

STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

Agreement – means the agreement between APAF and the Client that comprises:

- (a) an Order;
- (b) any Schedules attached to or referred to in an Order that are accepted and agreed to in writing by the Client and APAF; and
- (c) these Standard Terms and Conditions.

Background IP means inventions, designs, expertise, knowledge, skills, techniques, methods, procedures, ideas, concepts, copyright works and Intellectual Property which is in existence at the date of this Agreement or which have been developed by a person for general use in their work.

Business Days refer to any day other than:

- (a) a Saturday, Sunday, public holiday or bank holiday in New South Wales;
- (b) 27, 28, 29, 30 or 31 December.

Client means the person(s), company, organisation, incorporated association or firm to whom APAF agrees to provide the Services described in an Order.

Fee means the total fee payment to be paid in accordance with an Order.

GST and all words and phrases used in clauses concerning GST have the meaning under A New Tax System (Goods & Services Tax) Act 1999 (Cth) (**GST Act**).

Insurance as regards APAF includes risk cover covering the same insurable risk as insurance and references to **insurers** includes the providers of that risk cover.

Intellectual Property means present and future rights in relation to computer programs, copyright, registered or unregistered trademarks patents, designs, circuit layouts, inventions, confidential information (including trade secrets and know-how) and the right to apply for grant or registration of the intellectual property.

Order means:

- (a) any Quotation provided by APAF to a Client which is accepted and agreed to by that Client (together with an associated Service Request (if any) which may be completed with details consistent with that Quotation and signed by that Client); or
- (b) any Service Request which is accepted and agreed to by APAF.

Quotation means any quotation from APAF to a potential Client that incorporates by reference these Standard Terms and Conditions for the provision of Services, deliverables, milestones (if applicable) and invoicing schedule (and which the Client accepts and agrees to).

Service Request means any:

- (a) APAF Mass Spectrometry Service Request;
- (b) APAF Bioinformatics Service Request;
- (c) APAF Amino Acid Analysis Service Request;
- (d) APAF Multiplexed Immuno-assay Service Request;
- (e) APAF Array Technology Service Request; or
- (f) Any other APAF Service Request

(each of which are accessible at or by clicking the following:

<https://www.mq.edu.au/research/research-centres-groups-and-facilities/facilities/australian-proteome-analysis-facility/service-requests-pricing-and-access>)

that is completed, signed and provided by the Client to APAF in the format required by APAF (or in such other format as APAF may agree) to request the provision by APAF of services described in that Service Request.

Services means those services to be provided by APAF to the Client as described in an Order.

2. TERM AND CREATION OF AGREEMENT

2.1 In consideration of payment of the total Fee set out in an Order, APAF will perform the Services described in that Order.

2.2 The Client acknowledges that:

- (a) where APAF provides the Client with a Quotation, unless APAF in its sole discretion determines otherwise, no contract for the purchase of Services from APAF will exist unless and until APAF receives an unaltered acceptance of that Quotation signed by the Client within 30 days of the receipt by the Client of the Quotation;
- (b) where the Client provides APAF with a Service Request, no contract for the purchase of Services from APAF will exist unless and until APAF advises the Client that it accepts the Service Request within 30 days of the receipt by APAF of that Service Request from the Client.

3. FEES & SERVICES

3.1 The parties agree that APAF will be entitled to charge the Fee specified or determined in the manner provided in the Order.

- 3.2 APAF will be entitled to invoice the Customer on completion by it of the Services described in an Order unless that Order provides otherwise. The Client must pay each invoice issued by APAF pursuant to an Agreement without deduction or set-off:
- (a) within thirty (30) days of the date of invoice; or
 - (b) where specified payment dates or milestones are contained in an Order or in a Schedule to an Order or otherwise, within 10 Business Days of those payment dates or milestones (as applicable) being achieved by APAF.
- 4. GOODS AND SERVICES TAX**
- 4.1 In addition to paying the Fees (which are exclusive of GST), and any other consideration that may be payable under this Agreement, the Client must:
- (a) pay to APAF an amount equal to any GST for which APAF is liable on any supply by APAF under this Agreement, without deduction or set-off of any other amount; and
 - (b) make that payment as and when the Fees, or other consideration or part of it must be paid or provided. If the Client does not pay the GST at that time, then it must pay the GST within 14 days of a written request by APAF for payment of the GST.
- 4.2 A party making a taxable supply under this Agreement must issue a tax invoice to the other party for each taxable supply.
- 4.3 If a party is obliged to make a payment under an indemnity or is required to reimburse a party for a cost (for example a party's obligation to pay another party's legal costs) on which that other party must pay GST, the indemnity or reimbursement is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).
- 5. PERFORMANCE OF SERVICES**
- 5.1 APAF will, subject to complying with its obligations under this Agreement, exercise its reasonable business discretion as to the most appropriate and effective manner of providing the Services.
- 5.2 APAF will exercise reasonable care in the performance of the Services under this Agreement.
- 5.3 APAF will use suitably qualified staff to undertake the Services.
- 5.4 The Client must provide all assistance required or requested by APAF in order to allow it to perform the Services including, without limitation:
- (a) providing such information or material as APAF may request in relation to the Client in a timely manner; and
 - (b) ensuring that the staff of the Client co-operate fully with APAF staff in a timely manner to deliver the Services specified in the Order.
- 5.5 The Client confirms, warrants and represents to APAF that:
- (a) any information provided to APAF is accurate and complete and acknowledges that APAF will not check the accuracy of information provided by the Client, unless that checking is part of the Services;
 - (b) all consents have been obtained, including consents of relevant humans in relation to the use of any materials or samples from humans.
- 5.6 APAF will not be responsible for any delays in provision of the Services which are due to delays or non-provision of required information or material by the Client, including delays in sending samples.
- 5.7 Every endeavour will be made by APAF to adhere to the delivery dates set out in an Order, but such dates are estimates only and are not guaranteed. APAF accepts no liability of any kind for failure to meet such dates and such failure shall not entitle the Client to terminate, repudiate or cancel this Agreement.
- 5.8 Performance of Services and delivery of the report will be subject to equipment availability and scheduling of the Service for the Client.
- 6. SAMPLES**
- 6.1 The Client shall be responsible for the sampling and provision of samples to APAF in sufficient quantities or size to correctly complete all tests requested. These samples will be labelled with a fully descriptive name, the chemical name (where appropriate) and the batch lot numbers any other pertinent information that may affect the analysis requested.
- 6.2 The Client will provide APAF with samples packed in their original containers or in suitable containers that will not affect the integrity of

the sample.

- 6.3 The Client is responsible for establishing sampling programs that will provide adequate information in relation to the goods sampled.
- 6.4 Samples or materials to be submitted to APAF of a known or suspected hazardous nature must be clearly identified and discussed with and agreed by APAF in advance of shipping. The Client must comply with applicable law, codes and practices in relation to hazardous substances including proper labeling and risk measures.
- 6.5 The Client must provide APAF with all samples the subject of the Services within 12 months of:
- (a) the date that the Quotation is accepted and agreed to by the Client; or
 - (b) the date that the Service Request is accepted and agreed to by APAF.

7. DELIVERY OF SAMPLES

The Client will be responsible for ensuring that all samples delivered to APAF are suitably packed in appropriate outer containers and in accordance with any special quarantine, storage or delivery requirements. Furthermore, the Client will be responsible for all freight charges, customs duties and taxes payable and any transit insurances in relation to the transport of the samples to or from APAF.

8. TESTS REQUIRED

- 8.1 Samples will be delivered accompanied by a written request stipulating the tests required, and where relevant, the method to be used.
- 8.2 When samples require subcontracted testing, and the Client requests a laboratory other than those approved by APAF, it is the responsibility of the Client to:
- (a) assess the quality assurance compliance of that laboratory;
 - (b) facilitate the access to that laboratory, at the Client's cost.

APAF may decline to use any laboratory other than those approved or used by APAF.

9. TEST METHODS

- 9.1 Test methods selected for use by APAF for samples submitted remain the responsibility of APAF. Samples submitted for analysis will normally be tested using standard APAF methods or methods supplied/approved by the Client nominated representative. When other

methods are to be used, these will be agreed in writing by both the Client and APAF.

- 9.2 The Client is solely responsible for ensuring test methods selected/supplied/approved are validated for each sample submitted for analysis. Where required by the Client, APAF shall, with prior agreement, perform analytical method validation as specified by the Client. The cost of validation shall be borne by the Client.
- 9.3 APAF will advise the Client of any proposed changes in its test methods and will not change these methods without written authorisation from the Client which must not be unreasonably withheld.
- 9.4 The Client must advise APAF of any significant product formulation changes or change in production methods so that the test methods used may be validated against the new formulation. Validation expenses will be borne by the Client.

10. REPORTING TEST RESULTS

- 10.1 APAF will provide the Client with an electronic written report to the nominated representative within ten (10) Business Days of completion of the Services. Extra charges will be incurred if a non-standard format report, hard copy report, or raw data is required.
- 10.2 The standard report shall include:
- (a) Date:
 - (b) Name of sample
 - (c) Batch/Lot number: where applicable
 - (d) Project number:
 - (e) Date sample received:
 - (f) Test Method name:
 - (g) Results:
- 10.3 APAF will keep all records of testing accessible for the Client for a period of three (3) years from the date of reporting results unless by special arrangement. Within that three (3) year period, the Client may request access to the results which may be made available on a secure server over a period of five (5) consecutive Business Days or in other form. APAF will take no responsibility or liability for the storage of information. APAF is not required to provide information outside the test results.
- 10.4 Where payment of account is outside the agreed terms of payment, APAF reserves the right to withhold any analytical results until all outstanding amounts due by the Client have

been paid.

11. RETENTION SAMPLES

- 11.1 Samples submitted for analysis will be stored on-site by APAF until results have been reported and then for a period of thirty (30) days unless prior agreement has been made. The Client will be responsible for any costs or disbursements incurred in the return of samples to the Client. If the sample is deemed hazardous it shall be returned to the Client or destroyed at APAF's discretion, at the Client's cost.
- 11.2 The Client will be responsible for the keeping of retention samples from all samples submitted for testing.
- 11.3 APAF is not liable for the samples. The Client indemnifies APAF from any liability, costs or claims for losses, injury or damage arising from or in relation to:
- (a) the loss, destruction, contamination or otherwise deterioration of the samples;
 - (b) the samples as supplied by the Client.

12. PRODUCT RELEASE

- 12.1 It is the responsibility of the Client to decide whether a product or raw material is suitable for use based upon the results provided by APAF and any other pertinent information available.
- 12.2 Results provided by APAF pertain only to the sample tested and as received. The statistical relevance of the sample supplied to the entire product batch/lot or other samples is the sole responsibility of the Client.

13. OUT OF SPECIFICATION / REPEAT ANALYSIS

- 13.1 When advised by the Client or considered pertinent by APAF, repeat analysis may be undertaken to confirm validity of a test result. At any point APAF reserves the right to re-confirm any out-of-specification or atypical result.
- 13.2 Where repeat analysis has been requested by the Client to confirm an out of specification result and repeat analysis has resulted in a reproducible analytical result compared to the original result, additional analytical Fees and charges will be incurred at the cost of the Client.

14. INTELLECTUAL PROPERTY

- 14.1 Ownership of the test results created by APAF as a result of the performance of the Services shall pass to the Client on receipt of the total Fees

and any other money payable to APAF under this Agreement.

- 14.2 The Client grants APAF a licence to keep and use a copy of the test results for recordkeeping, administrative, audit and governance purposes.
- 14.3 Any Intellectual Property created by APAF in the course of providing the Services relating to the process, development, method, the Services or performing the Services will be owned by APAF or the relevant subcontractor.
- 14.4 No ownership of Background IP transfers to the Client, whether owned by APAF or a subcontractor. It remains owned by that person.
- 14.5 The Client grants APAF a royalty-free irrevocable, perpetual non-exclusive licence to use or reproduce any Client Intellectual Property provided to APAF in connection with the Services, for the purpose of providing the Services and APAF's statutory duties and its duties under this Agreement.

15. NO USE OF BRANDING

- 15.1 The Client must obtain APAF's written approval prior to the publication or dissemination of any material incorporating APAF's or Macquarie University's any names, trademarks or logos of Macquarie University or its controlled entities (including the Australian Proteome Analysis Facility trademark and business name) and will comply with written directions as to usage. Any approved usage of any of those names, trademarks or logos is on a non-exclusive, non-transferable, non-assignable basis.
- 15.2 Where approval is provided for the usage by the Client of any of those names, trademarks or logos, the Client must not use them in any manner:
- (a) likely to jeopardise the ownership or validity of those names, trademarks or logos; or
 - (b) which may bring Macquarie University (whether trading as the Australian Proteome Analysis Facility or otherwise) into disrepute.
- 15.3 The Client acknowledges and agrees that Macquarie University may alter or replace the representation of any of its names, trademarks or logos that it approves for usage by the Client at any time on seven (7) days written notice to the Client, in which case the Client must use the altered or replaced name, mark or logo on all material prepared on or after the effective date of the notice.

15.4 This clause survives the termination or expiry of the Agreement.

16. STATUTORY RIGHTS AND LIABILITY

16.1 If under any applicable law:

- (a) certain warranties and conditions are implied in this Agreement; or
- (b) certain guarantees and certain rights are conferred on the Client;

16.2 which cannot be excluded, restricted or modified, then to the maximum extent permitted by law, the aggregate liability of APAF is limited, at its option, to the resupply of the relevant Services or the payment of the cost of resupplying the relevant Services.

16.3 To the fullest extent permitted by law, APAF will not be liable for any indirect, incidental, consequential, special or exemplary damages, including loss of sales, loss of profits, loss of opportunity, research outcomes, funding or investment expenditure or losses, incorrect analysis, re-production costs or usage of results by any third person arising out of, in connection with or in relation to this Agreement whether in contract, statutory liability, tort (including negligence) or otherwise. In no event shall the aggregate liability of APAF and its subcontractors for any damages, claims or losses, direct or indirect, in connection with this Agreement in respect of each event or a series of events, exceed the total amount that would be due to be paid to APAF by the Client in connection with this Agreement, whether such liability arises from any claim based in contract, tort (including negligence), equity or otherwise.

16.4 APAF does not give any warranty or representation, whether express or implied, that the Services are fit for any purpose.

17. RELEASE AND INDEMNITY

17.1 The Client agrees to indemnify, hold harmless, and defend APAF and its controlled entities, affiliates, trustees, officers, employees, students, and agents against all actions, claims, proceedings, costs, damages or demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly and whether at common law, in equity or under statute or otherwise, in respect of any loss, death, injury, illness or damage (whether personal or property, and whether direct or consequential, including financial loss, loss of profits, loss of income, losses relating to research outcomes or funding,

re-production costs) arising out of or in relation to:

- (a) use of the Services by the Client, or any person licensed or authorised by the Client;
- (b) APAF's design, execution or completion of the Services;
- (c) any modifications, alterations or improvements made by the Client, the Client's employees, agents, a person engaged by the Client, or subcontractors to the Services during or after the provision of the Services;
- (d) any negligent act or omission of the Client, its employees, officers, agents or contractors;
- (e) any defects or errors in such part of the design, dimensions, quantities or specifications of the Services provided by the Client;
- (f) hazardous or toxic material supplied by the Client;
- (g) breach of Intellectual Property rights in relation to materials or samples supplied by the Client;
- (h) breach of this Agreement by the Client,

except to the extent that such claims for death, illness, personal injury, property damage arise out of, or result from, the negligence of APAF or its officers, employees, contractors or consultants, either collectively or individually.

17.2 APAF accepts no responsibility for loss of or damage in relation to maintenance of confidentiality or secrecy with respect to any plans, services, materials, drawings, samples or other materials supplied by the Client.

17.3 The Client's obligations under this release and indemnity clause includes payment of all damages, costs and expenses, including legal costs on a solicitor and client basis in defending, settling or dealing with any action claims proceedings, demands or investigations.

17.4 Each indemnity or release of liability in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Agreement.

18. SUBCONTRACTING

The Client acknowledges that APAF may subcontract the whole or part of these Services

at its sole discretion.

19. INSURANCE / RISK COVER

- 19.1 APAF maintains public liability and professional liability Insurance in respect of its business.
- 19.2 The Client must hold the following insurances:
- (a) Public liability insurance for an amount per occurrence that a prudent person would hold to protect against public liability risk based on its business;
 - (b) Professional indemnity insurance in respect of its business acting prudently to protect against risk.
- 19.3 The Client is also responsible for all insurance relating to transportation of the samples.
- 19.4 Certificates of currency of Insurances may be required to be supplied upon request.

20. VARIATIONS

- 20.1 No variation to this Agreement will be agreed otherwise than in writing. Either party may at any time, by written notice propose any variation to the Services.
- 20.2 Upon receipt or issuance of a variation notice, APAF must promptly notify the Client of:
- (a) the feasibility of accommodating the proposed variation;
 - (b) any resulting increase in the payment;
 - (c) any delay in the performance of the Services; assessed by the other party in, or in response to, any variation notice.
- 20.3 Upon receipt of information from APAF, the Client must within five (5) Business Days notify APAF that it approves, rejects or requires any variation to or additional information or explanation relative to any proposed variation.
- 20.4 Each party must consult with the other party in relation to resolving and adopting any variation proposed by the other party. Any variation agreed under this provision must be effected by a variation document created and executed by the parties.
- 20.5 Each party must continue to perform its duties under this Agreement in compliance with its then current terms, in the event of any failure by the parties to agree to any variation proposal or variation document.

21. CONFIDENTIALITY

- 21.1 All information of the Client that is of a

confidential nature which APAF obtains in the course of providing the Services must be treated by APAF as confidential and APAF must not disclose such confidential information to any person without the prior written consent of the Client, except when such disclosure is necessary for the purpose of carrying out the Services or where disclosure is required by law.

- 21.2 It is acknowledged by each party that the other party may disclose information pertaining to this Agreement or about the other party to any agency or authority to which it is obligatory or customary for that party to disclose such information, including but not limited to as required by law, to advisors, insurers and auditors.

22. DISPUTES

- 22.1 If a dispute arises out of or relates to this Agreement, its breach validity or subject matter or as to any claim in tort, in equity or pursuant to any domestic or international law, the parties agree to attempt to settle the dispute by mediation administered by the Australian Disputes Centre (“ADC”) before having recourse to litigation.
- 22.2 A Party claiming that a dispute has arisen must give written notice to the other party to the dispute specifying the nature of the dispute. On receipt of the notice the parties must within 7 days after receipt of the notice, meet to resolve the dispute. If the dispute is not resolved within 7 days or such further period as the parties agree then the dispute must be referred to the ADC. Any mediation must be conducted in accordance with ADC Mediation guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved, which terms are deemed incorporated in this clause.
- 22.3 This clause survives termination or expiration of this Agreement.

23. TERMINATION

23.1 Termination for Default

A party may terminate this Agreement upon fourteen days (14) day’s written notice given to the other party, (the “Defaulting Party”) if:

- (a) that party becomes aware of any material misrepresentation made by the Defaulting Party in the course of negotiating, or entering into, or the conduct of this Agreement;

- (b) the Defaulting Party breaches or fails to comply with any provision of this Agreement and, where the breach or failure is capable of being remedied, fails to remedy the breach or failure to the satisfaction of the party seeking to terminate within fourteen (14) days of receiving notice in writing from that party requiring it to remedy the breach or failure; or
- (c) any of the following actions occur in relation to the Defaulting Party:
- (d) an order is made for the winding up of the Defaulting Party;
- (e) a receiver or receiver and manager of any property of the Defaulting Party is appointed;
- (f) a provisional liquidator of the Defaulting Party is appointed;
- (g) the Defaulting Party is, or is deemed by law to be unable to, pay its debts;
- (h) the Defaulting Party makes any arrangement or compromise with its creditors or members or with any class of its members or creditors: or
- (i) the Defaulting Party ceases to carry on its business in the areas necessary for the performance of its obligations under this Agreement;

23.2 Termination by Mutual Agreement

The parties may, by written agreement, terminate this Agreement (and the provision of the Services) prior to APAF completing its provision of the Services.

23.3 Subject to clause 23.4, in the event of termination of this Agreement and the provision of the Services, APAF shall:

- (a) take all actions necessary to minimise any further expenditure on the Services from the date of the notice of termination;
- (b) use steps so that it does not incur any expenditure in relation to the Services beyond the termination date other than that which has been pre-committed; and
- (c) where the Client has advanced funds to APAF prior to the notice of termination, repay to the Client any part of the funds advanced and not then applied or appropriated for expenditure permitted under this Agreement or used or applied in closing down the Services by the termination date.

23.4 In any termination, APAF shall be paid fees earned and reimbursed all costs and non-cancellable obligations incurred in connection with the Services on or prior to the date of receipt of written notice of termination.

23.5 Termination of this Agreement will not affect the accrued rights and obligations of either party.

24. FORCE MAJEURE

Neither party shall be liable to the other for any default hereunder, if such default is caused by an event beyond such party's control, including without limitation, acts or failures to act of the other party, floods, fires, weather, governmental requirements, strikes, industrial disputes, quarantine, contamination (other than samples), insurrection, war, terrorism and acts of God. In the event of a default or a threatened default as a result of the above causes, the defaulting party shall use its reasonable steps to avoid and remedy such default. Should the default prevent performance of this Agreement for a period of greater than ninety (90) days, then the non- defaulting party may elect to terminate this Agreement.

25. NOTICES

Notices under this Agreement shall be delivered by hand or by email to the addresses of the parties as specified in the Order or as otherwise notified in writing by the party as their address for service for the purpose of this Agreement.

26. SEVERABILITY

If any part of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement shall remain otherwise in full force apart from such provision which shall be deemed deleted.

27. WAIVER

A waiver by either party of any breach of or failure to comply with this Agreement by the other party is of no effect unless it is in writing and a waiver of any particular breach or failure to comply is not to be treated as a waiver of any other or any continuing or subsequent breach of or failure to comply with this Agreement.

28. NO PARTNERSHIP

Each party is not and agrees not to claim or imply that it is a partner or agent or joint

venturer of the other party or otherwise able to bind or represent that party.

29. ENTIRE AGREEMENT/ VARIATIONS

This Agreement (as defined) constitutes the entire agreement between the parties with respect to the subject matter and the scope of the Services, unless agreed otherwise in writing. It supersedes all previous discussions, quotations and agreements between the parties whether oral or in writing. This Agreement can be varied by written agreement of the parties.

30. CONFLICTS AND INCONSISTENCIES

If there is a conflict or inconsistency between any provisions contained in an Order (including any Schedules attached to or referred to in an Order) and any of the provisions in these Standard Terms and Conditions, the provisions contained in that Order will prevail to the extent of the conflict or inconsistency.

31. COUNTERPARTS

This Agreement may be executed in counterparts. All counterparts together will be taken to constitute one document.

32. SURVIVAL

Clauses 1, 3, 4,10, 11, 14, 15,16,17, 22, 23.3 to 23.5 (inclusive), 25 to 28 (inclusive), 32 and 33 survive the completion of the provision of the Services or termination or expiry of this Agreement.

33. APPLICABLE LAW

This Agreement is governed by the laws in force in New South Wales, Australia. Each party submits to the exclusive jurisdiction of the courts of New South Wales, and courts of appeal from them.