

1. General

- 1.1. References to "Swan Analytical", "we" and "us" are references to Swan Analytical New Zealand Limited, company number 6193708. References to the "customer" and "you" and "your" are references to the person to whom the quote is addressed. References to "product" are references to any product supplied by us to you.
- 1.2. These terms and conditions govern how any goods and services are provided by us to you. Please read these carefully before placing an order or accepting a quote.
- 1.3. Once you place an order with us by reference to a quote, a contract between you and us will be formed subject to our acceptance of the order and subject to these terms and conditions.
- 1.4. Quotes are valid for 30 days from the date of issue, unless stated otherwise on the quote.
- 1.5. Quotes are based on the costs prevailing at the date of issue of the quote for materials, labour, exchange rates, freight, duties, taxes and other items over which the Company has no control. Where there is an increase in any of these costs, the Company reserves the right to refuse an order and revise a quote.
- 1.6. These terms and conditions will apply to each Contract and the supply of the product by the Company to the Customer and, where applicable, the provisions of any incidental services under the Contract and the Terms and Conditions will be or are deemed to be incorporated into, and form part of, each Contract, as if these Terms and Conditions were set out or implied therein in full.
- 1.7. We may transfer our rights and obligations under the relevant contract between us to another person or entity and we will notify you in writing if this happens, but this will not affect your rights under these terms and conditions. You may only transfer your obligations under these terms and conditions to another person if we agree in writing prior to such transfer.
- 1.8. Each provision is intended to operate separately. If any of the provisions in these terms and conditions are found by a court or relevant authority to be unlawful, the remaining provisions shall remain in full force and effect.
- 1.9. We have the right to cancel a contract as a consequence of events outside our control or the unavailability of stock from our usual source of supply. In this event we will endeavour to promptly inform you in writing of such cancellation and refund any deposit paid in full.
- 1.10. The Company reserves the right to review and amend these terms and conditions from time to time. Any material changes shall be notified to the Customer in writing.
- 1.11. You acknowledge that you have had adequate opportunity to obtain independent legal advice as to the meaning and effect of our terms before they were accepted.

2. Price

- 2.1. The price stated in the quote is exclusive of GST unless stated otherwise and the Customer is required to pay GST in addition to the price quoted.
- 2.2. Any requested variation to the quote, including but not limited to the quantity of Products ordered, the manner of delivery or the timeframe for delivery, must be notified to the Company in writing by the Customer. If the Company agrees, the Company's quotation and the price will be adjusted accordingly. If a variation is agreed after the Contract is formed, the Contract and the Price will be adjusted accordingly, taking into account any additional cost or increase in price the Company may incur as a result of the variation/s requested by the Customer.

3. Deposit

- 3.1. The Company may require the Customer to pay a deposit before any order is placed.
- 3.2. If a deposit is required by the Company, the Company shall be entitled to use the deposit to make payment to any third-party providers or manufacturers as those payments are incurred by the Company. In the event the deposit is to be refunded (except where a full refund is due under clause 1.9), the deposit shall be refunded less any payments or costs that the Company has incurred.

4. Liability

- 4.1. You are responsible for any damage or loss to the product as from the date on which the product is delivered to your registered address or such other delivery address nominated by you.
- 4.2. We will use commercially reasonable endeavours to deliver the product within the timeframe estimated in the quote but the Company will not be liable for:
 - (a) Any failure to deliver the Product by a specified date;
 - (b) An event beyond the Company's control;
 - (c) Testing the Products;
 - (d) Damage to the condition of the Product due to exposure to the elements after delivery;
 - (e) Any negligence, misrepresentation or other act or omission by the Company or its agents; or
 - (f) Any loss or damage resulting directly, or indirectly, from any of the above.
- 4.3. The Company shall not in any event be liable for any loss of business, business interruption, errors, loss of profits, damages based on a third-party claim or for any other special, incidental, indirect or consequential loss or damage suffered or incurred by the Customer.
- 4.4. All liabilities of the Company are excluded to the fullest extent permissible by law. Where the law does not permit exclusion, the liability of the Company shall be limited, at the Company's option to repair or replacement of the products or payment of the cost of repairing or replacing the products. The total aggregate liability of the Company arising out of all claims shall not in any event exceed the price paid by Customer to the Company.

5. Guarantee and Warranty

- 5.1. The Consumer Guarantees Act 1993 ("CGA") shall apply unless our products are being supplied or are used for the Customer's business purposes, in which event the CGA shall not apply to any of the supplies made by the Company to the Customer.
- 5.2. If the Customer is a consumer as defined in the CGA, the provisions in these Terms and Conditions will only apply to the extent that such provisions do not limit or exclude any provisions of the CGA.

6. Safety and Standards

- 6.1. The Customer agrees that the Customer has received adequate information regarding the products to ensure their safe use and maintenance. The Customer will ensure that the products are properly used in accordance with any instructions provided for the products.

7. Payment Terms

- 7.1. Payment terms will be stated on each invoice. As an essential term of this Contract, invoices are strictly to be paid in full when due. This will usually be on either the 20th of the month following the date of the invoice or within 30 days from the date of the invoice, whichever is specified in the invoice. If no due date is specified, the due date will be 30 days from the date of the invoice.

- 7.2 The Customer may not deduct, set-off or withhold payment of any amount.
- 7.3 Default interest shall accrue at the rate of 5% per annum over the Company's Bank's Business Overdraft Base Rate calculated on a daily basis on any amount not paid by the due date for payment. The Company's right to charge default interest is without prejudice to any of the Company's rights, powers or remedies arising after the Customer's payment default.
- 7.4 The Company may suspend all orders in the event any invoices are not paid in full by the due date. In no event shall the Company be obliged to make any delivery of Products to the Customer if any moneys due and payable by the Customer under any invoice remain outstanding.
- 7.5 The Customer will be liable for any costs, expenses or damages that the Company incurs in relation to enforcement of these terms and conditions, including legal costs on a solicitor-client basis.

8. Title, Risk and Insurance

- 8.1 The Company shall retain legal and beneficial interest in all products until the Company's invoices and all other amounts owing by the Customer are paid in full.
- 8.2 Until title to the Products passes to the Customer, the Customer holds the Products as the Company's bailee and, as agent for the Customer, the Company (and its employees and agents) may, without prior notice, enter upon any land or premises where the Company believes the Products are kept in order to inspect the Products.
- 8.3 The Customer acknowledges that as from the date of delivery of the Products by the Company until the date the Customer receives good title to the Products, all risk in and for the Products passes to the Customer and the Customer shall ensure that the Customer will:
- (a) keep and maintain adequate asset protection insurance for the full replacement value of the Products;
 - (b) store the Products so that they are separately identifiable from the Customer's own inventory and equipment;
 - (c) use the Product for the purpose for which it was designed and comply with any terms of use of the product, keep the product properly serviced (where recommended), and not do any act or allow any act to be done which may void any guarantee or warranty applicable to the Product.

9. Return of Goods

- 9.1 The Customer is not entitled to return the Products to the Company for any reason other than as provided for in this clause. For any defective Products which the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) repairing or replacing the Products (where practicable) or refunding the price for the Products provided that:
- (a) The Customer must notify the Company within 7 days of delivery of the Products are defective;
 - (b) The Company is given a reasonable opportunity to investigate the Customer's claim;
 - (c) The Company will not be liable for any Products that have been tampered with or modified without the Company's approval or which have been improperly stored or used;
 - (d) The Company will not be liable to pay the Customer any amount more than the amount (if any) the Company actually receives from the supplier for the defective Products.

10. Personal Property Securities Act 1999 ("PPSA")

- 10.1 The Customer grants to the Company a Security Interest in the products and their proceeds to secure all obligations of

the Customer to the Company. The Customer agrees and acknowledges that:

- 10.2 these terms and conditions shall constitute a security agreement for the purposes of section 36 of the PPSA;
- 10.3 the Company shall as a secured party be entitled to register a financing statement on the relevant securities register ("PPSR") to perfect its security, as a security interest or a purchase money security interest if applicable.
- 10.4 The Customer shall do all things reasonably necessary at its expense, to enable the Company to register, maintain and enforce its security interest on the PPSR and shall not do anything to adversely prejudice the Company's security interest.
- 10.5 The Customer shall sign any documents to enable registration of the financing statement, indemnify and upon demand reimburse the Company for any expenses incurred by the Company in registering a financing statement, a financing change statement or releasing any financing statement, give the Company at least 10 working days prior written notice of any proposed change to the Customer's name or any other detail relevant or material to the Security Interest, and immediately give the Company notice of any material change to the Customer's business practice which would prejudice the Company's Security Interest.
- 10.6 The Customer's right to receive a copy of the verification statement under section 148 of the PPSA is waived.
- 10.7 Nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to these terms, or the security under these terms, and the Customer waives the Customer's rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.

11. Dispute Resolution

- 11.1 Any disputes must be raised by a party by giving written notice to the other party. The parties will endeavour to resolve any dispute or difference arising out of or in connection with these terms and conditions by meeting in person within 10 working days of a dispute being raised. If the dispute is not resolved, then the parties agree to refer the dispute to a mediator to be agreed upon between the parties or, failing agreement, to be nominated by the President of the New Zealand Law Society.
- 11.2 If the Customer wishes to raise any dispute regarding payment of any invoice or part thereof, the Customer must provide reasonable details regarding the dispute within 7 calendar days of the date of the invoice, time being of the essence, failing which the Customer shall be deemed to have accepted the invoice in full.
- 11.3 If a dispute remains unresolved following mediation, the parties agree to submit to arbitration. A sole arbitrator will be agreed upon between the parties or, failing agreement, will be nominated by the President of the New Zealand Law Society. Arbitration will be conducted in accordance with the Arbitration Act 1996.

12. Liability and Indemnity

- 12.1 We will not be liable for any loss or damage suffered by you or otherwise arising in connection with the Product or Services.
- 12.2 You agree to indemnify us against any costs, claims or liabilities arising out of any breach, delay or non-performance by you of any of these Terms.
- 12.3 To the extent permitted by law, our liability to you under this Agreement (if any) is limited to the Fee payable for the Product and Services.

13. Force majeure

- 13.1 Both parties will be released from their respective obligations under these terms in the event of national emergency, war, prohibitive governmental regulations or where any other

cause beyond the reasonable control of either you or us, including strike, riot, lockout or trade disputes for a period of 7 days or more renders performance of our respective obligations impossible.

14. Maintenance and Servicing

14.1 The Customer acknowledges that the Company has advised the Customer and the Customer shall endeavor to have the products regularly serviced by a suitably qualified person in order to the maintain the products in proper working order.

15. Governing Law

15.1 All rights, powers, exemptions and remedies available to the Company remain in force notwithstanding any failure or delay in enforcing them. The Company will not be considered to have waived any right, power, remedy or condition except by express written waiver and signed by the Company or its authorised signatory.

15.2 If any part of the Contract (including these Terms and Conditions) is held by any court to be illegal, void or otherwise unenforceable, such determination shall not affect the enforceability of any other parts of the Contract (including these Terms and Conditions) which is not illegal, void or otherwise unenforceable.

16. Governing Law

16.1 The Contract and these Terms and Conditions are governed by the law of New Zealand.