

Terms and Conditions of Sale.

Formation and Scope of the Contract

1.1 In this document:

Contract means any agreement for the sale of Goods and/or Services entered into between SDS and the Purchaser.

SDS means Specialist Diagnostic Services Pty Ltd and its subsidiaries, together with their agents, servants and employees.

Goods mean all products and parts thereof offered for sale by SDS.

GST means the goods and services tax imposed by The New Tax System (Goods and Services Tax) Act 1999 (Cth).

Order means an order placed in accordance with the Terms and Conditions by the Purchaser for the supply of Goods and Services (if accepted) by SDS.

Purchaser means the party entering into the Contract to purchase Goods and/or Services from SDS.

Services means all services offered for sale by SDS including, but not limited to, genetic testing services, storage of genetic material, and research and consultancy in genetics and related fields.

Terms and Conditions means these terms and conditions of sale.

Disclaimer means the Website Disclaimer

Privacy Statement means the Website Privacy Statement.

1.2 Unless there is express written agreement to the contrary, SDS contracts upon terms that any contract is subject to the Terms and Conditions, the Privacy Statement and the Disclaimer (to the fullest extent applicable). Any Order placed by the Purchaser shall be conclusively deemed to have been made subject to the Terms and Conditions in force as at the date the Order is received by SDS, irrespective of any contrary terms printed on or accompanying the Purchaser's order documentation, and such contrary terms shall in no circumstance prevail.

1.3 A reference in these Terms and Conditions to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2. Confirmation of Orders.

No Order placed by the Purchaser shall be binding on SDS unless and until SDS accepts the Order. Acceptance of any Order may be made by SDS taking any steps to satisfy the Order. Any Order which has been accepted by SDS may not be cancelled by the Purchaser except with agreement in writing of SDS and, in such circumstances, only on the basis that the Purchaser shall indemnify SDS in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by SDS as a result of such cancellation.

3. Price.

3.1 All Orders will be invoiced at the prices in effect at the time of delivery of the Goods and/or Services.

3.2 Goods and Services Tax.

(a) Interpretation.
Words or expressions used in this clause 3.2 which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this clause.

(b) GST inclusive amounts.
For the purposes of these Terms and Conditions where the expression 'GST inclusive' is used in relation to a price, an amount payable or other consideration to be provided for a supply under these Terms and Conditions, the amount or consideration will not be increased on account of any GST payable on that supply.

(c) Consideration is GST exclusive.
Any consideration to be paid or provided to SDS for a supply made by SDS under or in connection with these Terms and Conditions unless specifically described in these Terms and Conditions as 'GST Inclusive', does not include an amount on account of GST.

(d) Gross up of consideration.
Despite any other provision in these Terms and Conditions, if SDS makes a supply under or in connection with these Terms and Conditions on which GST is imposed (not being a supply the consideration for which is specifically described in these Terms and Conditions as 'GST inclusive'):

- the consideration payable or to be provided for that supply under these Terms and Conditions but for the application of this clause ('GST exclusive consideration') is increased by, and the Purchaser must also pay to SDS an amount equal to the GST payable by SDS on that supply; and
- the amount by which the GST exclusive consideration is increased must be paid to SDS by the Purchaser without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

(e) Reimbursements (net down).

If a payment to a party under these Terms and Conditions is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

(f) Purchaser Warranty and Indemnity.

The Purchaser warrants that where GST is imposed on a supply made by SDS under or in connection with these Terms and Conditions and the consideration for that supply was not increased under this clause 3.2 as the parties mistakenly regarded the supply as GST-free, the Purchaser will indemnify SDS for and in respect of the GST (including any interest or penalty) imposed on or in respect of that supply.

4. Payment and Default.

4.1 Unless SDS requests the Purchaser to pay in advance or unless alternate payment terms are expressly agreed in writing between the parties, the Purchaser shall pay the full amount specified on the invoice from SDS strictly within thirty (30) days from the date of SDS's invoice for the Goods and/or Services.

4.2 All payments shall be made by cheque or electronic funds transfer (wire transfer) into SDS's account:

Bank	CBA
BSB Number	062-320
Account Number	1112 6832
Account Name	Specialist Diagnostic Services Pty Ltd T/as Genomic Diagnostics

4.3 Where the purchase price is not paid in full on the due date, SDS has the right to charge interest on the balance outstanding calculated from the due date until the date of payment at a rate 5% higher than the rate of interest charged by SDS's bankers on SDS's overdraft from time to time. Such interest shall accrue from day to day on the amount of the purchase price remaining unpaid up to the date of payment and shall be payable on demand.

4.4 The Purchaser shall indemnify SDS against all costs and disbursements which SDS may incur in recovering any sums due to be paid by the Purchaser to SDS under any Contract, including but not limited to any debt recovery agency fees, court fees or legal fees.

4.5 SDS has the right to cancel the remainder of the Contract or to suspend deliveries of Good and/or Services if the Purchaser does not strictly observe the terms of payment. SDS also has the right to sell or otherwise dispose of Goods or the results of the Services that are the subject of the contract and to apply the proceeds of any such sale to the overdue account.

4.6 Payment of the purchase price shall become immediately due if:

- the Purchaser makes default in any payments or is unable or states that it is unable to pay its debts as and when they fall due;
- the Purchaser, being an individual, commits an act of bankruptcy or has a controller or trustee appointed in respect of the Purchaser's estate or any part of the Purchaser's property or assets;
- the Purchaser, being a company, passes a resolution for its winding up or enters into liquidation or has an application for winding up filed against it;
- a receiver, receiver and manager, controller or voluntary administrator is appointed over any part of the property or assets of the Purchaser;
- SDS reasonably apprehends that any of the events mentioned above is about to occur in relation to the Purchaser; or
- the Purchaser experiences any analogous event having substantially similar effect to any of the events specified above.

5. Delivery Times.

5.1 Subject to clause 5.2, SDS will use reasonable endeavours to achieve any delivery times stated by SDS.

5.2 Times stated by SDS for delivery are estimates only. SDS does not guarantee that the delivery of the Goods and/or Services will be within the delivery times stated by SDS and no liability shall attach to SDS in the event of delivery being delayed by any circumstances, including circumstances beyond SDS's control. In no circumstances shall delay amount to, or be deemed to be, a breach of the Contract and the Purchaser shall not be entitled to treat the Contract as repudiated by reason of any delay in delivery.

6. Delivery and Risk.

6.1 Unless expressly agreed otherwise in writing by SDS, the Purchaser is responsible for paying postage, transportation and insurance of Goods from SDS's premises to the Purchaser. Risk but not title in such Goods shall pass to the Purchaser upon the loading of the Goods on to the nominated carrier.

6.2 The Purchaser is responsible for all local taxes and for any customs or import duties payable for Goods and/or Services sold outside Australia.

7. Title to Goods.

7.1 Subject to clause 12, irrespective of the time when risk in the Goods shall pass, passing of property in these Goods shall be determined as follows:

- property in the Goods and/or Services shall remain with SDS until the Purchase has made payment in full to SDS of the purchase price and any other indebtedness of the Purchaser to SDS;
- pending payment in full of the purchase price, the Purchaser shall arrange for the Goods to be adequately insured against all insurable risks pending the passing of title and the Purchaser shall produce the insurance policy and latest premium receipt for inspection at the request of SDS;
- if the Purchaser defaults in payment of the purchase price in accordance with the terms of the Contract, the Goods shall be delivered to SDS on demand and/or SDS and its employees or agents shall have the right to enter upon the Purchaser's premises or any other premises where the Goods are known to be stored, to repossess the Goods and for that purpose the Purchaser shall grant all reasonable rights;
- if, prior to payment, the Purchaser sells the Goods and/or Services to a third party and defaults in payment of purchase price, SDS shall be entitled to so much of the proceeds of such sales (which shall be kept separate and identifiable) as representing the purchase price or balance thereof remaining unpaid. The Purchaser hereby assigns to SDS the right to receive payment from the third party for the Goods and/or Services.

7.2 The Purchaser acknowledges that until payment of the purchase price is made in full, the Purchaser holds the Goods and/or Services in a fiduciary capacity on behalf of SDS.

8. Purchaser's Representations and Acknowledgments.

8.1 The Purchaser acknowledges that it is responsible for informing SDS in writing of all requirements the Purchaser has relating to the use of the Goods and/or Services in the country or State of intended use, including, but not limited to, all statutory or other like requirements relating to marking, labelling and/or packaging.

8.2 The Purchaser warrants that it has not advised SDS of any particular purpose for which it requires the Goods and/or Services, save for any purpose stated by the Purchaser to SDS in writing.

8.3 Any failure by the Purchaser to inform SDS in writing of any of the matters referred to in clauses 7.1 and 7.2 shall not entitle the Purchaser to refuse to accept the Goods and/or Services or pay the purchase price, nor shall SDS be liable in any way whatsoever if the Goods and/or Services fail to comply with any requirements not disclosed in writing to SDS by the Purchaser prior to the formation of the Contract. The Purchaser indemnifies SDS in full against any loss or damage suffered by SDS howsoever arising out of any failure to comply with any requirements not disclosed in writing to SDS by the Purchaser prior to the formation of the Contract.

8.4 The Purchaser acknowledges that:

- it has selected the Goods and/or Services from a range of products and the Purchaser has satisfied itself that the Goods and/or Services meet the Purchaser's requirements;
- no oral or written information, representation or advice given by or on behalf of SDS, other than as contained in the Terms and Conditions, creates a warranty or in any way increases the scope of the Terms and Conditions; and

(c) unless expressly agreed otherwise in writing, the Purchaser has not relied on any information, representation or advice given by or on behalf of SDS in selecting the Goods and/or Services; and

(d) SDS makes no representation that its Goods and/or Services conform to country, State or local laws, ordinances, regulations, codes or standards (except as may otherwise be agreed to in writing by SDS) and the Purchaser is responsible for complying with all local laws relating to use of the Goods and/or Services at its own cost and expense.

9. Use of Goods and Services.

9.1 Purchaser as end-user.

Where the Purchaser is an end-user of the Goods and/or Services, it warrants that it will use the Goods and/or Services in conformity with:

- practices that are consistent with industry practice;
- all applicable laws and regulations, guidelines and decisions of judicial or regulatory bodies;
- any patent or other proprietary rights of third parties; and
- instructions provided by SDS.

9.2 Purchaser as distributor.

Where the Purchaser is a distributor of the Goods and/or Services, the Purchaser must:

- ensure that the end-user(s) of the Goods and/or Services will use the Goods and/or Services in conformity with paragraphs 9.1(a) to 9.1(d) above and will, in any event inform any end-user in writing of the above requirements for the use of the Goods and/or Services; and
- to the extent permitted by law, comply with any additional restrictions specified by SDS in relation to the manner in which the Goods and/or Services may be supplied to end-users including but not limited to geographic restrictions (eg. countries or States in which end-users are located to whom the Purchaser may not supply the Good and Services).

10. Product and Service Warranty.

10.1 SDS warrants that, subject to clause 10.3, Goods and Services provided by SDS will be free from defects caused by manufacture and/or testing for a period of 12 months from the date an invoice is issued by SDS.

Should any fault occur within that period as the result of such defect, SDS will make all necessary repairs, retesting or at SDS sole discretion, replace the Goods or Services at no charge to the Purchaser except for delivery and duties charges.

10.2 To the fullest extent permitted by the Australian Trade Practices Act 1974 and any Victorian legislation relevant to the sale and supply of Goods by SDS to the Purchaser, in the case of Goods not manufactured by SDS or Services not provided by SDS, SDS warranty in clause 10.1 shall be limited to the warranties implied by law and any further warranty contained in any manufacturer's or service provider's warranty for those Goods and Services.

10.3 The warranty contained in clause 10.1 shall not apply in the following circumstances:

- in respect of loss or damage caused by the installation, configuration, commission or use of the Goods and/or Services other than strictly in accordance with the terms of use of the Goods and/or Services, including without limitation loss or damage caused as a result of a failure to service, maintain or use the Goods and/or Services in accordance with SDS instructions, or caused by rough or negligent handling of the Goods;
- in respect of loss or damage caused by an act of God or any other cause not within SDS control or otherwise not related to the Goods or Services; and
- the use of parts and/or processes in connection with the Goods and Services other than those supplied or specified by SDS.

10.4 To the fullest extent permitted by the Australian Trade Practices Act 1974 and any other Victorian legislation relevant to the Purchaser, SDS liability for sale and supply of the Goods and/or Services by SDS to breach of a condition or warranty implied by such Acts, including any incidental or consequential loss which the Purchaser may sustain or incur shall be limited to one of the following, at the sole discretion of SDS:

- replacement of the Goods;
- repair of the Goods;
- repeat the Service or component of Service found to be defective;
- payment of the cost of replacing the Goods and/or Services or acquiring equivalent Goods and/or Services; or
- payment of the costs of having the Goods repaired or the Services re-performed.

10.5 To the extent permitted at law, SDS excludes all liability (including all losses, damages, costs and expenses of whatever nature and any indirect and consequential losses, economic losses or any loss of profit, loss of opportunity, loss of savings, loss of interest or otherwise) to the Purchaser regardless of the nature of the claim, whether in contract, negligence (or any other tort), breach of statutory obligation or otherwise arising from your use of the Goods and/or Services.

10.6 Subject to the other provisions of this clause 10 and to the extent permitted by law, SDS disclaims and will not be accountable for any and all warranties, either express or implied, including but not limited to any warranty regarding performance, the implied warranty of merchantability, fitness for a particular purpose and non-infringement of third party rights with respect to the Goods and Services. This disclaimer shall be read subject to any statutory provision which applies to supply of the Goods and Services to the Purchaser by SDS and any term condition, warranty and obligation which cannot be excluded or modified except to a limited extent.

10.7 Goods or Services returned under warranty for repair or re-testing will incur a charge, to be fixed by SDS, if no fault is found.

11. Claims.

11.1 No claims will be recognised in respect of any mistake or shortage or over supply of Goods and/or Services after thirty (30) days from the invoice date.

11.2 Unless otherwise expressly agreed in writing, SDS shall not accept any conditions providing for the payment by SDS of liquidated damages or other penalties for delayed delivery of Goods and/or Services or provision of information or for any other reason whatsoever.

11.3 All validly issued SDS vouchers, competition prizes, promotional materials and the like are NOT refundable nor transferrable (full or partial) in any way and shall only remain valid for one year from their date of issue.

12. Return of Products & Services.

Goods and Services are not supplied on a return or refundable basis. At SDS sole discretion, SDS may accept the return of Goods or Services supplied, subject to the following conditions:

- In relation to animal genetic testing performed by SDS:
 - Specimens provided to SDS by the Purchase are not retained and are disposed of by SDS; and as such are not returned to the Purchaser
 - SDS's internal laboratory records are SDS confidential information and as such will not be provided under any circumstances.
- Goods must be returned to SDS or a nominated agent in good order and condition, be resaleable and be returned within thirty (30) days of the date of the invoice;
- the Purchaser shall pay a restocking fee or an amount determined by SDS at its sole discretion for handling; and
- subject to the provision of clause 10.1 the return of Goods or Services for credit will not be accepted except upon prior written agreement from SDS.

13. Decontamination of Goods.

If Purchaser returns any Goods to SDS either under warranty (clause 10) or under clause 12 above it must use its best efforts to decontaminate the Goods in strict compliance with accepted international guidelines.

14. Intellectual Property Rights

- The Purchaser acknowledges SDS's licence to use or ownership of the patents, trade marks, designs and any other intellectual property rights contained within the Goods and/or Services manufactured or supplied by SDS and in particular agrees that neither the Purchaser, nor its servants or agents, will attempt to do anything with any of SDS intellectual property rights which will render the Purchaser liable to SDS or violation or infringement of its intellectual property rights.
- All rights not expressly granted are reserved.

15. Indemnity.

The Purchaser indemnifies and holds SDS harmless from and against any and all losses (whether actual or anticipated) costs and expenses of SDS, including legal fees and expenses, in any way relating to:

- any use of Goods and/or Services not in compliance with these Terms and Conditions;
- any failure by Purchaser to comply with practices that are consistent with industry practice, laws, guidelines or decisions in the handling or use of the Goods and/or Services;
- any failure by Purchaser to decontaminate the Goods prior to returning the Goods to SDS;
- any failure by Purchaser to correctly identify, label, pack, store and transport samples and specimens sent to SDS for testing;
- any failure by Purchaser to provide SDS with correct and complete information required by SDS to perform Services;

- any violation or infringement of any patent or other intellectual property or other proprietary rights of SDS or other third parties by the Purchaser in the handling, distribution, promotion or use of the Goods and/or Services; or
- any other use or misuse of the Goods and/or Services by the Purchaser.

16. Modifications to Goods.

16.1 Where the Purchaser provides information and/or instructions in writing to SDS and where SDS makes any modifications, alterations or adjustments to any Goods and/or Services as a result of or in reliance upon the information or instructions provided by the Purchaser, the Purchaser indemnifies SDS in full against any loss or damage suffered by SDS howsoever arising out of any reliance by SDS on the information or instructions provided by the Purchaser.

16.2 Where the Purchaser provides information and/or instructions to SDS on which modifications, alterations or amendments to the Goods and/or Services are made, the Purchaser indemnifies SDS in full against any loss or damage suffered by SDS where any such modifications, alterations or amendments are challenged by a third party as being in breach of that third party's intellectual property rights.

17. Privacy.

17.1 SDS and, to the extent applicable, the Purchaser agree to comply with their respective obligations under the Privacy Act 1988 and other applicable State and Territory laws in respect of personal information and health information (if any) collected, used, disclosed or stored in the course of this Agreement.

17.2 The Purchaser acknowledges and agrees that SDS will collect, use, disclose and store personal information and health information (if any) as specified in the Privacy Statement as updated and amended from time to time.

18. General.

18.1 No Waiver.

Failure by SDS to insist upon strict performance of any term, warranty or condition of this Contract shall not be deemed a waiver of any term, warranty or condition, or of any rights SDS may have and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.

18.2 Severance.

If any provision of these Terms and Conditions shall become void or unenforceable for any reason, such void or unenforceable provision or part thereof shall be deleted and the remaining provision shall continue if full force and effect.

18.3 Assignment.

The Purchaser shall not be entitled to assign any of its rights or obligations under this Contract without the prior consent of SDS.

18.4 Notices.

Any notice to be served in respect of the Contract shall be made in writing and either delivered personally or sent by registered post to the latest notified address of the other party and shall be deemed served upon delivery where delivered personally or when recorded by the delivery agent if sent by registered post.

19. Governing Law.

These Terms and Conditions between SDS and the Purchaser shall be subject to the laws of the State of Victoria, Australia and the parties submit to the exclusive jurisdiction of the Courts of the State of Victoria, Australia.