

Terms and conditions

These Terms and Conditions shall apply to the provision of the Services by RMIT to the Client:

1. **Intellectual Property**

- 1.1. Ownership of Intellectual Property which exists prior to the provision of the Services shall not be altered or transferred merely by virtue of its use in the provision of the Services.
- 1.2. Ownership of Intellectual Property created directly as a result of the provision of the Services shall be owned by the Client.

2. **Sampling**

- 2.1. The Client must deliver the Samples for testing to RMIT by the Date for Delivery of the Samples.
- 2.2. The Client agrees to provide a written certification to RMIT detailing the nature of the Samples provided to RMIT and detailing any matters which might reasonably affect RMIT's handling and use of the Samples.
- 2.3. Further to Clause 2.2, the Client will provide clear instructions for its handling, use and storage in accordance with all laws and regulations relating to the Samples.
- 2.4. RMIT will retain the Samples at the completion of the Services.
- 2.5. The Client will at all times insure the Samples.
- 2.6. The Services will be carried out in accordance with standard test procedures.
- 2.7. Services will be carried out in strict order of receipt. If Client wants testing carried out in priority, a surcharge of 50% of the total Fees will apply. RMIT will not be liable for any loss incurred to Client as a result of a delay in the completion of the Services.

3. **No Warranties**

- 3.1. The Client agrees that RMIT's obligations in respect of the Services shall be limited to the research, analysis or reporting referred to on the Test Request Form and nothing in these Terms and Conditions will require RMIT to guarantee any proof of concept, potential use or outcome, nor to provide support for any action or litigation entered into by the client in the absence of prior written agreement.
- 3.2. Except as expressly provided to the contrary in these Terms and Conditions, all terms, conditions, warranties and representations whether expressed, implied, statutory or otherwise relating in any way to the Services or to this Agreement are excluded. Without limiting the generality of the proceeding sentence, RMIT shall not be under any liability to the client in respect of any loss or damage (including consequential loss or damage) howsoever caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the failure or omission on the part of RMIT to comply with its obligations under these Terms and Conditions.
- 3.3. Where any Act of Parliament implies in these Terms and Conditions any term, condition or warranty that the Act avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of, or liability under such term, condition, or warranty, such term, condition or warranty shall be deemed to be included in these Terms and Conditions. However, the liability of RMIT for any breach of such term, condition or warranty shall be limited, at the option of RMIT, to any one or more of the following:
 - (a) the supply of the Services; or
 - (b) the payment of the cost of having the Services supplied again.

4. **Indemnity**

- 4.1. The Client indemnifies and will keep indemnified RMIT and its officers, employees, agents, contractors and consultants from and against all actions, claims, proceedings, or demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with the indemnifying party in respect of any loss, death, injury, illness, damages, costs or expense where caused by any unlawful or negligent act of the Client, its employees, agents, subcontractors or consultants arising from the Client's exercise of its rights or obligations under this agreement or from any loss which may arise from or as a result of a breach of these Terms and Conditions by the Client, its employees, agents, subcontractors or consultants.
- 4.2. The Client's obligation to indemnify RMIT as set out in Clause 4.1 in a continuing obligation separate and independent from the Client's other obligations and will survive expiration or earlier termination of these Terms and Conditions.

5. **Limit of Liability**

Notwithstanding anything else contained in these Terms and Conditions, RMIT's liability arising from the performance of the Services shall be limited in all events to the amount of the Cost.

6. **Payment**

- 6.1 The Client shall pay the Fees to RMIT within 30 days of the invoice date.
- 6.2 Interest at the rate of 18% per annum shall be charged to the Client for all late payments.
- 6.3 The Fees shall be expressed to be inclusive of GST and the Client agrees to pay RMIT an amount equal to the GST liability in respect of any amounts.

7. **Governing Law**

These Terms and Conditions shall be governed in accordance with the laws of the State of Victoria and the parties agree to submit to the jurisdiction of the Courts and Tribunals of that State.