



# TERMS OF TRADE

## 1 Definitions

In these Terms, unless the context otherwise requires:

**"Business Day"** means any day other than a Saturday, Sunday, or a statutory public holiday in Hamilton, New Zealand.

**"GST"** means goods and services tax as defined in the Goods and Services Tax Act 1985.

**"Intellectual Property"** means all intellectual property and associated rights and interests (including common law rights and interests) of any kind anywhere in the world whether or not registered or able to be registered including copyright, patents, trademarks, trade names, service marks, know how, trade secrets and techniques, URLs, websites, internet addresses and telephone numbers, design application and rights and algorithms.

**"Order"** means an accepted Order Form, per clause 2(d).

**"Order Form"** means an order submitted by you to Hills via telephone, post, email or Website or the submission of a sample for the purchase of Services.

**"Price"** means the total amount payable by you for the Services including all delivery costs (including freight and carriage by any means), import/export costs, insurance costs, and any other fees, surcharges or other charges payable by you.

**"Price List"** means the current list of prices for our Services which will be quoted to you by Hills. Prices are available by calling 0508 HILL LAB (0508 44 555 22).

**"Privacy Policy"** means our privacy policy as published on our Website from time to time.

**"Services"** means any services provided by us to you and includes without limitation any related or associated services, fees or charges from us to you.

**"Terms"** means these Terms of Trade (as amended from time to time).

**"We", "us", "our" and "Hills"** means RJ Hills Laboratories Limited, New Zealand registered company no. 537931, and its agents, successors or assigns.

**"Website"** means the website operated by Hills from time to time.

**"You"** and **"your"** means the person(s) or entity(ies) named as the customer on the Order Form.

## 2 Supply of Services

- Hills shall supply the Services to you and you will purchase the Services from Hills in accordance with these Terms.
- By placing an Order Form with Hills, you are deemed to have accepted these Terms without amendment.
- We will treat any person holding themselves out as your agent, employee, contractor or representative as authorised by you to submit an Order Form.
- A binding contract is deemed to be formed between us when we accept your Order Form ("Order"). Once this occurs, you may not cancel or reverse your Order unless otherwise provided in these Terms.
- You may not transfer your responsibilities under these terms to any other party unless you obtain our prior written approval.

## 3 Customers

- You are required to provide personal information when requesting our Services via telephone, email or through our Website. This includes name, email address, contact phone number and physical address.
- You authorise us to collect, retain and use any information about you in accordance with these Terms and our Privacy Policy.

## 4 Price

- Unless otherwise agreed by us, the Price of the Services we supply you will be as specified in the Price List.
- The Price List is in New Zealand dollars and is exclusive of GST unless specifically stated otherwise. You will pay all applicable GST in addition to the Price.
- We reserve the right to increase the List Prices to reflect increases in costs to Hills to provide the services.
- If a quote is provided, it is available to be accepted for a maximum of 30 days from the date of the quote (unless otherwise stated in the quote).
- Any quotes or special discounts are confidential and for the company or person quoted to only. They are not available or transferrable to another customer unless expressly stated in writing by Hills. We reserve the right to withdraw any special discounts or arrangements at any time without any reason.

## 5 Credit Accounts

- If you are a regular customer, you can apply for a credit account with us.
- We may require you to fill in a credit application form prior to your results being released and credit granted.
- The credit account will be up to a maximum credit limit as decided by us. We may at any time without reason or notice to you, increase or decrease the amount of credit we supply to you, or terminate or suspend any credit arrangement we have with you.
- We reserve the right to refuse credit.
- If the credit limit is exceeded, results may be delayed until payment is made on the account.
- Provision of a credit facility may require additional security from you in the form of personal guarantees. If required by Hills, the Customer will take necessary steps to implement the personal guarantees, and complete the personal guarantee form including additional terms of trade.

## 6 Payments

- You must pay, without deduction or set-off, the amount set out in the invoice issued by Hills for the relevant Order.
- Any deposit required by us must be received by the due date we specify and, unless otherwise specified, is non-refundable. We will not supply the Services or begin work until such time as the deposit is received by us.
- We reserve the right to require that payment of the Price be made in advance for any Services, or prior to the release of any results and may refuse to undertake any further Services without prepayment.
- In cases where Hills has agreed that payment in advance is not required, full payment of the Price will be required on the 20th of the month following the date of invoice, which will be sent with the results to the location and by the method specified by you in your Order Form.
- Payment may be made by direct credit or credit card. Cheques will not be accepted after 1 January 2021.
- We reserve the right to charge you for any bank charges associated with processing your payment (e.g. foreign currency charges, credit card fees etc.).
- You may request that we invoice a third party for payment of our Services. We may charge a \$25 plus GST re-invoicing fee which will be added to your invoice. We will not release results for the Order until both you and the third party have signed an approval form for re-invoicing to occur.
- If the service is cancelled by you after Hills has commenced the testing, you will be liable for payment for our cost of providing that service up to the date of cancellation.
- If you, in good faith, dispute any portion of an invoice amount, you shall pay the invoice in full in accordance with clause 6 and give notice of that dispute to Hills. That notice shall state the basis of the dispute and give relevant supporting details. The disputed invoice shall be determined in accordance with clause 15(f).

## 7 Overdue Accounts

- Without prejudice to our other rights and remedies under these Terms or at law, if you fail to make payment of any amount due to us by the due date, we may:
  - take immediate action to recover overdue debt;
  - withhold further results until payment is received;
  - cancel or suspend the Order and/or future Orders;
  - suspend or terminate any provision of credit;
  - take action against you or any guarantor to recover any amount you owe us;
  - charge interest on the amount owing at the rate of 1.5% per month or part month from the due date for payment until payment is received in full (both prior to and following any judgment obtained);
  - cancel any rebates or discounts (whether or not previously credited); and
  - recover from you any amounts incurred in recovering any amount owing by you to Hills, including legal and collection costs.

## 8 Data

- a) Hills will retain title to any analysis, results, reports produced by Hills until all amounts have been paid by you.
- b) The Customer who has paid the Price for the Order has the primary right to a copy of the results of that analysis requested in the Order.
- c) Hills will be entitled to store, use, publish or otherwise deal with all analysis, results or reports so long as Hills does not identify the Customer, except where required by law.
- d) When Hills is required by law or authorised by contractual arrangements with the Customer to release any analysis, results, reports or other confidential information, the customer shall be notified of the information provided, unless prohibited by law.

## 9 Delivery

- a) Delivery of the results shall be made by us to the location and by the method specified by you in the Order Form.
- b) Delivery of the results shall be deemed to be made to you when the results are first dispatched from Hills, collected by you or your agent, successfully transmitted to your email address or made available to your online account on the Website. All carriers, including couriers, are deemed to be your agents.
- c) Any timeframes set out in an Order Form or advised by Hills are an estimate only. Hills will use reasonable endeavours to supply the Services by the delivery date specified in the Order Form. However, Hills will not be liable for any costs, losses, damages or claims in relation to any failure or delay in supply and you are not entitled to terminate an Order or these Terms due to any failure or delay in supply. If we are unable to deliver the Services due to any action or inaction by you, then we will be entitled to charge a reasonable fee for re-delivery of the Services at a later date and time.

## 10 Warranty and Liability

- a) Notwithstanding any other provision of these Terms, under no circumstances will we be liable for any loss of income or profits or any consequential, indirect or special damage or injury of any kind suffered by you or any other person.
- b) You acknowledge that we are not liable for any error, non-performance or breach of any of our obligations to you under these Terms as a direct or indirect result due to a cause outside of our control, or on the basis of erroneous or faulty information and/or samples provided by you to Hills.
- c) To the extent that our liability is not otherwise limited or excluded, and to the fullest extent permitted by law, our aggregate liability to you whether in tort (including negligence), contract, indemnity or otherwise arising from the relationship between the parties, for any loss, damage or injury arising directly or indirectly in relation to the Services we supply you, or any other breach of our obligations under these Terms is limited to the Price paid by you for the affected Services in the relevant Order.
- d) To the maximum extent permitted by law:
  - (i) you agree not to make and waive any right to make, any claim against us under sections 9, 12A and 13 of the Fair Trading Act 1986 and you agree this is fair and reasonable; and
  - (ii) you acknowledge that if you acquire our Services for a business purpose, the provisions of the Consumer Guarantees Act 1993 shall not apply.

## 11 Termination

- a) We may cancel or suspend these Terms including the Services (or any part of the Terms) if:
  - (i) you breach any provision in these Terms; or
  - (ii) Hills believes the Order to be fraudulent or constitutes a misuse of a promotional or marketing activity or where an error has occurred including but not limited to errors relating to pricing; or
  - (iii) you fail to pay any amounts due to us on or before the due date for payment; or
  - (iv) you seek relief under any insolvency or bankruptcy law; or
  - (v) a Force Majeure Circumstance occurs before the Services are fully performed.
- b) Termination of an Order:
  - (i) is without prejudice to any other right, power or remedy under these Terms, at law, or otherwise, that Hills has in respect of a default by you; and
  - (ii) shall not terminate any clauses which are intended to survive termination of these Terms.
- c) If we do cancel, suspend, withdraw or restrict our Services, we accept no liability for any resulting damages or costs suffered by you, however we will refund the Price to you (where it has already been paid) unless you are in breach of these Terms.

## 12 Privacy and Confidential Information

- a) Any personal information that you provide will be subject to our Privacy Policy.
- b) We agree not to disclose your personal information for purposes other than the purpose for which it was collected unless permitted to do so by law.
- c) You agree that we may use any information we have about you relating to your creditworthiness for lawful purposes.
- d) You agree and consent to Hills collecting or obtaining your personal information (as defined in the Privacy Act 1993) from any person (including any collection agency) and to use that information for any purposes in connection with Hills' business, including for credit assessment or debt collection purposes to sending emails or other types of electronic messages that promote Hills' Services to you.

## 13 Intellectual Property

- a) You acknowledge our ownership of all Intellectual Property in connection with the Services.
- b) Any new Intellectual Property which is created as a result of, or in connection with, the supply of the Services (including any new processes that are created by, or developed in collaboration with you), will vest in Hills automatically on creation. If you, for any reason, become the owner of any Intellectual Property in the Services or new Intellectual Property, you hereby assign those rights to us.
- c) You shall have no right to use, sell, reproduce, copy, distribute or otherwise dispose of our Intellectual Property, and you must not allow any third party to reproduce our Intellectual Property.

## 14 Force Majeure

- a) We always try to perform our obligations to you responsibly. However, we are not liable to you for any loss, failure or delay caused by events beyond our control. That includes an act of God or nature, riot, armed conflict, strikes, government intervention, sanctions, notifiable diseases, pandemics, natural disaster or any other circumstance beyond our reasonable control. Any measures implemented by Hills or any third party in response to disease or a pandemic constitute a cause beyond Hill's reasonable control.
- b) If we cannot perform our obligations due to an event beyond our control, we will try to tell you what obligations we cannot meet, why and for how long. You will not be required to pay for any services not provided by us due to the circumstances contemplated by this clause. Performance will resume as soon as possible following the Force Majeure event.

## 15 Miscellaneous

- a) No waiver of any provision of these Terms will serve as a waiver of any other provision of these Terms and we will not have waived or be deemed to have waived any provision of these Terms unless such waiver is in writing and executed by us. A waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach.
- b) Nothing in these Terms shall create or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the parties, and a party may not make, or allow to be made, any representation that any such relationship exists between the parties. A party shall not have authority to act for, or to incur any obligation on behalf of the other party.
- c) If any provision in these Terms will be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- d) No alteration or variation of these Terms will be binding on us unless authorised by us in writing. To the extent permitted by law, we may alter or change these Terms by notice to you.
- e) You must not assign, subcontract or transfer all or any part of your rights or obligations under these Terms (including undergoing an effective change in your management or control) without our prior written consent. We may assign any rights or obligations without your approval as well as subcontract any obligations to third parties.
- f) If any dispute arises between the parties in connection with these Terms, the parties will enter into discussions with a view to resolving the dispute as soon as practicable. Either party may terminate these discussions and commence legal proceedings at any time.
- g) These Terms and the applicable Order Form and invoice constitute the sole understanding of the parties in relation to its subject matter and supersede all prior understandings, written or oral, which will be of no further force or effect.
- h) All other terms and conditions specified in the Order Form, and all other terms and conditions specified in any documentation or communication issued by or from you, will not apply between the parties and will have no effect.
- i) These Terms will be deemed to be made in New Zealand and will be construed and governed by the laws of New Zealand. The parties submit to the exclusive jurisdiction of the courts of New Zealand.