

Terms & Conditions

1. DEFINITIONS

The following terms and definitions shall be relevant for the reading of these Terms and Conditions:

'Client' shall be deemed to be a person and / or organisation including a representative, agent or employee of the person and / or organisation entering into a service agreement with FACTS.

'FACTS' (Food and Allergy Testing Services) provides food and allergy testing services to the Client and shall be construed to encompass its officers, agents, representatives and employees.

'Services' shall be deemed to consist of the following:

a) **'Allergen Testing'** means tests to detect and quantify allergens in foodstuffs, beverages and related products; and / or

b) **'DNA Testing'** means DNA-Based Species Detection and / or Identification to detect and / or identify animal species in foodstuffs, beverages and related products; and / or

c) **'Food Adulteration Testing'** means the testing of food product for presence of adulteration

d) **'Facilitated Testing'** means analyses which are not routinely conducted by the FACTS Laboratory, and are sent to competent laboratories; and / or

e) **'Labelling Consulting'** means evaluating a food-stuff's product label compliance with regard to the applicable legislation; and / or

f) **'General Consulting'** means a report/opinion provided by FACTS based on information required by the Client which falls within FACTS' areas of expertise regarding, among other things, new product development, the interpretation of certain regulations, standards, procedures, food safety, fraud and defence risk assessment tools and / or allergen risk assessment tools; and / or

g) **'Labelling Regulatory Training'** means training provided on certain regulations and standards which pertain to food product labelling in South Africa; and / or

h) **'Allergen Training'** means training provided to Management and / or Factory Workers teaching principles for the purpose of handling food during production in order to reduce the risk of allergen cross contact within the food manufacturing facility.

'Sample' shall be deemed to be (but not limited to) a sample of the final product/ intermediate product / raw material / ingredient / rinse water / flush samples / swabs collected and brought to FACTS for testing.

'External bodies' refers to Service providers and certification bodies granted access to the FACTS Laboratory for specific purposes.

2. APPLICABILITY

2.1 The following Terms and Conditions constitute the sole basis for any and all agreements / contracts regarding services provided by FACTS.

2.2 FACTS shall not accept any: conflicting; variant; subsidiary; or, deviant conditions unless such conditions are expressly agreed to in writing.

FACTS will provide services using reasonable care and skill and in accordance with the Client's instructions and/ or requirements. In the absence of such instructions and/ or requirements FACTS will provide services using any relevant custom, usage or practice; and / or methods as FACTS shall consider appropriate on technical, operation and/ or financial grounds.

3. TESTING SERVICES

3.1 ALLERGEN AND / OR DNA TESTING AND / OR MICROSCOPIC ASSESSMENT / IDENTIFICATION OF HERBS AND SPICES

3.1.1 FACTS, through its laboratory division, conducts:

a) tests to detect and quantify allergens in foodstuffs, beverages and related products; and / or

b) DNA tests to detect and / or identify animal species in foodstuffs, beverages and related products.

3.1.2 FACTS, through a specialist in Microscopic Assessments offers the identification of certain Herbs and Spices is based on reference material which provides information on individual spice structures, characteristic shapes and sizes, crystal structure and colour.

3.1.3 FACTS can only report on the results of the tests performed on the sample received. FACTS in no way warrants, represents or implies that the rest of the same batch which has not been tested will achieve a similar test result if tested.

3.1.4 All analytical work is conducted professionally, in accordance with all applicable standard laboratory practises. The data contained in the report reflects FACTS best attempt to generate accurate results for the specific sample(s).

3.1.5 Order processing is not included in the lead time for analysis. Full orders arriving before 15:00 pm will be processed on the same day. Orders arriving after 15:00 pm will be processed the next day. Testing lead times will be assigned after processing.

3.1.6 Additional fees may be charged at the laboratory's discretion when amendments to test reports are requested, which is not due to an error on the laboratory's part.

3.1.7 In the event that an analysis is cancelled after testing has begun, the client will be liable for the entire or part of the total invoiced amount.

3.2 SAMPLES

3.2.1 General

- a) All samples submitted by clients must be accompanied by an acceptance note completed by an authorised person, containing comprehensive and accurate information.
- b) Samples of the products to be tested are given by the Client to FACTS and it is the responsibility of the Client to perform sampling that is random and representative of the specific batch.
- c) It is the responsibility of Clients to inform the laboratory of additional information pertaining to samples submitted, such as: specific storage conditions, high sugar content, high fat content, hydrolysed / fermented product, alcohol content, etc.
- d) Where applicable, the batch numbers of the samples must be provided.
- e) FACTS offers testing, as reflected in our testing catalogue on food and related products.
- f) FACTS is SANAS accredited for selected methods and matrices per its schedule of accreditation available on:
www.factssa.com/Docs/FACTS_Accreditation_Certificate.pdf
- g) All information pertaining to the Clients is strictly confidential.
- h) All testing is done in duplicate, with the exception of swab samples for ELISA and PCR testing and samples submitted for LC-MS analyses.
- i) FACTS will issue the Test Report containing test results per sample per analysis requested.
- j) Test reports will be dispensed to the person whose contact details appear in the space provided ("Technical contact person") on the acceptance note.
- k) Reports can be issued on a continual basis to additional persons upon written request by the organisation.
- l) FACTS assumes responsibility for the safekeeping of samples submitted by Clients, from the time of receipt up until the time of disposal.
- m) Perishable samples will be disposed of once the Test Report has been generated.
- n) Non-perishable samples will be disposed of 10 days after the Test Report has been generated.
- o) If sample dilutions are necessary to mitigate the effects of interfering matrices, an appropriate dilution will be applied. Please note that such dilutions may influence the method's reporting limit, potentially affecting the detection and quantification of certain analytes. Any dilutions performed will be clearly indicated on the final test report.

3.2.2 Sampling and amount of sample

- a) FACTS Laboratory does not perform sampling on behalf of Clients.
- b) It is the sole responsibility of the Client to perform sampling that is random and representative of the specific batch.
- c) Clients must submit at least 100g of a sample for up to 5 tests.
- d) Clients must not submit more than 1kg / 1L of a sample.
- e) An additional disposal fee (not included in the quote) may be charged if a large number or volume of a sample is received
- f) When collecting samples Clients must take into consideration and follow the Special Considerations annexed to the Terms and Conditions and marked as Annexure A.

3.2.3 Sample transportation and receipt

- a) FACTS Laboratory is not responsible for transporting samples to the first point of receipt.
- b) If refrigeration or freezer temperature is recommended, it is the responsibility of the Client to transport the samples to the laboratory in a cooler box with ice bricks in order to maintain the required temperature of the samples during transport.
- c) FACTS Laboratory will reject samples which are insufficient, damaged or compromised upon receipt. The Client will be informed in writing and a new sample will be requested for analysis.
- d) All samples submitted by Clients to the laboratory must be identifiable and clearly labelled by the Client as well as submitted in a sealed container which protects the integrity of the sample.
- e) FACTS does not collect samples, but can coordinate collection via a courier service on request. Courier costs will be added to order invoice. FACTS is not liable for loss of and / or damages to samples caused by its elected courier service provider.

3.2.4 Sample retention

- a) Samples will be retained at the Client's recommended storage temperature for the time period it takes for the experimental analysis to be completed. This will include the time from the receipt of the sample until the generation of the Test Report.
- b) The only exception is when test results are questionable, and the Laboratory Manager authorises for the tests to be repeated on the sample in question. In this case, the Client will be informed in writing by the Laboratory Manager of the delay of results. The sample will be retained until the Test Report has been generated and the repeat results have been issued to the Client.
- c) Requests for storage of samples may incur a storage charge payable by the Client.

TERMS & CONDITIONS

d) The Client will be billed a handling and courier fee if samples are returned. Special disposal charges will be billed to the Client if incurred.

3.3 LIABILITY AND INDEMNIFICATION

3.3.1 FACTS is not responsible for claims or damages resulting from the existence of:

a) Allergenic proteins in samples for which the Client had not specifically requested the sample to be tested for.

b) Animal species in the sample which the Client had not specifically requested the sample to be tested for.

c) Any adulterating material in samples that are sent for food adulteration testing.

3.3.2 The Client assumes all responsibility for the total batch of the product after the sample from the batch has been tested. FACTS will not be liable for any claims or damages arising out of the use of any tested product. The contents of the report are representative of the condition of the sample only. The sample is assumed to be statistically representative of the batch of the product at the time of sampling.

3.3.3 Although FACTS uses, applicable to ELISA and PCR, test kits from reputable suppliers, FACTS cannot be held responsible for flaws in the test kits that may result in an inaccurate test result.

3.3.4 Whilst every effort is made in ensuring results are accurately reported, due to the nature of on-going research in the field of allergen and/or DNA testing and best practices and acceptable thresholds, FACTS does not accept liability for any loss or damage suffered by a Client arising out of the use of or reliance on the reports of the sample tests conducted.

3.3.5 FACTS does not assume any liability for and does not constitute or imply an endorsement of the product tested or its producer.

3.3.6 FACTS is not responsible for any claims or damages related to the quality or safety of the product.

3.3.7 FACTS shall not be liable for any loss or damages caused by:

a) False or misleading information provided by the Client to FACTS; and / or

b) Negligence in obtaining a sample from the batch, be it the direct or indirect act / omission or default of the person in obtaining the sample from the batch; and / or

c) The neglect to inform FACTS of any ingredient modification; and / or

d) The loss of the sample or damage to the sample during delivery or shipment; and / or

e) The containment of the sample.

3.4 WARRANTIES

3.4.1 FACTS does not warrant that:

a) the contents of the report or the product will meet the end user's requirements; and / or

b) the assessment, evaluation or testing of the sample or any part thereof will be uninterrupted or error free; and / or

c) defects in the sample will be corrected.

3.4.2 FACTS does not warrant or make any representations regarding the use or the results of the testing, assessment or evaluation of the sample in terms of their correctness, accuracy, liability or otherwise.

3.4.3 Upon acceptance of this quotation by the Client or its representative, the Client or its representative acknowledges that it has read the written contents of the quotation including the terms and conditions and disclaimer contained therein and confirm that it understands the contents thereof and agree to be bound thereby.

3.5 FACILITATED TESTING

3.5.1 FACTS offers an Facilitated Testing Service for analyses, which are not routinely conducted by the FACTS Laboratory. In the event that Facilitated testing is required FACTS will notify the Client and offer the Facilitated Testing Service. This service includes the sourcing of a suitable laboratory as well as interpretation of the results against the appropriate regulations where necessary.

3.5.2 FACTS does not assume any liability for and does not constitute or imply an endorsement for the laboratory which conducted the analysis.

3.5.3 FACTS is not responsible for any claims or damages related to the decisions based on the results of the analysis. FACTS shall not be liable for any loss or damages caused by the provision of false or misleading information by others, by the negligent act or default of the person in obtaining a sample from the batch and by the neglect to inform FACTS of ingredient modification, by the loss of the sample in delivery or shipment or by the containment of the sample.

3.5.4 FACTS does not warrant that the contents of the Facilitated testing report provided or any part thereof will be uninterrupted or error free.

3.5.5 FACTS does not warrant or make any representations regarding the use or the results of the testing, assessment or evaluation of the sample in terms of their correctness, accuracy, liability or otherwise.

3.5.6 Upon acceptance of this quotation by the signature of the Client or its representative, the Client or its representative acknowledges that it has read the written contents of the quotation including the terms and conditions and disclaimer contained therein

TERMS & CONDITIONS

and confirms that it understands the contents thereof and agrees to be bound thereby.

3.6 URGENT TESTING

3.6.1 FACTS offers an urgent testing service at an additional fee per sample / per label provided in the case of regulatory urgent requests.

3.6.2 Urgent testing is subject to availability and must be arranged with FACTS before submission of samples and prior to acceptance of the order.

3.6.3 Urgent testing service is not available for species identification.

3.6.4 Urgent service is subject to the following:

- a) Samples must be delivered to the FACTS Laboratory by the Client.
- b) Samples must be received at the laboratory no later than 10:00 am.
- c) An acceptance note and purchase order must be supplied with samples or prior to sample receipt.
- d) If samples, acceptance note and purchase order is received after 10:00 am, urgent service is not possible.
- e) COD Clients must supply proof of payment before results are released.
- f) If an analysis needs to be repeated, not due to a fault by FACTS, repeat tests will be scheduled with the next possible testing batch. Final report(s) will be supplied in compliance with the laboratory's normal lead times.
- g) The lead times for urgent testing / reporting will be communicated to the Client.

3.7 ALLERGEN QUANTIFICATION BEYOND THE QUANTIFICATION RANGE OF ELISA

3.7.1 ELISA assays used by FACTS have a specific range of quantification, e.g. the range of accurate quantification for egg is from 2.5 to 25 ppm (25.0 mg/kg).

3.7.2 To determine higher levels requires a different approach. If the result required needs to be an accurate reflection of the allergen residue as opposed to simply an indication whether the residue level is high and above the assay's range of quantification, e.g. >25 ppm, Clients are requested to indicate this requirement in the Special Requests section of the acceptance note.

3.7.3 These quantification's are charged at a higher rate than standard ELISA testing because the lab first needs to roughly determine at what levels the allergen is present in the sample, make appropriate dilutions and then complete quantification tests to get to the true concentration.

3.7.4 It is beneficial for the Client to advise what they expect the levels of the allergen would be (should they have an idea) in order to speed up the testing process as well as possibly lowering testing costs. If an estimated concentration of the target allergen in the sample cannot be provided, FACTS will employ the following standard testing protocol:

- a) A 10X, 100X and 1000X dilution of the sample will be prepared and tested in duplicate.
- b) Alternatively, the Client may request six single dilutions, which will be 2x, 10x, 50x, 100x, 500x and 1000x. Only a single result will be reported.
- c) If allergen content cannot be determined from the 10X, 100X or 1000X dilutions, FACTS will consult with the Client to determine action plan before any additional analyses are completed. If additional tests are required, costs may apply.

4. USE OF REPORTS BY THE CLIENT

4.1 Reproduction, publication or disclosure in respect of all test results, documents, and reports shall not be allowed without prior written permission from FACTS.

4.2 The name of FACTS shall not appear in any way on such reproduced or published extracts, unless prior written permission has been obtained from FACTS.

4.3 Any use of the test results, documents, and reports or the information contained therein is conditional upon the timely payment of all fees and charges.

5. GENERAL and / or LABELLING CONSULTATION

5.1 FACTS, through its regulatory and / or allergen division offers:

- a) Foodstuff Labelling Consultation service whereby the compliance of a foodstuff's product label is evaluated with regard to the applicable legislation; and / or
- b) General consulting services based on Client needs which may fall within FACTS' areas of expertise regarding certain regulations, product development, standards, procedures, and / or allergen risk assessment tools.

5.2 The Product Labelling Report / General Consulting Report is dependent upon the information provided by the Client, whereby:

- a) Every effort is made by FACTS to ensure that the report complies with the relevant legislation, as is contingent upon information received from the Client.
- b) Information required depends upon the nature of the query, and on the Client's choice of the specific service(s) requested with regard to the product labelling.

c) Certain information, which might be viewed as confidential by the Client and which the Client may prefer not to divulge, is crucial to the thorough assessment of the product labelling.

5.3 FACTS guarantees strict confidentiality in respect of any confidential data and / or information provided by the Client, at the Client's request.

5.4 In the event that any of the information requested by FACTS is not fully divulged by the Client, and as a result thereof the labelling of the product and / or general consulting report/opinion does not conform with the relevant legislation, the report will be presented as is and cannot be assumed to be complete or accurate.

5.5 FACTS does not accept liability for any damages caused directly or indirectly by the wording of labels / interpretation of general consulting reports which are interpreted incorrectly due to wrong syntax or spelling. Every care is taken to ensure that the wording on the label is correct in respect of spelling and syntax. We also do not accept liability for any mistakes in the wording on the label caused in the printing process of the label.

5.6 In the cases where the regulations are not clear or do not offer regulations for that particular case it becomes necessary for the report issued by FACTS, as well as the suggestions contained in such report, to be based on our interpretation of current legislation and regulations pertaining to food products. It is possible that another individual or company may have a different interpretation from ours of certain sections or parts of the relevant legislation and regulations.

5.7 The report issued by FACTS, pertaining to the compliance of the Client's present product label with the relevant labelling legislation, is based solely on the packaging provided by the Client. If any ingredient or supplier changes are subsequently made which may require amendments to the label, FACTS cannot be held responsible for such changes that do not comply with the relevant legislation.

5.8 FACTS will not be liable to any Client who has suffered economic losses (including loss of revenues, profits, contracts, business or anticipated savings); damages, loss of goodwill or reputation, special or consequential losses incurred due to a direct or indirect negligent act/omission by the Client, its employees, representatives or agents.

5.9 Upon acceptance of this quotation by the signature of the Client or its representative, the Client or its representative acknowledges that it has read the written contents of the quotation including the terms and conditions and disclaimer contained therein and confirms that it understands the content thereof and agrees to be bound thereby.

6. TRAINING

6.1 LABELLING REGULATORY TRAINING

a) Food labelling training provided by FACTS includes public and on-site training based on regulations and standards overseen by different regulatory bodies in South Africa.

b) On-site training can be tailored according to the Client's requirements.

6.2 ALLERGEN TRAINING

a) Allergen training provided by FACTS includes principles for the purpose of handling food during production in order to reduce the risk of allergen cross contact within the food manufacturing facility. The training is not all inclusive, but does suggest some specific techniques that should be incorporated in the allergen control plan.

b) FACTS may provide guidance in factory worker training.

c) FACTS may provide guidance in management training.

d) FACTS shall not be liable for any claims or damages related to the improper handling of food during production by individuals trained by FACTS due to the direct or indirect act / omission of such individual(s) not following the principles of handling food during production provided by FACTS.

e) FACTS warrants that food staff training will provide the Client's staff with the basic principles for the purpose of handling food during production in order to reduce the risk of allergen cross contact within the food manufacturing facility. The Client shall be responsible for ensuring staff members trained by FACTS follow the principles and guidelines provided by FACTS.

7. CONFIDENTIALITY

7.1 FACTS will not publish any results, obtained through investigations financed by the Client, without such Client's consent. FACTS will, however, be entitled to use technical information obtained from the investigation, but in so doing, undertakes not to identify the nature of the investigation or the Client.

7.2 On occasion external bodies may have access to the laboratory and Client confidential information. Confidential information will however be protected by means of:

a) external bodies agreeing too and signing confidentiality agreements.

b) limiting external bodies' access to laboratory rooms, information, records and documents.

c) allocation of unique sample and analyses identification numbers to samples, therefore results are not immediate traceable to a specific samples and Clients.

d) laboratory access control.

e) external bodies will only have access to the laboratory if they have a scheduled appointment.

f) representatives of external bodies being under the supervision of a laboratory personnel member at all times.

g) laboratory records being protected.

7.3 FACTS distribute rapid on-site testing kits and therefore have distribution agreements with key kit manufacturers. In the normal course of business, client information is shared with rapid on-site testing kit manufacturers.

8. ADVERTISING

No reference may be made to FACTS or any of its employees in advertisements, or for sale, or publicity purposes, without obtaining prior written consent from FACTS.

9. LIMITATION OF LIABILITY

While every care is taken to ensure the accuracy of any work performed by FACTS, FACTS does not warrant the commercial viability or merchantability of test results or information contained in its reports. Any claim for damages, whether direct or indirect, including consequential damages against FACTS based on the work commissioned by the Client, shall be limited to an amount equal to the amount actually paid by the Client to FACTS for the specific work commissioned by the Client.

10. INTELLECTUAL PROPERTY RIGHTS

All training materials provided by FACTS are deemed to be the intellectual property of FACTS and may not be copied or be used by anyone other than FACTS to train third parties.

11. PAYMENT

A. Local and International Payments

11.1 FACTS will provide Clients with written quotes for tests upon request.

11.2 Price increases will be communicated to Clients in writing at least one month prior to the implementation of the increase.

11.3 FACTS will issue a tax invoice per order received and related to the purchase order received from the Client.

11.4 FACTS banking details will be displayed on the invoice. Any change in banking details will be officially confirmed in writing by our office.

11.5 Non-account holding clients must settle the invoice supplied before release of results.

11.6 Account clients must make payment according to agreed and approved terms.

11.7 Clients may not withhold payments under any circumstances, unless permission has been granted to the Client in writing from the Administration Manager or Director of FACTS.

11.8 Discount is offered at FACTS' own discretion, providing (a) samples are submitted on the same date and (b) appropriate number of samples per allergen / facilitated test is submitted.

11.9 All payments shall be made in South African Rand, without set off or deductions or withholding of any nature, free of bank or other charges, unless permission has been granted per point 11.7.

11.10 Unless stated otherwise on the invoice, all payments will be strictly made within thirty (30) days of the date of invoice, or the date on which payment is due to FACTS.

11.11 Failure to pay any instalment on the due date shall constitute a material breach of Contract. As such FACTS shall be entitled to claim payment of the full outstanding balance of the contract price without delay from the Client. In addition:

a) FACTS shall charge interest at the rate of 1.5% per month.

b) The Client will be required to pay all costs and expenses, including legal expenses, incurred by FACTS in order to obtain full payment. The costs and expenses shall be on the attorney and own Client costs scale, including collection commission. In addition, failure to pay, shall also entitle FACTS to invoke the provisions of the Breach of Contract Clause (13) below.

B. Vendor Application Agreements

11.12 The Client agrees that (a) this Agreement represents the entire Agreement between the Client and FACTS and that any alterations or additions to this Agreement may not be effected unless agreed to by both parties, reduced to writing and signed by the Client and a duly authorized representative of FACTS; (b) this Agreement will govern all future contractual relationships between the parties, notwithstanding receipt or acknowledgement of the Client own order form or conditions; (c) this Agreement is applicable to all existing debts between the parties; (d) this Agreement is final and binding and is not subject to any suspensive or resolutive conditions; (e) any conflicting terms, conditions or agreements without prejudice to any securities or guarantees held by the Supplier and (f) this Agreement applies to all employees and subcontractors of FACTS.

11.13 This Agreement, and any offers, orders or contracts of sale pursuant thereto, become binding only when accepted by FACTS.

11.14 The signatory hereby binds himself in his personal capacity as Shareholder (in the case of a company), Member (in the case of a close corporation) or Owner, Partner, or Proprietor, as co-principal debtor jointly and severally for the full amount due to FACTS and agrees that this Agreement will apply in the same way to him.

11.15 The Client acknowledges that it does not rely on any representations made by FACTS in regard to its products and

services, or qualities thereof, leading up to this Agreement other than those contained in this Agreement. All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by FACTS in respect of its products or services, whether orally or in writing will not form part of this Agreement in any way unless agreed to in writing by the Supplier.

11.16 All quotations will remain valid for a period of 15 days from the date of the quotation, or until the date of issue of any new price list, whichever occurs first, or unless specified in writing by FACTS. All signed acceptance notes needs to be accompanied by a valid purchase order.

11.17 Delivery and performance times quoted are estimates and are not binding on FACTS.

11.18 All quotations are subject to the availability of input goods or services and subject to correction of good faith errors by FACTS, and the prices quoted are subject to any increase in the cost price, including currency fluctuations, to the Supplier before acceptance of the order.

11.19 In the event of the Client disputing the amount of the cost increase in Clause 8 above, the said amount may be certified by an independent auditor and such certificate shall be final and binding on the Client.

11.20 Notwithstanding the provisions of Clause 1 above, all orders or contracts of sale, or agreed variations thereto, whether oral or in writing, shall be binding and subject to this agreement and may not be cancelled by the Client.

11.21 It is the responsibility of the Client to determine that the products or services ordered by it are suitable for the purposes of intended use. FACTS gives no warranty, express or implied, concerning the suitability of the products and services supplied for any purpose whatsoever.

11.22 FACTS shall not be liable for any damage arising from any misuse, abuse or neglect of products under any circumstances whatsoever.

11.23 FACTS shall be entitled to invoice each delivery or performance separately when executed. No tax invoice can be issued without a valid purchase order number. Deliveries might be delayed should a valid purchase order not be provided.

11.24 The Client agrees to establish, immediately upon delivery, that the products and services appearing on FACTS's delivery note, Tax Invoice or other documentation, correctly represents the products, or services, and prices agreed to and are free of defects.

11.25 Where products or services are delivered prior to the issue of a Tax Invoice, the Client agrees to immediately upon receipt of the Tax Invoice, establish that it correctly represents the delivered products or services and prices agreed to.

11.26 The Client hereby confirms that the goods or services detailed on the Tax Invoice issued duly represents the goods ordered by the Client at the prices agreed to by the Client and, where delivery / performance has already taken place that the goods were inspected and that the Client is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects.

11.27 Any delivery note, invoice or waybill (copy or original) signed by the Client or a third party engaged to transport the products, and held by FACTS shall be conclusive proof that delivery was made to the Client.

11.28 Claims under this agreement shall only be valid if the Client has within 3 days of the alleged breach or defect occurring, given FACTS 30 days written notice by prepaid registered post to rectify any defect or breach of Agreement.

11.29 To be valid, claims must be supported by the original Tax Invoice.

11.30 All products supplied by FACTS remain the property of the FACTS until such products have been fully paid for.

11.31 The Client agrees that the amount contained in a Tax Invoice issued by the Supplier shall be due unconditionally (a) cash on order, or (b) if the Client is an Account Approved Client, then within the granted credit period as specified on the Account Application, or not later than the end of the month in which a Tax Invoice has been issued by FACTS.

11.32 The risk of payment by electronic funds transfer rests with the Client.

11.33 The Client is not entitled to set off any amounts due to the Client by FACTS against its indebtedness to FACTS.

11.34 All discounts shall be forfeited if payment in full is not made on the due date.

11.35 The Client hereby gives his / her consent for a credit check by signing the Vendor Application agreement.

11.36 On payment of the outstanding debt the default listing will be adjusted to read "Paid Default" until legislation demands complete removal.

11.37 FACTS hereby agrees that should they default on payment; FACTS can make this information available to the industry and affiliated businesses.

11.38 A credit approved client can forthwith lose their approval when payment is not made in accordance with the specific terms granted under this agreement. All amounts then outstanding shall immediately become due and payable.

11.39 The Client irrevocably authorizes FACTS to enter its premises to repossess any products delivered, without court order, and

indemnifies FACTS completely against any damage whatsoever, relating to the removal of repossessed products.

11.40 The supplier is entitled to exercise a lien over any of the Client's property in its possession until all outstanding debts have been paid.

11.41 Any document shall be deemed duly represented to and accepted by the Client (a) within 3 days of prepaid registered mail to any of the Client's business or postal addresses or to the personal address of any director, member or owner of the Client; or (b) within 24 hours of being faxed to any of the Client's fax numbers, or any director, member's or owner's fax numbers; or (c) within 24 hours of being e-mailed to any of the Client's e-mail addresses, or any director, member's or owner's e-mail addresses; or (d) on being delivered by hand to hand courier, and (e) within 7 days of being sent by surface mail.

11.42 In the event of the Client being in arrears with any payment or in breach of any term of this agreement, the Supplier is entitled to cancel all contracts with immediate effect.

12. BREACH OF CONTRACT, CANCELLATIONS, SUSPENSION AND TERMINATION OF SERVICES

12.1 FACTS will be entitled to immediately and without liability either suspend or terminate provision of the services, should the Client:

- a) fail to make any payment of any amount on the due date thereof;
- b) fail to comply with any of its obligations hereunder;
- c) commit an act of insolvency;
- d) allow a judgement to be entered against it;
- e) be provisionally or finally liquidated or sequestered;
- f) have a cash flow problem;
- g) suspend payment; and / or
- h) have commercial difficulty which may in any way whatsoever negatively impact upon the ability of the Client to comply with any of its current or future obligations in terms of these Terms and Conditions.

12.2 In the event of any of the parties committing a breach of any of the terms of this agreement, the other may by written notice require the Party which is in breach, to remedy the breach, and if it has not done so within 14 (fourteen) days of receipt of such notice, or if the breach is incapable of being remedied, the other Party may, in writing, terminate the agreement / contract without prejudice to its right to claim damages. In all other cases Clients will be liable for the full cost of commissioned work once the analysis or service has been signed for.

12.3 All expenses incurred will be charged if in-house / private training is cancelled after receipt of a purchase order / signed agreement or contract / enrolment.

12.4 Cancellations for attendance of Training Courses are accepted up to 7 (seven) working days prior to the commencement of the course. If cancellations are made less than 7 (seven) days from commencement the date of the course, the full fee as per signed agreement / contract/ enrolment will be invoiced, and the non-attending delegate will forfeit all rights to reference notes and course materials. Substitute candidates will be permitted.

12.5 Any termination or suspension of contract shall not absolve the Parties from the obligation to observe the confidentiality measures and other restraints as set out herein.

13. DOMICILIUM CITANDI ET EXECUTANDI

13.1 The Client hereto chooses their address as supplied on the Service Agreement Form as their domicilium citandi et executandi for the service of notices in regard to this agreement.

13.2 FACTS chooses their domicilium citandi et executandi as: Office 11, The Woodmill Lifestyle Centre, Vredenburg Road, Devon Valley, Stellenbosch, 7600

14. PLACE OF JURISDICTION

14.1 Regardless of the place of execution or performance under these Terms and Conditions or domicile of the Client, these Terms and Conditions and all modifications and amendments hereof, shall be governed by, decided upon and constructed under and in accordance with, the laws of the Republic of South Africa.

14.2 Subject to the 'Disputes' clause of these Terms and Conditions, FACTS and the Client will submit to the non-exclusive jurisdiction of the South African courts.

14.3 All legal costs, including attorney / own Client costs, tracing agent's fees and collection charges which the aggrieved party may incur in taking any steps pursuant to any breach by the other party to the agreement or enforcement of these terms and conditions shall be borne and paid by the party against whom the rights are being enforced to the enforcing party, whether or not legal proceedings are commenced.

15. DISPUTES

Save for urgent or interim relief which may be granted by a competent court, in the event of any dispute of any nature whatsoever arising between the Client and FACTS on any matter provided for in, or arising out of these Terms, and not resolved, then such dispute shall be submitted to confidential arbitration in terms of the rules of the Arbitration Foundation of South African or in the case where you are a consumer as defined under the Consumer Protection Act 68 of 2008, any Ombud or other dispute resolution mechanism in terms of the Consumer Protection Act, or the National Consumer Commission.

16. VALIDITY OF TERMS

Each of the terms herein shall be a separate and divisible terms and if any such term becomes unenforceable for any reason whatsoever, then the terms shall be severable and shall not affect the validity of the other terms.

17. FORCE MAJEURE

To the extent that any incident or circumstance beyond either party's control (including natural occurrences, war, strikes, lock-outs, shortages of raw materials and energy, obstruction of transportation, breakdown of manufacturing equipment, fire, explosion, acts of Government), that reduces the availability of products such that FACTS cannot fulfil its obligations under this agreement, FACTS shall be relieved from its obligations under this agreement to the extent that it is prevented from performing such obligations.

18. DISCLAIMERS

18.1 Samples of the product to be tested are given by the Client to FACTS and this sample of the product comes from a specific batch manufactured by the Client. FACTS can only report on the results of the tests performed on the sample by delivering the report to the Client. FACTS in no way warrants, represents or implies that the rest of the same batch which have not been tested, will achieve a similar test result if tested.

18.2 FACTS is not responsible for claims or damages resulting from the existence of traces of contaminant allergens and / or the existence of mislabelled meat species in the sample which the Client had not specifically requested the sample to be tested for.

18.3 The Client assumes all responsibility for the total batch of the product after the sample from the batch has been tested. FACTS and its officers, agents, representatives and employees are not liable for any claims or damages arising out of the use of any tested produce. The contents of the report are representative of the condition of the sample only. The sample is assumed to be statistically representative of the batch of the product at the time of sampling.

18.4 FACTS warrants that all analytical work is conducted professionally in accordance with all applicable standard laboratory practises and that data contained in reports reflects our best attempt to generate accurate results for the specific sample(s). Although FACTS uses suitable testing methods FACTS cannot be held responsible for flaws in critical consumables that may result in an inaccurate test result. Neither can Clients or third parties hold FACTS liable for the way in which the results are used.

18.5 FACTS does not assume any liability for and does not constitute or imply an endorsement of the product tested or its producer.

18.6 FACTS is not responsible for any claims or damages related to the quality or safety of the product.

18.7 FACTS shall not be liable for any loss or damages caused by:

- a) FACTS being provided false or misleading information by the Client or a representative, agent or employee of the Client;
- b) The negligent direct or indirect act / omission or default of the person in obtaining a sample from the batch;
- c) The neglect to inform FACTS of any ingredient modification;
- d) The loss of the sample during delivery or shipment; or
- e) The containment of the sample.

18.8 FACTS does not warrant that the contents of the report contained herein or that the product will meet the end user's requirements, or that the assessment, evaluation or testing of the sample or any part thereof will be uninterrupted or error free, or that defects in the sample will be corrected.

18.9 FACTS does not warrant or make any representations regarding the use or the results of the testing, assessment or evaluation of the sample in terms of their correctness, accuracy, liability or otherwise.

18.10 Upon submission of the acceptance note, the Client or its representative acknowledges that it has read the written contents of the terms and conditions and disclaimer contained therein and confirm that it understands the contents thereof and agrees to be bound thereby.

ANNEXURE A: SPECIAL CONSIDERATIONS

SAMPLING:

- a) Never touch samples for DNA testing with bare hands - always wear clean disposable gloves.
- b) Do not touch your face or bare skin with gloved hands and then touch the sample being collected.
- c) Avoid talking, sneezing and coughing over samples.
- d) Change gloves and instruments after each item is collected to avoid cross contamination between items.
- e) Whenever possible, use disposable instruments for handling samples. If disposable instruments are not available, instruments should be cleaned thoroughly before and after handling each sample.
- f) Do not allow samples to come into contact with any surface that contains residue from other biological samples (e.g. contaminated work surfaces, dirty tweezers and used gloves).
- g) Individual samples submitted for DNA testing should be collected and packaged separately and should not at any time come into contact with one another.

TERMS & CONDITIONS

SPECIFIC SAMPLE CONSIDERATIONS:

Hydrolysed and processed products:

- a) Due to the nature of proteins, the possibility exists that proteins that have been extensively processed, hydrolyzed or fermented may not be detected using ELISA and LC-MS methods for allergen testing.
- b) Heating, hydrolysis or fermentation can alter the proteins to the extent that they cannot be detected by the ELISA and LC-MS, however, active allergenic residues could still be present.
- c) If it is suspected by the company supplying samples to FACTS that the proteins present may have been altered from their usual native confirmation, please provide us with this information prior to the testing so that suitable alternative testing methods can be arranged.

PCR analysis:

- a) While DNA is more resistant to degradation than protein, the possibility does exist that DNA could become degraded to some extent during processing.
- b) Although not likely, the possibility thus also exists that such degraded DNA may not be accurately detected by the PCR primers used in the reaction.
- c) If it is suspected by the company supplying samples to FACTS that the DNA present may have been altered from its native confirmation due to processing, it would be beneficial to provide us with this information prior to the testing so that suitable alternative testing methods can be arranged.

Product analysis:

For detection of an allergen in the product, please take samples from the final product.

Detection of cross-contamination:

- a) For detection of contamination during production, please take samples during different stages of production where contamination could be possible.
- b) Samples can be combined to form a composite sample or can be tested individually to isolate the contamination point.

Rinse water:

- a) Samples should be taken from final rinse water from a CIP system or after manual cleaning.
- b) Samples should be taken before the application of a sanitizer as the presence of sanitizers in the sample can affect the outcome of the test results. Samples should be chilled immediately and remain chilled during transport.

Swabs:

- a) Swabbing of food contact surfaces or equipment for allergens should be carried out using swabs which are specifically designed for allergens, which make use of buffers intended to preserve the stability of allergens in solution (please contact the FACTS office for more information on allergen-specific swabs).
- b) After sampling, swabs can be kept refrigerated for up to four days, or frozen at -20°C for longer storage.
- c) As there may be a delay between sampling and analytical testing, the stability of the allergen residues in the extraction buffer should be known and arrangements for sampling and testing organised accordingly.
- d) Surfaces should be swabbed after cleaning, but before the application of a sanitizer, as the presence of sanitizers on the swab can affect the outcome of the test results.

Lysozyme and egg analysis:

The ELISA method used to detect for egg does not target lysozyme, please indicate on the acceptance note whether it is required to test for egg or lysozyme.

Species testing:

- a) The species screen test includes an array of animal species that are relevant in a South African context. [View our testing catalogue](#) for more detail. Should you require additional species detection, please let us know.
- b) Although the method is suitable for the analysis of highly processed food products, species identification in such products cannot be guaranteed.

Sample transportation:

- a) Samples that are intended to be refrigerated or frozen should be kept chilled during transit to FACTS.
- b) Please send the samples in properly sealed containers or packaging, clearly marked with the name of the sample, your company name, as well as the allergen to be tested for.
- c) Dry samples should be packaged in clean paper bags or envelopes. Do not use staples.
- d) Moist samples should be packaged in clean, sterile containers or bags and should not be wrapped in tissue paper.
- e) Liquid samples should be packaged in sterile collection tubes.
- f) Seal, label and date envelopes or bags and transport in a way that ensures proper chain of custody.
- g) Submit samples to the laboratory as soon as possible.

h) Samples should be kept dry and at room temperature during transportation and out of direct sunlight.