

TOWNSVILLE LABORATORY SERVICES – UTILITY SERVICES

GENERAL CONDITIONS OF SERVICE



1. Definitions

- 1.1. **Certificate of Analysis** means the certificate provided by TLS which sets out the results of laboratory testing and analysis carried out by TLS.
- 1.2. **Chain of Custody Form** means the document used by TLS to take custody of samples and instruction from the Client about the laboratory services to be provided, and which refers to these General Conditions of Service.
- 1.3. **Client** means the person or entity identified as the client in the Chain of Custody Form to which TLS is providing laboratory services in accordance with these General Conditions of Service.
- 1.4. **Laboratory Services** means sampling, testing and consulting services provided by TLS, including but not limited to water supply analysis, wastewater analysis, environmental analysis, biological analysis, and/or natural and digester gas analysis.
- 1.5. **TLS** means Townsville Laboratory Services and its officers, employees, agents and subcontractors. Where any reference is made to Townsville Laboratory Services, it also means the Townsville City Council.
- 1.6. **NATA** means the National Accreditation of Testing Authorities, Australia.

2. Terms and Conditions

- 2.1. Any laboratory services provided by TLS are provided in accordance with these General Conditions of Service (the **Conditions**), unless otherwise specifically agreed in writing by TLS and the Client. These Conditions are the General Conditions of Service referred to in the Chain of Custody Form.
- 2.2. The submission by the Client of samples to TLS will be deemed as acceptance of these Conditions by the Client.
- 2.3. These Conditions supersede all previous verbal and written communications, representations and agreements between TLS and the Client.

3. Provision of Services

- 3.1. TLS may perform services for persons or entities (private, public or governmental) provided that these services do not contravene the regulation and policies of the Townsville City Council and the performance of such service does not interfere with the provision of TLS' core functions of service to the Townsville City Council.
- 3.2. TLS will provide services using due care and skill and in accordance with:
 - 3.2.1. the Client's specific instructions;
 - 3.2.2. its NATA requirements for accreditation;
 - 3.2.3. any relevant trade custom, usage or practice; and
 - 3.2.4. such methods as TLS considers appropriate on technical, operational or financial grounds.
- 3.3. Upon completion of analysis, TLS will provide to the Client a Certificate of Analysis.
- 3.4. Any provisional results provided by TLS upon request by the Client are subject to confirmation of the results in the form of a Certificate of Analysis.

- 3.5. Information stated in a Certificate of Analysis is derived from the results of testing procedures carried out in accordance with the instructions of the Client and TLS' assessment of the results of such tests on the basis of any technical standards and any trade custom, usage or practice, or other circumstances which should, in the professional opinion of TLS, be taken into account.
 - 3.6. A Certificate of Analysis issued as a result of the analysis of samples contains the TLS test results characteristic (according to standard methods) of those samples only and does not express any indication of the characteristics of the lot from which the samples were drawn.
 - 3.7. A Certificate of Analysis issued by TLS will reflect the results as recorded by TLS at the time of its intervention only and within the limits of the instructions received and the alternative parameters applied as provided for in clause 3.2. TLS 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.
 - 3.8. Should the Client request that TLS witness any third party intervention, the Client agrees that TLS' sole responsibility is to be present at the time of the third party's intervention and to forward the results, or confirm the occurrence of the intervention. The Client agrees that TLS 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 the third party or the analysis results.
 - 3.9. Should TLS receive documents reflecting engagements contracted between the Client and third parties or third party documents, they are considered to be for information only, and do not extend or restrict the scope of the services or the obligations accepted by TLS. The Client acknowledges that TLS, by providing the services, neither takes the place of the Client 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 Client to any third party or that of any third party to the Client.
 - 3.10. Notwithstanding that TLS may provide containers to the Client to facilitate sampling, the Client is responsible for complying with any laws and regulations applicable to the delivery or shipment of all sampling containers to the laboratory for analysis, and is liable for any injury, harm or damage arising out of the collection, handling, storage and shipment of such samples.
- ### 4. Subcontracting
- 4.1. TLS may delegate the performance of all or part of the services to an agent or subcontractor and the Client authorises TLS to disclose all information necessary for such performance to the agent or subcontractor.
- ### 5. Obligations of Client
- 5.1. The Client will:
 - 5.1.1. ensure that sufficient information, instructions and documents are given in

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- due time (and, in any event not later than 48 hours prior to the desired intervention) to enable the required services to be performed;
- 5.1.2. procure all necessary access for TLS' representatives to the premises where the services are to be performed and take all necessary steps to eliminate or remedy any obstacles which could interrupt the performance of the services;
 - 5.1.3. if required, supply any special equipment and personnel necessary for the performance of the services;
 - 5.1.4. ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of services;
 - 5.1.5. inform TLS in advance of any known hazards or dangers, actual or potential, associated with any order or samples or testing including, for example, presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution or poisons;
 - 5.1.6. procure any necessary approvals, licences and certifications required for the testing and disposal associated with any order or sample.
- 5.2. Unless TLS receives prior written instructions to the contrary from the Client, no other party is entitled to give instructions, particularly on the scope of the services or the delivery of reports or certificates. The Client hereby irrevocably authorises TLS to deliver a Certificate of Analysis to a third party if instructed by the Client.
- 6. Payment for Services**
- 6.1. Where the price of a service is not established at the time of the Client ordering a service, the Client is liable to pay the price of the service in accordance with TLS' Schedule of Laboratory Fee in effect at the time. TLS reserves the right to change its Schedule of Laboratory Fee at any time, without notice to the public.
 - 6.2. If the provision of services by TLS is a supply in respect of which Goods and Services Tax (GST) is payable, the price payable by the Client will be increased by the amount of the GST payable.
 - 6.3. The Client will promptly make payment of all fees, charges and taxes (including GST if applicable) associated with the provisions of the service either:
 - 6.3.1. Where the Client holds an account with Townsville City Council, within 30 days from the date of invoice; or
 - 6.3.2. For all other Clients, before provision of the Certificate of Analysis, (the Payment Date).
 - 6.4. TLS reserves the right to withhold the Certificate of Analysis until full payment of all fees, charges and taxes is made (including GST if applicable).
 - 6.5. Without affecting any other rights of TLS in the event of non-payment, if the Client fails to make payment by the Payment Date, interest will become due at the rate of ten (10)% per annum from the due date for payment until such time as payment is made, calculated at daily intervals.
- 6.6. The Client shall not be entitled to retain or defer payment of any sums due to TLS on account of any dispute, counter claim or set off which it may allege against TLS.
 - 6.7. In the event that any unforeseen problems or expenses arise in the course of providing the services, TLS will endeavour to inform the Client and shall be entitled to charge additional fees to cover extra time and cost necessarily incurred to complete the services.
 - 6.8. If at any point after the Client requests the provision of a service, the Client cancels a service agreed to be provided by TLS, the Client will remain liable to pay the full amount of any fees, charges and taxes prior to the Payment Date.
- 7. Disposal of Samples**
- 7.1. All samples will be properly disposed of by TLS according to law after a maximum period of one week or such other shorter time period as the nature of the sample permits as determined by TLS.
 - 7.2. TLS will not be liable for any loss incurred by the Client as a result of disposal of a sample in accordance with clause 7.1.
- 8. Records**
- 8.1. TLS will retain records (not including samples) pertaining to the work performed for the Client for a period of three (3) years.
 - 8.2. The Client agrees that TLS may, at its discretion, dispose of any records at expiry of the three (3) year period and TLS will not be liable for any loss incurred by the Client as a result of the disposal.
- 9. Limitation of Liability and Indemnity**
- 9.1. Any samples will remain at the Client's risk at all times. TLS will not be liable for any loss or damage to samples whilst the samples are in TLS' custody and the Client indemnifies TLS against any claims or legal action resulting from damage, deterioration or loss of samples.
 - 9.2. Certificates of Analysis are issued on the basis of information, documents and samples provided by, or on behalf of, the Client and are solely for the benefit of the Client.
 - 9.3. TLS will not be liable to the Client or any third party for any actions taken or not taken on the basis of a Certificate of Analysis.
 - 9.4. TLS will not be liable for any delayed, partial or total non-performance of the services arising directly or indirectly from any event outside TLS' control including failure by the Client to comply with any of its obligations under these Conditions.
 - 9.5. To the extent permitted by law, the liability of TLS in connection with a service provided is limited to:
 - 9.5.1. refund of the price of the service; or
 - 9.5.2. resupply of the service in respect of which the liability arose.TLS will not be liable for any indirect or consequential loss of any sort arising from the provision of Laboratory Services save for where such services are provided negligently, including but not limited to loss of profits, loss of business, loss of

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- opportunity, loss of goodwill and cost of product recall.
- 9.6.** TLS will not be liable for any loss, damage or expenses arising from the claims of any third party that may be incurred by the Client and the Client guarantees, holds harmless and indemnifies TLS against all claims, actual or threatened, by any third party for any loss, damage or expense of any nature including all legal expenses and related costs relating to the performance, purported performance or non-performance, of any services.
- 9.7.** Nothing in this clause 9 or these Conditions excludes, restricts or modifies any statutory guarantees, warranties, implied terms and conditions or other obligations applicable to the Client by law.

10. Confidentiality

- 10.1.** TLS agrees to keep confidential the results of testing and analysis on behalf of the Client and any other information provided to TLS in connection with the provision of the service, unless it is instructed to do so by the Client, there is a breach of any local or other law or regulation, or TLS is legally obliged or compelled to release the results.
- 10.2.** The Client agrees to keep confidential all information and data it receives about TLS, including but not limited to information concerning technology, procedures and methods used by TLS, formulas, trade secrets, computer programs and inventions. The Client will not disclose confidential information to any third party without prior written approval of TLS.
- 10.3.** This clause 10 does not apply to information which is lawfully obtained from a third party, is public knowledge, is already known or is otherwise independently developed by representatives of the either TLS or the Client who have not been exposed to the information.

11. Protection of Personal Information

- 11.1.** In relation to any personal information obtained during the course of providing the services, TLS will:
- 11.1.1.** Only use or disclose personal information for the purposes of providing the services, and in accordance with these Conditions; and
- 11.1.2.** Not do any act or engage in any practice that would breach an Information Privacy Principle under the Information Privacy Act 2009.

12. Termination of Services

- 12.1.** If the Client:
- 12.1.1.** fails to comply with any of its obligations under these Conditions and does not remedy the failure within 14 days after receiving notice requiring it to do so; or
- 12.1.2.** being an individual, makes any arrangement, assignment, composition or agreement for the benefit of his or her creditors under the Bankruptcy Act 1966 (Cth) as amended, or a creditor's

petition is filed with an Australian Court seeking a sequestration order against him or her;

- 12.1.3.** being a corporation, comes under one of the forms of external administration referred to in the Corporations Act 2001 (Cth), or an order has been made for the purpose of placing the corporation under external administration, or an application is filed with an Australian Court seeking the appointment of a liquidator, receiver or other external administrator,

TLS may, without prejudice to any other rights that it has under these Conditions or otherwise, terminate the provision of the services and the Client will be liable to pay to TLS the full price of services that were agreed to be rendered by TLS, and any interest payable.

13. Miscellaneous

- 13.1.** If any one or more provisions of these Conditions is found to be illegal, unenforceable or contrary to law in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
- 13.2.** No modification of these Conditions will be binding on either party unless agreed to in writing by the parties.
- 13.3.** These conditions are governed by the law of Queensland and the parties agree to submit to the jurisdiction of the State of Queensland.
- 13.4.** No waiver by either party of any condition, provision or obligation will constitute a waiver of any subsequent breach.
- 13.5.** Any conditions or provisions within these Conditions that can take effect after the services have been provided or after the provision of the services has been terminated or cancelled, will remain in force.
- 13.6.** Use of TLS' name or registered marks for advertising purposes is not permitted without prior written authorisation of TLS.

This is the end of the General Conditions of Service.