



Terms of Supply by PHF Science

1. AGREEMENT TO SUPPLY

- 1.1 Unless a specific written agreement has been entered into between New Zealand Institute for Public Health and Forensic Science Limited ("**PHF Science**") and you (the Client), these Terms of Supply by PHF Science ("**Supply Agreement**") shall apply to any order issued by the Client to PHF Science for services ("**Services**"). Any terms and conditions of the Client shall have no legal effect and shall not constitute part of any agreement between PHF Science and the Client for the supply of Services specified in an order or otherwise described in any document or correspondence to which this Supply Agreement is attached or incorporated.
- 1.2 Any order issued by the Client for Services pursuant to this Supply Agreement shall only be deemed to be accepted when PHF Science issues a written acceptance of that order.

2. PRICE

- 2.1 The Client agrees to pay the price specified in the relevant purchase order or otherwise described in any document, form, or correspondence to which this Supply Agreement is attached or incorporated (**Price**). If no Price is specified, the Price will be that specified in any quotation provided by PHF Science and accepted by the Client. Unless otherwise stated, the Price will be exclusive of any GST.
- 2.2 Any additional work that is not expressly within the scope of the Services shall be paid for in addition to the Price at the rate normally charged by PHF Science for the consultancy staff providing the additional work or variation to work.
- 2.3 The Client will reimburse PHF Science for all disbursements and expenses reasonably incurred in the performance of the Services.

3. PAYMENT OF PRICE

- 3.1 If the payment arrangement for the Services (**Payment Term**) is on "Order", the Client shall pay PHF Science the Price in full (including GST) immediately upon demand being made by PHF Science to the Client.
- 3.2 If the Payment Term is "Cash", the Client will pay PHF Science the Price in full (including GST) immediately upon completion of the Services by PHF Science.
- 3.3 If the Payment Term is on "Account", payment of the Price in full (including GST) and without deduction or set off is due on the 20th of the month following the date of issue of an invoice, or as otherwise set out in writing by PHF Science and notified to the Client.
- 3.4 In all cases, default interest of 4% above the prevailing ANZ base lending rate shall be payable monthly from the date payment is due until payment is received by PHF Science.
- 3.5 PHF Science may withhold delivery of any or all of the Services and take or retake possession of any reports produced by PHF Science if the Price and/or any other money is outstanding under this Supply Agreement after payment is due.
- 3.6 The Client will pay PHF Science on demand all of PHF Science's costs and expenses arising from any delay or default in payment of the Price by the Client including without limitation agency collection fees and expenses and all legal fees.

4. PERFORMANCE

- 4.1 PHF Science warrants that it shall perform the Services in a competent and professional manner. If any Services provided by PHF Science are materially defective then the Client shall promptly provide PHF Science with notice detailing the relevant defect. If that defect is due to PHF Science's breach of this Supply Agreement, PHF Science shall, where possible, remedy such defect at no additional cost to the Client. Except as provided in this clause 4.1, PHF Science shall have no liability to the Client in respect of the Services and excludes any terms and conditions implied by law.
- 4.2 PHF Science is authorised to act as the Client's agent in performance of the Services.
- 4.3 PHF Science may use and integrate the work of third parties in the performance of the Services, but shall not, unless the relevant third party is a subcontractor or agent of PHF Science, be responsible for the performance of third parties.

5. LIABILITY

- 5.1 Neither party shall be liable for any indirect or consequential loss or damage, or any loss of profits or revenue, arising out of or in connection with this Supply Agreement.
- 5.2 Subject to clauses 4.1 and 5.1, each party's total aggregate liability under or in connection with this

Supply Agreement, whether in contract, or tort (including negligence) or otherwise, will not exceed an amount equal to the Price paid and payable under this Supply Agreement.

6. INTELLECTUAL PROPERTY

- 6.1 Upon the later of completion of the Services and payment of the Price and/ or any other money outstanding under this Supply Agreement, any report generated for the Client by PHF Science as part of the Services shall become the exclusive property of the Client and PHF Science hereby assigns all rights in and to that intellectual property.
- 6.2 The Client grants PHF Science a non-exclusive and royalty free licence to any Client intellectual property to the extent necessary for PHF Science to perform the Services.
- 6.3 Both parties shall retain ownership of all intellectual property owned prior to entry into this Supply Agreement or developed independently to this Supply Agreement and any modifications or improvements to that intellectual property.
- 6.4 Unless agreed to the contrary by the parties in writing and subject to clause 6.1, all intellectual property which arises out of or in the course of provision of the Services shall be the sole and exclusive property of PHF Science. The Client shall execute any and all such documents to give effect to this clause.
- 6.5 PHF Science warrants that, to the best of its knowledge, its performance of the Services does not and will not infringe or violate in any way the rights, including intellectual property rights, of any person.
- 6.6 For the purposes of this Supply Agreement “intellectual property” means all intellectual property whether or not proprietary in nature, and whether or not rights to such property are registered or registerable, including, but without limitation property or rights arising from, constituted or recognised by any Act of law or of equity, and for the purposes of this Supply Agreement include without limitation trade secrets, confidential information, data, programmes, software, document formats and know-how.

7. TE TIRITI

- 7.1 The parties will ensure that cultural, Te Tiriti, and Māori matters are properly taken into consideration when undertaking any activities relating to this Supply Agreement. PHF Science and the Client acknowledge:
 - (a) the importance and validity of Mātauranga Māori and Kaupapa Māori;
 - (b) that Mātauranga Māori and Kaupapa Māori are kept and treated as proprietary by whanau, hapū and iwi; and
 - (c) neither party has any rights to Mātauranga Māori or Kaupapa Māori.
- 7.2 If a party to this Supply Agreement intends to use Mātauranga Māori or Kaupapa Māori in connection with this Supply Agreement, that party will:
 - (a) consult with the relevant whanau, hapū or iwi to reach kotahitanga (consensus) in writing on how that Mātauranga Māori or Kaupapa Māori will be used, including in any potential new intellectual property or publication; and
 - (b) subject to the kotahitanga reached above, where that Mātauranga Māori or Kaupapa Māori is to be used to be communicated with any third party (either verbally or in writing), it will be accompanied by an explicit acknowledgement of the contributing whanau, hapū or iwi.

8. CONFIDENTIALITY

- 8.1 For the purposes of this clause, “**Confidential Information**” means all information that by its nature could reasonably be considered to be confidential, including but not limited to: (a) any secret process or formula, trade secret, list of customers or suppliers, business statistics, or any other information which is within or may come to a party's knowledge concerning the other party, its employees, methods, business or finances, its customers or clients and their identity, and its administration or operation; or (b) an any form of intellectual property right or proprietary interest of either party, whether registered or not.
- 8.2 Both parties shall: (a) only use the other party's Confidential Information for the purpose of providing or receiving the benefit of the Services; (b) not disclose any Confidential Information belonging to the other party to any person or third party, other than to a person, entity, or third party authorised by the disclosing party in writing to receive it; and (c) take reasonable steps to safeguard the other party's Confidential Information, including observing all of the other party's notified security requirements.
- 8.3 The restrictions in clause 8.2 shall not apply to the extent that:
 - (a) Confidential Information belonging to the disclosing party enters the public domain through no fault of the receiving party;
 - (b) the receiving party independently develops information without recourse to the disclosing party's Confidential Information;
 - (c) the Confidential Information is obtained from a third party who is lawfully in possession of the information and is not under any obligation of confidentiality;

- (d) the disclosing party consents in writing to the disclosure; or
 - (e) the disclosure is required by law or any Government Agency, any minister of the Crown or parliamentary officer or body, provided that the party required to disclose the Confidential Information belonging to the other party must, where lawful and practicable to do so, notify the disclosing party of such requirement and liaise with that party regarding that requirement prior to disclosure.
- 8.4 On completion of delivery of the Services, each party shall:
- (a) immediately, at the other party's request, securely destroy or deliver up to that other party all of that other party's Confidential Information; and
 - (b) except as required by law, not retain possession or control of any copies or extracts of the other party's Confidential Information without the express written approval of the other party.

9. FORCE MAJEURE

- 9.1 PHF Science will not be liable to the Client for any failure or delay in performance of this Supply Agreement due to any circumstance reasonably beyond the control of PHF Science.

10. DISPUTE RESOLUTION

- 10.1 Any dispute arising under this Supply Agreement whether as to interpretation of any provision of this Supply Agreement, or to its application shall be dealt with:
- (a) by direct negotiation between the parties; or failing such agreement;
 - (b) by mediation in terms of the Resolution Institute standard mediation agreement; or failing such agreement;
 - (c) where both parties agree in writing, arbitration by such person as the parties may agree upon, or failing such agreement, by such person as shall be appointed by the President of the New Zealand Law Society. Such arbitration shall be conducted in accordance with the Arbitration Act 1996.
- 10.2 Each party will pay its own costs of mediation or arbitration under this clause 10.

11. GENERAL

- 11.1 PHF Science may assign or transfer all or any of its rights and obligations under this Supply Agreement to anyone else, without obtaining the Client's consent provided that the assigning party agrees to be bound by the terms of this Supply Agreement. Notice of assignment will be provided to the Client. The Client may not assign or transfer any of its rights or obligations under this Supply Agreement to anyone else unless PHF Science provides its prior consent in writing.
- 11.2 PHF Science is in all respects an independent entity contracted by the Client to provide the Services described in this Supply Agreement. This Supply Agreement does not create an employment, fiduciary, partnership, agency or joint venture relationship between the parties.
- 11.3 No modification, variation or waiver of this Supply Agreement will be effective and binding on the parties unless made in writing and signed by each party.
- 11.4 This Supply Agreement records the full agreement between the parties concerning the Services to be provided by PHF Science and supersedes any agreement, written or oral, or product of past practice, existing between the parties.
- 11.5 Each term of this Supply Agreement is separately valid and binding. If for any reason either party cannot rely on any term, all other terms will remain valid and binding.
- 11.6 No failure, delay or indulgence by either party in exercising any power or right conferred on that party by this Supply Agreement will operate as a waiver of such power or right.
- 11.7 This Supply Agreement shall be governed and interpreted in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.