



Agricultural Laboratory

Terms and Conditions

2014





APAL Agricultural Laboratory is an innovative locally owned company providing soil, plant and water analytical services. APAL is independent and accredited with a commitment to accuracy and quality of data, providing prompt delivery of results.

1. General

- 1.1 Without limiting the way a Customer may accept these Terms and Conditions, the Customer will be deemed to have accepted these Terms and Conditions:
- (a) where the Customer executes a credit application acknowledging its agreement to these Terms and Conditions;
 - (b) where the Customer accepts a Quotation in writing;
 - (c) where the Customer pays for the Services; or
 - (d) where the Customer submits an Order or otherwise requests the provision of Services or accepts the results of the Services.
- 1.2 These Terms and Conditions shall prevail over all inconsistencies in any Quotation or other correspondence unless APAL agrees otherwise in writing. These Terms and Conditions are the only conditions to which APAL will be bound and the Customer agrees that these Terms and Conditions will prevail over the Customer's terms and conditions of purchase (if any).
- 1.3 APAL reserves the right to vary these Terms and Conditions at any time without prior written notice to the Customer. Such variations shall not apply for Services already ordered.
- 1.4 Any agreement by APAL to grant the Customer credit has been or will be made on the basis of a credit application and such other documents and information as may be required by APAL.
- 1.5 The granting of credit does not oblige APAL to extend any particular amount of credit to the Customer and APAL may withdraw, refuse, suspend or limit credit to the Customer at any time, in its absolute discretion, without notice or providing any reason.
- 1.6 The Customer must notify APAL in writing if there is any change in the shareholding or ownership of the Customer or any material change in the Customer's financial position.

2. Definitions

In these Terms and Conditions, unless otherwise stated:

ACL means the Australian Consumer Law which is contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*.

APAL means SPW Analytical Pty Ltd ACN 166 799 793 as trustee for the SPW Analytical Unit Trust (ABN 98 238 246 418) trading as APAL Agricultural Laboratory.

Consumer Guarantee means the guarantees provided to "consumers" (as defined in the ACL) pursuant to Part 3-2, Division 1 of the ACL.

Customer means the customer specified in a Quotation (or if there is no written Quotation any person or entity that submits an Order or otherwise acquires or requests Services from APAL).

Order means a request for the provision of Services made in accordance with these Terms and Conditions (if accepted by APAL).

Price List means the price list published at www.apal.com.au from time to time.

Privacy Statement means the privacy statement published at www.apal.com.au from time to time.

Quotation means a quotation supplied by APAL to the Customer in respect of the Services.



APAL Agricultural Laboratory is an innovative locally owned company providing soil, plant and water analytical services. APAL is independent and accredited with a commitment to accuracy and quality of data, providing prompt delivery of results.

Services means the performance by APAL of tests for the Customer.

Terms and Conditions means the terms and conditions set out in this document.

3. **Orders and Prices**

- 3.1 No Order placed by the Customer shall be binding on APAL unless and until APAL accepts the Order by notifying the Customer in writing or by logging in the samples or taking other steps to satisfy the Order.
- 3.2 Any Order accepted by APAL cannot be cancelled by the Customer without APAL's written consent.
- 3.3 All Services provided shall be performed in accordance with the Quotation or Pricelist. Any acceptance of an Order absent the issue of a Quotation shall be performed and billed in accordance with the Pricelist, unless otherwise agreed in writing. In either case:
 - (a) All prices are listed per sample, unless otherwise stated.
 - (b) Prices quoted are subject to the addition of Goods and Services Tax (GST) and to any tax or levy imposed by any government authority upon the Services/Services quotes or upon production, sale, distribution, delivery or any other applicable feature.
 - (c) All prices are subject to withdrawal or variation by APAL prior to confirmation.
- 3.4 APAL reserves the right to charge the Customer for any costs incurred as a result of the Customer varying the Services requested, or requiring Services urgently. Prices do not include cost of delivery of samples by the Customer to APAL or by APAL to the Customer, which will be borne by the Customer, unless otherwise agreed.

4. **Methods and Delivery Times**

- 4.1 The Services shall be provided based on the methodologies, procedures and protocols published at APAL's website ("**APAL's Methods**"). If the Customer directs APAL to use a manner of making tests that differs from APAL's Methods, the Customer agrees that it will hold APAL harmless from all claims, damages and expenses arising from its direction.
- 4.2 APAL reserves the right to sub-contract (in whole or in part) any of the Services.
- 4.3 APAL will only send results of the Services to the Customer's email address (or other address agreed by the parties) specified in the credit application executed by the Customer or as otherwise advised by the Customer in writing.
- 4.4 To the extent permitted by law, APAL shall have no direct or indirect liability for delay in result delivery. Any delivery time quoted by APAL is an estimate only and is based on APAL's understanding of conditions prevailing at the time the Quotation was made and is conditional upon the Customer's timely payment for the Services. Time shall in no circumstances be deemed of the essence in relation to delivery.
- 4.5 To the extent permitted by law, APAL does not accept samples for analysis under penalty for late delivery and the Customer agrees to waive any and all penalties for late delivery to the extent that they may apply and to the extent permitted by law.
- 4.6 APAL reserves the right to suspend or discontinue the supply of the Services, in its discretion.

5. **Samples**

- 5.1 The Customer must provide, together with the submission of its samples a completed submission 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. The Customer warrants that all relevant

disclosures have been made to APAL about the presence of hazardous substances and agrees that it will be liable and will pay all costs and damages resulting from its failure to disclose to APAL that a sample contained or was suspected to contain a hazardous substance. The Customer is liable for and will pay all costs and damages resulting from its failure to comply with any law regarding the sample.

- 5.2 APAL is accredited and audited by PIRSA plant health to accept soils and plants from interstate under the procedure for importation of state quarantine risk material by an accredited laboratory (*Plant Health Act 2009* (SA), section 16)(Registration number S1286). Sample submission forms must clearly indicate post code of sample. For samples from Phylloxera Risk Zones (PRZ) and Phylloxera Infested Zones (PIZ) sample submission must follow Quarantine submission process as per www.apal.com.au.
- 5.3 Without limiting the above, the Customer is liable for and will pay all costs and damages whatsoever resulting from any action or negligence on the part of the Customer which interrupts APAL's ability to process work, contaminates APAL's laboratory, its instruments or work areas or necessitates any clean-up or recovery on the part of APAL.
- 5.4 The Customer shall bear the risk and cost of, and shall comply with all laws related to, the shipment of the sample to APAL. The Customer assumes full responsibility for any injury, harm, or damages arising out of the collection, handling, storage and shipment of the sample to or from APAL.
- 5.5 If the Customer is not satisfied with any Services supplied, it may request that APAL retest the samples. APAL may elect to retest or not retest the samples in its sole discretion.
- 5.6 APAL will store any samples provided by the Customer for a period of 4 weeks from the date the test results are provided. Upon the expiration of 4 weeks from the date the test results are provided to the Customer, the samples will be destroyed as per APAL quarantine requirements or returned to the Customer (at the Customer's risk and cost).

6. Payment

- 6.1 Once the Services have been completed, APAL will issue an invoice to Customer. Unless agreed otherwise by APAL:
 - (a) accounts where APAL has agreed to provide credit to the Customer and has not exercised its powers to withdraw, refuse or suspend credit, shall be payable within 30 days from the end of the month of the invoice;
 - (b) accounts where there is no agreement to provide credit, or where such APAL's agreement to provide credit has been withdrawn, shall be payable within 30 days from the date of invoice; and
 - (c) Customers without accounts will be required to pay by credit card via APAL's online portal or providing credit card details, or by cheque (to be submitted with samples). To the extent permitted by law, no refund will be provided.
- 6.2 Payment must be made in full and without set off or counterclaim. Payment is only received by APAL when it receives payment via credit card or when the proceeds of other methods of payment are credited and cleared to APAL's bank account. APAL may set off any amount due and payable by APAL to the Customer against any amount due and payable by the Customer to APAL.
- 6.3 Results of testing or other Services supplied by APAL may be retained by APAL until payment has been received in full by APAL.

7. Default

- 7.1 The Customer will be in default of this Agreement if:
 - (a) payment has not been received by APAL by the due date for payment;



APAL Agricultural Laboratory is an innovative locally owned company providing soil, plant and water analytical services. APAL is independent and accredited with a commitment to accuracy and quality of data, providing prompt delivery of results.

- (b) it breaches another material term of these Terms and Conditions and such breach is not remedied within 14 days of receiving notice requiring it to do so;
- (c) being a body corporate it becomes an externally-administered body corporate or has an application for winding up filed against it; or
- (d) in the case of the Customer being an individual, it commits an act of bankruptcy or becomes an insolvent under administration.

7.2 If the Customer is in default, APAL may:

- (a) treat the whole of these Terms and Conditions as repudiated and sue for breach of contract; and/or
- (b) refuse to provide further Services and declare all monies owing by the Customer to APAL on any account immediately due and payable.

7.3 The Customer must pay APAL all costs and expenses incurred by APAL in connection with these Terms and Conditions including legal expenses (on a full indemnity basis) related to the recovery of any amount payable or in otherwise enforcing APAL's rights against the Customer under these Terms and Conditions.

7.4 APAL may charge interest on any overdue amount at a rate equivalent to 2.5% p.a. above the business overdraft interest rate of its principal banker, as determined and calculated by APAL.

8. Limitation of Liability

- 8.1 Except as expressly provided to the contrary in these Terms and Conditions, all representations, warranties, guarantees and implied terms or conditions in relation to the Services (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law.
- 8.2 Subject to clause 10.7, and to the extent permitted by law, APAL's liability to the Customer (and any party claiming through the Customer against APAL) for any claim for loss or damages (including legal expenses) made in connection with these Terms and Conditions (including the supply of Services described in these Terms and Conditions) whether in contract, tort (including negligence), under statute, in equity or otherwise shall be strictly limited as follows:
 - (a) for any liability arising from the Services not meeting the scope or which are said to be otherwise defective or deficient, APAL's liability is limited to the provision of the Services again or payment of the cost of having the relevant Services provided (at the option of APAL); and
 - (b) for any liability that does not fall within the scope of clauses 8.2(a), APAL's liability for any loss or damage arising from or caused in any way by APAL, the Services it supplies or these Terms and Conditions is excluded (to the maximum extent permitted by law).
- 8.3 APAL shall not be liable for any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the Services it supplies, where "indirect, special or consequential loss or damage" includes: (A) any loss of income, profit, production, contract, customers, business opportunity or business; (B) any loss of goodwill or reputation; (C) any loss of value of intellectual property; (D) any loss or damage resulting from the loss or damage to goods.

9. Indemnity

Without limiting any other provision of these Terms and Conditions, the Customer will indemnify and release APAL and keep APAL fully indemnified against any loss of or damage to any property or injury to or death of any persons caused by any negligent act or omission or wilful misconduct of the Customer, its employees, agents or subcontractors or by any breach of its contractual obligations arising out of these Terms and Conditions

10. General

- 10.1 APAL is not liable for failure to perform its obligations under these Terms and Conditions to the extent and for so long as its performance is prevented or delayed without substantial fault or negligence by APAL because of circumstances outside APAL's control, failure of APAL's machinery, or failure of a supplier to APAL, provided that APAL gives notice to the Customer of the delay and uses reasonable efforts to remedy the cause of the delay quickly.
- 10.2 APAL agrees to comply with its obligations under the Privacy Act and other applicable laws in respect of personal information and health information (if any) collected, used, disclosed or stored under these Terms and Conditions. The Customer acknowledges that APAL will collect, use, disclose and store personal information and health information (if any) in accordance with its Privacy Statement.
- 10.3 Except as expressly set out in the Terms and Conditions, a party waives a right under these Terms and Conditions only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- 10.4 If a provision of these Terms and Conditions would, but for this clause, be unenforceable:
- (a) the provision must be read down to the extent necessary to avoid that result;
 - (b) if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of these Terms and Conditions.
- 10.5 These Terms and Conditions are governed by, and the Customer submits to the law of the State of South Australia (or any other State or Territory nominated by APAL). The courts of that State or Territory have non-exclusive jurisdiction in connection with these Terms and Conditions.
- 10.6 APAL may assign its rights or novate its rights and obligations under these Terms and Conditions (in whole or in part) to any person without the consent of the Customer. The Customer may not assign or otherwise transfer its rights under these Terms and Conditions without prior notice to and consent from APAL.
- 10.7 Where and only to the extent that the supply of Services is to a "consumer" (as that term is defined by the ACL):
- (a) clauses 8.2 and 8.3 shall not apply and nothing in these Terms and Conditions shall be construed as excluding, restricting or modifying any Consumer Guarantee provided under the ACL, in respect of that supply of Services; and
 - (b) APAL's liability to the Customer will be limited to the remedies available to the Customer as provided by the ACL.
- 10.8 Notices given by APAL will be deemed to be received:
- (a) if given by email, on being sent, provided the notice is sent to the email address of an officer or employee of the Customer responsible for placing or administering orders for Services and no "out of office" or other automated reply is received indicating that the message has not been or will not be received or read by the intended recipient;
 - (b) if given by facsimile transmission to a facsimile number shown in the application for credit (or any other number provided by the Customer) by production by APAL of a copy of the facsimile transmission bearing the time and date of dispatch, on that date and at that time; and
 - (c) if given by post, on the third day after posting.
- 10.9 The Customer agrees to regularly check APAL's website for any notices of changes to the Terms and Conditions and to accept any notices from APAL as agent for any guarantor.