

# ZOETIS GENETIC TESTING SERVICES TERMS

Zoetis Genetics  
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The following are Zoetis Australia Pty Ltd's (**Zoetis**) terms for testing services relating to genetics. These terms, any other terms agreed on in writing between Zoetis and the client specified in the Test Request Form (**Client**) and the Test Request Form (together, **Agreement**) apply to all supply of services by Zoetis to that Client to the exclusion of all other terms.

## 1. Definitions and Interpretation

1.1. Unless the context otherwise required:

Fee means the relevant prices for the Services in the pricing forms made available by Zoetis from time to time.

**Intellectual Property** includes design patents, registered designs, copyrights, trade dress, trade marks, trade and business names and trade secrets, and applications for any of the foregoing as well as rights in and to inventions, discoveries, improvements, look and feel, works and names.

**Pre-Existing IP** means any Intellectual Property owned, licensed or held by a party and made available to the other party for the purpose of the Agreement and, in the case of Zoetis, includes all testing methodology, testing processes, raw data (which includes genotype data, laboratory results files, marker information and phenotype data) and the Trade Mark.

**Samples** means any samples submitted by the Client to Zoetis for the purposes of the tests described in the Test Request Form.

**Services** means the services requested by the Client in the Test Request Form.

**Trade Mark** means the registered and unregistered trade mark(s) used or owned by Zoetis.

1.2. All monetary amounts are in Australia dollars, unless otherwise stated.

1.3. The term **person** includes an individual, partnership, firm, company, body corporate, corporation, association, organisation, trust, estate, state or government or any agency thereof, municipal or local authority, and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality).

## 2. Order, Acceptance and Performance of Services

2.1. The Client must order the Services by submitting:

- a Test Request Form identifying the type and quantity of the Services it wishes Zoetis to supply;
- the Samples in accordance with Zoetis' instructions; and
- such other information as Zoetis may request.

2.2. Zoetis may reject any Test Request Form without liability to the Client.

2.3. In relation to Test Request Forms that have not been rejected, the Client engages Zoetis to provide the Services and Zoetis will carry out the Services on the terms of the Agreement.

2.4. The Client acknowledges that, while Zoetis will use reasonable efforts to ensure that the Services are provided within the time (if any) specified in the Test Request Form or otherwise notified to the Client, all dates specified for completion or delivery of the Services are estimates only.

## 3. Remuneration

3.1. The Client must pay to Zoetis the Fee and any other charges specified in the Agreement.

3.2. Payments are due within 45 days from the date of invoice. Unless otherwise stated, all monetary amounts are, and all payments must be made, in Australian dollars and must be made in cleared funds. Zoetis reserves the right to provide the Services on a cash sale basis or on other terms as it, in its sole discretion, determines appropriate.

3.3. All prices are exclusive of freight, insurance, customs duty, and any other costs.

3.4. If GST applies to any supply made to the Client in accordance with these terms, the Client must pay Zoetis an additional amount equal to the GST payable on the supply. The additional amount is payable at the same time as the Fee or other consideration for the supply. Zoetis must issue a tax invoice to the Client. Terms used in this clause 3.4 that have a defined meaning in the A New Tax System (Goods and Services Tax) Act 1999 (GST Act) have the same meaning in this clause. Unless otherwise expressly stated, all amounts payable under these terms are expressed exclusive of GST.

3.5. The Client must not withhold payment or make any set off or deduction from the Fee or from any other payment due by the Client.

3.6. If the Client fails to pay any sum due under the Agreement on the due date, the Client must pay interest on that sum from the due date until the date of payment at 2% above the Westpac Bank base lending rate, calculated on a daily basis and capitalised monthly. That interest shall be payable on demand by Zoetis. If no time is provided, payment shall be made within 7 days of payment being demanded by Zoetis.

## 4. Risk

Notwithstanding delivery to Zoetis, the risk of any loss, damage or deterioration of or to the Samples will remain with the Client.

## 5. Liability

5.1. To the fullest extent permissible at law, all representations, terms, warranties, guarantees, or conditions whether implied or imposed by statute, common law or custom of the trade or otherwise that might apply to the provision of the Services are excluded.

5.2. In relation to any terms, warranties, guarantees or conditions that cannot lawfully be excluded, Zoetis's liability for them is limited, at the option of Zoetis, to:

- the re-supply of the Services; or
- the payment of the cost of having the Services re-supplied.

5.3. To the fullest extent permissible at law:

- the liability of Zoetis, whether in contract, tort (including negligence) or otherwise, to Client will not in aggregate exceed the invoice price of the Fee for the Services in respect of which the liability arises;
- Zoetis will not be liable for any loss of profits or any consequential, indirect or special damage or loss of any kind suffered by Client or any of the Client's representatives; and
- Zoetis does not accept any liability arising from: (i) any data, materials or protocols provided by the Client; (ii) any errors in any third party data; (iii) the Client's failure to correctly collect, identify, store or deliver the Samples; and (iv) any other act or omission by or on behalf of the Client.

5.4. A claim by the Client against Zoetis in connection with this Agreement must be notified to Zoetis within 12 months of the completion or delivery of the relevant Services.

## 6. Client's Acknowledgements

6.1. Client acknowledges that:

- it has not relied, and will not rely, on any representation or statement made by or on behalf of Zoetis or its employees or agents other than the express provisions of the Agreement and any qualifications the Test Request Form and in any reports provided by Zoetis to the Client;
- there may be an inherent margin of error for each type of genetic testing conducted by Zoetis;
- genetic testing can provide only limited information about a condition or an animal, and does not guarantee or rule out the existence of a condition or a characteristic of an animal; and
- the accuracy and interpretation of the test results and the information contained in any Reports (as defined in clause 8.2(a)) depends on a variety of factors, including environmental factors, breed of animal being tested, quality of the Sample and any other specific factors specified on the Test Request Form.

## 7. Release and Indemnity

7.1. To the extent permitted by law, the Client releases and indemnifies Zoetis and its officers, employees, sub-contractors and agents from and against:

- all actions, claims, proceedings or demands by any person, in respect of any loss, damage, cost, expense or injury, which may be brought against Zoetis, whether on their own or jointly with the Client and whether at common law, in equity or pursuant to statute or otherwise, arising out of reliance on, and use or dissemination of, the test results and the information contained in any Reports;
- all damages, costs and expenses incurred in defending or settling any such claim, proceeding or demand; and
- any liability, damages, cost and expenses incurred by the Service Provider as a result of any breach by the Client of any provision of this Agreement.

7.2. Clauses 5 and 7 shall survive expiration or termination of the Agreement.

## 8. Intellectual Property

8.1. The Pre-Existing IP will remain the property of the party that provides it and is not altered, transferred or assigned by virtue of its use by the other party under the Agreement.

8.2. Unless the parties agree otherwise:

- the Client will own all rights, including Intellectual Property rights, in any material created by Zoetis (which includes gene test result reports, genetic conditions reports, client reports, profile reports, parentage verification reports, reinterpreted client data reports, sample confirmation reports, sample status reports and SIL reports) for the Client in providing the Services to the Client pursuant to the Agreement (**Reports**), provided, however, that Reports excludes any Zoetis Pre-Existing IP; and
- the Client grants to Zoetis a perpetual, irrevocable, non-exclusive, royalty-free licence to use all Intellectual Property in:
  - the Reports for all such purposes as Zoetis sees fit; and
  - the Client's Pre-Existing IP to the extent required for Zoetis to comply with its obligations under the Agreement.

## 9. Ownership and Use of Samples

- 9.1. The parties acknowledge and agree that all Samples remain the property of the Client.
- 9.2. Subject to clause 9.3, Samples will be used only in delivery of the requested Services.
- 9.3. Zoetis may store Samples for future testing that may be requested by the Client, but makes no commitment that they will be available for further testing. Unless the Client has requested for the Samples to be returned to it (at its cost), the Samples may be destroyed within 30 days of testing.
- 9.4. The Client is responsible for all costs associated with the freight of DNA test kits and the Reports.
- 9.5. Zoetis will attempt to confirm with the Client the number of Samples received and any Samples that Zoetis cannot process (for example, due to duplicates or missing information). Any re-sampling and re-testing required to correct poorly taken, contaminated or incorrectly identified samples is at the Client's expense.

## 10. Confidentiality

- 10.1. In this clause 10, unless the context otherwise requires:
  - (a) **Approved Purposes** means the purpose of the Agreement;
  - (b) **Confidential Information** means information of every kind: (i) concerning, or in any way connected with: (A) either party or a Related Entity of either party; or (B) the business, property or affairs of either party or of any officers or employees of either party; or (ii) which is the property of either party or a Related Entity of either party, and which: (iii) is disclosed in writing, orally or by any other means by either party or by any person on either party's behalf to the other or an employee, officer or agent of the other; or (iv) comes to the knowledge of either party or an employee, officer or agent of either party by any means, and includes the Intellectual Property and any other intellectual property of either party; and
  - (c) **Notes** means notes which relate to, summaries and copies of, and extracts from any Confidential Information whether in documentary, visual, machine readable or other form.
- 10.2. Each party must:
  - (a) maintain and take all steps necessary to maintain all Confidential Information and all Notes in strictest confidence;
  - (b) use Confidential Information and Notes solely for the Approved Purposes;
  - (c) not make Notes or allow Notes to be made except as necessary in connection with the Approved Purposes; and
  - (d) not disclose any of the Confidential Information or Notes to any person other than those employees, officers and agents who are required to receive and consider the Confidential Information in the course of (and solely for) the Approved Purposes.
- 10.3. Clause 10.2 does not impose obligations on:
  - (a) either party concerning Confidential Information which is publicly available; and
  - (b) Zoetis in respect of DNA profiles resulting from SireTRACE® DNA profiling requested by the Client, which Zoetis may share with other customers requesting parentage verification, unless the Client has withdrawn consent in respect of specific Samples by signing the relevant notice on the Test Request Form where indicated.
- 10.4. It is not a breach of clause 10.2 for either party to disclose Confidential Information which it is obliged by law to disclose to the person to whom it is disclosed.

## 11. Data Protection and Privacy

- 11.1. The Client acknowledges that Zoetis may need to collect information and conduct security checks on the Client, its employees and consultant(s) for the purposes of administering the Agreement and complying with the special responsibilities Zoetis has to drug regulatory agencies and to the public in view of the nature of its products. The Client will promptly provide copies of all such information relating to the Client, its employees and consultant(s) as Zoetis may request from time to time and the Client must ensure that its employees and consultant(s) will cooperate with the provision of such references and information to Zoetis.
- 11.2. Zoetis must comply with all relevant privacy laws or regulations with respect to the references and other personal information provided by the Client.
- 11.3. The Client:
  - (a) acknowledges and agrees that Zoetis will collect, store, use and disclose any personal information provided by the Client in accordance with Zoetis' privacy policy; and
  - (b) warrants that, before providing any personal information to Zoetis, it has:
    - (i) notified all individuals to whom the personal information relates that it will be disclosing their personal information to Zoetis for the purposes of the Agreement and obtained any required consent to such disclosure; and
    - (ii) provided the individuals with the location of where Zoetis' privacy policy can be found.

## 12. Additional Terms for Specific Tests

- 12.1. To the extent the Services relate to the HP, SireTRACE®, AM, NH, CA or DD group tests, the following additional terms apply:
  - (a) the Client acknowledges that testing of Samples according to standard procedures can result in false-positive test results and agrees that, where Zoetis' has followed the standard procedures, Zoetis will not be liable for any false-positive test results;
  - (b) the Client acknowledges and agrees that Zoetis' third party service providers will retain the DNA type on their database, provided that Zoetis will require its third party service providers to:
    - (i) keep DNA information confidential and not disclose or use it for any reason without the Client's prior written consent; and
    - (ii) delete or destroy that information promptly after a request from the Client's to do so; and
  - (c) the Client must, within 7 days of receipt of a test result or Report identify any

part of them as confidential, in which case, Zoetis will, and will ensure that its third party service providers will, keep that part of the test result or Report secret and confidential for 1 year following the completion of the Service.

- 12.2. To the extent the Services relate to Shepherd Multiplex, LoinMAX, MyoMAX, Mannosidosis or Sheep Progeny Test, the Client acknowledges and agrees that all genotypes derived from the Samples will be incorporated into the database of Zoetis' third party service providers, provided that Zoetis will require its third party service providers to:
  - (a) maintain confidentiality of that information at all times (save for disclosures consented to by the Client or required by law); and
  - (b) not use or disclose that information for any purpose other than the provision of the Services without the prior written consent of the Client.

## 13. Default

- 13.1. Zoetis may suspend or terminate the Agreement immediately by notice if:
  - (a) the Client breaches a term of the Agreement or any other agreement with Zoetis and fails to remedy the breach (if capable of remedy) within 7 days after notice to do so;
  - (b) being a corporation, the Client goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration;
  - (c) being an individual, the Client has a meeting of creditors called or held or has a step take to make the party bankrupt;
  - (d) the Client no longer carries on business or threatens to cease carrying on business;
  - (e) there is a change of ownership or effective control of the Client or the nature of the Client's business is materially altered; or
  - (f) a Force Majeure Event (as defined below) continues for more than 60 days.
- 13.2. Without prejudice to any rights Zoetis may otherwise have under the Agreement or at law, on expiry or termination of the Agreement all moneys outstanding will become immediately due and payable. Payments by the Client will be applied in reduction of amounts owing by the Client in such order as Zoetis determines. The Client will pay all costs incurred by Zoetis, (including costs on a solicitor/client basis and debt collectors' costs) incurred in the recovery or attempted recovery of outstanding moneys and the enforcement of the Agreement.
- 13.3. Termination of the Agreement will not affect any obligations or rights of either party which will have accrued on or before termination.

## 14. No Assignment

Neither party may assign or otherwise deal with the whole or any part of it except with the prior written consent of the other party which consent may not be unreasonably withheld; provided, however, either party may, without such consent, assign the Agreement, in whole or in part, to any of its respective related entities (as defined in section 9 of the Corporations Act 2001) or successors-in-interest. Any permitted assignee shall assume all obligations of its assignor under the Agreement.

## 15. Anti-Bribery Warranties

- 15.1. The Client warrants that it has not offered, promised or paid, either directly or indirectly, any money or anything of value to a government official (including, but not limited to, a healthcare professional) or other person to induce such government official or other person to act in any way in connection with his/her official duties or to otherwise obtain an improper advantage for the Client or for Zoetis and will not offer, promise, pay or authorise such an offer, promise or payment in the future.
- 15.2. The Client will at all times comply with Zoetis' Anti-Bribery and Anti-Corruption Principles available at [www.zoetis.com.au](http://www.zoetis.com.au).

## 16. Publications

Subject to clause 10.3(b), in any publication (including advertising and promotional material) relating to the Agreement or the Reports, Zoetis must not publish individual results from testing without first obtaining the Client's prior written consent.

## 17. General

- 17.1. Each party must promptly, at its own cost, do all things (including executing all documents) necessary or desirable to give full effect to the Agreement.
- 17.2. If anything in the Agreement is unenforceable, illegal or void, then it is severed and the rest of the Agreement remains in force.
- 17.3. The Agreement contains the entire agreement and understanding between the parties on everything connected with the subject matter of the Agreement.
- 17.4. To the extent there is an inconsistency between the provisions of the Agreement, the order of precedence will be these terms and then the Test Request Form.
- 17.5. An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.
- 17.6. Notices or other communications connected with the Agreement must be in writing.
- 17.7. Neither party shall be liable for any failure or delay in complying with any obligation imposed on that party under the Agreement if:
  - (a) the failure or delay arises directly or indirectly from a cause reasonably beyond that party's control and not due to the default or insolvency, or an intentional act or omission, of that party (**Force Majeure Event**);
  - (b) that party, on becoming aware of the Force Majeure Event, promptly notifies the other party in writing of the nature and expected duration of, and the obligation affected by the cause; and
  - (c) that party uses its reasonable endeavours to mitigate the effect of the cause on that party's obligations and to perform that party's obligations on time despite the Force Majeure Event, but nothing in this clause shall excuse a party from any obligation to make a payment when due under the Agreement.
- 17.8. The laws of New South Wales, Australia govern the Agreement. The parties submit to the jurisdiction of the courts of New South Wales.