



## ZOETIS NEW ZEALAND - GENETIC TESTING SERVICES TERMS

The following are Zoetis New Zealand Limited's (**Zoetis**) terms for testing services relating to genetics. These terms, any other terms agreed on in writing between Zoetis and the customer specified in the approved Order Form (**Customer**) (together, **Agreement**) apply to the supply of services by Zoetis to that Customer to the exclusion of all other terms.

### 1. Definitions and Interpretation

- 1.1. Unless the context otherwise requires:
  - (a) **Fee** means the relevant prices for the Services in the pricing forms made available by Zoetis from time to time.
  - (b) **Intellectual Property** includes patents, 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.
  - (c) **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.
  - (d) **Samples** means any samples submitted by the Customer to Zoetis for the purposes of the tests described in the Order Form.
  - (e) **Services** means the services described in the Order Form.
  - (f) **Related Companies** has the meaning given to it in the Companies Act 1993 (read as if the expression 'company' in that subsection included any body corporate of any jurisdiction).
  - (g) **Trade Mark** means the registered and unregistered trade mark(s) used or owned by Zoetis.
- 1.2. All monetary amounts are in New Zealand 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 Customer must order the Services by submitting:
  - (a) an Order Form electronically identifying the type and quantity of Services it wishes Zoetis to supply (where such Order Form is to be in the format approved by Zoetis);
  - (b) the Samples in accordance with Zoetis' instructions; and
  - (c) such other information as Zoetis may reasonably request.
- 2.2. Zoetis may reject any Order Form without liability to the Customer.
- 2.3. In relation to Order Forms that have not been rejected, the Customer engages Zoetis to provide the Services and Zoetis will carry out the Services on the terms of the Agreement.
- 2.4. The Customer acknowledges that, while Zoetis will use reasonable efforts to ensure that the Services are provided within the time (if any) specified in the Order Form or otherwise notified to the Customer, all dates specified for completion or delivery of the Services are estimates only. The Customer acknowledges that it must include all relevant and correct information within the approved Order Form and failure to do so may result in further delays of the Services and/or may result in incorrect results.
3. **Remuneration**
- 3.1. The Customer must pay the Fee to Zoetis and any other charges specified in the Agreement. The Fee and other prices are based on Zoetis' standard list price and Zoetis may update the price list at any time.
- 3.2. Unless agreed otherwise in writing, payments are due on the 20th of the month from the date of invoice. All payments are to be made in New Zealand 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 determines appropriate.
- 3.3. All prices are exclusive of freight, insurance, customs duty, and any other costs.
- 3.4. All prices exclude GST, unless expressly stated. If GST is payable on a supply made by Zoetis in accordance with these terms, the Customer must pay an additional amount equal to the GST payable on supply at the same time as the Fee or other consideration for the supply. Zoetis will issue a tax invoice to the Customer.
- 3.5. The Customer shall not be entitled to withhold payment or make any set

off or deduction from Fee or from any other payment due by the Customer.

- 3.6. If the Customer fails to pay any sum due on or before the due date, Zoetis may charge a default penalty on such overdue amount calculated on a daily basis at the rate of interest payable on Zoetis's bank overdraft from time to time. That interest shall be payable on demand by Zoetis.
- 3.7. The Customer authorises Zoetis to make enquiries from time to time as to the credit and financial history of the Customer, including but not limited to, by obtaining such reports from credit reporting agencies. Any credit offered by Zoetis may be conditional upon the Customer's directors giving personal guarantees in relation to the Customer's obligations under this Agreement and their consent for Zoetis to make such enquiries as to their personal and commercial credit and financial history, including by obtaining such reports from credit reporting agencies as may be required by Zoetis from time to time.
- 3.8. Zoetis reserves the right to terminate the Customer's credit account at any time. In the event of such termination, Zoetis may require security for payment and may suspend performance of the Services, or the acceptance of any further orders, until the provision of sufficient security. Such termination shall be without prejudice to any other rights Zoetis may have, and the Customer will not be entitled to any compensation in respect of such termination.
- 3.9. If the Customer breaches the Agreement and Zoetis takes action to recover amounts payable by the Customer, then the Customer must pay, all reasonable collection costs, including commissions and legal charges on a solicitor and client basis.
- 3.10. Zoetis shall only be responsible to comply with regulations, bylaws, codes and standards specified in the Order Form and Zoetis shall be under no liability whatsoever for any failure to meet any other regulations, bylaws, codes or standards.
- 3.11. In the event of there being any changes in any regulations, bylaws, codes or standards with which Zoetis is obliged to comply after the date of the Order Form, then any additional costs in meeting such changes shall be to the account of the Customer.

### 4. Risk

Notwithstanding delivery to Zoetis, risk of any loss, damage or deterioration of or to the Samples will remain with the Customer. Once delivery has been accepted by Zoetis, Zoetis shall take reasonable care of the Samples.

### 5. Customer's Acknowledgements

The Customer acknowledges that:

- (a) 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 Order Form and in any reports provided by Zoetis to the Customer;
  - (b) there may be an inherent margin of error for each type of genetic testing conducted by Zoetis;
  - (c) 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
  - (d) 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, a correct and complete Order Form from the Customer and any other specific factors specified on the Order Form.
- ### 6. Liability, release and indemnity
- 6.1. The Consumer Guarantees Act 1993 ("CGA") confers rights, guarantees and remedies on the Customer and if Zoetis (a) supplies the Customer with goods and services of a kind that are ordinarily acquired for personal, domestic, or household use or consumption; and (b) the Customer does not acquire or hold itself as acquiring those goods or services for the purposes of resupplying them in trade, consuming them in the course of a process of production or manufacture, or (in the case of goods) repairing treating in trade other goods or fixtures on land. Where the CGA applies, nothing in these terms is intended to limit Zoetis' liability under that Act.

- 6.2. Without limiting the above, 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.
- 6.3. In relation to any terms, warranties, guarantees or conditions that cannot be lawfully 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.
- 6.4. Subject to any applicable laws that cannot be excluded (including under the CGA where it applies), to the fullest extent permissible at law:
- the liability of Zoetis, whether in contract, tort (including negligence) or otherwise, to the Customer 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 profit or opportunity, or any consequential, indirect or special damage or loss of any kind suffered by Customer or any of the Customer's representatives;
  - Zoetis is not liable to the extent that any loss or damage was caused or contributed by the Customer's negligence or the Customer's representatives, or any third party; and
  - Zoetis does not accept any liability arising from: (i) any data, materials or protocols provided by the Customer; (ii) any errors in any third party data; (iii) the Customer's failure to correctly collect, identify, store or deliver the Samples or complete the Order Form; and (iv) any other act or omission on or behalf of the Customer.
- 6.5. A claim by the Customer against Zoetis in connection with this Agreement must be notified to Zoetis within 12 months of the completion or delivery of the relevant Services.
- 6.6. To the extent permitted by law, the Customer 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 Customer 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, costs and expenses incurred by Zoetis as a result of any breach by the Customer of any provision of this Agreement.
- 6.7. This clause 6 shall survive expiration of this Agreement.
- 7. Default**
- 7.1 Zoetis may suspend or terminate the Agreement immediately by notice if:
- the Customer breaches a term of the Agreement or any other agreement with Zoetis (including failure to make payment on the date the payment is due) and fails to remedy the breach (if capable of remedy) within 7 days after notice to do so;
  - the Customer becomes insolvent or is adjudicated bankrupt or an application is made for its liquidation or a liquidator or receiver is appointed in respect of its assets;
  - the Customer enters into, or is likely to enter into, any composition or arrangement with its creditors;
  - the Customer no longer carries on business or threatens to cease carrying on business;
  - there is a change of ownership or effective control of the Customer or the nature of the Customer's business is materially altered; or
  - any other event occurs which Zoetis considers may materially adversely affect the ability of the Customer to perform any of its obligations under this Agreement.
- 7.2. Without prejudice to any other rights or remedies Zoetis may otherwise have, on expiry or termination of the Agreement, all moneys outstanding will be immediately due and payable. Payments by the Customer shall be applied in reduction of amounts owing by the Customer in such order as Zoetis determines.
- 7.3. The Customer shall 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 this Agreement.
- 7.4. Termination of the Agreement will not affect any obligations or rights of either party which will have accrued on or before termination.
- 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 Customer will own all rights, including Intellectual Property rights, in the 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 Customer in providing the Services to the Customer pursuant to this Agreement (**Reports**), provided, however, that Reports excludes any Zoetis Pre Existing IP; and
  - the Customer grants to Zoetis a perpetual, non-exclusive, royalty-free licence to use all Intellectual Property in:
    - the Reports for such research, development and commercialisation purposes as Zoetis sees fit; and
    - the Customer's Pre-Existing IP to the extent required for Zoetis to comply with its obligations under this Agreement.
- 9. Ownership and Use of Samples**
- 9.1 The parties acknowledge and agree that all Samples remain the property of the Customer.
- 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 Customer, but makes no commitment that they will be available for further testing. Unless the Customer 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 Customer 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 Customer 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 Customer's expense.
- 9.6. For the avoidance of doubt, Zoetis will not reimburse the Customer for any Samples that fail to produce a genotype.
- 10. Confidentiality**
- 10.1 In this clause 10, unless the context otherwise requires:
- Approved Purposes** means the purpose of this Agreement;
  - Confidential Information** means information of every kind: (i) concerning, or in any way connected with: (A) either party or a Related Company 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 Company 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; and includes, the Intellectual Property and any other intellectual property of either party; and
  - 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:
- maintain and take all steps necessary to maintain all Confidential Information and all Notes in strictest confidence;
  - use Confidential Information and Notes solely for the Approved Purposes;
  - not make Notes or allow Notes to be made except as necessary in connection with the Approved Purposes; and
  - 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:
- either party concerning Confidential Information which is publicly available; and
  - Zoetis in respect to profiles where the Customer has granted permission for the specific samples to be shared with other customers.
- 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. Additional Terms for Specific Tests**
- 11.1 To the extent the Services relate to the HP, SireTRACE®, or gene tests, the following additional terms apply:
- the Customer 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;
  - the Customer 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:
    - keep DNA information confidential and not disclose or use it for any reason without the Customer's prior written consent; and

- (ii) delete or destroy that information promptly after a request from the Customer's to do so; and
  - (c) the Customer 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.
- 11.2. To the extent the Services relate to Shepherd, LoinMAX, MyoMAX, Mannosidosis or Sheep Genomics, the Customer 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 Customer 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 Customer.
- 12. Data Protection and Privacy**
- 12.1 The Customer acknowledges that Zoetis may need to collect information and conduct security checks on the Customer, its employees and consultants 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 Customer will promptly provide copies of all such information relating to the Customer, its employees and consultants as Zoetis may request from time to time and the Customer must ensure that its employees and consultants will cooperate with the provision of such references and information to Zoetis.
- 12.2. Zoetis must comply with all relevant privacy laws or regulations with respect to the references and other personal information provided by the Customer.
- 12.3. The Customer:
- (a) acknowledges and agrees that Zoetis will collect, store, use and disclose any personal information provided by the Customer in accordance with Zoetis' privacy policy available at [www.zoetis.co.nz](http://www.zoetis.co.nz); 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.
- 13. No Assignment**
- 13.1. Neither party to this Agreement 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 this Agreement, in whole or in part, to any of its respective Related Companies or successors-in-interest. Any permitted assignee shall assume all obligations of its assignor under this Agreement.
- 14. Anti-bribery Warranties**
- 14.1 The Customer 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 Customer or for Zoetis and will not offer, promise, pay or authorise such an offer, promise or payment in the future.
- 14.2. The Customer agrees at all times to comply with Zoetis' Anti-Bribery and Anti-Corruption Principles available at [www.zoetis.co.nz](http://www.zoetis.co.nz).
- 15. Publications**
- 15.1. In any publication (including advertising and promotional material) relating to this Agreement or the Reports, Zoetis shall not publish individual results from testing without first obtaining the Customer's prior written consent.
- 16. General**
- 16.1. Each party must promptly, at its own cost, do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.
- 16.2. If anything in this Agreement is unenforceable, illegal or void, then it is severed and the rest of this Agreement remains in force.
- 16.3. This Agreement contains the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement.
- 16.4. To the extent there is an inconsistency between the provisions of the Agreement, the order of precedence will be these terms and then the Order Form.
- 16.5. Any waiver by Zoetis of a provision or right granted under these terms is only effective in writing and signed on Zoetis' behalf. Any failure or delay in exercising a right under these terms will not prevent Zoetis from exercising that right at another or later time.
- 16.6. Zoetis may vary these terms at any time in our discretion by updating them at [www.zoetis.co.nz](http://www.zoetis.co.nz)
- 16.7. Neither party shall be liable for any failure or delay in complying with any obligation imposed on that party under an 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.
- 16.8. The law of New Zealand governs this Agreement. The parties submit to the jurisdiction of the courts of New Zealand.