

## Standard Terms and Conditions

### 1. Definitions and Interpretations

<b>Contractor</b>	Turbid Pty Ltd (ABN 49 158 485 039)
<b>Client</b>	As stipulated upon project commissioning.
<b>Proposal</b>	Letter or report outlining the understanding of the project, proposed scope and methodology and fees associated with the project, and these standard terms and conditions. The proposal constitutes an offer for services.
<b>Agreement</b>	On acceptance of the proposal by the client, the client will be regarded as have entered into a contractual agreement with the contractor. This agreement is the final agreement between the parties in connection with the transaction, replacing any pre-printed or other terms in any purchase order, invoice or other document issued by either party. The agreement may not be amended or varied by any other subsequent terms or conditions imposed by you without, prior written approval and signature by an authorised officer of Turbid.
<b>Equipment</b>	Any Turbid equipment available for lease.
<b>Product</b>	Any product that is provided for sale, such as Turbiclear.
<b>Lease Period</b>	Refer to Clause 12
<b>Minimum Lease Period</b>	Minimum <i>lease period</i> for any equipment as stipulated in the <i>proposal</i> .
<b>Project</b>	As defined in the proposal by the scope, methodology and fees.
<b>Variations</b>	Changes to proposed scope, fees or timing to a project after commissioning and before completion.
<b>IFOD/ Floc Box</b>	Coagulant dosing system – specific type of <i>equipment</i> leased by Turbid.
<b>DT Waiver</b>	Damage Theft Waiver is defined in clause 18.

Reference to:

- 1.1. Reference to:
  - a) The singular includes the plural and vice versa
  - b) “including” and similar expressions are not words of limitations
  - c) Reference to you, yours, their or other variations refer to the client.
  - d) Reference to we, ours or tother variations refer to the Contractor
  - e) Reference to days are calendar days unless otherwise specified.
  - f) Headings are for convenience only and do not form part of this agreement or its interpretation
  - g) All fees listed exclude GST except in those instances where GST is explicitly included in the fee.

### 2. Role of Contractor

- 2.1. The contractor shall comply with all instructions given by the client in respect to this agreement (including instruction which have the effect of modifying or terminating this agreement).
- 2.2. The client will not be responsible for fees or charges incurred when the contractor has acted in contrary to clause 2.1.
- 2.3. The contractor is engaged as an independent contractor and not as an agent, employee, or as any other type of relationship.
- 2.4. The contractor will nominate a project manager as the primary contact for the project. The project manager will be responsible for the timely, cost effective provision of deliverables.

### 3. Role of Client

- 3.1. Confirm that the contractors understanding of works and proposed scope address the clients’ requirements by reviewing the proposal and standard terms and conditions and providing appropriate authority to commence works.
- 3.2. The client shall make available to the Contractor information, documents, maps and other particulars relating to the Client’s requirements for the services in a timely manner.
- 3.3. The client shall make appropriate arrangements to enable the Contractor to gain access to properties as necessary to enable the Contractor to perform the services. The client shall provide advice to the Contractor if changes to the scope or timing of the project are requested.

### 4. Commissioning

- 4.1. Acceptance of the proposal may be made by any one of the following ways:
  - a) The client shall fax, email or post a completed copy of Annexure 2 (project commissioning form) to the Contractor
  - b) Providing written or email instructions after receiving the proposal
  - c) Contacting us (verbally or otherwise) and advising of your acceptance
- 4.2. Without derogating from the above, we prefer that you accept in the way set out in 4.1a to ensure all appropriate contract and account details are accurately captured, and a full written record can be maintained.
- 4.3. This proposal is valid for 14 days from the issue date and then subject to confirmation.

### 5. Payment for Services

- 5.1. The contractor may require payment of the proposed fee at commissioning, or full payment on acceptance of watermarked draft deliverables (prior to release of final deliverables).
- 5.2. The client shall pay to the contractor fees as stipulated in the Proposal. Fees will be progressively invoiced on a monthly basis, after completion of identified milestones or following project completion whichever is sooner, strictly on 14 day terms.
- 5.3. Disbursements (including, but not limited to laboratory fees, equipment hire, travel costs and sub contractor fees) will attract a surcharge of 15%. Expected disbursements may be invoiced one billing period in advance.
- 5.4. Moneys not received within the agreed payment terms shall incur a fee to cover finance costs and additional administrative costs associated with this debt. This fee shall be equal to 3% of the outstanding money owed, and will be levied initially on the first day after payment was due, and monthly thereafter until the clients account is fully settled.
- 5.5. The client will be liable for third party or legal costs be incurred by the Contractor in recovering outstanding monies.
- 5.6. If the client disputes the whole or any portion of the amount claim in an account, the Client shall pay the portion of the amount stated that is not in dispute, and shall notify the Contractor in writing of the reasons for disputing the outstanding amount within 5 days of receipt of invoice, else invoice is deemed accepted. Any claim shall then be dealt with as per Section 7 of the Standard Conditions.

## 6. Variations

- 6.1. The client may request a variation to the services after acceptance of the proposal. The contractor may accept or reject this request.
- 6.2. If the contractor accepts a request for variation, notice of proposed changes to scope and fee will be provided to the client for consideration and acceptance as per Section 4.
- 6.3. The contractor may require a variation to the services and/or fee to complete the project in the event changes are required due to circumstances outside the Contractors immediate control. A written notice of proposed changes to scope and fee will be provided to the client for consideration and acceptance as per Section 4.

## 7. Dispute Resolutions

- 7.1. In the unlikely event that a dispute between the Client and Contractor, the parties agree that they will proceed in the following manner;
  - a) In the first instance the Client and the Contractor's (or representatives) shall attempt to resolve the dispute by negotiation.
  - b) If, in the opinion of either party, the offending party has not carried out its obligations to correct the dispute in seven (7) days, the offended party shall, by notice in writing to the offending party, provide details of the specific obligations that have not been carried out.
  - c) If, after seven (7) days from the date of such notice, the offending party fails to remedy such default the matter shall be referred to the Brisbane Dispute Resolution Branch.
  - d) The cost of arbitration proceedings pursuant to this Agreement shall be borne by the parties as the arbitrator may direct.
- 7.2. Condition 7.1 shall not affect the contractor's rights to deal with delinquent payments as per condition 5 of the standard terms and conditions.

## 8. Termination of Agreement

- 8.1. Agreement is taken to be completed after draft deliverables have been reviewed provided and accepted by the client.
- 8.2. The contractor may terminate this agreement immediately and without penalty for any just cause, or if the client:
  - a) doesn't pay invoices within the nominated terms
  - b) isn't able to agree on a variation to fees required under Section 6.3 of the standard terms and conditions
  - c) fails to provide us instruction or information either requested in the proposal, or arising throughout the project in a reasonable time
  - d) fails to accept advice provided by the contractor
  - e) asks us to act unethically.
- 8.3. The client may terminate or suspend the agreement; however, the client will be liable for all professional fees, fees for other items, expenses and disbursements incurred by the contractor up to the termination or suspension date, together with a cancellation fee equal to 15% of the uninvoiced project value.
- 8.4. You may terminate this agreement at any time by giving us 14 days written notice. If a minimum lease period has been specified, you will be liable for payment of an early termination fee equal to the remaining value of the lease.
- 8.5. We may terminate this agreement at any time for any reason by giving you 14 days written notice.

## 9. Intellectual Property

- 9.1. The Contractor shall retain the copyright and all intellectual property rights in all documents and material it produces. Subject to payment of the Fee, the Contractor shall grant the Client a licence to use those document and materials for the purposes of the project.
- 9.2. If the Client is in breach of any obligation to make a payment to the Contractor, the Contractor may revoke the licence referred to in clause 9.1, and the Client shall then cause to be returned to the Contractor all documents referred to in clause 9.1 and all copies thereof.

## 10. Limits to Liability

- 10.1 The liability of the contractor to the client arising out of the performance or non-performance of the services, whether under the law of contract, tort or otherwise shall be limited to the estimated fees payable to contractor described in the attached proposal. Should a fee not be nominated in the proposal, this limit shall be set at \$50,000.
- 10.2 The contractor shall be deemed to have been discharged from all liability in respect of the Services, whether under the law of contract, tort or otherwise, on the expiration of one year from the completion of the Services, and the Client (and persons claiming through or under the Client) shall not be entitled to commence any action or claim whatsoever against the contractor (or any employee of the contractor) in respect of the Services after that date.
- 10.3 The contractor does not give any warranty nor accept any liability in relation to the performance or non-performance of the Services except to the extent, if any, required by law or specifically provided for in this Agreement. If apart from this Clause any warranty would be implied whether by law, custom or otherwise, that warranty is to the full extent permitted by law hereby excluded.
- 10.4 Nothing herein, contained shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods or services pursuant to this Agreement of all or any of the provisions of Part V of the Trade Practices Act 1974 (as amended) or any relevant State Act or Territorial Ordinance which by law cannot be excluded, restricted or modified.

## 11. Severance and Acknowledgements

- 11.1. In the event that any part of this agreement is found to be void or unenforceable for any reason, the remaining parts shall remain in force.
- 11.2. In commissioning the contractor, you acknowledge that you have read and understood this proposal (including standard terms and conditions), and that you accept the payment terms and relevant fees associated with late payment.

## 12. Lease Period

- 12.1. The *lease period* starts when you take possession of the equipment.
- 12.2. The *lease period* is for an indefinite term, but may be no less than the minimum period specified in the *proposal*.
- 12.3. The *lease period* concludes when we have received the equipment from site after you have given us appropriate notice as per clause 20.

## 13. Lease Charges

- 13.1. The fees associated with installation, lease, maintenance and consumables are described in the *proposal*.
- 13.2. Should you terminate the *agreement* prior to the *Minimum Lease Period* expiring, you will be charged a fee equal to the remaining hire of *equipment* for the *minimum lease period* specified in the *proposal* at termination.
- 13.3. *Lease charges* will be invoiced monthly in advance over the *lease period*. Should the *lease period* terminate during an invoicing cycle, we will reimburse the unused component on a daily pro-rata basis.

## 14. Our Obligation to You

- 14.1. We will
  - a) lease the *equipment*, and provide services specified in the proposal,
  - b) provide advice on the use of the equipment, and
  - c) provide the *equipment* in clean working order.

## 15. Your Obligations to Us

- 15.1. This agreement is with you, you must not re-hire or devolve possession of the *equipment* to third parties.
- 15.2. You warrant that you are familiar with the limitations of the *equipment* and their fitness for purpose
- 15.3. You must take good care of the *equipment* during the lease period and not alter, modify, tamper with, damage or repair the *equipment* or remove, add, obstruct or deface any labels or notices on the *equipment*.
- 15.4. At all times during the *lease period* you must maintain adequate site security to protect *equipment* from theft, seizure, loss or damage.
- 15.5. You will allow us to enter your premises and inspect the *equipment* from time to time during the *lease period*.
- 15.6. You warrant that you will comply with all Environmental Laws and will immediately rectify any breach of an Environmental Law caused by the use of the *equipment*.
- 15.7. You are responsible for the *equipment* during the lease period.
- 15.8. Equipment must be returned to us in the same condition it was provided to you – ordinary fair wear and tear excluded.
- 15.9. Specific obligations relating to use and operation of the **IFOD**
  - a) Only suitably qualified staff of yours that have been trained by Turbid shall open the outer door to the IFOD or modify input parameters. Untrained modification of input parameters may lead to overdosing and potentially cause environmental harm.
  - b) Only operate the IFOD and Flocc Box using the coagulant Turbiclear.
  - c) The IFOD must only be moved and installed by a Turbid employee or authorised contractor. You must not move or transport the IFOD.

- d) The inner door concealing the IFOD electronic componentry, batteries must not be opened by you at any time.
- 15.10. Your safety is important to us. When you, your employees, agents and contractors use the *equipment* you agree to take all appropriate safety precautions, including but not limited to:
  - a) Ensure no persons operating the *equipment* are under the influence of drugs or alcohol.
  - b) Wear suitable personal protective equipment as recommended or required by US or the manufacturer.
  - c) Operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with our or the manufactures instructions.
  - d) Conduct a JSA before using or interacting with the *equipment*.
  - e) Display all safety signs and instructions required by law and ensure instructions and signs are observed by operators of the *equipment*.

#### 16. Equipment Failure

- 16.1. In the unlikely event that the *equipment* breaks down or becomes unsafe to use during the *lease period* You must:
  - a) Immediately stop using the *equipment* and notify us.
  - b) Take all steps necessary to prevent injury or environmental harm occurring as a result of the condition of the *equipment*.
  - c) Take all steps necessary to prevent any further damage to the *equipment* itself; and
  - d) Not repair or attempt to repair the *equipment* without our written consent.
- 16.2. Except if clause 17 applies, upon receiving notice from you, we will:
  - a) Take all steps necessary to repair the *equipment* or provide suitable substitute *equipment* as soon as reasonably possible after being notified by you; and
  - b) Not impose a hire charge for that portion of the *lease period* for which the *equipment* was broken down or unsafe, nor the costs associated with any repair or replacement of the *equipment*.
- 16.3. Should it be identified that *equipment* failure is a result of your error and we incur costs associated with repair or replacement, you will be liable for these costs.

#### 17. What to do if Equipment is Lost, Stolen or Damaged

- 17.1. If the *equipment* has broken down or become unsafe to use as a result of your negligence for if the *equipment* is lost, stolen or damaged beyond fair wear and tear during the *lease period*, you will be liable for:
  - a) Any costs incurred by us to recover and repair or replace the *equipment*; and
  - b) The hire charges for that portion of the *lease period* during which the *equipment* is being recovered and repaired or replaced, except where You have paid a *damage theft waiver fee*, in which case Your liability is subject to clause 18 below.

#### 18. Damage Theft Waiver (DT Waiver)

- 18.1. *DT Waiver* is not insurance. It is an agreement by us to limit Your liability in certain circumstances for theft or damage to our *equipment* to an amount called the DT Waiver Excess.
- 18.2. You are not required to pay the *DT waiver fee* if you produce a certificate of currency for an appropriate policy of insurance that covers loss, theft or damage to the equipment during the lease period for an amount not less than the replacement value of equipment.
- 18.3. Where you have paid the *DT Waiver*, we will waive our right to claim against you for damage or theft to the *equipment* if:
  - a) You have reported any damage or theft to the Police within 48 hours of becoming aware of the damage or theft, and provided us with a police report.
  - b) The theft or damage does not fall into one of the categories described in clause 18.4
- 18.4. Even if You have paid the *DT Waiver*, we will not waive our rights to claim against you for damage or theft of the *equipment* and the DT Waiver will not apply if the damage or theft:
  - c) Has arisen out of your breach of a clause in this hire agreement.
  - d) Is due to your negligent omission or act.
  - e) Has been caused by your failure to use the Equipment other than for its intended purpose or in violation of our or the manufacturer's instructions.
  - f) Is caused by exposure to any corrosive or caustic substance.
  - g) Is caused by vandalism.
- 18.5. The DT Waiver excess for each item of equipment is the amount equal to 20% of the cost of repair or replacement or \$500, whichever is the lesser.

#### 19. Termination of this Agreement

- 19.1. Either party may terminate this agreement immediately and without penalty by giving notice to the other party if:
  - f) That other party fails to remedy a breach of the agreement within 5 days of written notification of that breach under clause 19.

- g) The other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.
- 19.2. You may terminate this agreement at any time by giving us 14 days written notice. If a minimum lease period has been specified, you will be liable for payment of an early termination fee equal to the remaining value of the lease.
- 19.3. We may terminate this agreement at any time for any reason by giving you 14 days written notice.

**20. Recovery of the Equipment**

- 20.1. 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 lease period).
- 20.2. If you are in breach of the *agreement* or if the *agreement* has been terminated under clause 20.1, we may take all steps necessary (including legal action) to recover the *equipment*, including entering your premises to do so. Upon receiving written notice from us, you expressly consent to us entering your premises for the purposes of recovering our *equipment*.

**21. General**

- 21.1. This Agreement is a claim for payment under the *Building and Construction Industry Payments Act 2004*.
- 21.2. The Client agrees to allow Turbid to use its company logo for marketing purposes, and the use of its company name and a brief project summary on the Turbid website (confidential project details will not be disclosed), unless directed otherwise.