

## Symbio Laboratories Pty Ltd - Service Terms and Conditions

### **CURRENT AS OF 1<sup>ST</sup> OCTOBER 2018**

The lodgement of an order or receipt of samples for **Symbio Laboratories Pty Ltd** (herein after referred to as "**Symbio**") services constitutes an acceptance of the following terms and conditions ("Terms").

Unless otherwise agreed in writing, these Terms apply to services conducted by Symbio, resulting from engagement of Symbio either by accepting a quotation and/or submission of samples to Symbio. The person(s) or company that lodges the order (or the owner of any business name that lodges the order) ("client" or "you") agrees to be bound by and comply with these Terms. Any terms and conditions you notify to Symbio, will apply only if and to the extent that Symbio agrees to them in writing.

### **SERVICES**

Symbio reserves the right to review prices at any time if:

- significant changes to our costs are incurred beyond our control i.e. changes to legislative requirements or variations in tax or excise rates; or
- any of the assumptions set out in the quotation prove to be incorrect.

Alterations to the scope of the quoted services (including changes to timeframe of services, sample numbers, limits of reporting, agreed analyte suite etc), prior to commencement of the services, may require a review of the quotation. Alterations to client requirements requested after commencement of the testing process will incur an administration fee of \$35.00 exclusive of GST plus charges for extra service delivery costs incurred by Symbio, if any. Amendments to finalized certificates as a result of alterations to client requirements will also incur a reissue fee of \$35.00 exclusive of GST.

Records will be kept for the required minimum period unless otherwise requested and agreed to by Symbio (e.g. NATA technical accreditation requires records are kept for a minimum of three years).

### **TURNAROUND TIMES**

Any samples received after 4:00 pm EST Monday to Friday or on Public Holidays are deemed to have been received the following working day. It is the client's responsibility to ensure that Symbio has access to all information necessary to commence the services as agreed. The due date of the services may be delayed where such information or access is not provided, or is judged by Symbio to be inadequate for the services to commence. Certificates will be issued by close of business on the due date.

While we use our best efforts to meet stated turnaround times, some delay in reporting maybe experienced for non-standard samples.

### **ACCOUNTS & PAYMENT**

GST at the applicable rate (currently 10%) will be charged in addition to the quoted prices. Symbio will issue valid tax invoices and adjustment notes as per requirements of GST legislation. Symbio reserves the right to undertake credit verification of all established accounts or to request upfront payment of services before services can commence. Terms of payment are strictly 30 days from date of invoice. If payment is not received on the due date, Symbio may charge interest (as liquidated damages) at the rate of two percent (2%) above the rate of interest fixed from time to time under Section 2 of the Penalty Interest Rates Act 1983 and suspend or discontinue supply of its services to the client and/or cancel the client's account.

Symbio may revoke its express or implied approval for extending credit at any time. Symbio can set-off against any money owing to the client amounts owed to Symbio by the client on any account whatsoever. Any payments received from the client on overdue accounts will be applied first to satisfy interest which may have accrued, second to reasonable expenses and legal costs, and then to principal. The client is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a full indemnity basis) incurred by Symbio for enforcement of obligations and recovery of monies due from the client to Symbio.

All sums outstanding become immediately due and payable by the client to Symbio if the client makes default in paying any sums due to Symbio, the client becomes insolvent, bankrupt or commits any act of bankruptcy, or has judgment entered against it in any court notwithstanding the provisions of any other clause in these Terms.

### **TREATMENT OF SAMPLES**

Unless Symbio has otherwise agreed in writing, the client is responsible for collecting samples and for delivering samples for testing to the address nominated in the quotation.

When providing samples to Symbio, the client must give written notice of all known safety or health hazards and special procedures relevant to the handling, testing, storage, transport and disposal of samples. Symbio reserves the right to refuse to conduct any test where Symbio in its absolute discretion determines such testing may pose a safety or health hazard. Where a formal request is made, Symbio will return samples to the client, at the client's expense. The client acknowledges that during conduct of the services the samples or parts of samples may be altered, damaged, lost or destroyed. Symbio shall not be liable to the client or any third party for any samples that are altered, damaged, lost or destroyed during conduct of the services. In the event of return, Symbio will not be responsible for the condition of samples once they leave the laboratory.

The client is responsible for ensuring that samples supplied for testing are representative of the product or material to be analysed and for retaining any duplicate or control samples.

Symbio reserves the right for samples deemed hazardous by Symbio to be returned, to the client, at the client's expense.

All samples must be accompanied by signed paperwork specifying testing to be undertaken and sample description. ***Samples received without a signed authority to test will be held for a maximum of 48 hrs before they are destroyed.***

Where possible a representative sample will be kept for a period of one (1) month from the date of final report (two (2) weeks in the case of microbiological samples except for microbiological water samples which are kept for one (1) week). Symbio will charge for costs incurred for longer term storage, or for disposal of noxious samples.

### **RIGHT TO SUBCONTRACT**

Symbio reserves the right to subcontract work if required, whether because of unforeseen reasons or on a continuing basis, as appropriate, with a competent subcontractor laboratory.

### **OWNERSHIP**

Symbio will own the final report until such time as full payment for the services is received, beyond which time the client will own the final report. All intellectual property rights associated with sample analysis methods, processes and reports are vested, and shall remain vested, in Symbio.

### **LEGAL OBLIGATIONS**

Symbio, its proprietor, its officers, employees and agents are under no legal obligation to provide information or expert witnesses as an outcome of any testing undertaken at Symbio.

Any requests for Symbio, its proprietor, its officers, employees and agents to provide information or expert witnesses will not be granted without the express written consent of Symbio's Chief Executive Officer or approved delegate.

In circumstances where Symbio, its proprietor, its officers, employees or agents agree or are required to provide information or appear as expert witnesses as an outcome of testing undertaken at Symbio an hourly fee will be charged to the client.

### **FORCE MAJEURE**

Symbio shall not be responsible or liable for any delay to perform any of its obligations when such delay or failure

to perform any of its obligations is caused by unforeseen circumstances beyond its reasonable control and without its fault or negligence, including, without limitation, Acts of God, fire, explosion, riot, sabotage, strike or other labour dispute, shortage of materials, transportation difficulties or compliance with any order, action, governmental officer, department, agency, authority or committee thereof that renders performance impracticable or impossible for Symbio.

### **CLIENT'S RELEASE AND INDEMNITY**

To the extent permitted by the Australian Consumer Law, the client hereby releases and indemnifies and shall continue to release and indemnify Symbio, its proprietor, its officers, employees and agents from and against all actions, claims, proceedings 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, death, injury, illness or damage to persons or property, and whether direct or indirect and in respect of any infringement of any industrial or intellectual property rights, howsoever arising out of the use of the report or the services of Symbio.

### **PRIVACY ACT 1988 ('PRIVACY ACT')**

To enable Symbio to assess the client's application for credit, the client authorises Symbio: (1) to obtain from a credit reporting agency/body a consumer or commercial credit report containing personal information about the client and any guarantors; and (2) to obtain a report from a credit reporting agency/body and other information in relation to the client's commercial credit activities, and (3) to give to a credit reporting agency/body information including identity particulars and application details.

The client authorises Symbio to give to and obtain from any credit provider named in the accompanying Credit Application and credit providers that may be named in a credit report issued by a credit reporting agency/body information about the client's credit arrangements. The client understands that this information can include any information about the client's credit worthiness.

The client understands that information can be used for the purposes of assessing the client's application for credit, assisting the client to avoid defaulting on its credit obligations, assessing the client's credit worthiness and notifying other credit providers and credit reporting agencies of a default by the client under these Terms.

Symbio has a privacy policy which governs the collection, use, storage and disclosure of personal information. This privacy policy is available from Symbio's website: <https://www.symbiolabs.com.au/privacy-policy/>.

### **WARRANTIES**

No warranties except those implied and that by law cannot be excluded are given by Symbio in respect of the Services supplied. If the client is a Consumer or if these Terms constitute a Small Business Contract (within the meaning of the Australian Consumer Law), Symbio's liability for a breach of a condition or warranty is limited to: (1) the resupply of the services or the cost of resupplying the services if Symbio determines that there has been a minor fault or (2) cancelling the agreement and granting a refund if there is a major fault with the services.

### **CLIENT'S ACKNOWLEDGMENT**

The client acknowledges that to the extent permitted by the Australian Consumer Law (and only to that extent):

The client at its own risk uses the report and its contents and any advice, opinions or information supplied by Symbio, its proprietor, its officers, employees or agents concerning the service; The service is performed on the understanding that the client will not hold Symbio, its proprietor, its officers, employees or agents liable for any loss or damage resulting from the conduct of the service or the use of or reliance upon the report or its contents; and it is the responsibility of the client to make its own assessment of the suitability for any purpose of the service, report and its contents and any information or advice generated there from.

#### STATED TURNAROUND TIMES

Test turnaround times are stated on the basis of the test proceeding on a 'normal' basis, passing all quality controls (QC), with no further re-test or confirmation stages. Any tests that require repeat testing, due to uncertainty over the initial results (out of specification), a QC or QA fail, or subject to further confirmation testing, may result in additional time taken to release of final reports.

#### ACCELERATED TURNAROUND

Accelerated turnaround testing is conditionally available on selected tests only and excludes microbiological testing. This service is subject to approval by the relevant laboratory manager on the day of receipt of samples and requires a clear request for the accelerated service on the submitted analysis request form accompanied with the samples. An additional fee will be incurred to all tests requested for the submitted batch of samples.

The day the samples are received is counted as day 0.

Samples for Environmental analysis tested under the accelerated turnaround programme incur the additional fees exclusive of GST per batch in Table 1. Table 1: Accelerated turnaround fees for Environmental tests

Same day (samples submitted prior to 9:30am)	100% surcharge
1 business day	50% surcharge
2 business days	25% surcharge
3 business days	12.5% surcharge

Samples for all other analysis tested under the accelerated turnaround programme incur the additional fee of \$377.78 exclusive of GST per batch for a turnaround time of 3 business days.

#### MEASUREMENT UNCERTAINTY

Measurement uncertainty is the concept which provides the confidence interval in which the true value of a measured property is expected to lie. This will vary depending on the type of sample, the test being conducted, the equipment used and the concentration of the parameter being measured. For this reason, it is not possible to publish measurement uncertainty for every individual test scenario but estimates are available upon request.

#### NOTIFICATION

The client must notify Symbio in writing within seven (7) days of: (1) any alteration of its name or ownership; (2) the issue of any legal proceedings against it; (3) the appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to it; and (4) any change in the ownership of its business name. The client agrees that it shall be liable to Symbio for all services supplied to the new owner by Symbio until notice of any such change is received.

#### TERMINATION

Symbio may terminate this Agreement if the client does any of the following, which is not remedied within 7 days of written notice given by Symbio: (1) Committing a material breach of these Terms which includes but is not limited to the failure to make payment for the services by the due date; or (2) Becoming bankrupt, committing an act of bankruptcy or having judgment entered against the client in any court.

#### VARIATION

Symbio may vary these Terms by providing written notice to the client (by email, conventional mail or by posting the amended terms on our website). Symbio will not change any Terms for an existing order that has been accepted by it; the Terms that apply to the order are the Terms that applied at the time the client placed the order.

If the client is a Consumer, or these Terms are deemed to be a Small Business Contract (within the meaning of the

Australian Consumer Law), and the client does not deem the variation acceptable, the client may elect not to proceed with the purchase of the services ordered before the date of the variation but which are intended to be subject to the variation.

If the client is not a Consumer and this agreement is not deemed to be a Small Business Contract, the client agrees that the variation applies from the date of receiving notice of the varied Terms.

#### FAILURE TO ACT

Symbio's failure to enforce or insist upon the timely performance of any term, condition, covenant or provision in these Terms, or its failure to exercise any right or remedy available under these Terms or at law, or its failure to insist upon timely payment of monies when due or to demand payment of any charges or fees which accrue or any extension of creditor forbearance under these Terms shall not constitute a waiver of any subsequent default or a waiver of Symbio's right to demand timely payment of future obligations or strict compliance with the Terms.

#### LEGAL CONSTRUCTION

The services are governed by the laws of the State in which services have been conducted, unless Commonwealth law prevails. The client will not represent in any way that Symbio supports or endorses the client's business, goods or services, without Symbio's written consent. The client will not make any press release or public statement about the services or Symbio without Symbio's written consent.

Notwithstanding that any provision of these Terms may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the Terms and Conditions shall continue in full force and effect.

#### EQUITABLE CHARGE

The client as beneficial owner and/or registered proprietor now charges in favour of us all of its estate and interest in any real property to secure payment of accounts rendered by us to you for the supply of the services under these Terms including interest payable on these accounts and costs (including legal costs on a full indemnity basis) incurred by us and including the costs to prepare and lodge a caveat against the Land and to remove the caveat.