



right solutions.  
right partner.

## ALS INDUSTRIAL - TERMS AND CONDITIONS OF SUPPLY

### GENERAL

a) ALS will provide the Services described in the accompanying tender, quotation, or email to the Client, which together with these terms and conditions will hereafter be called the 'Agreement'.

b) For the avoidance of doubt, the Agreement contains the entire agreement between ALS and the Client and no terms or conditions submitted by either party that are in addition to or inconsistent with the terms and conditions contained in the Agreement, including, but not limited to, the Client's terms and conditions or any terms and conditions contained in the Client's purchase order, acknowledgement, acceptance, or other instrument, shall be binding on either party unless expressly agreed to in writing and signed by duly authorised representatives of both parties.

c) This Agreement will be binding on the Client from the date the Agreement is accepted by the Client in writing, through the placement of an order for, or receipt of samples for analysis based upon this Agreement.

### 2. PROVISION OF SERVICES

a) ALS will provide the Services by exercising the same degree of skill, care and diligence that would be exercised by professional service providers in similar circumstances.

b) If the Client requires the Services to be performed to a specific standard or criteria or requires detection limits and/or confidence intervals different to those inherent in ALS's standard testing methodology, then the Client must advise ALS of such needs prior to submission of samples.

c) The Client acknowledges that it is the Client's sole responsibility to make its own assessment of the suitability for any purpose of the Services, detection limits and confidence intervals inherent in ALS's standard testing methodology, the ALS Report and its contents. All data and ALS Reports relate to the sample tested only.

d) ALS may subcontract all or part of the Services to a subcontractor and the Client consents to ALS disclosing all information (including Confidential Information) of the Client to that subcontractor necessary for the performance of the Service.

### 3. FEES AND PAYMENT

a) Payment terms are 30 days from the date of invoice (Due Date), unless negotiated otherwise prior to the placement of an order or submission of samples. Any such variance from the standard payment terms must be stipulated separately in writing in the Agreement.

b) All prices quoted by ALS are exclusive of GST (or other value added tax if relevant) unless stated otherwise. The Client must pay the amount of GST specified in an invoice issued by ALS pursuant to A New Tax System (Goods and Services Tax) Act 1999.

c) ALS reserves the right to review prices at any time if significant changes to ALS's costs are incurred that are beyond ALS's control, such changes may include, but are not limited to, changes in legislative requirements, Client variations to sample numbers, analytes requested, turnaround required, or reporting requirements.

d) All fees due and payable after the Due Date (Outstanding Amount) will be subject to the payment of interest at a rate of 1.5% per month of the Outstanding Amount from the Due Date up to and including the date of payment, unless ALS and the Client otherwise agree in writing.

e) The Client will indemnify ALS for any fees incurred by ALS to recover the outstanding Amount, including any solicitor fees, or collection agency fees.

### 4. LIMITATION OF LIABILITY

a) To the full extent permitted by law, ALS excludes all warranties, terms, conditions or undertakings (Terms), whether expressed or implied, in relation to the Services, the ALS Report, or its contents.

Where any legislation implies any Terms in this Agreement that cannot be modified or excluded then, such Terms shall deem to be included. However, to the full extent permitted by law, ALS's liability to the Client for any breach of any Terms that cannot be excluded by law is limited at ALS's option to the re-performance of the Services or the refund of the fee for the Services.

b) The Client hereby releases and indemnifies and shall continue to release and indemnify ALS, its officers, employees and agents from and against all actions, claims (actual or threatened), proceedings (including proceedings where ALS is joined pursuant to any proportionate liability regime, whether under common law or any federal, state, or territory legislation) or demands (including any costs and expenses in defending or servicing same) which may be brought against it or them, in respect of any loss (including consequential loss), death, injury, illness or damage to persons or property, and whether direct or indirect and in respect of any breach of any industrial or intellectual property rights, howsoever arising out of the use of, reliance on, or benefit of, the Services or any ALS Report, except to the extent that the loss, death, injury, illness or damage to persons or property was directly caused by the negligence, wilful acts or omissions of ALS or its employees.

c) Notwithstanding any other provision of the Agreement, and except to the extent that liability cannot be limited or excluded by law:

i) ALS will not be liable to the Client or any other person for any special, indirect or consequential loss, loss of profits, or economic loss, arising from the Client's use of, reliance on, or benefit of, the Services or any ALS Report;

ii) ALS's cumulative liability to the Client for any loss or damage whatsoever which arises under or in connection with this Agreement or the provision of Services (excluding loss or damage to real or personal property, or personal injury to persons), and whether by way of an indemnity or statute, in tort (for negligence or otherwise), or on any other basis in law or equity, is limited to the value of the Services provided; and

iii) ALS's cumulative liability to the Client for any loss or damage to real or personal property whatsoever which arises under or in connection with this Agreement or the provision of Services, and whether by way of an indemnity or statute, in tort (for negligence or otherwise), or on any other basis in law or equity, is limited to \$5 million in aggregate.

### 5. CLIENT'S OBLIGATIONS

a) The Client will ensure that all personnel, information, samples, test materials, access to facilities and infrastructure, assistance, records, documentation and facilities needed by ALS to perform the Services, are available when reasonably required by ALS.

b) The Client will give written notice to ALS of all known safety or health hazards and special procedures applicable to the performance of the Services, and the safe handling, testing, storage, transport and disposal of samples submitted to ALS (including whether or not the disposal of samples may cause contamination) or the Client's facilities or infrastructure in which ALS is partly or wholly performing the Services. ALS may in its absolute discretion, refuse to provide part or all of the Services where it determines that the provision of part or all of the Services may pose a health or safety hazard. The Client must take all necessary steps to remove or remedy any known safety or health hazards, or any obstacles to or anything that is likely to interrupt the performance of the Services by ALS.

c) The Client must take all necessary steps to remove or remedy any known safety or health hazards, or any obstacles to or anything that is likely to interrupt the performance of the Services by ALS.

d) The Client and ALS agree that during the period ALS is providing Services to the Client, and for a period of six months thereafter, the Client and any entity related to the Client, must not make any offer of employment to any current employee of ALS without ALS's prior consent.

## 6. INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

a) All ALS IP will remain the property of ALS. ALS grants to the Client a world-wide, non-exclusive, royalty free licence to use ALS IP for the purpose agreed to between the Client and ALS to the extent that it is needed for the enjoyment and benefit of the Services.

b) Neither ALS nor the Client will disclose Confidential Information of the other party to any third party without the prior written consent of the other party, unless required by law or the rules of a relevant stock exchange. ALS and the Client will only use Confidential Information of the other party for the purpose of the supply of the Services.

c) Any report, findings, results, statement, certification issued by ALS (ALS Report) is issued on the basis of testing of samples or materials, information, or documents provided by, or on behalf of, the Client. The Client will indemnify and hold harmless ALS, its officers, employees, agents and subcontractors for any claim whatsoever in relation to any ALS Report arising from unclear, erroneous, incomplete, misleading or false information provided to ALS; or arising from any incorrect or defective materials or samples provided to ALS.

d) Each ALS Report is:

i) issued using detection limits and confidence intervals inherent in ALS's testing methodology;

ii) contains ALS's results and opinions (if provided) on those samples or specific materials only;

iii) solely for the benefit of the Client, its officers and employees; and

iv) prepared at the request of the Client for the purpose agreed between the Client and ALS, and the Client may disclose the report to a third party for that purpose only, but ALS does not accept any responsibility or liability (including, without limitation, liability for negligence) to that third party.

e) The Client indemnifies ALS, its directors, employees, agents, consultants, contractors, successors in title and assigns against any claim made against any or all of them by third parties arising out of either the disclosure of any ALS Report, whether directly or indirectly by the Client, to a third party; or any reproduction or publication of an extract of any ALS Report.

f) The Client acknowledges and agrees that any action, inaction, or decision of the Client in response to the ALS Report will be determined by the Client. Neither ALS nor any of its officers, employees, agents, or subcontractors will be liable to the Client or any third party for any action or inaction of the Client in response to any ALS Report.

## 7. TERMINATION

a) ALS may suspend or terminate its obligations under this Agreement if (a) monies payable to ALS by the client are outstanding 60 days or more (unless otherwise agreed) after the date of invoice, (b) other substantial breach by the Client of their obligations under the Agreement, which breach is not remedied within 30 days of written notice the breach to be remedied, or (c) by giving the Client 60 days written notice of ALS's intention to terminate.

b) The Client may terminate its obligations under this Agreement in the event of a substantial breach by ALS of its obligations under the Agreement, which breach has not been remedied within 30 days of written notice to ALS requiring the breach to be remedied.

c) If ALS, acting reasonably, suspects that the Client is insolvent or is having difficulties paying its debts as and when they become due, or the Client is insolvent, ALS may give written notice to the Client of ALS's intention to immediately suspend or terminate its obligations under this Agreement.

d) In the event of termination, ALS is entitled to be paid for all work performed up to the date of termination and for any unavoidable commitments entered into by ALS before the date of termination.

## 8. MISCELLANEOUS

a) Any provision of this Agreement that is illegal, invalid or unenforceable will be severed to the extent that it is illegal, invalid or unenforceable, with the remainder of the Agreement continuing in full force.

b) This Agreement is governed by the law of the state or territory in which the Services are provided, and each party irrevocably and

unconditionally submits to the non-exclusive jurisdiction of the courts of that place.

c) ALS will retain Client data for three (3) years only from the date of the final ALS Report.

d) Samples may be collected after receiving the ALS Report. Storage fees will apply to samples that are not collected within 30 days from the date of issue of the ALS Report, and ALS may dispose of those samples at the Client's cost unless otherwise agreed in writing with ALS.

e) Samples are stored at the Client's exclusive risk of loss, damage or delay in delivery whatsoever, including, without limitation, loss, damage or delay caused through (a) any action or failure to act beyond the reasonable control of ALS, (b) ALS Industrial Division - Australia | Terms and Conditions of Supply ordinary wear and tear in handling, (c) natural deterioration of packing material over time, (d) theft, (e) sprinkler or other water damage, (f) fire.

## 9. DEFINITIONS

a) **ALS** means ALS Industrial Pty Ltd ABN 21 006 353 046.

b) **ALS IP** means all intellectual property and proprietary rights (whether registered or unregistered) owned by ALS prior to performance of the Services, developed by ALS in performance of the Services, or developed by ALS outside of, or after, performance of the Services, and without limitation includes business names, trade or service marks, any right to have information (including confidential information) kept confidential, patents, patent applications, drawings, discoveries, inventions, improvements, trade secrets, technical data, formulae, databases, know-how, logos, designs, design rights, copyright and similar industrial or intellectual property rights.

a) **Client** means the entity to which the accompanying tender, quotation, letter, fax or email is addressed.

b) **Confidential Information** means all information in relation to a disclosing party, its business, operations, products, processes, customers, suppliers or contractors which is or might reasonably be considered by the disclosing party to be confidential, including all technical data, formulae, specifications, diagrams, plans, drawings, sketches, designs, business plans and reports, business methods and systems, business records, production information, unpublished financial accounts and reports, discount and supply agreements, subcontractor lists, customer lists, except to the extent that such information is lawfully in the public domain.

c) **Services** means the services described in the accompanying tender, quotation, letter, fax or email.