

General Terms & Conditions



1. AGREEMENT TO SUPPLY GOODS AND SERVICES BETWEEN YOU AND US

These Terms of Supply, together with:

- (a) each Schedule provided to You by Us, whether signed or not; and
- (b) any Special Conditions specific to the type of Equipment provided to You for the service,

set out the terms of the agreement (the "Agreement") between You and Us. The provision or acceptance of a Schedule shall not form a separate agreement between You and Us, but shall constitute part of this Agreement. Any terms contained in any document supplied by You, including any terms on Your purchase order, will not form part of the Agreement. In these Terms of Supply:

"Additional Charges" means the additional charges that may apply in certain circumstances as set out in the Schedule.

"Charges" means the costs and charges for:

- (a) the hire or purchase (as applicable) of Equipment and Materials; and
- (b) the Services

as set out in the Schedule.

"Daily Progress Report (DPR)" means the report provided under clause 3.1.

"Equipment" means the equipment specified in the Schedule.

"Expected Off Hire Date" means the date you advise us at the commencement of the hire that you would no longer require the equipment. This date is set out in the hire schedule.

"Force Majeure Event" means an event that means any event that causes a failure or delay in the performance of a party's obligations under this Agreement that: i. would otherwise constitute a breach of this Agreement; ii. is caused, directly or indirectly, without fault by such party, by fire, flood, earthquake, elements of nature or acts of God, strikes, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, quarantines, embargoes and other similar governmental action, or any other similar cause beyond the reasonable control of such party iii. could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans or other means.

"GST" means any tax imposed by or through the GST Law on a supply (without regard to any input tax credit) including, where relevant, any related interest, penalties, fines or other charges to the extent they relate to a supply under this Agreement.

"GST Law" means A New Tax System (Goods and Services Tax) Act 1999 (Cth) (and any related tax imposition act).

"Materials" means any consumables used in the operation of the Equipment or in the performance of the Services.

"Minimum Period" means any minimum period for which the Equipment and/or Services are to be provided as notified to You under clause 2.4.

"Proposed Service Period" means the anticipated period for which the Equipment and/or Services are to be provided as specified in the Schedule.

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“Personnel” means and includes the parties’ employees, agents and contractors (including, where appropriate, its directors and officers).

“Related Bodies Corporate” bears the meaning given to that term in the Corporations Act 2001.

“Services” means the services specified in the Schedule to be carried out by our Personnel.

“You” or “Your” means the customer named in the Schedule.

“Us” or “We” means BioKem Oil Services Pty Ltd ACN 155 205 815

Section 1 – Hire

2. PROPOSED SERVICE PERIOD

2.1. The Proposed Service Period commences when the Equipment arrives at Your site.

2.2. The Proposed Service Period is for an agreed term specified in the Schedule and ends when the Equipment has been off hired and or demobilised according to the Daily Progress Reports

2.3. The Proposed Service Period includes weekends and public holidays.

2.4. A Minimum Period may apply in respect of certain items or Equipment as set out in any proposal or other material provided to You. If You return the Equipment to Us or otherwise seek to terminate this Agreement before the expiration of the Minimum Period, You are required to pay all Charges in respect of the Minimum Period.

3. HOW WE CALCULATE YOUR CHARGES

3.1. Each day during the Proposed Service Period, We shall provide to You, by email, a daily summary (Daily Progress Report) setting out the following with respect to the Services performed that day:

(a) the cost of the Equipment and Materials used;

(b) the cost of the Personnel (including sub-contractors if any);

(c) the costs of consumables and laboratory testing;

(d) the cost of accommodation, mobilisation and demobilisation;

(e) comments and notes regarding the Services, including where applicable outcomes, events, results, SimOps, delays, wins/delays, assistance to sit.

3.2. You must, no later than 48 hours following the date on which we notify You of the Daily Progress Report notify Us by email:

(a) that You agree to the Charges set out in the Daily Summary Report; or

(b) provide details of any discrepancy or dispute with respect to the Daily Progress Report.

3.3. All matters, including Charges and Additional Charges, set out in the Daily Progress Report are deemed to have been accepted by You unless advised otherwise within the time specified in clause 3.2.

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3.4. Upon receipt of a notice from You under clause 3.2(b), the parties shall immediately meet (in person or by telephone) to discuss and resolve the discrepancy or dispute. If the discrepancy or dispute is unable to be resolved by the parties within 2 Business Days of such meeting.

3.5. We may, at our sole discretion, suspend the Services until We have received from You:

(a) a copy of the Daily Summary Report certifying that You agree to the Charges and any Additional Charges; or

(b) any discrepancy or dispute in respect of the Daily Summary Report is resolved In the event that we suspend the Services, You will continue to be liable for the costs incurred by us, including any penalties due to a sub-contractor and any costs relating to 3rd party hireage or otherwise use of any Equipment and Materials. You will pay Us at the Charge set out in the Schedule.

3.6. The Schedule will specify the applicable charges which will apply under this Agreement and their associated rate and method of calculation.

3.7. Additional Charges as set out in the Schedule will apply should additional equipment or consumables be required or the quoted number of days exceeded.

3.8. You will be charged for the Equipment for the full Proposed Service Period. For the avoidance of doubt, You must continue to pay the Charges and other charges after the Expected Off Hire Date if You have not returned the Equipment to Us by the Expected Off Hire Date (needs to be defined in terms of service). This obligation survives termination of the Agreement.

4. OTHER CHARGES

4.1. In addition to the Charges, You agree to pay:

4.2. for any Materials (including consumables, fuel or trade materials) We supply to You;

4.3. if You require Us to deliver, collect or install the Equipment, the cost of delivery, collection or installation, as detailed in the Schedule. Such charge may include a waiting fee (charged at cost) in addition to the delivery and collection fee if the nominated time for delivery or collection of the Equipment is delayed by You.

4.4. our expenses associated with refilling of fuel tanks;

4.5. any stamp duty or GST arising out of this Agreement;

4.6. any other applicable levies, fines, penalties and any other government charges arising out of Your use of the Equipment;

5. PAYMENT

5.1. You must pay all Charges and any other fees, charges and costs that become due and payable under this Agreement within 30 days after the end of month.

5.2. If You do not pay the invoice in full by the payment due date, We may charge, in addition to any other costs recoverable under this Agreement:

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(a) interest, calculated monthly, on the total outstanding balance. The interest rate used to calculate the interest payable for the month is the 90-day Bank Bill Swap Rate published on the first business day of that month plus 2%; and

(b) any costs and expenses (including any commission payable to any commercial or mercantile agents and legal costs) incurred by Us in recovering any unpaid amounts under this Agreement.

5.3. We are entitled to set off against any amount We owe You any amount owed to Us by You or any amount owed to Us by any of Your Related Bodies Corporate.

6. YOUR OBLIGATIONS TO US

6.1. This Agreement is personal to You and You must not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time, unless expressly agreed by Us in writing.

6.2. You must:

(a) not in any way alter, modify, tamper with, damage or repair the Equipment without Our prior written consent;

(b) not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment;

(c) provide all utilities including light, water and power including suitable 3 phase 200FLA connection or suitable genset; and

(d) comply with any instructions or directions provided to You by Us and any manufacturer's instructions for the safe use, handling, maintenance, cleaning or storage of the Equipment and any Materials.

6.3. At all times during the Proposed Service Period, You must store the Equipment safely and securely.

6.4. Whenever You are moving the Equipment, You must ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines. You (or any contractor You engage) must observe any safety directions advised by Us and/or the manufacturer of the Equipment to ensure its safe loading and handling.

6.5 For the avoidance of doubt, where the Equipment is damaged to the extent that it becomes unusable or inoperable as a result of misuse, negligence or failure to comply with these Terms of Supply, in addition to compensating Us for the cost of repair or replacement of the Equipment (as applicable), You remain liable to pay Us for the cost of hire for at least the Minimum Period.

7 OWNERSHIP OF THE EQUIPMENT

7.1. Except as detailed in clause 7.4, You acknowledge that We own the Equipment and in all circumstances, We retain title to the Equipment (even if You go into liquidation or become bankrupt during the Proposed Service Period). Your rights to use the Equipment are as a bailee only.

7.2. You are not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way.

7.3. In no circumstances will the Equipment be deemed to be a fixture.

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7.4. You acknowledge that We may hire or lease Equipment from a third party if we cannot provide the Equipment to You ("Third Party Owner"), and if this occurs, title in the Equipment remains with the Third Party Owner.

8. RESPONSIBILITY FOR THE EQUIPMENT

You are responsible for any loss, theft or damage to the Equipment from any and every event whatsoever and howsoever and by whosoever caused during the Proposed Service Period except to the extent that any such loss, theft or damage was caused by Our actions.

9. TERMINATION OF AGREEMENT

9.1. Either party may terminate this Agreement and any Proposed Service Period immediately by giving notice to the other party, if:

- (a) that other party breaches any term of the Agreement and fails to remedy the breach within 7 days of written notification of the breach; or
- (b) that other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.

9.2. Termination of this Agreement shall not affect a party's rights in relation to any claim it has or holds, including in respect of any breach of this Agreement by the other party which occurred prior to the termination, or in respect of the payment of monies due and owing to it under this Agreement.

9.3. Upon termination of this Agreement:

- (a) we shall cease to perform the Services; and
- (b) You must cease using the Equipment and take reasonable steps to assist in the return of the Equipment to us, including making the Equipment available for collection.

10. RECOVERY OF THE EQUIPMENT

If You are in breach of the Agreement or if the Agreement or a Proposed Service Period has been terminated under clause 9, We may, at Your cost, take all steps necessary (including legal action) to recover the Equipment, including entering Your premises to do so and You expressly consent to Us entering Your premises for the purposes of recovering Our Equipment.

11. DELIVERY

11.1 Clauses 11 and 12 apply only to any Equipment that We sell to You and not to any hire of Equipment.

11.2 Unless otherwise agreed in writing by Us, delivery of the Equipment will take place at the address for delivery stated in any purchase order or otherwise agreed between the parties.

11.3 Any dates specified by Us for delivery of the Equipment are intended to be an estimate and time for delivery will not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.

11.4 Subject to the other provisions of these conditions We will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the

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delivery of the Equipment (even if caused by Our negligence), nor will any delay entitle You to terminate or rescind this agreement unless such delay exceeds 180 days and in that event, termination will be Your sole remedy.

11.5 If for any reason You fail to accept delivery of any of the Equipment when it is delivered, or We are unable to deliver the Equipment on time because You have not provided appropriate instructions, documents, licences or authorisations:

- (a) risk in the Equipment will pass to You (including for loss or damage caused by Our negligence);
- (b) the Equipment will be deemed to have been delivered.

11.6 You will provide at the delivery address and at its expense adequate and appropriate equipment and manual labour for unloading the Equipment.

11.7 We may deliver the Equipment by separate instalments. Each separate instalment will be invoiced and paid for in accordance with the provisions of these Terms. Each instalment will be a separate contract and no cancellation or termination of any one contract relating to an instalment will entitle the Buyer to repudiate or cancel any other contract or instalment.

11.8 The quantity of any consignment of Equipment as recorded by Us on dispatch from Our place of business will be conclusive evidence of the quantity received by You on delivery unless You can provide conclusive evidence proving the contrary.

11.9 We will not be liable for any non-delivery of Equipment (even if caused by Our negligence) unless You give written notice to Us of the non-delivery within 2 days of the date when the Equipment would in the ordinary course of events have been received.

11.10 Notwithstanding anything else in these Terms, Our liability for non-delivery of Equipment will be limited to replacing the Equipment within a reasonable time or issuing a credit note for such Equipment.

12. RISK/TITLE

12.1 The Equipment is at Your risk from the time of delivery.

12.2 Ownership of the Equipment will not pass to You until We have received in full (in cash or cleared funds) all sums due to Us in respect of:

- (a) the Equipment; and
- (b) all other sums which are or which become due to Us from You on any account.

12.3 Until ownership of the Equipment has passed to You, You will:

- (a) have no right or claim to any interest in the Equipment to secure any liquidated or unliquidated debt or obligation We owe to You;
- (b) not be able to claim any lien over the Equipment;
- (c) hold the Equipment on a fiduciary basis as Our bailee and owe Us the duties and liabilities of a bailee;
- (d) store the Equipment (at no cost to Us) separately from all Your other goods or any third party goods in such a way that it remains readily identifiable as Our property;

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- (e) You will not deliver it or any document of title to the Equipment to any person except as directed by Us;
- (f) not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and
- (g) maintain the Equipment in satisfactory condition and keep it insured on Our behalf for their full price against all risks to the reasonable satisfaction of Us. On request You will produce the policy of insurance to Us.

13. PRIVACY

Copies of Our Privacy Policy and Credit Reporting Policy are available upon request or visit www.biokem.com.au.

14. BENCHMARKING

14.1. You agree that data from various metrics may be collected and compared to analogous assets as part of a benchmarking service. The collation of data will be held by Us for the purposes of benchmarking. Your identity shall be held in confidence, but We reserve the right to publish and disseminate general information and data collected to other parties using the benchmarking service.

14.2. This confidentiality clause will remain in effect in perpetuity unless or until You give Us written notice indicating permission to release confidential information as part of the benchmarking service.

15. FORCE MAJEURE

15.1. An obligation of a party to this Agreement shall be suspended during the time and to the extent that the party is prevented from or delayed in complying with that obligation by a Force Majeure Event. In order to avoid any doubt, the party must comply with all other obligations.

15.2. If a Force Majeure Event continues for a period greater than 30 days the other party may terminate this Agreement and such termination shall be deemed to not be due to breach of this Agreement by the party affected by the Force Majeure Event.

15.3. Nothing in this clause 15 limits or excludes any: (a) obligations relating to any payment due by You to Us under this Agreement; (b) Your responsibility and liability under the Agreement for Equipment that is lost, stolen or damaged beyond fair wear and tear during the Service Period, or has broken down or become unsafe to use as a result of Your conduct or negligence.

16. LIMITATION OF LIABILITY

16.1. Other than as expressly stated in this Agreement or as required by law, We do not give any express or implied warranties or representations in respect of the Equipment or the Services. All statutory or implied conditions and warranties are excluded to the maximum extent permitted by law.

16.2. Except as otherwise provided in this Agreement, neither party will be liable to the other under this Agreement for any consequential or indirect loss, including loss of profit or anticipated profit, loss of reputation, loss of goodwill or loss of business opportunity, whether arising in contract, tort (including for negligence), under statute or on any other basis in law nor any punitive or exemplary damages, on account of any breach of this Agreement.

16.3. To the extent permissible by law:

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(a) Our liability to You under this Agreement is capped to the total value of the relevant purchase order (under which the relevant Equipment or Services to which the liability relates was supplied);

(b) We are not responsible for any recommendations or advice given to you, except where such recommendations or advice form part of the Services we provide to you (and You expressly acknowledge that you have not relied on any recommendations or advice given by us, except to that extent).

17. GST

17.1. Any reference in this clause to a term defined or used in the GST Law is, unless the context indicates otherwise, a reference to that term as defined in the GST Law.

17.2. Unless otherwise specified all amounts stated are exclusive of GST.

17.3. You must pay to Us, in addition to any amounts payable under this Agreement, a further amount equal to those amounts multiplied by the statutory rate of GST prevailing at the time of payment.

18. SEVERABILITY

If any part of this Agreement becomes void or unenforceable for any reason, then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

19. GOVERNING LAW

This Agreement is governed by the laws of Queensland and each party submits to the non-exclusive jurisdiction of the courts of that State in respect of any proceedings arising in connection with the Agreement. Each party waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

20. ENTIRE AGREEMENT

The Agreement comprises the entire agreement between the parties. No additional terms and conditions (including any terms contained in any purchase order supplied by You) apply to the use of the Equipment unless the Agreement is varied in accordance with clause 20.

21. NO RELIANCE

You acknowledge that neither We nor any person acting on Our behalf have made any representation or other inducement to You to enter into the Agreement and You have not entered into the Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations contained in this Agreement.

22. VARIATION

We may wish to vary this Agreement. If We intend to do so, We will give You 28 days' written notice of our varied terms. If You have reasonable grounds to believe the change will be detrimental to Your rights, You may terminate this Agreement without penalty within 28 days of receiving Our written notice. Any other variation of the Agreement must be agreed in writing by You and Us within seven days.

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23. ETHICS AND CONFLICTS OF INTEREST

21.1 You shall not, and shall ensure that neither your Personnel or Related Bodies Corporate shall, directly or indirectly:

(a) pay salaries, commissions, or fees, or make payments or rebates to any of Our Personnel;

(b) favour Our Personnel with gifts or entertainment of significant cost or value, or with services or goods sold at less than full market value; or

(c) enter into business arrangements with our Personnel, except to the extent such Personnel are properly and duly acting in their capacity as Our representatives with respect of these Terms of Supplys or any purchase order.

21.2 Neither You, nor Your Related Bodies Corporate, shall engage in any behaviour or encourage action by Your Personnel that is contrary to any applicable laws.

21.3 You warrant that You have appropriate policies and procedures in place to deter or prevent any illegal activities, including but not limited to any activities in furtherance of bribery, corruption or money laundering and agree to promptly notify Us in writing in the event that You discover that any of Your Personnel or Related Bodies Corporate have taken, in connection with these Terms of Supplys or any purchase order, any such action.

21.4 You agree that during the duration of these Terms of Supply or any purchase order, and for a period of 12 months thereafter, You shall not seek to solicit or induce any of Our Personnel to leave their engagement or employment with Us.