

## STANDARD TERMS AND CONDITIONS FOR SERVICES

### 1. Scope

- a. These terms and conditions (the "Terms") between Analytical Laboratory Services (Analab) and the customer (the "Customer") requesting certain services, govern the relationship between Analytical Laboratory Services and Customer, and the terms on which the services are provided to the Customer.
- b. A "Quotation" is a document issued by Analytical Laboratory Services, in any media, including via the Internet that sets out the services to be provided to the Customer by Analab or its agents (the "Services") and the prices for such Services. Customer agrees that when Customer accepts a Quotation or otherwise indicates Customer's acceptance, as the context requires, an agreement will be formed between Customer and Analab for the provision of the services which will be governed exclusively by these Terms.
- c. Save for circumstances where localised legal and or regulatory requirements differ and such conflicts have been attended to in writing and accepted between the parties, then all offers and services shall be governed by the following general terms and conditions.
- d. ALS may deliver test reports or reports findings to a third party only with the prior written consent of the Customer.
- e. If any one or more provisions of these general terms and conditions are found to be illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- f. During the course of receiving the services from Analab and for a period of one year thereafter, the Customer shall not directly or indirectly entice, encourage or make any offer to Analab's employees to leave their employment with Analab.
- g. Neither party shall use the intellectual property of the other, without that party's prior written consent.
- h. This agreement constitutes the sole record of the agreement between the parties in relation to the subject matter hereof. Neither party shall be bound by any expressed or implied term, representation, warranty, promise or the like not recorded herein. This agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the parties in respect of the subject matter hereof. No addition to, variation, novation or agreed cancellation of any provision of this agreement shall be binding upon the parties unless reduced to writing and signed by or on behalf of the parties. No indulgence or extension of time which Analytical Laboratory Services may grant to the Customer shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of Analab in terms hereof, save in the event and to the extent that Analab has signed a written document expressly waiving or limiting such right.

### 2. Provision of Services

- a. ALS will provide services using reasonable care and skill and in accordance with Customer's specific instructions as confirmed by Analab or, in the absence of such instructions, such methods as ALS shall consider appropriate on technical, operational and /or financial grounds.
- b. Information stated in test reports or reports of findings is derived from the results of testing procedures carried out in accordance with the instructions of the customer or other circumstances which should in our professional opinion be taken into account.
- c. Reports of findings issued relate to the testing only and do not express any opinion upon the source from which the samples were drawn.

- d. Should the Customer request that Analab witness any third-party intervention, the Customer agrees that Analab's sole responsibility is to be present at the time of the results or confirm the occurrence of the intervention. The Customer agrees that Analab is not responsible for the condition or calibration of apparatus, instruments and measuring devices used, the analysis methods applied, the qualifications, actions or omissions of third-party personnel or the analysis results.
- e. Reports of findings issued by Analab will reflect the facts as recorded by it at the time of its intervention only and within the limits of the instructions received or, in the absence of such instructions, within the limits of the alternative parameters applied as provided for in clause 3 a. Analab is under no obligation to refer to, or report upon, any facts or circumstances which are outside the specific instructions received or alternative parameters applied. The Customer may request further information and Analab should not unreasonably withhold such request.
- f. Analab may delegate the performance of all or part of the services to an agent or subcontractor upon written authorisation of the Customer. The Customer thereby authorises Analab to disclose all information necessary for such performance to the agent or such subcontractor. Analab remains liable for any and all acts or omission by such agent or subcontractor.
- g. Should Analab receive documents reflecting engagements contracted between the Customer and third parties or third-party documents, such as copies of sale contracts, letters of credit, bills of lading, etc., they are considered to be for information only, and do not extend or restrict the scope of the services or the obligations accepted by Analab.
- h. The Customer acknowledges that Analab, providing the service, neither takes the side of the Customer or any third party, nor releases them from any of their obligations, nor otherwise assumes, abridges, abrogates, or undertakes to discharge any duty of the Customer to any third party or that of any third party to the Customer.

### **3. Obligations of the Customer**

The Customer will:

- a. ensure that sufficient information, instructions, and documents are given in good time (and, in any event not later than 48 hours prior to the receipt of samples or the desired intervention required by Analab) to enable the required services to be performed:
- b. supply, if required, any special equipment and personnel necessary for the performance of the services.
- c. The collection and delivery of the sample and any other logistical measures shall be the matter for the Customer and shall be carried out or organised by the Customer at the Customer's own risk.
- d. If the Contractor renders assistance in organising the transport or in logistical measures outside the laboratory, the Contractor shall act in the name of and on the authority of the Customer, so that the risk of transport or any delays in transport shall be the Customer's responsibility and the consequences shall be borne by the Customer.
- e. Samples must be in a condition which permits the analyses and production of reports relevant in relation to the purchase order and without any problems arising. The Customer shall make available sufficient sample size such that the Contractor can carry out the analytical work with regard to the examination request and perform repeats if needed.
- f. The Contractor shall be entitled to carry out an examination of any sample on their delivery in order to establish their condition prior to the processing of the sample. The Customer shall be obliged to bear the costs of such inspection on deliver, should it emerge that the samples do not comply with the requirements. In the event that the results of the inspection on delivery reveals that the analysis will be impossible or only possible in more onerous circumstances than originally anticipated – for example because the sample contains foreign materials or substances in respect of which the Customer has provided no information or if the sample has degraded or decomposed – the Contractor shall be entitled to withdraw from the contract or to suspend the performance of the purchase order. In such a case the Customer shall bear the costs which the Contractor has incurred until such point in time.

- g. The Customer warrants and has an obligation towards the Contractor to ensure that all samples sent to the Contractor for purposes of analysis are in a safe and stable condition. The Customer must ensure and hereby warrants that the samples shall constitute no danger to the property and any other legal interests of the Contractor and its employees and other agents or third parties.
- h. If a sample is dangerous or represents any health and safety concerns or special waste or hazardous materials, the Customer must inform the Contractor in writing prior to dispatch.
- i. In the event of any breach of these obligations, the Customer shall be liable for any costs, damage and any other prejudice which are incurred or suffered by the Contractor or its personnel or other agents as a result thereof. Costs due by the Customer shall be finally determined by a court of competent jurisdiction. Such liability shall also include a corresponding obligation to indemnify the Contractor in the event of any proceedings being instigated against them by third parties.
- j. The Customer shall bear the costs of the reasonable removal/disposal of special waste and hazardous materials which are incurred as the results of the nature of the samples provided by the Customer.

#### **4. Fees and Payment**

- a. The Customer agrees to pay all additional costs resulting from any acts or omissions by the Customer including suspension of work, modification of requirements, failure or delay in giving particulars required to enable work to proceed on schedule or requirements that work be completed earlier than agreed.
- b. The Customer agrees that the amount in a Tax Invoice issued by Analytical Laboratory Services shall be due and payable unconditionally by (i) cash on order; or (ii) if the Customer is a Credit Approved Customer, within 30 days from the date of Tax Invoices been issued by Analytical Laboratory Services or otherwise as agreed in writing between the parties. (must be in writing)
- c. All payments shall be made at the office of Analytical Laboratory Services or paid into the Analytical Laboratories bank account as stated on the official Analytical Laboratories Quotation, Tax Invoice or Statement.
- d. The Customer shall not be entitled to retain or defer payment of any sums due to Analab on account of any dispute, counter claim or set off, which it may allege against Analab.
- e. Should the Customer breach any provisions of this contract then Analab will (i) give the customer 5 working days from date of notice to remedy such breach. Should such breach not be rectified within such period the Analab will be (ii) entitled to immediately institute action against the Customer at the sole expense of the Customer; or (iii) to cancel the Agreement and take possession of any goods delivered to the Customer and claim damages (iv) to stop services immediately and withhold any or all test results and samples, and (v) withdraw any results reported to the Customer.
- f. The Customer agrees that if accounts have not been settled within 90 days from date of Tax invoice been issued Analab will release no further test reports until the full amount has not been settled.
- g. In the event any unforeseen problems or expenses arise in the course of carrying out the services, ALS shall inform and notify the Customer in writing and shall be entitled to payment of the amount of all non-refundable expenses incurred by Analab and a proportion of the agreed fee equal to the proportion of the services actually carried out.

#### **5. Suspension or Termination of Services**

ALS shall be entitled to suspend or terminate provision of the services in the event of:

- (i) Failure by the Customer to comply with any of the obligations hereunder and such failure is not remedied within 5 days of notification of such failure to the Customer or
- (ii) Any suspension of payment, arrangement with creditors, bankruptcy, insolvency, receivership, or cessation of business by the Customer.

## **6. Liability and Indemnification**

### **a. Limitation of liability:**

- (i) Whilst Analab will do its utmost to ensure the accuracy of the final test data it does not act as a guarantor for such data and disclaims all liability in such capacity and accordingly the Customer should arrange appropriate insurance cover against any loss or damage arising therefrom.
- (ii) Reports of findings are issued on the basis of information, documents and/or samples provided by or on behalf of the customer and solely for the benefit of the Customer who is responsible for acting as it sees fit on the basis of such reports and findings. Neither Analab nor any of its officers, employees, agents or subcontractors shall be liable to the Customer nor any third party for any actions taken or not taken on the basis of such reports of findings nor for any incorrect results arising from unclear, erroneous, incomplete, misleading or false information provided by Analab.
- (iii) Analab shall not be liable for any delayed, partial or total non-performance of the services arising directly or indirectly from any event outside Analab's control including to comply with any of its obligations hereunder. The liability of Analab in respect of any such claim for loss, damage or expense of any nature whatsoever arising shall not exceed the total amount of the fee paid in respect of the specific service which gives rise to such claim.
- (iv) Analab shall have no liability for any indirect or consequential loss including without limitation loss of profits, loss of business, loss of opportunity, loss of goodwill and cost of product recall. It shall further have no liability for any loss, damage or expenses arising from the claims of any third party (including, without limitation, the product liability claims) that may be incurred by the Customer.
- (v) In the event of any claim the Customer must give written notice to Analab within 60 days of its discovery of the facts giving rise to such claim.

- b. Indemnification: The Customer shall guarantee, hold harmless and indemnify the Company and its officers, employees, agents, or subcontractors against all claims (actual or threatened) by any third party for loss, damage or expenses of whatsoever nature including all legal expenses and related costs and howsoever arising relating to the performance, purported performance or non-performance, of any services

## **7. Governing Law**

The governing law that shall apply will be that of the Republic of Namibia.

## **8. Jurisdiction**

The parties agree to the jurisdiction of the Local Magistrates Court and/or any other court with jurisdiction.

## **9. Dispute Resolution**

Without derogating from any rights either party may have in law, disputes arising out or in connection with this Agreement shall be resolved and settled under the Rules of Arbitration of the Professional arbitration and mediation Association of Namibia (PAMAN) by one or more arbitrators appointed in accordance with the said rules or by a mutually agreed arbitrator nominated by the Law Society of Namibia or the Institute of Chartered accountants of Namibia. The arbitration shall take place in Windhoek, Namibia and shall be conducted in the English language. In the event of a dispute the parties must meet in mutually agreed place or otherwise communicate in an effort to resolve the dispute on an informal and amicable basis.

## **10. Confidentiality**

The Laboratory and its employees agree to maintain confidentiality and not to use or disclose any information derived from the Customer, without the written consent of the Customer.

As part of the ISO/IEC 17025 and SADCAS requirements, the Laboratory participates in regulatory external SADCAS assessments and internal audits. These external service providers might view confidential information but are bound to confidentiality agreements established by the Laboratory. By signing this agreement, the customer accepts these conditions.

When the Laboratory is required by law or authorised by contractual arrangements to release confidential information, the customer or individual concerned will, unless prohibited by law, be notified in writing of the information provided.

## 12. Complaints

All complaints related to Analytical Laboratory Services should be directed to the Quality Manager, by providing a clear description of the complaint:

Email: [sitemanager@analab.com.na](mailto:sitemanager@analab.com.na)  
Tel: +264 81 122 1588

Upon receipt of the complaint, the Quality Manager, will acknowledge the receipt of the complaint and provide further information on handling of complaint.

## Acceptance of Terms and Conditions

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Applicant's Name

\_\_\_\_\_  
Designation