



Terms and Conditions

Please read carefully the terms and conditions printed below. By using the Services you are accepting the terms and conditions set out below and will be bound by them. No terms or conditions put forward at any time by the Customer shall form any part of the Agreement.

1. Definitions

1.1 The following expressions shall have the following meanings when used in these terms and conditions unless otherwise requires:

"Agreement"

means this agreement between TFSL / Hai Kang and the Customer for the supply of Services.

"TFSL"

means The Food Safety Laboratories Limited

"Hai Kang"

means Hai Kang Life Corporation Limited

"Customer"

means the person or persons with whom the Agreement is made. Where the Customer consists of more than one person, the obligations of those persons in respect of the Agreement shall be jointly and severally.

"Hong Kong"

means the Hong Kong Special Administrative Region.

"Intellectual Property"

means patents, trademarks, service marks, trade names, registered designs, designs, copyrights and other forms of intellectual or industrial property (in each case in any part of the world and whether or not registered or registrable and for the full period thereof and all extensions and renewals thereof and applications for registration of or otherwise in connection with the foregoing), know-how, inventions, formulae, confidential or secret processes and information, computer programs and software, and any other protected rights and assets, and any licences and permissions in connection with or relation to any materials and/or information provided for the Services;

"Price"

means the fees, charges, expenses, taxes and disbursements specified in the quotation/order form prepared by TFSL / Hai Kang to the Customer.

"Services"

means the non-exclusive services in respect of the testing for the presence of genetically modified organism to be provided by TFSL / HAI KANG for the Customer as described in Clause 2 hereof.

1.2 Unless the context otherwise requires:

- i. words importing one gender include both genders and the neuter;
- ii. words importing the singular include the plural and vice versa; and
- iii. references to persons include bodies, corporate or unincorporated.

1.3 The headings in the Agreement are for convenience only and shall not affect its interpretation.

2. The Services

2.1 TFSL / HAI KANG agrees to provide the Services to the Customer in accordance with the terms and conditions set out in the Agreement. TFSL / HAI KANG hereby undertakes to the Customer that it shall use its reasonable endeavours to provide the Services in accordance with normal industrial practice and standard.

2.2 All testing and technology supports are provided by Hai Kang.

2.3 The Customer shall agree TFSL or Hai Kang to subcontract services to other company if necessary.

2.4 In the event that any and all materials and/or items of equipment which are to be supplied by the Customer for the Services shall be delivered, assembled, maintained, dismantled and collected at the Customer's own cost and expense (for the avoidance of doubt, the Customer shall be fully responsible for all insurance premiums of all kind insurance policy whether fully insured to its full replacement value at the sole discretion of the Customer for its materials and/or equipment to be provided to TFSL / HAI KANG, and the Customer undertakes to fully indemnify and keep indemnified TFSL / HAI KANG against any and all claims, demands, losses, liabilities and proceedings from any parties in respect of damage, injuries or whatsoever resulting from the use, misuse or loss of such materials and/or equipment), and such supply shall be strictly in accordance with the requirements of the TFSL / HAI KANG.

2.5 To ensure statistical rigour in the results of the Services, each sample or material supplied by the Customer to TFSL / HAI KANG for the Services should conform to the recommended sample size and time limit as determined by TFSL / HAI KANG. In the event that the sample or material supplied by the Customer to TFSL / HAI KANG for the Services does not conform to the recommended sample size or specifications or the time limit, TFSL / HAI KANG shall not be responsible for and liable to any failure or delay in providing the result or any accuracy therein.

2.6 The result of the Services shall be limited only to the sample or material supplied by the Customer to TFSL / HAI KANG, but not be extended to any other samples or materials that have not been submitted to and tested by TFSL / HAI KANG.

2.7 Hai Kang may at its sole discretion to contract out some procedures that are involved in the Services to other laboratory or testing centre.

3. Warranties and Indemnities

3.1 The Customer shall provide TFSL / HAI KANG with all such information and/or materials within the time limit as requested by TFSL / HAI KANG to carry out the Services in accordance with Clause 2 hereinabove and the Customer hereby warrants that all information provided by it or on its behalf to TFSL / HAI KANG is accurate and without omission in all respects. The Customer further warrants that it will forthwith give TFSL / HAI KANG written notice of any hazards, known or suspected, that might potentially arise in the use or misuse of such materials in relation to the provision of the Services.

3.2 The Customer warrants that it has the absolute rights to use, exploit or disclose for the purposes of the Services all Intellectual Property.

3.3 The Customer shall fully indemnify and keep indemnified TFSL and Hai Kang, their employees, officers, advisors and agents against any and all actions, claims, demands, costs, charges and/or expenses incurred by or made against TFSL / HAI KANG, its employees, officers, advisors and/or agents in respect of any and all claims, losses, liabilities and/or damages as a result of any infringement or alleged infringement by the Customer of any Intellectual Property.

3.4 The Customer shall further fully indemnify and keep indemnified TFSL and Hai Kang, their employees, officers, advisors and agents against any and all claims, losses, liabilities and/or damages arising from the use or disclosure or exploit the result of the Services.

4. Limitation of Liability and Insurance

4.1 Save and except Clauses 3.3 and 3.4 hereof and in the case of personal injury (including death) caused by gross negligence or willful act or omission of either party, the aggregate liability of either party to the other arising out of any breach of any provision in the Agreement shall not exceed the Price.

4.2 In no event shall TFSL and Hai Kang be liable to the Customer for any direct, incidental, consequential, special or exemplary damages whatsoever (including, without limitation, damages for loss of business profit, sales or goodwill, business interruption, or other pecuniary loss) arising out of the Agreement, of the provision of or failure in provision of the Services or for any acts or negligence that are not reckless or intentional in nature.

4.3 TFSL and Hai Kang assumes no responsibility for the accuracy of results test from the provision of the Services and makes no warranties or representations of any kind with respect to the results of any tests conducted as part of the Services whether express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose. Customer agrees that use of the Services and the results thereof is at its own risk, and shall determine the fitness for purpose of the Services to be provided by TFSL and Hai Kang for the Customer's intended use, and the Customer shall assume all risk and liability in connection therewith. Neither TFSL and Hai Kang nor any party involved in conducting the Services shall be liable to any person for any direct, incidental, special, consequential, indirect or punitive damages arising out of the Services or the use of or reliance on the results of the Services, or any errors or omissions in the content thereof.

4.4 In the event any persons assigned or contracted by TFSL and Hai Kang to collect samples or materials shall not be responsible for checking integrity, type and quantity with that stated on the corresponding order form.

4.5 TFSL and Hai Kang shall not be responsible for any and all damage or loss in transit of the package and any and all samples or materials therein given or tendered by the Customer for the Services as contemplated in the Agreement. Moreover, TFSL and Hai Kang shall not be responsible for inspection or examination of the safety measures of the package and such samples or materials contained therein.

4.6 TFSL and Hai Kang will use its reasonable endeavours to meet the dates quoted, promised or requested for the provision of the Services but shall not be liable to make good any loss or damage howsoever arising (whether directly or indirectly) out of delay or in failure to make the availability of the Services or any part thereof.

5. Confidentiality

The receiving party of any and all information which is designated by the disclosing party as "confidential" shall (i) hold such information in strict confidence and prevent from any unauthorized copying, use, distribution, installation or transfer of possession of such information; (ii) restrict disclosure of such information to its employees, officers, directors, consultants, advisors and agents with a "need to know" (and advise such persons of the obligations assumed herein); (iii) use such information only for the Services; (iv) not, except as provided herein, disclose such information to any third party without prior written approval of the disclosing party; and (iv) protect such information by using the same degree of care (which shall be no less than reasonable care) to prevent its unauthorized disclosure as the receiving party uses to protect its own confidential information of a like nature.

The restrictions on the receiving party with respect to the use or disclosure of such information shall not be applied with respect to:

- (i) which is independently developed by the receiving party or its affiliates as evidenced by documentation in such party's possession; or
- (ii) which is lawfully received from another source free of restriction and without breach of this Agreement; or
- (iii) after it has become generally available to the public without breach of the Agreement by the receiving party or its affiliates; or
- (iv) which at the time of disclosure to the receiving party was already known to such party or its affiliates free of restriction as evidenced by documentation in such party's possession; or
- (v) which the disclosing party agrees in writing is free of such restrictions; or
- (vi) which is disclosed to any third parties by the disclosing party without breach of any obligation of confidentiality under the Agreement or
- (vii) Such disclosure is required by applicable laws, rules, regulations or other governmental requirements.

6. Invoicing and Payment Terms

6.1 Price shall be paid in full without any deduction whatsoever in accordance with the credit terms mentioned in the quotation issued by TFSL and Hai Kang.

6.2 Price shall be paid in Hong Kong currency unless otherwise TFSL / HAI KANG agrees to accept any other currencies of which the exchange rate shall be at the sole discretion of TFSL / HAI KANG.

6.3 All outstanding sums due from the Customer to TFSL / HAI KANG shall bear compounded interest at the rate of 2% per month.

7. Sample

7.1 TFSL / HAI KANG shall not be responsible for keeping any sample or material from the Customer after the result of Services has been delivered to the Customer, and the remaining samples or materials (if any) may be discarded at the sole discretion of TFSL / HAI KANG, however, the Customer shall promptly reimburse all costs and expenses incurred in discarding the remaining samples or materials in the event that such samples or materials shall be discarded by special means which leads extra cost to TFSL / HAI KANG.

7.2 TFSL / HAI KANG shall have the right to retain any sample or material from the Customer for any other uses in relation to or connection with the Services without having to further notify the Customer.

8. Publication

The results of the Services may be freely published by the Customer, but the Customer shall not make any reference to TFSL / HAI KANG without obtaining prior approval in writing of each reference in its context, but such approval shall not be unreasonably withheld or delayed.

9. Cancellation

The order for Services may be cancelled by the Customer before the sample or material is collected by any persons assigned or contracted by TFSL / HAI KANG as per the collection schedule. No cancellation can be made after the sample or material has been collected by such persons.

10. Waiver and Variation

10.1 No failure or delay by TFSL / HAI KANG in exercising any right, power or remedy under the Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any other right, power or remedy.

10.2 No variations of any provision of the Agreement shall be effective unless in writing and issued by TFSL / HAI KANG.

11. Legal Relationship

Neither parties shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf.

12. Notices

Each notice, demand, consent, approval or other communication given or made under the Agreement shall be in writing and delivered or sent to the relevant party at its address or facsimile number set out on the order form. Any such notice, demand, consent, approval or other communication shall be deemed to have been delivered (a) if given or made by letter, when actually delivered to the relevant address; and (b) if given or made by electronic mail transmission or facsimile, when despatched.

13. Dispute resolution

13.1 TFSL / HAI KANG and the Customer shall in good faith attempt to negotiate a settlement to any dispute between them arising out of or in connection with any provision of the Agreement.

13.2 If any such dispute cannot be resolved in accordance with the Clause 13.1 hereinabove, the dispute shall be submitted to jurisdiction of the courts of Hong Kong.

14. Governing Law

The Agreement shall be construed and governed in accordance with the laws of Hong

F0305 (12/2007)