

The following Terms and Conditions are applicable to any services provided by BioToxLab (hereinafter referred to as the Laboratory) or correspondence exchanged between the Laboratory and the Client in connection with the project as a whole.

Collectively the Proposal/Quotation, the Analysis Request form (QM7.1/R-19) and the following Terms and Conditions form the Agreement between the Client and the Laboratory. Please notify BioToxLab prior to submitting any samples for testing as far as is possible. Samples submitted for analysis must be accompanied by the Analysis Request form (QM7.1/R-19). Please sign and return a copy of the Analysis Request form as well as the formal quote that will be submitted to you before analysis of samples can commence.

All samples must be clearly labelled; labels should include the name of the sample, a lot number (if applicable), the date of sampling and the sample type (e.g. river water/effluent etc).

Any samples requested to be prioritized and which will have to be analysed on a weekend, on holidays and/or after hours will accrue additional fees. A general pricelist is available, and a formal quotation will be submitted to the project manager for approval/signature before analysis will commence (unless in cases where the Client has a separate system in place for managing quotes and purchase orders). Note that these prices are based on a standard range of dilutions (for definitive tests) and any additional/further dilutions required will be done at additional cost which will be submitted in the form of an amended quotation which needs to be approved by the project manager before it can be done.

Note that due to different reasons, some results obtained during certain tests may be rendered inconclusive as a result of e.g. precipitate forming in the sample which can affect the validity of the reading – in such cases, if less than 4 trophic levels were requested, the specific test can be replaced by a test using another trophic level (with prior consent from the project manager), however, this will be done at an additional cost which will be reflected on an amended quotation.

The quotations are normally done using figures from the pricelist and discounts apply when more than 8 samples (of a specific matrix) are submitted to the laboratory at any one time. Should the quotation be based on the discounted price for more than 8 samples, and less than 8 samples are actually submitted (due to e.g. some sites being dry or inaccessible), the quotation will be amended to reflect the  $\leq 8$  sample prices and approval will be obtained from the project manager before analysis can commence.

No opinions and interpretations will be provided to the client because the Laboratory does not have access to the required site information to do so. No conformity statements will be provided because no national/international guideline for toxicity testing is available – results should be interpreted by the client based on trends from previous results.

Due to the fact that different trophic level tests are performed over different timelines, the client may ask for preliminary results during the course of the project, however, it is important to note that only the final, written report following review and approval is considered to be valid. All notices and other communications in connection with an Agreement shall be in writing and should issues be discussed otherwise, written confirmation by email will be done.

## 1. VALIDITY OF THE OFFER

- Toxicity testing prices are valid from the date of quote till the last day of the current year.
- Any changes in the scope of work reflected in the proposal/quotation shall be affected by written agreement between the Laboratory and the Client.
- If changed or additional services are required, the parties must agree on the cost and program implications thereof prior to rendition of the services

## 2. STANDARD OF CARE

- The Laboratory shall provide the Service with such reasonable skill, care, and diligence as is ordinarily exercised by accredited laboratories in similar circumstances at the time the Service is provided.
- The Laboratory shall provide the Client with an opportunity to provide feedback regarding the provision of the Service at any time during the course of the Service, and thereafter.

### 3. TERMS OF PAYMENT

- The Client shall pay the Laboratory the Fees and Expenses as set out in the formal proposal/quotation without set off or deduction, unless otherwise agreed.
- Payment shall be in Rands unless expressly agreed otherwise. If Rands are not the currency of the country in which the Services are provided, the exchange rate for payment from local currency to Rand shall be that at the time of the invoice.
- External disbursements and sub-contracted services will be subject to a 10% handling fee.
- Invoices will be issued upon completion of services.
- For COD Clients (all new clients or clients choosing this payment method), the invoice will be submitted first. Upon payment of the full amount, the report will be provided.
- For Clients other than COD clients, all monies payable by the Client to the Laboratory shall be paid within thirty (30) days of the date of the invoice, unless otherwise agreed. Monies not paid within that period shall attract interest from the date of the invoice until payment at a rate of 3% per month, plus debt collection fees where applicable.
- The Client shall notify the Laboratory within ten (10) days of receipt of any invoice of any dispute with the invoice and the parties will promptly meet to resolve the dispute. Unless such a notification is received by the Laboratory, the Client agrees the invoice will be deemed valid and payment is due under the terms of this Condition.
- Where this Agreement has been entered into or authorized by an Agent (or person purporting to act as an Agent) on behalf of the Client, the Agent and the Client shall be jointly and severally liable for payment of all accounts due to the Laboratory under this Agreement.
- VAT will be charged at the applicable rate.
- Should the Client (not on COD terms) fail to meet its payment obligations and not remedy this default within 15 days of notification by the Laboratory, the Laboratory has the right to terminate the Contract and place the Client on COD terms, whilst applying interest as noted in (f) above.
- BioToxLab clients who outsource work on behalf of their clients are liable for payment to BioToxLab as per the terms agreed during the initial client take-on process (between BioToxLab and its Client) irrespective of fulfilment of their agreements with their clients (unless otherwise agreed with BioToxLab).

### 4. LIMIT OF LIABILITY

- This Agreement will be governed by the laws of South Africa.
- The Laboratory's total liability to the Client arising from the work covered by the proposal/quotation, is limited to twice the fees paid to the Laboratory, excluding any disbursements.
- The Laboratory shall not be liable for any claims, losses or damages arising under this agreement and services performed hereunder. The Laboratory shall not under any condition be liable to the Client in respect to any indirect, consequential or special losses incurred directly or indirectly by the Client arising from this Agreement (including but not limited to loss of profit, loss of business opportunity and payment of liquidated sums or damages under any other Agreement).
- The Laboratory will be deemed discharged from all liability in respect of the services, whether under the law of contract, tort, delict or otherwise, on the expiration of one (1) year from the completion of the Services, the date of invoice in respect of the final amount claimed by the Laboratory pursuant to Clause 3 above, or the termination of this Agreement, whichever is earliest. The Client shall not be entitled to commence any action or claim whatsoever against the Laboratory or any employee, agent, or sub-contractor of the Laboratory in respect of the Services after that date.
- The Client shall not under any condition be liable to the Laboratory in respect to any indirect, consequential or special losses incurred directly or indirectly by the Laboratory arising from this agreement (including but not limited to loss of profit, loss of business opportunity and payment of liquidated sums or damages under any other agreement), unless such losses arise from negligence or wilful misconduct of the Client or any of its employees, officers or directors.
- The Client shall indemnify the Laboratory against all claims by third parties which arise out of or in connection with the rendition of the services save to the extent that such claims do not in the aggregate exceed the limit of compensation in clause 4 bullet 2.

## 5. COPYRIGHT AND OWNERSHIP OF WORK PRODUCT

- The Laboratory maintains copyright of all documents prepared by it, including the proposal/quotation. The Client is entitled to use these documents and to copy them only for the Project in respect of which they were prepared and for the purpose for which they were intended. In particular, the Client may not use the Laboratory's proposal as a whole or in part for soliciting opposing bids.
- The Client obtains ownership of data and factual information collected by the Laboratory upon payment of all the fees and disbursements payable by the Client to the Laboratory.
- In the event that the Laboratory agrees that copyright in the documents shall be ceded to the Client, then the Laboratory shall not be liable in any way for the use of any information or documents other than as originally intended and the Client indemnifies the Laboratory against any claim which may be made against the Laboratory by any party arising from the use of such information or documents for other purposes.
- If the Client is in breach of any obligation to make a payment to the Laboratory, the Laboratory may revoke the use of the work product and the client shall return to the Laboratory all originals and copies of the work product provided under the Services within three (3) working days after having been requested in writing to do so.

## 6. CONFIDENTIALITY

- Neither the Client nor the Laboratory shall disclose to third parties or use for any purpose (other than providing or benefiting from the Services) any information provided by the other unless required by law or as a result of a court order to do or the information is already available to the public, or the other consents to the disclosure.
- In the case of being requested by law to provide information to a third party, the Laboratory will inform the Client in writing of its intention to do so.
- Should a third party, other than the person requesting the tests, request information related to, or a copy of the report produced, the Laboratory will first obtain written permission from the Client requesting the analyses before distributing such information/reports.

## 7. TERMINATION

- Either party may terminate its obligations under this Agreement in the event of a substantial breach by the other party of its obligations and the breach has not been remedied within 10 working days of a written notice requiring the breach to be remedied.

## 8. SUB-CONTRACTING

- If the Laboratory considers it appropriate to do so, it may, with the Client's prior written approval, engage another Laboratory/Contractor to assist the laboratory in provision of the Services. The Laboratory will be fully responsible to the Client for the Services and work done by all of its sub-contractors/outsourcing facilities, unless the Client specifies which facilities should be used. The Laboratory will endeavor to use only approved, reputable subcontractors/outsourcing facilities. In the event where a Client plans to submit samples for the same types of analyses to be subcontracted/outsourced on a regular basis, the Laboratory will issue an initial notification and obtain written consent, after which a confirmation email only will be sent to the Client with each batch of samples requiring similar analyses (not obtaining written consent each time).

## 9. MISCELLANEOUS

- If, after the date of this Agreement, the cost or duration of the services is altered as a result of changes in, or additions to, any statute, regulation or by-law, or in the requirements of any authority having jurisdiction, over any matter in respect of the project, then the agreed remuneration and time for completion shall be adjusted in order to reflect the impact of those changes. Because of the fact that the exchange rate changes significantly from time to time, a change in costs may be implemented (with prior notice) by the Laboratory at any time.
- This Agreement shall be subject to the laws of the Republic of South Africa. The parties irrevocably agree to submit to the non-exclusive jurisdiction of the courts of the Republic of South Africa.
- This Agreement is the entire Agreement between the parties for the provision of the Services in the attached proposal/quotation and supersedes all other agreements, representations, correspondence and discussions in connection with the Services.

- Nothing in this Agreement, nor in the performance of the Services, shall be construed as creating a relationship of agency, partnership, or other relationship other than that of Client and Laboratory between the parties.
- NOTE: BioToxLab identified 'internal audits' and "external SANAS audits' as areas where a client's information may potentially be placed in the public sector. Acceptance of this document serves as notification and acceptance of this fact.

**END OF DOCUMENT**