

## **ECOGENE TERMS AND CONDITIONS OF SERVICE**

**The EcoGene laboratory is a business unit of Landcare Research New Zealand Limited**

### **1. DEFINITIONS**

1.1 In these terms and conditions:

- (a) **“Client”** means the entity submitting a sample or samples to Landcare Research for testing at the EcoGene laboratories.
- (b) **“Fees”** means the fees for the Tests normally advised in writing by Landcare Research to the Client.
- (c) **“Landcare Research”** means Landcare Research New Zealand Limited.
- (d) **“Report”** means the report prepared by Landcare Research in relation to the Test results.
- (e) **“Sample”** means the sample or samples provided by the Client.
- (f) **“Tests”** means the test or tests requested by the Client in relation to the Samples.

### **2. SERVICES**

2.1 Landcare Research agrees:

- (a) To perform the Tests in relation to the Samples, unless it advises the Client that it is unable to perform the Tests;
- (b) To perform services with the standards of skill, care and diligence normally practised by professional laboratories performing services of a similar nature, and to comply with all relevant laws, regulations, standards and codes of conduct; and
- (c) To use reasonable endeavours to provide the Report within the timeframe specified by the Client (if any) and to advise the Client if it will be unable to do so.

### **3. PAYMENT AND INTEREST**

3.1 The Client agrees to pay the Fees by the 20<sup>th</sup> of the month following the date of invoice from Landcare Research.

3.2 In the event that the Client does not comply with its payment obligations by the due date, Landcare Research may charge interest at the rate of 15% per annum on any outstanding amounts, from the date that the amount fell due to the date of actual payment.

### **4. CONFIDENTIALITY, PUBLICITY AND USE OF INFORMATION**

4.1 Unless otherwise agreed in writing with the Client, subject to clause 4.2 below, Landcare Research agrees to not disclose to a third party, and not use for any purpose other than performance of the services, any information relating to the Samples, the Tests and the Report which by its nature could be regarded as confidential or commercially sensitive or which is marked or otherwise identified as confidential or commercially sensitive.

4.2 Nothing in clause 4.1 will prevent Landcare Research from using information relating to the Samples, the Tests or the Report (including for the avoidance of doubt any data derived during the Tests) for the purpose of internal education and training.

4.3 The Client will acknowledge either that the EcoGene laboratory or Landcare Research has conducted the Services in any material published by the Client which refers to the Test results and/or the Report.

## **5. SAMPLES**

5.1 Landcare Research will use its best endeavours to ensure that Samples and data are managed in accordance with any protocols that may be listed on its website [www.ecogene.co.nz](http://www.ecogene.co.nz) from time to time.

5.2 The Client agrees to advise Landcare Research in the event that a Sample has not been collected or stored in accordance with any collection or storage guidelines issued by Landcare Research from time to time.

5.3 Unless otherwise agreed in writing with the Client, Landcare Research:

(a) Will use reasonable endeavours to store any Samples and associated DNA remaining after completion of the Tests for one month following completion of the Tests and;

(b) May destroy the Samples and associated DNA following that period.

## **6. INTELLECTUAL PROPERTY**

6.1 Provided the Client has paid any fees due in relation to the applicable Test, to the extent that any new copyright subsists in a Report issued to the Client, the Client will own that copyright and will own all rights in relation to the data set out in the Report.

6.2 Notwithstanding clause 6.1 above, Landcare Research may copy and use the Report and the data it contains for the purpose of internal education and training.

6.3 Landcare Research acknowledges that it does not gain any ownership rights in relation to a Sample or any associated data.

6.4 Landcare Research will own all rights in relation to any new primers or markers it develops. Landcare Research grants the Client the right to use any new primers or markers developed at the Client's request, provided that the Client first pays the fees charged by Landcare Research in relation to that development.

## **7. EXCLUSION OF LIABILITY**

7.1 Landcare Research will not be liable in any manner whatsoever for any costs, damages, expenses, losses or for any consequences of any nature arising as a result of the advice, services, or information provided to the Client.

7.2 In the event that clause 7.1 above does not apply to a claim, Landcare Research's maximum total cumulative liability to the Client will be NZ\$1,000.

## **8. NO WARRANTY**

8.1 Landcare Research warrants that it will take reasonable care in performing the Tests but all other warranties, express or implied, are excluded to the maximum extent permitted by law.

## **9. General**

9.1 **Force majeure:** Landcare Research will not be liable for failure to perform the services if such failure results from circumstances beyond its reasonable control, including but not limited to government intervention, fire, explosion, earthquake, volcanic activity, extreme adverse weather conditions, war, terrorism, civil commotion and sabotage.