

Genetic Material Storage and Despatch Terms and Conditions

These are Genetics Australia Holdings Pty Ltd ACN 666 904 436 (the **Company**) terms and conditions for the supply of Services to the Customer (**Terms and Conditions**).

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply in these Terms and Conditions unless the context requires otherwise:

Business Day means a day that is not a Saturday, Sunday or public holiday in Victoria.

Customer means the entity or individual engaging the Company for the Services.

Fees means the fees set out in the Fee Schedule and any additional fees or charges for which the Customer is liable under these Terms and Conditions.

Fee Schedule means the schedule of fees provided by the Company to the Customer prior to commencement of the Services and any updates to the fee schedule made by the Company and notified to the Customer from time to time.

Force Majeure Event means any event which is beyond a party's control and that is preventing its performance under these Terms and Conditions (including war, riot, natural disaster, labour dispute, or law taking effect after the commencement of the Services).

Freight Carrier means the specialised transport services used to transport and deliver Product undertaken by either:

- (a) a third party provider of (**Third Party Freight Carrier**); or
- (b) employees of the Company.

Law means:

- (a) national, state or local legislation, including regulations, by-laws and other subordinate legislation;
- (b) common law;
- (c) guidelines of any government or any governmental, semi-governmental, fiscal, monetary, judicial or statutory agency, authority, tribunal, commission, body or other entity, with power, authority or jurisdiction in any part of the world (**Government Agency**); and
- (d) any consent, authorisation, registration, filing, lodgement, permit, licence, agreement, notarisation, certificate, permission, licence, direction, declaration, authority or exemption issued by a Government Agency (**Authorisations**) and conditions in respect of any Authorisations.

Product means animal germplasm provided by the Customer to the Company.

Term means the period of time contemplated by clause 2.

Services means

- (a) Product storage;
- (b) Product despatch and delivery;
- (c) Product inventory management;
- (d) retrieval of Product shipments from freight forwarders and subsequent customs and quarantine clearance; and
- (e) receipt of Product into a Storage Facility.

Storage Facility means a cryopreservation facility used by the Company to store frozen Product.

1.2 Interpretation

In these Terms and Conditions, unless the context requires otherwise:

- (a) references to legislation or regulations include any modification or re-enactment of them, and any instrument, regulations or orders issued under them;
- (b) the singular includes the plural and the plural includes the singular. Words importing a gender include every other gender;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) reference to a “person” or a word denoting an individual, person, firm, partnership, association (whether or not incorporated), corporation, authority, government, government agency or any other body or entity (in each case whether or not having separate legal personality), includes any of them;
- (e) specifying anything in these Terms and Conditions after the words “including”, “includes”, “such as”, “for example” or similar expressions does not limit what else might be included unless there is express wording to the contrary;
- (f) if the day on which:
 - (i) anything, other than a payment, is to be done is not a Business Day, that thing shall be done on the preceding Business Day;
 - (ii) a payment is to be made is not a Business Day it shall be made on the next Business Day but if the next Business Day falls in the next calendar month it shall be made on the preceding Business Day; and

- (g) if an act, other than a payment or the giving of a communication, is required to be done on a particular day and the act is done after 5:00 pm on that day, it will be deemed to have been done on the following day.

2. Term

- 2.1** These Terms and Conditions commence upon the earlier of first receipt of Product on behalf or provision of Services to you and will continue until the later of we cease to provide Services to you or we no longer hold any Product on your behalf, unless these Terms and Conditions are terminated pursuant to clause 9.

3. Services

- 3.1** The Company will provide the Services to the Customer for the Term, pursuant to these Terms and Conditions.

- 3.2** In providing the Services:

- (a) the Company will store and arrange for the transport of Product according to the accepted general storage requirements for that type of frozen germplasm;
- (b) the Company will use its best endeavours and practices to avoid Product losses subject to clauses 6, 9 and 10 of these Terms and Conditions;
- (c) the Company will not, subject to clause 9, dispose of Product without the Customer's prior written consent; and
- (d) the Company will hold the Customer's personal information in accordance with its Privacy Policy at <https://genaust.com.au/privacy-policy/>.

- 3.3** The Company will select the Freight Carrier for the Services unless the parties agree otherwise.

- 3.4** The Company will facilitate delivery with the Freight Carrier within a reasonable timeframe after receipt of the delivery address from the Customer and the following (as applicable):

- (a) after the Product is collected; or
- (b) on receipt of the request for Product held at the Storage Facility from the Customer.

- 3.5** While the Company may facilitate payment of the Third Party Freight Carrier services from the Customer, the responsibility for payment of the Third Party Freight Carrier services remains with the Customer, unless the Company has advised otherwise.

4. Insurance

- 4.1** The Company does not provide any insurance for Product stored at a Storage Facility or in transit.

- 4.2** Any Freight Carrier does not provide insurance for Product.

4.3 It shall at all times be the Customer's responsibility to effect insurance necessary to cover its risks in any way arising from, relating to or connected with the storage and transit of Product.

5. Warranties

5.1 The Customer warrants that:

- (a) the Product is the property of the Customer and the Customer retains title over Product provided to the Company for the Services;
- (b) the Product is stored and delivered at the risk of the Customer;
- (c) the Customer is responsible for the quality, completeness and viability of any Product provided to the Company for the Services.

5.2 Each party warrants that:

- (a) it has the power and authority to enter into and perform its obligations under these Terms and Conditions;
- (b) its obligations under these Terms and Conditions are valid and binding and enforceable against it in accordance with their terms; and
- (c) as far as it is aware, no additional authorisations, consents or approvals are necessary or required to enter into and give effect to these Terms and Conditions.

6. Liability

6.1 Subject to clause 6.2, the Services are provided "as is" unless these Terms and Conditions state otherwise and the Company is under no circumstances responsible to the Customer:

- (a) for any failures arising from, or injurious act or default of a Freight Carrier or other third party contractor or supplier;
- (b) for any failures arising from:
 - (i) handling errors of Product by a Freight Carrier or Company personnel including breakage of artificial insemination straws, goblets or a vessel used to store the Product or other equipment used to transport the Product;
 - (ii) dropping or breakage of a vessel carrying Product that compromises the viability of Product;
 - (iii) contamination of Product by a Freight Carrier;
 - (iv) any loss of the conditions necessary to maintain cryopreservation of Product at a Storage Facility;
 - (v) any loss of the conditions necessary to maintain refrigeration of the Product;

- (vi) any failure of a Freight Carrier to maintain appropriate temperature control of Product;
 - (vii) any failure to maintain appropriate temperature control of Product being transferred from a Storage Facility to a Freight Carrier or vice versa; and
 - (viii) the theft, misdelivery, delay in delivery, loss, damage or destruction, by whatever cause, of any Product being carried or stored by a Freight Carrier at any time (and regardless of whether there has been any deviation from any agreed or customary route of carriage or place of storage); and
- (c) excludes all conditions and warranties which would otherwise be implied in these Terms and Conditions.

6.2 If any Law implies in these Terms and Conditions any condition or warranty and avoids or prohibits provisions in an agreement which exclude, restrict or modify the application or liability under that condition or warranty, the condition or warranty will be deemed to be included in these Terms and Conditions to the minimum extent required (**Non-excludable Condition**).

6.3 To the maximum extent permitted by Law, the liability of either the Customer or the Company for any loss or damage however caused (except by the gross negligence or wilful misconduct, or breach of a representation or warranty) or breach of a Non-excludable Condition is limited to the Fees applicable for the affected Services.

6.4 The limitation of liability excludes what the Customer or the Company may recover or collect on its own account from its own insurance policies.

7. Pricing

7.1 The Company may increase the Fees during the Term. If this occurs, the Company must provide at least two months notice to the Customer of its intention to increase the Fees and provide the updated Fee Schedule, and the Customer may in its discretion choose to:

- (a) terminate the Services pursuant to clause 9.2; or
- (b) continue receiving the Services in accordance with the revised Fee Schedule.

7.2 The Fees are to be invoiced to the Customer:

- (a) for Services comprising of Product storage: in 90 day intervals from the commencement of the Services until termination of the Services;
- (b) for all other Services:
 - (i) where a Customer does not hold an account with the Company or is using the Company's services for the first time: upfront, with payment required prior to commencement of the Services; or

- (ii) where a Customer holds an account with the Company: within 30 days of the Service being completed,

unless otherwise agreed in writing by the parties.

7.3 Payment of the Fees are to be made by the Customer to the Company within 30 days of the date the Customer receiving the Company's invoice, unless otherwise agreed in writing by the parties.

7.4 Fees do not include an amount for GST unless stated otherwise. In addition to any GST-exclusive amounts payable the Customer must also pay an amount equivalent to the GST payable in respect of the taxable supply on receipt of a valid tax invoice.

8. Confidentiality

8.1 Each party must keep confidential any information that it receives from the other party which is marked as confidential, which a party notifies the other party is confidential, or which a party knows or ought to know is confidential to the other party.

8.2 A party must not, without the prior written approval of the other party, disclose to any person any information contained in material considered to be part of these Terms and Conditions or received from another party.

8.3 The obligation under clause 8.2 will not be taken to have been breached where the information referred to must be disclosed by law, except that a party disclosing for this purpose must notify the other parties of such disclosure.

8.4 Upon the termination or expiration of the Services, each party must upon request:

- (a) return to the other party all confidential information of the other party in the party's possession or under its control;
- (b) delete, erase, or otherwise destroy any confidential information not permitted to be continued to be used in its possession or under its control which is not capable of delivery to the party and must procure that its personnel to follow this procedure; and
- (c) sign an acknowledgment that all such material referred to in clauses 8.4(a) and 8.4(b) has been returned or destroyed.

9. Termination

9.1 Either party may terminate these Terms and Conditions:

- (a) immediately by written notice to the other party if the other party breaches these Terms and Conditions, provided that where the breach is capable of remedy, the other party failed to remedy the breach within 10 Business Days of receipt of written notice describing the breach and calling for it to be remedied; or
- (b) by providing 30 days written notice of its decision to terminate these Terms and Conditions.

9.2 If the Company varies the Fee Schedule and the Customer does not agree to the variation, the Customer may terminate these Terms and Conditions within 30 days of receiving notification of the varied Fee Schedule, by written notice to the Company.

9.3 Upon termination or expiration of these Terms and Conditions:

- (a) the Customer remains liable for the collection of Product and must collect its Product within 21 days of the date these Terms and Conditions terminate or expire;
- (b) the Company will invoice the Customer for the Fees relating to the work completed prior to the expiration or termination of these Terms and Conditions;
- (c) the Company can dispose of the Product if:
 - (i) the Customer does not pay outstanding Fees including Fees invoiced by the Company pursuant to clause 9.3(b) pursuant to these Terms and Conditions, the Company can dispose of the Product after the deadline to pay the Fees expires; and
 - (ii) if there are no outstanding Fees, upon the timeframe in clause 9.3(a) expiring.

10. Force Majeure Event

10.1 A party shall not be liable for any delay or failure to perform its obligations under these Terms and Conditions (other than an obligation to pay Fees or other amounts) if such delay is due to a Force Majeure Event.

10.2 If a delay or failure is caused or anticipated due to a Force Majeure Event, that party's obligations will be suspended. If a delay or failure by a party to perform its obligations due to Force Majeure Event exceeds 60 days, the other party may immediately terminate these Terms and Conditions on providing notice in writing to the party.

11. Dispute Resolution

11.1 Each party must not start court proceedings (except proceedings seeking urgent and/or interlocutory relief) in respect of a dispute arising out of these Terms and Conditions (**Dispute**) unless it has complied with this clause 11.

11.2 If a party claims that a Dispute has arisen it must notify the other party to the Dispute giving details of the Dispute.

11.3 During the 10 Business Day period after a notice is given under clause 11.2 (or longer period agreed in writing by the parties to the Dispute) (**Initial Period**) each party must use its reasonable efforts to resolve the Dispute, including referring the Dispute to senior management and then to the relevant Chief Executive Officers as applicable.

11.4 If the Dispute cannot be resolved within the Initial Period, the parties must refer the Dispute for mediation.

11.5 The mediator will be a registered member of the Resolution Institute mutually agreed by the parties or, in default of agreement within a further period of seven days, appointed, at the request of either party, by the President for the time being of the Resolution Institute ABN 69 008 651 232.

11.6 The mediation will be conducted in Melbourne, in accordance with the guidelines laid down by the appointed mediator, having regard to the principles of best practice in mediation generally. The parties will bear their own costs of preparing for and participating in the mediation.

11.7 If the mediation does not conclude the Dispute within 10 Business Days of mediation and unless the parties agree to extend the mediation, either party may start court proceedings.

12. Notices

12.1 All notices, requests, demands, consents, approvals, offers, agreements or other communications (**Notices**) given by a party under or in connection with these Terms and Conditions must be:

- (a) in writing;
- (b) signed by a person duly authorised by the sending party;
- (c) directed to the recipient's last known address on file; and
- (d) hand delivered, sent by prepaid post or transmitted by email to that address.

12.2 A Notice given in accordance with this clause 12 is taken as having been given and received:

- (a) if hand delivered at or before 4.30 pm on a Business Day, on delivery, otherwise at 9.30 am on the next Business Day;
- (b) if sent by prepaid post:
 - (i) within Australia, on the second Business Day after posting;
 - (ii) to or from a place outside Australia, on the seventh Business Day after the date of posting;
- (c) if sent by email transmission, at the time that would be the time of receipt under the *Electronic Transmissions Act 1999* (Cth).

13. General

13.1 These Terms and Conditions set out the entire agreement between the parties and supersede any prior agreements or discussions or conduct by the parties.

13.2 Governing law and jurisdiction:

- (a) these Terms and Conditions are governed by Victorian law; and
- (b) the parties submit to the non-exclusive jurisdiction of the courts of that State.