

TRADING TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1.1. **MouldLab** is NSJ Envirosiences Pty Ltd trading as MouldLab, ABN 27 143 789 995, of 4/52 Industrial Drive, Mayfield East NSW 2304 and at <http://www.mouldlab.com.au/> (the **Website**). MouldLab is referred to as the Supplier in the Account Application and/or quotation and/or the Hire Agreement (see item 1) and these terms may be used interchangeably.
- 1.1.2. The **Goods and Services** are the environmental mycology laboratory related goods and/or services provided by MouldLab. The Goods and Services may include, but are not limited to, mould assessments and analysis, preparation of analytical reports, hire or sale of equipment, preparation of scope of works, project management, reports with forensic investigation and photographic record, mediations and attendance at tribunals or court as an expert witness.
- 1.1.3. The **Order** is a request for the provision of Goods and Services which has been received and accepted by MouldLab.
- 1.1.4. The **Customer** is any person/s and/or entity/ies that place an Order and/or as specified at item 2 of the Account Application and/or quotation and/or the Hire Agreement.
- 1.1.5. The **Price** is the amount quoted and/or invoiced and/or advertised on the Website.
- 1.1.6. The Customer must make payment of the Price immediately upon provision of the Goods and Services or as specified at Item 5 of the Account Application (the **Payment Terms**).
- 1.1.7. The **Price Review Date** is as defined in the Account Application form (see Item 10).
- 1.1.8. The **Delivery Arrangements** refer to the time of delivery and location or method of delivery as outlined in the Order or as specified at Item 8 of the Account Application.
- 1.1.9. The **Cost of Delivery** refers to the costs associated with the supply of the Goods and Services which includes, but is not limited to, shipping costs, courier costs, taxes and duties etc.
- 1.1.10. The **Termination Notice Period** is 30 days or as specified at Item 10 of the Account Application.
- 1.1.11. The **Hired Goods** are the goods listed on the Hire Agreement.
- 1.1.12. The **Hire Period** is as listed on the Hire Agreement.
- 1.1.13. The **Agreement** is comprised of the following documents if exchanged by MouldLab and the Customer;
- These Trading Terms and Conditions;
 - MouldLab's Account Application;
 - A Chain of Custody form accepted by MouldLab;
 - An Order accepted by MouldLab;
 - A quotation provided by MouldLab;
 - A credit card or direct debit authority;
 - MouldLab's Hire Agreement.
- and is made on the date that MouldLab agrees in writing or when MouldLab commences supplying the Goods and Services (**Agreement Date**).

2. AGREEMENT TO SUPPLY

- 2.1.1. MouldLab shall supply the Goods and Services to the Customer at the Price in accordance with the Agreement.
- 2.1.2. The Price is inclusive of GST but exclusive of all other taxes or duties.
- 2.1.3. MouldLab reserves the right:
- to decline to accept any Order from the Customer;
 - to sell or continue to sell direct to other persons who may be competitors of the Customer;
 - to vary the specification of the Goods and Services.

3. OBLIGATIONS OF THE CUSTOMER

3.1. Place Orders in Writing

- 3.1.1. The Customer shall place the Order with MouldLab in writing wherever possible.

3.2. Acceptance of Goods – Claim Period

- 3.2.1. The Goods and Services may only be returned if they are damaged, faulty or not as ordered. The Customer shall return such Goods in the condition that they were supplied.
- 3.2.2. In the event of any of the Goods and Services delivered to the Customer being damaged, faulty or not as ordered, the Customer shall advise MouldLab in writing within forty-eight (48) hours of delivery of the Goods and Services.
- 3.2.3. The Customer shall arrange for the Goods and Services that are damaged, faulty or not as ordered to be returned to MouldLab within seven (7) days of the date of delivery. The cost of the return freight shall be paid by MouldLab.
- 3.2.4. In the event, that the Customer fails to comply with paragraphs 3.2.2 or 3.2.3 the Customer shall not be entitled to make any claim against MouldLab and shall pay the full price of the invoice for the Goods and Services.

3.3. Payment of Accounts

- 3.3.1. MouldLab may require a deposit as set out in the Account Application or prior to accepting the Order which is to be paid prior to the provision of the Goods and Services.
- 3.3.2. The Customer shall pay MouldLab in full for the Goods and Services in accordance with the Payment Terms whether or not any dispute exists between the Customer and MouldLab about the amount required to be paid by the Customer under the Agreement.
- 3.3.3. In the event of a dispute existing between MouldLab and the Customer about the amount required to be paid by the Customer under the Agreement, MouldLab may require, as a pre-condition to any attempt to resolve the dispute or the filing of any defence to litigation that MouldLab nominate a solicitor to hold the amount claimed by MouldLab but in dispute in trust as a stakeholder for the parties until the dispute is settled. Upon such request being made by MouldLab, the Customer shall pay any amount claimed by MouldLab to that solicitor's trust account.
- 3.3.4. Where MouldLab has been provided with a credit card or direct debit authority on behalf of the Customer, MouldLab shall be authorised to use that authority to arrange for payment of any amounts due under the Agreement.
- 3.3.5. To avoid doubt, terms relating to payment of accounts shall survive termination of the Agreement.

3.4. Dealing with MouldLab Representatives

- 3.4.1. The Customer shall:
- disclose all dealings with persons employed or engaged by MouldLab other than any transactions directly between the Customer and MouldLab in accordance with the Agreement;
 - not provide any money, gift or inducement to any persons employed or engaged by MouldLab or to any other person at their request without the consent in writing of a director of MouldLab.

4. OBLIGATIONS OF MOULDLAB

4.1. Maintain the Price

- 4.1.1. MouldLab shall change the Price only in the following circumstances and shall advise the Customer of any revised price which will be binding on the Customer:
- in the event of an increase in the price to MouldLab of any of the components used in supplying the Goods and Services; or
 - due to alterations to the Order made at the Customer's request;
 - on or after the Price Review Date in accordance with the method set out in the Account Application.

4.2. Deliver Goods on Time

- 4.2.1. MouldLab shall use its best endeavours to deliver the Goods and Services in accordance with the Delivery Arrangements.

4.2.2. MouldLab shall not be held accountable for the delays or non performance of its delivery partners.

4.2.3. MouldLab shall advise the Customer of a revised date for delivery and the Customer shall not be entitled to cancel or alter any Order unless the delivery is late by 28 days or more.

4.2.4. In the event that the Customer is unable to take delivery of the Goods as arranged then MouldLab may charge a reasonable fee for redelivery.

4.2.5. MouldLab may deliver the Goods and Services in instalments and invoice each instalment separately.

4.2.6. In the event that any payment under the Agreement is overdue or there is some other default on the part of the Customer, MouldLab may cancel or suspend further delivery of the Goods and Services until the payment is made or the default is rectified and MouldLab shall not be liable for any loss or damage including consequential loss arising as a result of such cancellation or suspension.

4.3. **Quality of Goods**

4.3.1. MouldLab makes no other representations about the Goods and Services including the fitness of the Goods and Services for a particular purpose other than those made in writing by MouldLab prior to the date of the Agreement.

4.3.2. MouldLab shall ensure that the Goods and Services are of merchantable quality and are similar within reasonable tolerances.

4.3.3. In the event that MouldLab delivers the Goods and Services to the Customer that are damaged, faulty or not as ordered then the limit of the liability of MouldLab shall be to do any of the following at MouldLab's option:

- (a) replace the Goods and Services within a reasonable period;
- (b) repair the Goods and Services within a reasonable period;
- (c) pay the Customer difference between the cost of supply of the Goods and Services by MouldLab and supply of equivalent Goods by another person.

4.4. **Risk & Liability**

4.4.1. The Customer is responsible to ensure that MouldLab is made aware of any special requirements pertaining to the Order and acknowledges that MouldLab relies upon the integrity of the information supplied to it.

4.4.2. MouldLab takes no responsibility if the specifications are wrong or inaccurate and the Customer will be liable for the expenses incurred by MouldLab for any work required to rectify the Order and/or the Goods and Services.

4.4.3. The Customer acknowledges that MouldLab shall not be liable for loss or damage or for consequential loss or the damage of any kind arising out of the supply of the Goods and Services.

4.4.4. The Customer acknowledges that any report provided by MouldLab will be based on a sample provided by the Customer or based upon conditions noted during a site inspection at that point in time. The Customer acknowledges that MouldLab shall not be liable for the report being wrong as a result of further deterioration, climatic conditions or for any other reason after a site inspection.

4.5. **Delay**

4.5.1. MouldLab shall not be liable for any reasonable delay in supplying the Goods and Services to the Customer.

4.6. **Warranty for Services**

4.6.1. If there is any defect in any Service supplied by MouldLab and the defect is reported to MouldLab within seven (7) days of the provision of the Services then MouldLab will remedy the defective Service.

4.6.2. If any defective Services are repaired or altered without MouldLab's consent, the warranty shall cease and MouldLab shall not thereafter in any circumstances be liable under the terms of the

warranty.

4.6.3. For defective Services where the Customer has complied with the conditions of warranty, MouldLab's liability is limited to repairing the defective Service.

5. **QUOTATIONS**

5.1.1. MouldLab's quotation will describe the scope of the Goods and Services to be provided and will indicate an estimated price for the Goods and Services. The quotation is based on information provided by the Client at the time of the quotation request. If further information or a change in circumstances comes to the attention of MouldLab, then MouldLab's rights are reserved in regards to withdrawing our quotation or providing an amended quotation.

5.1.2. Where the quotation includes assessment of a site, should MouldLab need to return for any reason, there will be a further assessment fee charged at the agreed hourly rate as listed on the Quotation

5.1.3. Unless otherwise specified, the quotation does not include disbursements.

5.1.4. A quotation given by MouldLab shall expire in thirty (30) days.

5.1.5. All prices are based on taxes and statutory charges current at the time of the quotation. Should these vary during the period from the date of the quotation to the date of the invoice, the difference will become the responsibility of the Customer and the Customer will be invoiced for the extra charge by MouldLab.

6. **COPYRIGHT**

6.1.1. The Agreement by MouldLab to provide the Goods and Services to the Customer shall not confer any right upon the Customer to own any intellectual property (IP) MouldLab uses or creates. At all times such IP remains the sole property of MouldLab.

6.1.2. Any Goods and Services designed by MouldLab and/or created by MouldLab are subject to the *Copyright Act 1968*.

6.1.3. MouldLab warrants that MouldLab holds the rights to authorise the reproduction of all IP in the Goods and Services provided to the Customer.

6.1.4. The Customer warrants that it shall not, whether directly or indirectly, infringe or allow any party to infringe on any IP rights in relation to the Goods and Services provided.

6.1.5. The Customer agrees to indemnify and agrees to keep indemnified MouldLab against all direct, Indirect, Special or Consequential losses, liability, and or expenses incurred by MouldLab in relation to and/or in any way related with any breach of IP rights by the Customer in relation to the Goods and Services provided.

6.1.6. The Customer agrees to indemnify MouldLab for any claims made by a third party in relation to Goods and Services supplied based on special requirements, specifications and/or designs provided by the Customer.

7. **GOODS ON HIRE**

7.1.1. The Customer must return the Hired Goods to MouldLab within the Hire Period in the same condition in which the Hired Goods were received by the Customer, subject only to damage from normal fair wear and tear.

7.1.2. The Customer acknowledges that the Hired Goods are to remain the property of MouldLab at all times. MouldLab is the owner of the Hired Goods and has provided the Customer the contractual license to use the Hired Goods. The Customer accepts that the Hired Goods must not be otherwise sold or rented in whole or in part for commercial gain.

7.1.3. The Customer will be responsible for the care, security and storage for Hired Goods during the Hire Period and will indemnify MouldLab against any loss and damage to the Hired Goods

7.1.4. The Customer acknowledges that it has no property or interest in the Hired Goods and agrees that it will not make any alterations or additions to the Hired Goods without obtaining

the written consent of MouldLab.

- 7.1.5. MouldLab shall be entitled to take action against the Customer for the full retail replacement price for the Hired Goods which are damaged, altered or stolen whilst in the Customer's custody, care or storage as a liquidated demand.
- 7.1.6. The Customer agrees to use the Hired Goods only for the purpose intended and in accordance with the instructions provided.
- 7.1.7. The Customer shall ensure that the Hired Goods are operated in a skilful and proper manner and by a person who is competent to operate the same.

8. DEFAULT

- 8.1.1. Should any party default in the Agreement, the party not in default may give notice in writing to the party in default specifying the default and giving the party in default:
 - (a) if the default relates to the non payment of monies, seven (7) days, or;
 - (b) in any other case, thirty (30) days in which to remedy the default.
- 8.1.2. If the default relates to the non payment of monies, MouldLab shall be entitled to charge interest on all amounts payable at the daily rate of 5% above the *Reserve Bank of Australia* Cash Rate which, if not paid, shall be added to the amount due to MouldLab on the 1st day of each month and bear interest from that date.

9. TERM & TERMINATION

9.1. Termination

- 9.1.1. The Agreement shall continue unless terminated in accordance with this Clause.
- 9.1.2. A party may terminate the Agreement by giving notice in writing to the other party and obtaining the written consent of the other party to the termination in which case the Agreement ends on the date that the consent of the other party is given or, otherwise ends after the expiration of the Termination Notice Period.
- 9.1.3. In the event of any of the following circumstances applying to a party, the other party may elect to terminate the Agreement by giving notice in writing to the party to which the circumstances apply:
 - (a) a default notified in accordance with clause 8 above remaining unremedied;
 - (b) the appointment of a Trustee in Bankruptcy, Liquidator, Receiver, Receiver and Manager or any other official management;
 - (c) entering into an arrangement or composition with creditors;
 - (d) a mortgagee, debenture holder, or other chargee taking possession of any property either in person or by an agent;
 - (e) a change in the ownership or control of a party;
 - (f) the occurrence of any event or circumstance which in the opinion of MouldLab has or will detrimentally affect the financial position of the Customer or the Customer's ability to repay any payments made under the Agreement as they become due;
- 9.1.4. Upon termination, the following shall occur:
 - (a) MouldLab shall provide an invoice to the Customer for any stock not already invoiced and shall provide a statement for invoices outstanding
 - (b) all monies payable under the Agreement become immediately due and payable.

10. GENERAL

10.1. Entire Agreement

- 10.1.1. The Agreement constitutes the entire Agreement between the parties and supersedes all previous communications, representations, inducements, undertakings or arrangements between the parties.
- 10.1.2. Nothing in these Terms and Conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010* or the *Fair Trading Acts*

in each of the States and Territories of Australia.

10.2. Severance

- 10.2.1. The Agreement is to be interpreted so that it does not infringe against the Acts of any Parliament of Australia or any regulations made under those Acts. If any provision is invalid or not enforceable, the remaining provisions which are self-sustaining and capable of separate enforcement shall continue in force.

10.3. Amendment

- 10.3.1. Any amendment to the Agreement must be in writing and signed by the parties.

10.4. Privacy Act Consent

- 10.4.1. In accordance with section 18K (1) (c) of the *Privacy Act 1988 (Cth)* or any similar legislation, the Customer authorises MouldLab to use any information supplied by the Customer for the purposes of assessing the creditworthiness of the Customer including the obtaining a report from any credit reporting agency.

10.5. Notices

- 10.5.1. Any notice to be given under the Agreement shall be in writing and is deemed duly given if it is:
 - (a) left at that other party's address;
 - (b) sent by pre-paid mail to that other party's address; or
 - (c) transmitted by facsimile or electronic mail to that other party.
- 10.5.2. Any notice given to a party is deemed duly given and received:
 - (a) when delivered (in the case of it being left at that party's address);
 - (b) on the third business day after posting (in the case of it being sent by pre-paid mail); or
 - (c) on the day of transmission, if a business day, or, if not a business day, on the next business day (in the case of being transmitted by facsimile or electronic mail)

10.6. Account Fees

- 10.6.1. If the Customer provides MouldLab with a payment that is subsequently dishonoured, the Customer may be liable for a dishonoured payment fee of \$30 per payment plus any further amount due to any financial institution
- 10.6.2. Without prejudice to any other rights of MouldLab, if there is any amount which is overdue, the Customer may be charged account keeping fees of \$15.00 per month or as specified at item 6 of the Account Application, whichever is greater.
- 10.6.3. To avoid doubt, this term shall survive termination of the Agreement.

10.7. Costs of Recovery

- 10.7.1. The Customer shall pay MouldLab for all costs incurred by MouldLab in the recovery of any goods or monies owed (including those costs which may be contingent on recovery) by the Customer to MouldLab under the Agreement including debt recovery agents costs, repossession costs, location search costs, process server costs and solicitor costs on a solicitor/client basis.
- 10.7.2. To avoid doubt, this term shall survive termination of the Agreement.

10.8. Agreed Use

- 10.8.1. The Customer forfeits any rights it may have against MouldLab if the Goods and Services are used in a way they were not intended for, or they are altered without MouldLab's consent.

10.9. Retention of Title

- 10.9.1. The Goods shall remain the sole and absolute property of MouldLab as legal and equitable owner until such time as all money due to MouldLab has been paid to the Customer but shall be at the Customer's risk from the time of delivery to it;
- 10.9.2. The Customer acknowledges that it is in possession of the Goods as bailee for MouldLab until such time as they are delivered to a purchaser under the terms of the Agreement;
- 10.9.3. The Customer's right to possession of the Goods shall cease if

it does anything or fails to do anything which would entitle a receiver to take possession of any assets or which would entitle any person to present a petition for the winding up of the Customer;

10.9.4. MouldLab may for the purpose of examination or recovery of the Goods enter upon any premises where they are stored or where they are reasonably thought to be stored;

10.9.5. The entire proceeds of the Goods shall be held in trust for MouldLab and shall not be mingled with any other money paid into any overdrawn bank account and shall at all times be identifiable as MouldLab's money;

10.9.6. The Customer warrants that it is not at the time of entering into the Agreement insolvent and knows of no circumstances which would entitle any creditor to appoint a receiver or to petition for winding up or to exercise any other rights over or against its assets.

10.9.7. To avoid doubt, terms relating to retention of title shall survive termination of the Agreement.

10.10. Reservation of Rights

10.10.1. All rights not specifically and expressly granted to the Customer by the Agreement are reserved to MouldLab;

10.11. Receipt

10.11.1. The receipt of money by either of the parties shall not prevent either of them from questioning the correctness of any statement in respect of any money.

10.11.2. To avoid doubt, this term shall survive termination of the Agreement.

10.12. Security Arrangements

10.12.1. The Customer agrees that it shall arrange for the proper execution of the documents as set out in the Account Application to secure the performance of the Customer of the Agreement.

10.13. Charge

10.13.1. If Customer is an individual, if any amount is overdue, the Customer agrees to charge his/her real and personal property to secure the indebtedness of the Customer to MouldLab, and authorizes MouldLab to lodge a caveat or register the charge on the Personal Property Securities Register until the overdue amount is received in full by MouldLab. The Customer shall also be liable for all costs incurred by MouldLab arising from this clause on an indemnity basis.

10.13.2. If Customer is a company, if any amount is overdue, the Customer agrees to grant a fixed and/or floating charge over its assets in favour of MouldLab and irrevocably authorizes MouldLab to register the charge and MouldLab's interest in the charge with the Personal Property Securities Register. The Customer shall also be liable for all costs incurred by MouldLab under this clause on an indemnity basis.

10.14. Insurance

10.14.1. MouldLab warrants that it holds sufficient professional indemnity insurance for the provision for the Goods and Services.

10.14.2. MouldLab will not provide any additional insurance cover other than that specified in clause 10.14.1. The Customer shall be responsible for whatever additional insurance cover it requires at its own expense.

10.15. Force Majeure

10.15.1. Both parties will be released from their respective obligations in the event of national emergency, war, prohibitive governmental regulations or if any other cause beyond the reasonable control of the parties renders performance of the agreement impossible whereupon:

- (a) all money due to MouldLab shall be paid immediately; and
- (b) the Customer shall forthwith cease to carry on the business provided that this clause shall only have effect at the discretion of MouldLab except where such event renders performance impossible for a continuous period of 12 calendar months.

10.16. MouldLab's Right to Assign

10.16.1. The Agreement and all rights under it may be assigned or transferred by MouldLab without the consent of the Customer.

10.17. Waiver

10.17.1. The failure by MouldLab to enforce at any time or for any period any one or more of the terms or conditions of the Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of the Agreement.

10.18. Time of the Essence

10.18.1. Time is of the essence in the Agreement in all respects (whether any extension of time or other indulgence has been given by one party to the other or not) and any breach of a time limit by one party will give the other parties the right to terminate the Agreement.

10.18.2. To avoid doubt, this term shall survive termination of the Agreement.

10.19. Governing Law

10.19.1. The Agreement is to be governed by the laws of the New South Wales, Australia.

ACKNOWLEDGEMENT OF RECEIPT BY CUSTOMER

Signature of Authorised Representative of the Customer

Name of signatory and/or name of Customer

Date