

# NEW CLIENT APPLICATION FORM

Eurofins Environment Testing Australia PTY LTD, ABN 50 005 085 521  
 Eurofins ARL PTY LTD, ABN 91 050 159 898  
 Eurofins Promicro PTY LTD, ABN 47 009 120 549  
 Eurofins Environment Testing NZ LTD, NZBN 94 290 460 24954

www.eurofins.au/environment

<b>Please complete and return this form to the Eurofins   Environment Testing Accounts Department</b>
Phone: +61 3 8564 5000   Email <a href="mailto:EnviroReception@eurofins.com">EnviroReception@eurofins.com</a>
<b>New Client - Account Approval Process</b>
<b>Credit Account:</b> Ensure Section A & B (pages 1 & 2) are completed in full. When applying for a 30 Day credit account once all referees have been contacted, if your account is approved you will be notified by email stating the account is ready for use. An ASM (Analytical Services Manager) will be assigned for any subsequent enquiries, or contact our Reception Team at the phone number above for further assistance. <b>COD Account:</b> Complete Section A (page 1) and return to our Accounts Team at the details above.

SECTION A	TO BE COMPLETED BY ALL CLIENTS		Page 1 of 2
Company / Business Name*		ABN / ACN	
Trading Name*		NBN / NZBN	
Business Address*		Post Code*	
Postal Address*		Post Code*	
Contact Name*			
Email Address*			
Phone Number*		Fax Number	
Mobile Number*			
Signature of Applicant*		Date*	
Name of your Eurofins Contact			

INVOICE / STATEMENT	TO BE COMPLETED BY ACCOUNTS PAYABLE DEPARTMENT			
Contact Name for Invoices				
Email Address for Invoices*		Phone Number		
Email Address for Statements*				
Email Address for PO's*		Is a PO Number Mandatory for Invoicing?*	YES	NO
Does your Company / Corporation use an invoice platform for submitting & delivery of invoices?		YES	NO	
Name of Invoice Platform				

**IMPORTANT: If your company uses an invoice platform, please contact [EnviroReception@eurofins.com](mailto:EnviroReception@eurofins.com) directly and ensure relevant training and access is provided to Eurofins staff for this arrangement to be set up.**

Eurofins Admin Use Only							
ELVIS / LIMS		ABN Check		Approval Sent		Reviewed / Approved By	
MYOB		Trade Ref		Client Database		Internal Client (Eurofins)	

Last modified on: 28 July 2023	Approved on: 28 July 2023	Version: QS1033_R8
Last modified by: K. Wrigglesworth	Approved by: K. Chhina	Page 1 of 2
Editorial Committee: M. Macgeorge, K. Chhina, K. Wrigglesworth, S. Rouholamin		Next required review date: 28 July 2027

SECTION B (Part 1)		MUST BE COMPLETED IF APPLYING FOR A 30 DAY CREDIT ACCOUNT			Page 2 of 2
Contact Name					
Position					
Email Address					
Phone Number					
Company Website					
Nature of Business					
Date of Incorporation					
Parent Company (if any)					
Previous Business Name/s (if any)					
SECTION B (Part 2)		CREDIT REFEREES			
1	Contact Name*				
	Company*				
	Phone Number*		Email Address*		
2	Contact Name*				
	Company*				
	Phone Number*		Email Address*		
3	Contact Name				
	Company				
	Phone Number		Email Address		
Maximum Credit Required^		\$			^Amounts payable within 30 days from the invoice date
Is the applicant a trustee for any trust?*		YES		NO	
Name of Director/s or Proprietors					
1					
2					
3					

DECLARATION				
I hereby authorise Eurofins to investigate the references pertinent to my credit worthiness. I agree to abide by the terms and conditions of Eurofins (attached). I agree to pay Eurofins invoices within payment terms and relevant legal fees in the event of unreasonable non-compliance to payment terms.				
I have read the Eurofins   Environment Testing Terms & Conditions*				
Signature of Applicant*				
Full Name*		Date*		
Company*		Title*		

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## STANDARD TERMS AND CONDITIONS OF SALE (AUSTRALIA)

### 1. Area of Application

1.1 All Orders accepted by Eurofins Environment Testing Australia Pty Ltd, Eurofins ARL Pty Ltd or any of their subsidiaries or affiliates (collectively, "ES") will be governed by these General Terms and Conditions of Sales (the "Terms and Conditions"), including orders placed by telephone which have not been confirmed in writing and orders made by delivery of samples. A contract with these Terms and Conditions comes into being when an order that has been placed with ES is accepted by ES. An order placed with ES is considered as accepted by ES when (a) ES proceeds to fulfil that order, without need for any written confirmation from ES or (b) ES accepts the order in writing.

1.2 These Terms and Conditions supersede and replace all prior verbal or written price quotations and agreements between the parties and, unless specifically indicated otherwise therein, take precedence over all conflicting or inconsistent provisions of subsequent written agreements between the parties. No officer (other than the Chief Executive Officer of ES), employee, agent or subcontractor of ES has the authority to alter or waive any of these Terms and Conditions or to make any representation which conflicts with or purports to override any of these Terms and Conditions; and no such alteration, waiver or representation shall be binding upon ES, unless it is in writing and signed by the Chief Executive Officer of ES.

### 2. Placement of Order

2.1 A customer's order will be valid only if it is sent by mail or fax or other electronic message on letterhead of the customer or by using ES- approved sample dispatch sheets or electronic order forms and the commercial aspects of the order which are not specifically set out in these Terms and Conditions (including price, estimated turnaround times and delivery date) must be agreed at the time of the order. The customer must confirm in writing orders given by telephone immediately after they are made and will be deemed to have placed an order if the customer sends samples to ES quoting the customer reference. ES is not obligated to start any analytical work unless the order is clear and it has been provided all required information.

2.2 Unless specifically accepted in writing and signed by the Chief Executive Officer of ES, any terms proposed or submitted by a customer at any time (including, but not limited to, terms or provisions in the customer's purchase order, instructions or other document) which differ from these Terms and Conditions are rejected as a material alteration of these Terms and Conditions and shall be of no force or effect. Furthermore, special terms or conditions of prior orders, including special pricing, will not automatically apply to subsequent orders. Each order accepted by ES will be treated as a separate contract between ES and the customer.

2.3 ES is entitled to charge management and administrative fees of up to Twenty Five Dollars (\$25) in connection with the request for additional services to an existing order. A request for additional services on samples that have entered the laboratory will be treated as a new order and may postpone estimated delivery date accordingly.

2.4 Any logistic service off-site of the laboratory must be paid in full, unless it has been cancelled or modified by the customer at least forty eight hours (48) in advance for collection services, ninety six (96) hours in advance for sampling services and one (1) week in advance for auditing services.

### 3. Price and Terms of Payment

3.1 If the acknowledgment of an order does not state otherwise, ES' prices apply "ex works", excluding packaging, which is charged separately. Any additional cost or disbursement (e.g. incurred by ES in connection with the order) must be paid by the customer.

3.2 Prices are exclusive of all applicable taxes (including sales, use and good and services tax) and are based on tariffs in force at the day of the remittance of the offer to the customer. Applicable taxes are those in force at the date of invoicing.

3.3 Unless specifically agreed otherwise by ES in its acceptance of an order, payment of all invoices is due strictly within 30 days of the invoice date. Any dispute about invoices must be raised within 30 days of the invoice date. The challenge of an analytical result will not entitle a customer to defer payment. Any invoice which remains outstanding after due date, may be additionally charged with an administrative fee of Seventy Five Dollars (\$75) and may carry interest at the rate of one percent (1%) per

month or the rate set down from time to time pursuant to section 2 of the *Penalty Interest Rates Act 1983* (Vic), whichever is lower.

3.4 Invoices are subject to a minimum invoice charge of one hundred Dollars (\$100). ES has the right to charge an administrative fee of up to Fifteen Dollars (\$15) to re-issue an invoice.

3.5 The invoice settlement method is cheque, bank transfer or direct debit. Any other method of payment must receive prior agreement from ES. The customer undertakes to provide bank account details.

3.6 ES is entitled to require payment of up to 100% of the quoted order price as a condition of acceptance.

### 4. Duties of Customer in Delivering Samples or Materials

4.1 The samples or materials must be in a condition that makes the preparation of reports/analyses or the production of ordered products possible without difficulty. ES is entitled to conduct an initial examination of the samples or materials to check their condition before processing the samples, drawing up a report or using them in production. The customer shall bear the costs of this initial examination, if the samples or materials do not comply with the requirements described in this clause 4.1. If the result of the initial examination is that an analysis or production is impossible or is possible only under more difficult conditions than originally anticipated – for example, because the samples or materials have been interspersed with foreign materials or substances that were not reported by the customer or are degraded – ES shall be entitled to terminate or interrupt the order and the customer shall bear costs incurred by ES to that point.

4.2 The customer must ensure, and hereby warrants, that no sample poses any danger, including on its site, during transportation, in the laboratory or otherwise to ES premises, instruments, personnel or representatives. It is the customer's responsibility to insure compliance with hazardous waste regulations, including regarding information, transportation and disposal and to inform ES personnel or representatives about sample health and safety concerns, including any known or suspected toxic or other contaminant that may be present in the sample and its likely level of contamination as well as the risks to ES premises, instruments, personnel and representatives related to the contamination. The customer shall be responsible for, and indemnifies ES against, all costs, damages, liabilities and injuries that may be caused to or incurred by ES or its personnel or representatives including on the sampling site, during the transportation or in the laboratory by the customer's sample or by sampling site conditions. The customer shall bear all extraordinary costs for adequate disposal of hazardous waste resulting from the sample, whether or not described as hazardous waste. At ES' request, the customer must provide ES with the exact composition of the samples.

### 5. Property Rights on Sample Material and Sample Storage

5.1 All samples become the property of ES to the extent necessary for the performance of the order. Unless the customer pays for storage, ES shall have no obligation or liability for samples sent to ES for storage, including samples requiring refrigeration. If the customer pays for storage, ES will take commercially reasonable steps to store the samples, according to professional practice.

5.2 ES can dispose of or destroy samples immediately after the analysis has been performed, unless ES and the customer have agreed in writing on the terms of ES' retention of the sample. ES also can dispose of or destroy the samples after the agreed upon retention period, without further notice and at customer's cost, should an extra cost for ES arise to comply with any regulation (for example, with respect to disposal of hazardous waste). If the customer requests the return of unneeded sample material, ES will return them to the customer, at the customer's cost and risk.

### 6. Delivery Dates, Turnaround Time

6.1 Delivery dates and turnaround times are estimates and do not constitute a commitment by ES. Nevertheless, ES shall make commercially reasonable efforts to meet its estimated deadlines.

6.2 Results are generally sent by email and/or by Australia Post mail, or via other electronic means, to the attention of the persons indicated by the customer in the order, promptly after the analysis is completed.

## 7. Transfer of Property

- 7.1 Title in any analysis results, products, equipment, software or similar supplied by ES to the customer will remain with ES until all invoices in respect thereof have been paid by the customer in full, and until such full payment, the customer shall have no property rights or other rights to use them. In addition, even if ES has accepted and begun to fulfil an order, ES has the right at any time stop processing that order and to stop doing any work for a customer if that customer is late in paying any amount due to ES, whether for that or any other order.
- 7.2 Even after payment in full by the customer, ES shall retain the right to store, use and publish all analysis results in an anonymous form which does not identify the customer.

## 8. Limited Warranties and Responsibilities

- 8.1 Orders are handled in the conditions available to ES in accordance with the current state of technology and methods developed and generally applied by ES and the results may not always be 100% exact and/ or relevant. Analyses, interpretations, assessments, consulting work and conclusions are prepared with a commercially reasonable degree of care but ES cannot guarantee that these will always be correct or absolute. This limited warranty expires six months after the delivery date of the samples, if the acknowledgement of the order does not specifically state otherwise. In all cases, the customer must independently verify the validity of any results, interpretations, assessments and conclusions supplied by ES, if it wishes to rely on the same in respect of matters of importance and shall do so at its own risk.
- 8.2 Each analytical report relates exclusively to the sample analyzed by ES. If ES has not expressly been mandated and paid for the definition of the sampling plan (including which samples of which raw materials and finished products and at which frequency should be analysed) and the definition of the precise range of analysis to be performed or if the customer has not followed ES recommendations, ES shall not bear any responsibility if the sampling plan and/or the range of analysis to be performed prove to be insufficient or inappropriate.
- 8.3 The customer is responsible for the proper delivery of samples sent to ES for examination/analyses or materials sent for production. Unless otherwise specifically agreed in writing by ES, ES accepts no responsibility for any loss or damage, which may occur to any sample in transit or to any facility or site where logistics services are being delivered. The customer will at all times be liable for the security, packaging and insurance of the sample from its dispatch until it is delivered to the offices or the laboratories of ES. ES will use commercially reasonable care in handling and storing samples, but ES shall not be held responsible for any loss or destruction of samples even after their receipt at its laboratories.
- 8.4 The customer warrants and represents to ES that all samples sent to ES for analysis are safe and in a stable condition and undertakes to indemnify ES for any losses, injuries, claims and costs which ES, or its personnel, may suffer as a result of any sample not being in a safe or stable condition, notwithstanding that the customer may have given an indication on the sample or any order form of any perceived problem with the sample. The customer must always inform ES in writing prior to shipment and label the packaging, samples and/ or containers appropriately, if the samples are dangerous or otherwise of a hazardous nature.
- 8.5 Unless explicitly agreed in writing by all parties, the contractual relationship shall be exclusively between the customer and ES. There shall be no third party beneficiary or collateral warranty relating to any order and the customer shall indemnify and hold ES harmless from and against any and all third party claims in any way relating to the customer or to the order by the customer.

## 9. Limitation of Liability

- 9.1 Except to the extent that such limitations are not permitted or void under applicable law: (a) ES (together with its workers, office clerks, employees, representatives, managers, officers, directors, agents and consultants and all ES partners and affiliates, the "ES Indemnifying Parties") shall be liable only for the proven direct and immediate damage caused by the ES Indemnifying Party's wilful misconduct in connection with the performance of an order and then, only if ES has received written notice thereof not later than six (6) months after the date of the customer's knowledge of the relevant claim (unless any longer period is prescribed under applicable law and cannot be contractually limited), and (b) in all cases (whether arising under contract, tort, negligence, strict liability, through indemnification or otherwise), the ES Indemnifying Parties' liability per claim or series of related claims, and the customer's exclusive remedy, with respect to ES' services which fall under these Terms and Conditions, shall be limited to the lesser of: (i) the direct and immediate loss or damage caused by the ES Indemnifying Party's wilful misconduct in connection with the performance of the order and (ii) ten times the amount ES actually received from the customer in relation to the order up to fifteen thousand dollars (\$15,000).

- 9.2 The ES Indemnifying Parties shall not be liable for any indirect, direct or consequential loss or damage (including, but not limited to, loss of business, profits, goodwill, business opportunities or similar) incurred by the customer or by any third party.

- 9.3 It is a condition of ES' acceptance of an order that the customer indemnifies the ES Indemnifying Parties for any losses, injuries, claims and costs which the ES Indemnifying Parties may suffer as a result of arising from or in any way connected with its role under or services or products or software provided pursuant to these Terms and Conditions, except to the extent that the ES Indemnifying Parties are required to bear them according to these Terms and Conditions, and by placing an order the customer agrees to provide that indemnification.

## 10. Repeated Analysis

Objections to test results can be made within thirty (30) days after the customer receives the results. However, unless it would appear that the results of the repeated analysis do not match those of the first one, the customer shall bear the costs of the repeat testing or review. Furthermore, a repeated analysis will be possible only if ES has a sufficient amount of the original sample on hand when it receives the customer's objection. Otherwise the customer will be required to pay all costs, including sampling, transportation, analytical and disposal costs for the repeat analysis.

## 11. Force Majeure

ES cannot be held liable for delays, errors, damages or other problems caused by events or circumstances which are unforeseen or beyond ES' reasonable control, or which result from compliance with governmental requests, laws and regulations.

## 12. Confidentiality & Processing of Customer Data

- 12.1 ES shall be entitled to save and process personal or commercial data received from the customer in any way, no matter whether such data stem from the customer directly or from a third party and shall use commercially reasonable efforts to keep such data confidential, in compliance with applicable law.
- 12.2 ES shall use commercially reasonable efforts to keep all analysis results and service reports confidential, subject to ES' rights set forth in clause 7.2 and the right to use them in order to demonstrate its entitlement to payment for services rendered.
- 12.3 Analysis results are prepared and supplied exclusively for the use of the customer and should not be divulged to a third party for any purposes without the prior written agreement of ES. In addition, the customer is required to maintain secrecy concerning all services provided by ES and their results as well as the composition of products and software delivered by ES. Analysis results are not to be publicly disclosed or exploited without the prior written consent of ES. Even if such written consent is given by ES, the customer (a) remains responsible for any consequences due to the divulgence of such results to a third party and any reliance of such third party on such results and (b) hereby agrees to indemnify the ES Indemnified Parties against any liability which the ES Indemnified Parties may incur as a result of such divulgence or any such third party reliance.

## 13. Disclaimer and Miscellaneous

- 13.1 **ALL TERMS, CONDITIONS AND WARRANTIES (INCLUDING ANY IMPLIED WARRANTY AS TO MERCHANTABILITY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE) AS TO THE MANNER, QUALITY AND TIMING OF THE TESTING SERVICE AND RESULTS, EQUIPMENT, PRODUCTS OR SOFTWARE SUPPLIED BY ES ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE WARRANTIES, OBLIGATIONS AND LIABILITIES OF ES CONTAINED IN THESE TERMS AND CONDITIONS ARE EXCLUSIVE.**
- 13.2 These Terms and Conditions may be modified in writing from time to time by ES and orders will be governed by the most recent version of these Terms and Conditions that is in effect at the time ES accepts the order.
- 13.3 Should a court waive, limit or hold to be invalid, illegal or unenforceable any part of these Terms and Conditions, all other parts shall still apply to the greatest extent possible.
- 13.4 Failure by either ES or the customer to exercise the rights under these Terms and Conditions shall not constitute a waiver or forfeiture of such rights.

## 14. Governing Law/ Jurisdiction

- 14.1 The construction, validity and performance of these Terms and Conditions shall be governed by the laws and the courts of Victoria, Australia (including in cases involving multiple counsels for the defence or third-party respondents), which shall have exclusive jurisdiction.

**1. GENERAL**

- 1.1. All Services to be provided by Eurofins Environment Testing NZ Limited (Eurofins) will be governed by these Terms and Conditions (Terms) as varied by any special terms agreed to by Eurofins in writing (Special Terms).
- 1.2. No order for Services or any Special Terms relating to that order will be deemed to have been accepted by Eurofins unless Eurofins has confirmed acceptance of the order or the Special Terms in writing. In these Terms "in writing" means any confirmation by Eurofins in writing delivered personally or sent by post, facsimile or email.
- 1.3. These Terms will prevail over any other terms unless Eurofins specifically confirms acceptance of Special Terms in writing. Unless otherwise agreed to by Eurofins in writing any Special Terms shall apply only to that specific order.

**2. SERVICES**

- 2.1. In these Terms "Services" means food, or pharmaceutical product testing, environmental laboratory testing or audit and assurance services that Eurofins agrees to provide to the Customer in writing.
- 2.2. Eurofins will provide the Services using reasonable care and skill, adopting such methods as Eurofins considers appropriate and in accordance with any Special Terms agreed to by Eurofins in writing.
- 2.3. The Services will be undertaken in the time period agreed to between Eurofins and the Customer and in the absence of agreement within a reasonable time. Eurofins will not be liable for any delay in providing the Services.
- 2.4. Any reports issued by Eurofins relate exclusively to the samples provided by the Customer and do not relate to the lot from which samples have been obtained.
- 2.5. Where Eurofins has agreed to provide audit and assurance services, the audit report issued by Eurofins shall relate only to the scope of services agreed to in writing by Eurofins (either in the quotation, the engagement letter or an agency agreement).
- 2.6. Eurofins may delegate the performance of part or all of the Services to a third party and the Customer authorises the release of all information necessary to the third party for the provision of the Services.
- 2.7. Any reports provided by Eurofins can only be relied upon by the party to whom the report is addressed and cannot be relied on by any other party. By providing the Services (and any reports) Eurofins will not be deemed to have assumed any obligation or liability that the Customer has to a third party.

**3. OBLIGATIONS OF THE CUSTOMER**

- 3.1. To enable Eurofins to provide the Services, the Customer will:
  - (a) ensure that adequate quantities of the samples and materials are provided in a safe condition. Eurofins may (at the Customer's cost) undertake initial tests on the samples, material or the site to ensure that it is safe and appropriate for Eurofins to provide the Services;
  - (b) ensure that sufficient information instructions and documentation is provided;
  - (c) where appropriate provide safe and secure access to the site and access to the Customer's representatives;
  - (d) ensure that all necessary measures are taken to ensure safety in the performance of the Services including (without limitation) complying with all regulations relating to labelling, transportation of the samples and materials, access to the sites, treatment of hazardous materials;
  - (e) inform Eurofins in advance of any hazard or danger, actual or potential associated with any samples or testing;
  - (f) immediately inform Eurofins of any change that could affect the provision of the Services or the safety of its personnel.

**4. FEES AND PAYMENT**

- 4.1. The Customer will pay the fees agreed between the Customer and Eurofins for the Services. If the parties have not agreed on the fee payable for the Services then the Customer will pay Eurofins standard fees for the provision of the Services.
- 4.2. Fees are exclusive of GST which will be paid by the Customer.
- 4.3. Unless otherwise agreed in writing all fees quoted are exclusive of all expenses such as travelling costs and any disbursements incurred on behalf of the Customer.
- 4.4. The fees will be paid by the 20th calendar day of the month following the issue of a tax invoice for the Services by Eurofins.
- 4.5. Fees will be paid without deduction, set off or counter claim and the Customer cannot retain or defer payment on account of any dispute with Eurofins.
- 4.6. If the Customer fails to pay any fees when due, Eurofins may:
  - (a) charge interest at the rate of 2% per month calculated on a daily basis for any fees or part of fees outstanding at the due date for payment;
  - (b) commence proceedings for the collection of unpaid fees and the Customer will be liable for all costs incurred by Eurofins (including all legal costs on a solicitor – client basis);
  - (c) withhold the release of any reports until all fees have been paid in full by the Customer;
  - (d) require that part or all of the fees be paid in advance of providing the Services;
  - (e) cease providing the Services to the Customer without notice.
- 4.7. In the event that any unforeseen circumstances or expenses arise in undertaking the Services, Eurofins will endeavour to inform the Customer of any additional costs incurred by Eurofins and unless the Customer advises Eurofins not to undertake any further works, the Customer will be responsible for the additional costs.

**5. SAMPLES**

- 5.1. All samples become the property of Eurofins to the extent necessary for the performance of the Services.

- 5.2. Eurofins will not be required to store samples and may destroy or otherwise dispose of the samples or return the samples to the Customer (at the Customer's cost in all respects) immediately following analysis of the samples.
- 5.3. If the Customer pays for storage of the samples Eurofins will take commercially reasonable steps to store the samples for the agreed period in terms of industry practice.
- 5.4. The Customer acknowledges and accepts that:
  - (a) it is solely responsible for the sampling process and warrants that the sample provided to Eurofins is representative of the lot from which the samples were drawn; and
  - (b) Eurofins expresses no opinion and accepts no liability in respect of the Customer's production process or homogeneity of the sample.

## **6. TITLE TO PROPERTY AND REPORTS**

- 6.1. Eurofins will retain title to any analysis, results, reports or software produced by Eurofins until all fees have been paid by the Customer.
- 6.2. Eurofins will be entitled to store, use, publish or otherwise deal with all analysis, results, reports, or software so long as Eurofins does not identify the Customer, except where required by law.
- 6.3. All intellectual property rights created in the course of the provision of the Services by Eurofins pursuant to this agreement will vest in Eurofins immediately upon creation. If required by Eurofins, the Customer will execute all documents and do all acts and things required to enable the rights to vest in Eurofins.
- 6.4. Any report provided by Eurofins and the copyright contained therein shall be and remain the property of Eurofins and the Customer shall not alter or misrepresent the contents of such documents in any way. The Customer shall be entitled to make copies for its internal purposes only.
- 6.5. The Customer may only reproduce or publish any report by Eurofins in full without alteration. Eurofins name, logo or service marks, or any other means of identification cannot be used in any publication by the Customer unless the Customer has obtained the prior written consent of Eurofins.

## **7. LIMITATION OF LIABILITY**

- 7.1. The Customer acknowledges that the Services are provided using the then current state of technology and methods developed and generally applied by Eurofins and involve analysis, interpretations, consulting work and conclusions. Eurofins shall use commercially reasonable degree of care in providing the Services.
- 7.2. Reports 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. Neither Eurofins 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 nor for any incorrect results arising from unclear, erroneous, incomplete, misleading or false information provided to Eurofins.
- 7.3. Eurofins shall not be liable for any delayed, partial or total non-performance of the Services arising directly or indirectly from any event outside Eurofins control including failure by the Customer to comply with any of its obligations hereunder.
- 7.4. The liability of Eurofins in respect of any claim for loss, damage or expense of any nature and howsoever arising shall in no circumstances exceed the lesser of an amount equal to 3 times the fee paid in respect of the Service which gives rise to such claim or \$15,000.00.
- 7.5. Eurofins shall have no liability for any indirect or consequential loss including, without limitation, loss of production, loss of contracts, loss of profits, loss of business or costs incurred from business interruption, loss of opportunity, loss of goodwill or damage to reputation and cost of product recall (including any losses suffered as a result of distribution of the Customer's products subject of the Services prior to the report being released by Eurofins). 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.
- 7.6. In the event of any claim, the Customer must give written notice to Eurofins within 60 days of discovery of the facts alleged to justify such claim and, in any case, Eurofins shall be discharged from all liability for all claims for loss, damage or expense unless proceedings are brought within six calendar months from:
  - (a) the date of performance by Eurofins of the Service which gives rise to the claim; or
  - (b) the date when the Service should have been completed in the event of any alleged non performance.
- 7.7. Unless Eurofins explicitly agrees in writing, the Services shall be provided exclusively to the Customer and cannot be relied on by a third party. The Customer will indemnify and hold Eurofins harmless against any and all third party claims relating to the provision of the Services to the Customer.
- 7.8. The Customer shall be responsible for and indemnifies Eurofins against all costs, damages, liabilities, and injuries that may be caused to or incurred by Eurofins or its personnel or representatives including on the sampling site, during transportation or in the laboratory by the Customer's sample or by sampling site conditions.

## **8. FORCE MAJEURE**

- 8.1. If Eurofins is prevented from performing or completing the Services for any cause outside Eurofins' control, including, but not limited to, acts of god, war, terrorist activity or industrial action; electricity outage; failure to obtain permits, licenses or registrations; illness, death or resignation of personnel or failure by Customer to comply with any of its obligations the Customer will pay to Eurofins:
  - (a) the amount of all non-refundable expenses incurred by Eurofins; and
  - (b) a proportion of the fee equal to the proportion of the Services actually carried out (provided that if the Services cannot be performed as a result of an act or omission on the part of the Customer, the Customer will pay the full fee and all expenses incurred by Eurofins),

and Eurofins will be relieved of all responsibility whatsoever for the partial or total non-performance of the Services.

**9. MISCELLANEOUS**

- 9.1. If any one or more provisions of the Terms 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.
- 9.2. Except as expressly provided in these Terms or the Special Terms, the Customer may not assign or transfer any of its rights without Eurofins prior written consent.
- 9.3. The provisions of the Consumer Guarantees Act 1993 shall not apply to the Services provided by Eurofins to the Customer.
- 9.4. The parties acknowledge that Eurofins provides the Services to the Customer as an independent contractor and that this agreement does not create any partnership, agency, employment or fiduciary relationship between Eurofins and the Customer.
- 9.5. Any failure by Eurofins to require the Customer to perform any of Eurofins obligations under these Terms or Special Terms shall not constitute a waiver of its right to require performance of that or any other obligation.
- 9.6. This agreement is exclusively governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts.
- 9.7. The Terms may be modified in writing from time to time by Eurofins and the order for Services will be governed by the most recent version of these Terms that are in effect at the time Eurofins accepts the order.
- 9.8. Unless Eurofins specifically confirms acceptance in writing, Eurofins will not be bound by any terms and conditions set out in the Customer's purchase order.