



## TERMS AND CONDITIONS

### 1. GENERAL

- a. Unless expressly agreed in writing by the Manager of the Kula Gold Limited ("Kula") laboratory, these terms and conditions will prevail over any other terms and conditions specified in a quotation, sales invoice or sample receipt confirmation. The printed terms of Kula's Sample Submission Form and the details filled in on that Sample Submission Form form part of the Contract but, unless otherwise specifically agreed by the Manager of the Kula laboratory in writing no terms and conditions:
  - i. Included by the Customer (or any third party) on the Sample Submission Form;
  - ii. Set out by the Customer (or any third party) on any Purchase Order or Customer's acceptance documents
- b. Shall form part of the Contract or be incorporated into the Contract.
- c. Without limiting the way in which a Customer may accept these Terms and Conditions, any order (written or verbal) by or for the Customer for Services, acceptance of results for Services by or for the Customer, or payments for Services by or for the Customer will be deemed as acceptance of these Terms and Conditions by the Customer.
- d. Kula reserves the right to vary these Terms and Conditions at any time without prior written notice to the Customer. Such variations shall not apply for Services already ordered.
- e. Kula agrees to carry out and complete the Services in accordance with this Contract and in consideration of the Customer paying Kula in respect of the Services on the Terms and Conditions set out in this Contract.

### 2. Force Majeure

- a. If Kula is interrupted in or prevented from carrying out all or any part of its obligations under this Contract by reason of a Force Majeure event then Kula will be excused from performance of, and shall not be liable for any failure in, carrying out any of its obligations to the extent and for the time that is prevented in whole or in part from doing so by the Force Majeure event. Any delay in performance as a result of the Force Majeure event will not constitute default or give rise to any claim for damages.
- b. For the purpose of these Terms and Conditions, Force Majeure means any event or circumstance, to the extent that it is beyond the reasonable control of Kula and prevents Kula from meeting its obligations under this Contract, including but not limited to:
  - i. Fire, explosion, flood, earthquake, cyclone, natural disaster, epidemic;
  - ii. Riots, civil commotion, malicious damage, sabotage, act of public enemy, act of God, war (declared or undeclared), blockade or picketing revolution;
  - iii. Strikes, lockouts, industrial and/or labour disputes and/or difficulties, embargoes, work bans, blockades or picketing, not reasonably within the control of Kula;
  - iv. Failure of any of Kula's suppliers to supply any relevant product;
  - v. The refusal of, revocation of, or delay in obtaining any necessary consents or approvals from any governmental or regulatory agency;
  - vi. The failure or breakdown of or accident to plant, equipment or machinery.

### 3. Duties of Customer in Delivering Samples or Materials

- a. The samples or materials must be in a condition that makes the preparation of reports/analyses or the preparation of ordered products possible without difficulty. Kula is entitled to conduct an initial examination of the samples or materials to check their condition before processing the samples, drawing up a report or using them in production. The Customer shall bear the costs of this initial examination, if the samples or materials do not comply with the requirements described in this clause 3.a. If the result of the initial examination is that an analysis or production is impossible or is possible only under more difficult conditions than originally anticipated – for example, because the samples or materials have been interspersed with foreign materials or substances that were not reported by the customer or are degraded – Kula shall be entitled to terminate or interrupt the order and the Customer shall bear costs incurred by Kula to that point.
- b. The Customer must ensure, and hereby warrants, that no sample poses any danger, including on its site, during transportation, in the laboratory or otherwise to Kula premises, instruments, personnel or representatives. It is the Customer's responsibility to ensure compliance with hazardous waste regulations, including regarding information, transportation and disposal and to inform Kula personnel or representatives about sample health and safety concerns, including any known or suspected toxic or other contamination as well as the risks to Kula premises, instruments, personnel and representatives related to the contamination. The Customer shall be responsible for, and indemnifies Kula against, all costs, damages, liabilities and injuries that may be caused to or incurred by Kula or its personnel or representatives including on the sampling site, during the transportation or in the laboratory by the Customer's sample or by sampling site conditions. The Customer shall bear all extraordinary costs for adequate disposal of hazardous waste resulting from the sample, whether or not described as hazardous waste. At Kulas' request, the Customer must provide Kula with the exact composition of the samples.

#### **4. Prices**

- a. Prices applicable are listed in Kula's laboratory price lists and are applicable from the date stated on the price list, but are subject to change without notice. All prices listed are subject to withdrawal or variation by Kula prior to confirmation. Kula is not responsible for notifying you of the variations made to the price lists.
- b. All prices are listed per sample, exclusive of Goods and Services Tax (GST), unless otherwise stated.
- c. Prices quoted are subject to the addition of GST and to any tax or levy imposed by any government authority upon the Goods/Services quotes or upon production, sale, distribution, delivery or any other applicable feature.
- d. All orders are subject to acceptance by Kula in writing as evidenced by a sample receipt confirmation. All prices are subject to withdrawal or variation by Kula prior to confirmation. Kula is not responsible for notifying you of the variations made to price lists.
- e. All quotations are confidential and exist for the information of the Customer only. The Customer agrees to ensure quotations received by the Customer will not be disclosed to third parties without written consent by Kula and will remain Commercial in Confidence.

#### **5. Minimum Order Value**

- a. Analysis of samples is charged at a minimum dollar value of \$12 per sample excluding GST.
- b. All Submissions are subject to an administrative fee of \$50, irrespective of the sample submission size.

#### **6. Cancellation**

- a. Performance of the Services, and analysis by Kula of samples submitted by or for the Customer, may only be cancelled by the Customer prior to Kula issuing an arrival notification report.
- b. If the Customer:
  - i. Makes or enters into an agreement or arrangement with creditors or becomes insolvent;
  - ii. Is placed in liquidation or provisional liquidation or any trustee, administrator, receiver or receiver/manager is appointed in respect of it; or
  - iii. Is wound up or commenced to be wound up (not being a voluntary winding up for the purposes of amalgamation or reconstruction).Kula may terminate the Contact immediately by notice in writing.
- c. If Kula requires pre-payment for Services and the Customer fails to pay for the Services then Kula may cancel the order for Services if payment is not received within 1 month of written request by Kula for payment.

#### **7. Terms of Payment/Dispatch**

- a. The Customer must pay 50% of the quoted costs upon commencement, being the issue of the arrival notification report or at the time of submission of the samples. The outstanding 50% for Services must be paid prior to the release of the results. Unless otherwise approved in writing by Kula samples will not be analysed, and Services will not be performed, without prepayment.
- b. Kula will only send results to the email address as specified on the Sample Submission Form or when requested in writing by an authorised party of the Customer and confirmation of authorisation has been obtained.
- c. If Kula required pre-payment for the Services, then Kula is not obliged to send test results unless the invoice has been paid in full by the Customer. For accounts payable on credit terms, Kula will not send results if accounts are overdue.

#### **8. Availability of Goods and Result delivery times**

- a. To the extent permitted by law, Kula shall have no direct or indirect liability for delay in result delivery.
- b. Any result delivery times quoted by Kula on an indent basis are an estimate only and are based on Kula's understanding of conditions prevailing at the time the quotation was made and are conditional upon the Customer's timely payment for the Services.
- c. To the extent permitted by law, Kula does not accept samples for analysis under penalty for late delivery and the Customer agrees to waive any and all penalties for late delivery to the extent that they may apply and to the extent permitted by law.
- d. Kula does not accept samples for analysis when submitted without a completed analysis Sample Submission Form.

#### **9. Limitations of Liability – No consequential loss – Services**

- a. To the extent permitted by the law, Kula will not be liable for any indirect, incidental, special, punitive and/or consequential loss or damage whatsoever, or any loss of business, opportunity or profits arising out of, or in connection with this Contract or the supply or non-supply of Services or results (including and claim in relation to, or in connection with, to the supply or non-supply of results), even if Kula had been advised of the possibility of such damages or losses.
- b. The Customer acknowledges that this sale relates to the acquisition of services other than Services ordinarily acquired for personal domestic or household use or consumption and the Customer acknowledges and agrees that liability under the Australian Consumer Law with respect to any breach of the guarantees by Kula is limited to liability to one or more of the following:
  - i. The supplying of the Services again, or, at the election of Kula,
  - ii. To the reasonable cost of having the Services supplied again,
  - iii. In all other cases and except where inconsistent with the above, excluded to the fullest extent permitted by law.
- c. For the avoidance of doubt, the limitation of liability in this section does not limit any rights or remedies the Customer is entitled to under the Competition and Consumer Act (Cth) and which cannot lawfully be excluded or modified.

#### 10. Representations or warranties

To the extent permitted by law (and subject to paragraph 8b) Kula does not make any representations or warranties in relation to the Services other than the representation and warranties expressly set out in this Contract.

- a. Save for those representations, warranties and guarantees (including those under the Competition and Consumer Act (Cth)) which cannot be lawfully excluded or modified, all representations and warranties not expressly set out in this Contract are excluded.
- b. Save for those rights and remedies (including those under the Competition and Consumer Act (Cth)) which cannot lawfully be excluded or modified, to the extent permitted by law, Kula's liability to you, in relation to, or in connection with, any negligence by Kula or any of its employees, agents or contractors, and including in relation to, or in connection with, to the supply or non-supply of the Services) is:
  - i. Limited, where Kula supplies and goods or services under or in relation to this Contract (except where such goods or services are of a kind ordinarily acquired for personal domestic or household use, or where you establish that reliance upon this clause would not be fair and reasonable);
  - ii. In the case of goods, to the replacement of the goods or, at the election of Kula, to the supply of equivalent goods or the repair of the goods or the payment of the cost of replacing the goods or of acquiring equivalent goods or of having the goods repaired; or
  - iii. In the case of services, to the supplying of the services again or, at the election of Kula, to the cost of having the services supplied again; and
  - iv. In all other cases and except where inconsistent with the above, excluded to the fullest extent permitted by law.

For the avoidance of doubt, the limitation of liability in this section does not limit any rights or remedies you are entitled to under the Competition and Consumer Act (Cth) and which cannot lawfully be excluded or modified.

- c. To the extent permitted by law Kula will not be liable for any indirect, incidental, special, punitive and/or consequential loss or damage whatsoever, or any loss of business, opportunity, or profits, arising out of or in connection with this Contract or the supply on non-supply of the Services (including any claim in relation to, or in connection with, any negligence by Kula or any of its employees, agents or contractors, and including in relation to, or in connection with, the supply or non-supply of Services), even if Kula have been advised of the possibility of such damages or losses.

#### 11. Indemnity

- a. The Customer will indemnify and release Kula and keep Kula fully indemnified against any loss of or damage to any property or injury to or death of any persons caused by any negligent act or omission or wilful misconduct of the Customer, its employees, agents or subcontractors or by any breach of its contractual obligations arising out of these Terms and Condition.

#### 12. Error and Omission

- a. To the extent permitted by law, any typographical, clerical or other error or omission in sales literature, quotation, price list, arrival notification report, sales invoice or other documents or information issued by Kula will be subject to correction without any liability on the part of Kula.

#### 13. General

- a. This Contract and the transactions contemplated by it are governed by the law in force in Western Australia and the Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Western Australia for determining any dispute concerning this Contract.
- b. Any waiver, consent or approval by a party under or in respect of this Contract must be given in writing.
- c. If the whole or any part of a provision of this Contract is invalid, illegal or unenforceable, then that provision will be severed from this Contract and neither that part or provision or its severance will affect the validity or enforceability of the remainder of this Contract.

#### 14. Definitions

- a. In these Terms and Conditions, unless otherwise stated:

**Contract** mean the contract for the supply of Services incorporating these Terms and Conditions and the details included on Sample Submission Form.

**Customer** means the customer specified on the Sample Submission Form.

**Kula** means Kula Gold Limited (ABN 83 126 741 259)

**Sample Submission Form** means a Kula Sample Submission Form completed by the Customer (or the Customer's agent or adviser) and submitted to Kula requesting Services.

**Services** means the performance by Kula of tests for the Customer.

To the extent permitted by law, any typographical, clerical or other error or omission in sales literature, quotation, price list, sample receipt confirmation, sales invoice or other documents or information issued by Kula will be subject to correction without any liability on the part of Kula.

## 15. General interpretation

- a. In this Contract, unless otherwise stated:
  1. headings, sub-headings and captions do not affect the construction or interpretation of this Contract;
  2. words importing the singular include the plural and vice versa;
  3. words importing a gender include other genders;
  4. the words "include", "includes" and "including" are not to be construed as words of limitation;
  5. where any word or phrase is given a defined meaning in this Contract, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
  6. a reference to any document, instrument or agreement, including this Contract, includes a reference to it as amended, novated, supplemented, varied or replaced from time to time;
  7. a reference to any act, statute, code, regulation, order, ordinance, bye-law or other legislation or subordinated or delegated legislation or provision thereof includes any modification, substitution or re-enactment thereof;
  8. a reference to a person will be construed as including an individual, the estate of an individual, firm, body corporate, association (whether incorporated or not), government and governmental, semi-governmental and local authority, or agency;
  9. a reference to a person includes that person's successors and permitted assigns and, in the case of a natural person, that person's legal personal representatives;
  10. an agreement, representative or warranty by or in favour of two or more persons binds or is for the benefit of (as the case may be) them jointly and severally;
  11. a reference to a monetary amount is a reference to the amount in Australian currency; and
  12. a reference to time is a reference to the local time in Perth, Western Australia (unless otherwise stated).