

ECOGENE TERMS AND CONDITIONS OF SERVICE

The EcoGene laboratory is a unit of Landcare Research New Zealand Limited, submission of samples to EcoGene is deemed to be agreement by the Client to these Terms and Conditions of Service.

1. DEFINITIONS

1.1 In these terms and conditions:

- (a) **“Client”** means the person or entity submitting a sample or samples to Landcare Research for testing at the EcoGene laboratories.
- (b) **“Fees”** means the fees for the Tests normally advised in writing by Landcare Research to the Client.
- (c) **“Landcare Research”** means Landcare Research New Zealand Limited.
- (d) **“Report”** means the report prepared by Landcare Research in relation to the Test results.
- (e) **“Sample”** means the sample or samples provided by the Client.
- (f) **“Services”** means those services described in clause 2.1.
- (g) **“Tests”** means the test or tests requested by the Client in relation to the Samples.

2. SERVICES

2.1 Landcare Research agrees:

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

3. PAYMENT AND INTEREST

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

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

4. CONFIDENTIALITY, PUBLICITY AND USE OF INFORMATION

4.1 Unless otherwise agreed in writing with the Client, Landcare Research agrees to not disclose to a third party, and not use for any purpose other than performance of the services, any information relating to the Samples, the Tests and the Report which by its nature could be regarded as

confidential or commercially sensitive or which is marked or otherwise identified as confidential or commercially sensitive.

- 4.2 It will not be a breach of clause 4.1 should Landcare Research be required by a court of competent jurisdiction or other entity with legal authority, to release any confidential information.
- 4.3 Nothing in clause 4.1 will prevent Landcare Research from using information relating to the Samples, the Tests or the Report (including for the avoidance of doubt any data derived during the Tests) for the purpose of internal education and training, including for quality control purposes.
- 4.4 The Client will acknowledge either that the EcoGene laboratory or Landcare Research has conducted the Services in any material published by the Client which refers to the Test results and/or the Report.

5. SAMPLES

- 5.1 Landcare Research will use its best endeavours to ensure that Samples and data are managed in accordance with any protocols that may be listed on its website <https://www.landcareresearch.co.nz/partner-with-us/ecogene-dna-based-diagnostics/> from time to time.
- 5.2 The Client warrants that:
 - (a) it has the right to hold and submit the Sample for testing; and,
 - (b) the Sample has been collected and stored in accordance with any collection or storage guidelines issued by Landcare Research from time to time.
- 5.3 Unless otherwise agreed in writing with the Client, Landcare Research:
 - (a) Will use reasonable endeavours to store any Samples and associated DNA remaining after completion of the Tests for 30 days following completion of the Tests and;
 - (b) May destroy the Samples and associated DNA following that period.

6. INTELLECTUAL PROPERTY

- 6.1 Intellectual property owned by a Party prior to the commencement of this Agreement (Pre-existing Intellectual Property) and intellectual property created by a Party independently of this Agreement remains the property of that Party.
- 6.2 The Client shall identify any proprietary rights that any other person may have in any Sample provided by the Client to Landcare Research which relate to the Services. In the absence of any notification to the contrary Landcare Research will be entitled to assume that the Client is the sole owner of any proprietary rights in the Sample.
- 6.3 Intellectual property in the Report prepared as part of the Services shall be owned by the Client ("New Intellectual Property"). The Client absolutely indemnifies Landcare Research from any claim by a third party arising from the Clients' use, or any 3rd Party's use of any New Intellectual Property. The Clients' rights in relation to this New Intellectual Property are conditional upon the Client having paid all amounts due and owing to Landcare Research for the Services. The Client grants to Landcare Research an unrestricted royalty-free license in perpetuity to copy or use New Intellectual Property including any associated data.

6.4 All intellectual property rights in relation to any new primers and genetic markers developed as part of the Services ("New Primer, Genetic Marker and/or methods IP") and any methods and know how developed by Landcare Research in the course of providing the Services shall be owned by Landcare Research. Landcare Research may (at Landcare Research's sole discretion) grant the Client the right to use any new primers, genetic markers and or methods developed at the Client's request.

7. EXCLUSION OF LIABILITY

7.1 Landcare Research shall not be liable to the Client for any claims, damages, liabilities, losses (including loss of profits) or expenses, arising from the Services advice or information provided to the Client, whether under contract, tort or otherwise.

7.2 In the event that clause 7.1 above does not apply to a claim, Landcare Research's maximum total cumulative liability under these terms and conditions shall be NZ\$1,000.

8. NO WARRANTY

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

9. General

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

9.2 **Disputes:** The Parties shall attempt in good faith to settle any dispute themselves but failing that by mediation

9.3 **Laws:** This Agreement is governed by the New Zealand law, the New Zealand courts have jurisdiction in respect of this Agreement, and all amounts are payable in New Zealand dollars.