

Terms and Conditions

1. General

- (a) SPL may perform services for private individuals or entities (private, public or governmental) issuing instructions (hereinafter, the “Customer”).
- (b) Save for circumstances where localised legal and / 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.
- (c) SPL may deliver test reports or reports of findings to a third party with the prior written consent of the Customer.
- (d) If any one or more provisions of these general terms & 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.
- (e) During the course of receiving the services from SPL and for a period of one year thereafter, the Customer shall not directly or indirectly entice, encourage or make any offer to SPL’s employees to leave their employment with SPL.
- (f) Neither party shall use the intellectual property of the other, without that party's prior written consent.
- (g) 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 Set Point Laboratories 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 SPL in terms hereof, save in the event and to the extent that SPL has signed a written document expressly waiving or limiting such right.

2. Provision of Services

- (a) SPL will provide services using reasonable care and skill and in accordance with Customer's specific instructions as confirmed by SPL or, in the absence of such instructions, such methods as SPL 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 SPL witness any third party intervention, the Customer agrees that SPL's sole responsibility is to be present at the time of the results, or confirm the occurrence, of the intervention. The Customer agrees that SPL 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 SPL 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). SPL 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 such further information and SPL should not unreasonably withhold such request.

(f) SPL 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 SPL to disclose all information necessary for such performance to the agent or subcontractor. SPL remains liable for any and all acts or omission by such agent or subcontractor.

(g) Should SPL 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 SPL.

(h) The Customer acknowledges that SPL, by providing the services, neither takes the place 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 SPL) to enable the required services to be performed;

(b) supply, if required, any special equipment and personnel necessary for the performance of the services.

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 contained in a Tax Invoice issued by Set Point Laboratories shall be due and payable unconditionally by (a) cash on order; or (b) if the

Customer is a Credit Approved Customer, within 30 days from the date of Tax Invoice been issued by Set Point Laboratories or otherwise as agreed in writing between the parties.
(must be in writing)

(c) All payments shall be made at the offices of Set Point Laboratories or paid into the Set Point Laboratories bank account as stated on the official Set Point laboratories Tax Invoice or Statement.

(d) The Customer shall not be entitled to retain or defer payment of any sums due to SPL on account of any dispute, counter claim or set off which it may allege against SPL.

(e) Should the Customer breach any provision of this contract then SPL 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 then SPL 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) withdrawal of any results reported to the Customer.

(f) The customer agrees that all outstanding accounts that have not been settled within 90 days from date of Tax Invoice been issued, will attract interest of 2% (two percent) over the ruling prime overdraft rate calculated monthly in advance.

(g) In the event any unforeseen problems or expenses arise in the course of carrying out the services, SPL shall inform and notify the Customer in writing and shall be entitled to charge additional fees to cover extra time and cost incurred to complete the services.

(h) If SPL is unable to perform all or part of the services for any cause whatsoever outside the Company's control, SPL shall nevertheless be entitled to payment of the amount of all non-refundable expenses incurred by SPL and a proportion of the agreed fee equal to the proportion of the services actually carried out.

5. Suspension or Termination of Services

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

- (a)** failure by the Customer to comply with any of its obligations hereunder and such failure is not remedied within 5 days of notification of such failure to the Customer

Or

(b) 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 SPL 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 of Findings. Neither SPL 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 to SPL.

iii. SPL shall not be liable for any delayed, partial or total non-performance of the services arising directly or indirectly from any event outside SPL's control including failure to comply with any of its obligations hereunder. The liability of SPL in respect of any such claim for loss, damage or expense of any nature and howsoever arising shall not exceed the total amount of the fee paid in respect of the specific service which gives rise to such claim.

iv. SPL 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, product liability claims) that may be incurred by the Customer.

v. In the event of any claim the Customer must give written notice to SPL within 60 days of its discovery of the facts giving rise to such a 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 expense 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 South Africa.

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 Arbitration Foundation of Southern Africa by one or more arbitrators appointed in accordance with the said rules or by a mutually agreed arbitrator nominated by the Law Society of South Africa or the South African Institute of Chartered Accountants. The arbitration shall take place in Johannesburg, South Africa and be conducted in the English language. In the event of a dispute the parties must meet at a mutually agreed place or otherwise communicate in an effort to resolve the dispute on an informal and amicable basis.

10. Sample retention:

(a) Bulk samples will be stored free of charge for a period of 1 month. Bulk samples must be collected or will be discarded after a period of 1 month at an additional cost per 10kg sample. However, customer may request for the Bulk samples to be stored after this period by arranging it with us. A storage charge per month will be charged.

(b) Pulps will be stored free of charge for a period of 3 months from the date the samples were received. Thereafter all pulps must be collected or will be discarded at an additional cost per sample. However, customer may request for the pulps to be stored after this period by indicating so on the submission sheet. A storage charge per month will be charged.

(c) Set Point laboratories also offer refrigerated storage of special samples at an additional cost.

(d) Customers may request for samples to be packed and returned. A packaging charge per sample will be levied.

Acceptance of Terms and Conditions:

Applicant's Signature

Date

Applicant's Name

Designation