We are able to do so, Our liability will be limited or, to the extent allowed by law for negligence or other wrongdoing is limited, at Your option, to:

8.2.1 re-performing the Service; or

8.2.2 refunding that part of the Price in respect of that part of the Service for which We accept liability.

8.3 We will under no circumstances be liable to You for any indirect or consequential damage suffered by You in any way arising from the use of Our Services or Your or any other person's, use of the Results or the Service Report. We will not be liable under any Claim for any amount that exceeds a refund of the Price for the Service.

## **9. INDEMNITY**

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You agree to defend, indemnify and hold Us, our related bodies corporate and their respective officers, agents, employees and contractors harmless to the fullest extent permitted by law from and against any and all Claims (including but not limited to legal fees on a full indemnity basis and expenses of Our officers, employees, agents and contractors involved in litigation) or other cause of action arising out of, or relating to, Your negligent acts and omissions, or arising out of any violation by You of Your obligations under this Agreement.

## **10. DISPUTE RESOLUTION**

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If a dispute arises out of, or relates to, this Agreement, the parties expressly agree to negotiate in good faith to settle the dispute in accordance with this clause 10 before commencing any legal proceedings. A Party claiming that a dispute has arisen, must give written notice of the dispute to the other party specifying the nature of the dispute (Notice). On receipt of the Notice, the parties must, within 5 business days of receipt of the notice, seek to resolve the dispute in meetings between the respective chief executive officers or directors of the parties. If the dispute is not resolved within 5 Business Days or within such further period as the parties agree, then the dispute is to be referred to mediation administered by the Australian Commercial Disputes Centre (ACDC). The mediation will be conducted in accordance with ACDC Commercial Mediation Guidelines. Each party will bear its own costs in relation to the mediation. Nothing in this clause 10 will prohibit a Party from commencing proceedings for interlocutory relief. Also, this clause does not apply to failure to pay the Price or any other monies owing by You to Us.

## **11. GENERAL CONDITIONS**

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11.1 This Agreement may be terminated by Us in writing in the event of any default or any breach of any material term by You. If this Agreement is terminated by either party for any reason, We shall be paid in full for all Services performed through to the termination date.

11.2 You may not delegate, assign or transfer obligations or interest in this Agreement without the prior written consent of Us. We may assign or transfer some or all of our rights at any time to a related body corporate or subcontractor. However, We will remain responsible for the performance of a related body corporate or subcontractor assignee unless otherwise agreed.

11.3 We shall not be liable for delays or other problems caused by unforeseen circumstances or circumstances beyond Our reasonable control, compliance with governmental requests, laws, regulations or breakage or failure of equipment or apparatus or any other event beyond the reasonable control of Us.

11.4 The covenants, conditions, provisions and warranties contained in this Agreement will not merge or terminate on completion of the transactions

contemplated in this Agreement, but to the extent that they have not been fulfilled and satisfied or are capable of having effect will remain in full force and effect.

## **12. INTERPRETATION**

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- 12.1 The laws of Victoria govern this Agreement. Each party submits to the non-exclusive jurisdiction of the courts of Victoria.
- 12.2 This Agreement constitutes the whole understanding between the parties in relation to the subject matter it deals with. It can only be varied by the written agreement of the parties.

- 12.3 If You consist of more than one person or corporate body, this Agreement binds all of You jointly and each of You severally.
- 12.4 If a provision of this Agreement is held to be illegal, invalid, void or unenforceable, that provision must be either read down so that it does not have the above effect; or, if it not possible to read down the provision, severed from the Agreement.
- 12.5 In this Agreement, a reference to the singular includes the plural and vice versa.
- 12.6 The relationship between Us in relation to this Agreement is of independent contractor and principal. No partnership, joint venture or agency is created by this Agreement.