



Great Science. Great Service.

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Standard Terms and Conditions

This document contains the Terms and Conditions (“Terms and Conditions”) under which Envirolab Services Pty Ltd and Envirolab Services (WA) Pty Ltd (“Envirolab”) provide laboratory testing and analysis services (“Services”) to entities seeking those Services (“Clients”).

Contract

The lodgement of an order by a Client or receipt of samples by Envirolab from a Client constitutes a contract between Envirolab and the Client on the Terms and Conditions contained in this document and the Pricelist as varied from time to time.

1. Work Orders and Sample Receipt

Clients may order Services by submitting a written purchase order, a written request for analysis or by placing a telephone order. All telephone orders must be subsequently confirmed in writing by the Client. All such orders shall only be effective upon acceptance by Envirolab. Envirolab recognizes that time is of the essence in completing the Services, and upon timely delivery of samples, Envirolab will use reasonable best efforts to meet mutually agreed upon turnaround times. All turnaround times will be calculated from the date Envirolab receives a properly completed Chain of Custody form (“Chain of Custody”) and accepts delivery of the Client’s samples. The expression “Chain of Custody delivery acceptance” in this document means the point in time when Envirolab reasonably determines that it can proceed within a defined scope of work (“Scope of Work”) following receipt, inspection of samples and resolution of any discrepancies in the Chain of Custody.

2. Samples

Clients must provide, together with the submission of their samples, a completed and signed Chain of Custody form with adequate instructions describing the type of analysis requested and a complete and thorough written disclosure of the known or suspected presence of any hazardous substances. Hazardous substances are those defined as such by local, state and federal law. The Client warrants that all relevant disclosures have been made to Envirolab about the presence of hazardous substances and agree that it will be liable and will pay all costs and damages resulting from a Client’s failure to disclose to Envirolab that a sample contained or was suspected to contain a hazardous substance. Clients are liable and will pay all costs and damages resulting from their failure to comply with any local, state or federal law regarding the sample. Clients are liable and will pay all costs and damages whatsoever resulting from any action or negligence on the part of the Client which interrupts Envirolab’s ability to process work, contaminates Envirolab’s laboratory, its instruments or work areas or necessitates any clean-up or recovery on the part of Envirolab.

3. Shipment

Envirolab will ensure that any substances and/or containers shipped to a Client for purposes of facilitating sampling are shipped in compliance with all applicable local, state, federal or national laws, regulations and ordinances of any kind. Client bears sole responsibility for determining the applicability of compliance with all laws, regulations or ordinances applicable to the shipment of samples back to the Envirolab laboratory. The Client assumes full responsibility for any injury, harm, or damages arising out of the collection, handling, storage and shipment of explosive materials, biological agents, radioactive materials or other hazardous material to Envirolab.

4. Billing and Payment

All Services provided by Envirolab shall be performed in accordance with the quote (“Quote”) or the current published pricelist (“Pricelist”) provided by Envirolab to the Client. An agreement by Envirolab and the Client to proceed in the absence a Quote shall be performed and billed in accordance with Envirolab’s Pricelist on the date the parties agreed to proceed.

Envirolab will issue an invoice, based upon the Quote or Pricelist, whichever is applicable. Envirolab Group terms are strictly that all services will be by cash on delivery ('COD') or credit card (Amex and Diners are not accepted), unless agreed in writing by the Company. To make payments by any other method, the Client must be pre-approved by the Company.

If the Client seeks and obtains a credit facility, or as a consequence of having completed a "Credit Application Form", the Client, as an approved account, is entitled in accordance with the Credit Terms, to a Period of Credit of thirty (30) days from the date of the invoice.

Finance charges may be assessed on late payments of 1.5 % per month on the outstanding balance beyond the 30 day net period. Envirolab may refuse to perform work, demand immediate payment for work performed, withhold delivery of data, or require prepayment for Services based upon a Client's failure to make timely payments or upon receipt by Envirolab of an unfavourable credit report for a Client.

A minimum invoice amount of \$100 + GST applies.

In the event that Envirolab is acting as a sub-contractor of a Client, that Client is responsible for payment of Envirolab invoices regardless of non-reimbursement or late reimbursement by their client.

5. GST

Where required GST (Goods and Services Tax) at the applicable rate will be charged in addition to the quoted prices and will be shown as a separate item on tax invoices and adjustment notes.

6. Suspending or Stopping Envirolab's Services

The Client may direct Envirolab to suspend a portion or all of the work to be performed. In such case, the Client will remain responsible for all work performed up to the time Envirolab becomes aware of Client's desire to discontinue the Services. Any uncompleted Services will be billed on a pro-rated basis, as determined by Envirolab. All directions by a Client to suspend work must be issued to Envirolab in writing.

7. Professional Practice

7.1 Envirolab employees will undertake the Services in accordance with accepted industry practices and standards. Envirolab seeks to ensure that all Services will be performed in a timely and professional manner and that all findings are technically valid. A request by a Client to amend or alter a report or omit specific information will only be done in circumstances where there is a written request by the Client, there are valid technical grounds for doing so, and in accordance with Envirolab's NATA accreditation, the new report notes that the previous report has been superseded and the reason for the change is noted in the new report. Any failure on the part of Envirolab to perform in accordance with industry standards will be corrected, provided such failure was a direct result of acts or omissions by Envirolab in respect of factors deemed to be within Envirolab's Scope of Work pursuant to the contract and within Envirolab's exclusive control.

7.2 In circumstances where Envirolab has lost or damaged samples and the Client is required to undertake or arrange resampling Envirolab will reimburse the Client its reasonable costs of undertaking or rearranging resampling to a maximum of \$20,000.00 provided the client can demonstrate to Envirolab that those costs are in all circumstances reasonable.

8. Compliance with Laws

Envirolab and the Client agree to comply with all applicable Australian laws, ordinances, codes and regulations.

9. Licenses and Certifications

The Client will provide Envirolab with notice in writing, prior to sample delivery acceptance ("Sample Delivery Acceptance") of all licenses and certifications that it will require Envirolab to hold during performance of the Services by Envirolab for the Client. Envirolab will notify the Client of any revocation of a required licence or certification.

10. Holding Times

Envirolab will initiate preparation and/or analysis within holding times (which expression, when used in these Terms and Conditions, means industry recommended holding times), provided Sample Delivery Acceptance and completed Chain of Custody occurs within 50% of the recommended holding time for the test. This does not apply to tests with short holding times such as Ferrous Iron, Nitrite or BOD that are received on a Friday or the day before a public holiday after 10am. In cases where Sample Delivery Acceptance is not made within these time periods, Envirolab will use its best efforts to meet the holding times. The holding time commitment shall be satisfied if an initial analysis is performed within the holding time and reanalysis, to comply with quality assurance requirements, is performed outside the holding time.

11. Progress Reports

Envirolab will provide the Client with information concerning the progress of the work Envirolab is performing for the Client and will notify the Client of any changes, concerns, problems or delays materially affecting performance.

12. Methods

Envirolab will use those analytical methodologies which are based on methodologies set by NEPM, EPA, Standard Methods for the Examination of Water and Wastewater, NIOSH or other such appropriate methodologies. Envirolab may deviate from these methodologies where, in Envirolab's judgment, it is necessary or appropriate to do so. The nature or composition of a sample are examples of factors that may require Envirolab to deviate from these methodologies. Any deviations from the analytical methodologies set forth above will be made in accordance with recognised industry standards, Envirolab's quality assurance plans ("Quality Assurance Plan") and/or any relevant referenced standard operating procedures.

13. Data Quality Objectives (DQO's)

Should the Client want Envirolab to perform in accordance with a mutually agreed upon DQO, the Client must seek agreement with Envirolab on such a plan before Envirolab receives the samples. Samples arriving prior to an agreement upon a DQO will be analysed under Envirolab's standard Quality Assurance Plan then in effect. Envirolab will not be responsible for re-sampling or other costs for work that must be completed in order to comply with a DQO that is finalised subsequent to Envirolab receiving samples.

14. Confidentiality

Envirolab will exercise all reasonable efforts to maintain the Client's confidentiality with regard to business or technical information it receives in connection with its performance for the Client. Envirolab will use the information it receives about a Client solely for the purpose of providing Services to the Client.

The Client shall treat all information and data it receives about Envirolab as proprietary and confidential. The Client shall maintain in strict confidence all such information, including but not limited to information concerning technology, procedures, and methods used by Envirolab, formulas, trade secrets, ideas, computer programs and inventions. The Client shall not disclose, and shall prevent disclosure of, confidential information to any third party without express written permission being granted by Envirolab.

This provision does not prevent either party from disclosing and/or using information or data (i) known to the receiving party before being obtained or derived from the transmitting party; (ii) that is available to the public without the receiving party's fault at any time before or after it is acquired by the transmitting party; (iii) that is obtained or acquired in good faith by the receiving party from a third party who has the same information in good faith and who is not under obligation to the receiving party with respect thereto; (iv) where a written release is obtained by the receiving party from the transmitting party; (v) after five (5) years from the receipt of such information; or (vi) when required by process of law; provided, however, upon service of such process, the recipient thereof shall notify the other party and afford it an opportunity to resist such process.

15. Warranties

Envirolab does not make any express or implied warranties of any kind to the Client other than those required by the Competition and Consumer Act 2010.

16. Damages

In the case of any finding of liability against Envirolab, by a court of competent jurisdiction for damages incurred by a Client, the Client agrees, to the full extent permitted by law, to limit any award for damages, in law or equity to the fee charged to the client by Envirolab for the relevant services.

17. Challenge to Results

The Client will pay Envirolab for all Services performed on its behalf and for all results utilized by the Client (in any manner) regardless of any allegation by the Client that the Services provided by Envirolab did not conform with this contract. In every instance, Envirolab shall be given reasonable opportunity to defend its results and data directly with any entity challenging its results. Should Envirolab be prohibited or prevented from directly defending its data (and in this respect Envirolab shall be the arbiter) all money owed to Envirolab by the Client shall be immediately due and payable and no refund for money paid by the Client will be issued by Envirolab.

18. Ownership of Data

Data or information provided to Envirolab by the Client shall remain the Client's property. Upon full payment to Envirolab for all Services provided by Envirolab, data or information generated by Envirolab for the Client shall become the Client's property. Envirolab will retain exclusive ownership of any and all analytical methods, QA/QC protocols, and equipment developed by Envirolab for performance of work by Envirolab.

19. Choice of Laboratory

Unless the Client has specified, in a timely manner, a particular location where Envirolab is to perform its Services for the Client, Envirolab may perform Services for the Client at any laboratory in its network. Envirolab retains the right, at its discretion, to subcontract Services ordered by the Client to another laboratory or other laboratories.

20. Sample Disposal or Return

Envirolab will dispose of all remaining soil samples 2 months following receipt of samples. Envirolab will dispose of all remaining water samples 1 month following receipt of samples. Air samples are not usually retained after sampling as the entire sample is usually tested. Whole air samples collected in silico-steel canisters will be retained for one week from when the results are reported. Envirolab complies with federal, state and local laws when disposing of samples. Should a Client desire Envirolab retain the samples for longer periods the Client must notify Envirolab in writing. The Client, in accordance with Envirolab's Pricelist, will pay an additional sample retention charge in effect at the time of the request. Samples high in some contaminants such as dioxin, PCB's, asbestos etc will be returned to the Client for disposal at the Client's expense.

21. Record Retention

Envirolab will retain records pertaining to the Services provided to the Client for a period of three years following completion of the Services. Should a Client desire Envirolab maintain the records in excess of three years, the Client must notify Envirolab in writing. In those circumstances the Client, agrees to pay an additional record retention charge in effect at the time of the request.

22. Litigation

The Client agrees to pay Envirolab for all costs incurred, including the monetary value of time spent by Envirolab officers and employees, in the event Envirolab is required to respond in any manner to any legal process of any nature whatsoever in which the client is involved but not in respect to any time spent in legal process which may be commenced by the client against Envirolab in relation to the provision of services by Envirolab to the client. The Client will pay for all time expended by Envirolab officers and employees in accordance with its then current hourly rates or as may be published from time to time in the Pricelist.

23. Insurance

Envirolab shall maintain such insurances as are required by the nature of its business and the Services provided to the Client.

24. Sample Delivery Acceptance

Sample Delivery Acceptance is defined as the point in time after which Envirolab has received and inspected the samples and received project guidance from the Client regarding the work to be done and resolved any discrepancies in the Chain of Custody forms and made a determination that it can proceed with the defined

work. Envirolab reserves the right to refuse or reject samples that it deems to (i) be of unsuitable volume; (ii) pose a health, safety, environmental or other risk; or (iii) be a sample that will fail to meet holding times either due to the passage of more than 48 hours from the time of sampling or the passage of half the holding time for the requested test, whichever is less; (iv) be unsuitable for the provision of the Services for any reason Envirolab considers relevant in its absolute discretion.

25. Risk of Loss

The entire risk of loss or damage to samples remains with the Client. This includes subcontracted courier services by Envirolab. The Client will be responsible and Envirolab has no responsibility for the action or inaction of any Client or carrier shipping or delivering any sample to or from Envirolab's premises.

26. Entire Agreement

These Terms and Conditions, together with any duly authorised and executed addendum, embody the entire agreement of the parties. These Terms and Conditions supersede all previous verbal and written communications, representations and agreements between the Client and Envirolab. No modification or waiver of any provision of these Terms and Conditions shall be binding on either party unless made in writing and executed by the Client and Envirolab.

27. Governing Law

These Terms and Conditions, and any transactions and agreements to which they apply, shall be governed and construed, both as to interpretation and performance, by the laws of NSW. The Client and Envirolab agree to submit to the jurisdiction of NSW and the venue for any action arising out of these Terms and Conditions will be in Sydney, NSW.

28. Severability

The provisions of these Terms and Conditions are severable. The invalidity or unenforceability, in whole or in part, of any provision, term or condition herein shall not invalidate the remainder of these Terms and Conditions.

29. Waiver

No waiver by either party of any provision, term or condition herein, or of any obligation hereunder shall constitute a waiver of any subsequent breach. No waiver shall be inferred by a party's conduct. All waivers must be in writing.

30. Force Majeure

Envirolab shall not be liable for any failure to perform the contract or for any delay or non-delivery due to strikes, fires, explosion, flood, riot, lockouts, injunction, interruption of transportation, accidents, inability to obtain supplies at reasonable prices, war or apprehension of war, force majeure, government action, or any other circumstances beyond Envirolab's control.

31. Air Sampling Equipment

1. **Ownership**

The sampling equipment provided by Envirolab and/or MPL will remain the property of Envirolab and/or MPL at all times.

2. **Liability for provision of sampling equipment**

Please note Envirolab and MPL provide the sampling equipment in good faith for the collection of air samples.

Therefore it is expected that the sampling equipment will be returned in the same condition as provided by the laboratory.

If any damage occurs whilst the sampling equipment is in the custody of the customer, then said customer will be liable for the following:-

- payment for repair of the sampling equipment
- payment for replacement of the sampling equipment or equivalent

3. Customer Covenants

- The customer shall not part possession with the sampling equipment (unless arranged with the laboratory).
- The customer accepts responsibility to guard against theft, damage or negligence of the sampling equipment until returned to Envirolab and/or MPL – where sampling equipment is stolen whilst in the custody of the customer, all replacement costs must be paid for by the customer.

4. Limitation of Liability

The customer acknowledges that Envirolab and/or MPL is not liable for any failure of the sampling equipment that may cause loss or consequential damages to the customer caused by the sampling equipment failure.

5. Sample Analysis and Sample Types

- All sampling equipment is provided on the basis that the samples taken are analysed by the Envirolab Group.
- Customers will be charged for sampling equipment cleaning/conditioning even where the samples have not been scheduled for analysis.
- Canisters are provided for low level contaminant analyses and therefore liquid, fuel and refinery gas stream samples should not be sampled into canisters by customers. If the customer knowingly collects the aforementioned sample matrices into the canisters provided, the canister may be rendered inappropriate for further use and hence the customer will bear the cost of canister replacement.
- Sampling equipment is provided at \$50/week for each item (see the latest price list for further information (or individual quote)). If the sampling equipment is not returned to Envirolab and/or MPL within one week of receipt by the customer for scheduled testing, a weekly rate of \$50/week for each item will apply.
- All samples will be disposed after 1 week of issuing the “Certificate of Analysis” (CoA): this means after 1 week of issuing the CoA, all canisters will be cleaned, all TD Tubes will be conditioned, all carbon tubes/tehdar bags will be disposed, unless there is a pre-arrangement (Please inform Envirolab if you need to hold some samples). For those holding samples, the sample holding fee will apply: \$50 per week per canister sample, \$25 per week per TD tube sample.

6. Standard Terms and Conditions

The customer also accepts Envirolab/MPL’s standard terms and conditions as described in the most current price book.