

## DECODE SCIENCE AUSTRALIA PTY LTD

### TERMS AND CONDITIONS OF TRADE

#### 1. Definitions

In these Terms:

"ACL" means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) as amended;

"Agreement" means any agreement for the provision of equipment or services by Decode Science to the Client;

"Consumer" is as defined in the ACL and in determining if the Client is a consumer, the determination is made if Client is a consumer under the Agreement;

"Client" means the person, jointly and severally if more than one, acquiring equipment or services from Decode Science;

"Equipment" means the laboratory and associated equipment supplied by Decode Science to the Client;

"GST" means the Goods and Services Tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended;

"Indent Line" means equipment which is not held as stock by Decode Science at its premises, and is required to be manufactured by Decode Science or its related entities;

"PPSA" means the *Personal Property Securities Act 2009* (Cth) as amended;

"Decode Science" means Decode Science Australia Pty Ltd (ABN 24 615 709 245)

"Services" means services supplied by Decode Science to the Client;

"Stock Line" means equipment held by Decode Science at its premises, which can be delivered to the Client direct from Decode Science' premises; and

"Terms" means these Terms and Conditions of Trade.

#### 2. Basis of Agreement

2.1 Unless otherwise agreed by Decode Science in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms, including the Client's terms and conditions of purchase (if any).

2.2 Any quotation provided by Decode Science to the Client for the proposed supply of equipment or services is:

- (a) valid for 30 days;
- (b) an invitation to treat only; and
- (c) only valid if in writing.

2.3 The Terms may include additional terms in Decode Science' quotation, which are not inconsistent with these Terms.

2.4 An Agreement is accepted by Decode Science when Decode Science accepts, in writing or electronic means, an offer from the Client or provides the Client with the equipment or services.

2.5 Decode Science has absolute discretion to refuse to accept any offer.

2.6 The Client must provide Decode Science with its specific requirements, if any, in relation to the equipment and services.

2.7 Decode Science may vary or amend these Terms by written notice to the Client at any time. Any variations or amendments will apply to orders placed after the notice date.

2.8 Decode Science reserves the right to modify the design and specifications of its equipment without notice and without liability.

2.9 Decode Science may make modifications to or substitution of components during manufacture of the equipment, provided that the end performance of the equipment is not materially prejudiced.

#### 3. Pricing

3.1 The prices of the equipment and the services will be invoiced in Australian Dollars.

3.2 Prices exclude GST and any other taxes or duties imposed on or in relation to the equipment and services, which are additionally at the Client's cost.

3.3 If the Client requests any variation to the Agreement, Decode Science may increase the price to account for the variation.

## DECODE SCIENCE AUSTRALIA PTY LTD

### TERMS AND CONDITIONS OF TRADE

3.4 Where there is any change in the costs incurred by Decode Science in relation to the equipment or services (including but not limited to increases in import duties, freight charges, manufacturing price increases or currency fluctuations), Decode Science may vary its price to take account of any such change, by notifying the Client.

#### 4. Payment

4.1 Unless otherwise agreed in writing:

- (a) Subject to 5.1(b), payment for the equipment or services must be made in full, without any deduction or set-off, within 30 days of the date of Decode Science' invoice.
- (b) For orders above \$150,000 Decode Science reserves the right to require a deposit payment of up to 50% of the value of the goods, at the time of order and payment in full on delivery of the equipment or completion of the services.

4.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.3 Payment terms may be revoked or amended at Decode Science' sole discretion immediately upon giving the Client written notice.

4.4 The time for payment is of the essence.

#### 5. Payment Default

5.1 If the Client defaults in payment by the due date of any amount payable to Decode Science, then all money which would become payable by the Client to Decode Science at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Client, and Decode Science may, without prejudice to any of its other accrued or contingent rights:

- (a) charge the Client interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act* 1983 (Vic) plus 4 per cent for the period from the due date until the date of payment in full;
- (b) charge the Client for, and the Client must indemnify Decode Science from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any equipment;
- (c) cease or suspend supply of any further equipment or services to the Client;
- (d) by written notice to the Client, terminate any uncompleted contract with the Client.

5.2 Clauses 6.1(c) and (d) may also be relied upon, at Decode Science' option:

- (a) where the Client is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Client is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Client.

#### 6. Passing of Property

6.1 Until Decode Science receives full payment in cleared funds for all equipment and services supplied by it to the Client, as well as all other amounts owing to Decode Science by the Client:

- (a) title and property in all equipment remains vested in Decode Science and does not pass to the Client;
- (b) the Client must hold the equipment as fiduciary bailee and agent for Decode Science;
- (c) where possible, the Client must keep the equipment separate from its own goods and maintain Decode Science' labeling and packaging;
- (d) the Client must hold the proceeds of sale of the equipment on trust for Decode Science in a separate account with a bank to whom the Client has not given security however failure

## DECODE SCIENCE AUSTRALIA PTY LTD TERMS AND CONDITIONS OF TRADE

- to do so will not affect the Client's obligation as trustee;
- (e) in addition to its rights under the PPSA, Decode Science may without notice, enter any premises where it suspects the equipment are and remove them, notwithstanding that they may have been attached to other equipment not the property of Decode Science, and for this purpose the Client irrevocably licences Decode Science to enter such premises and also indemnifies Decode Science from and against all costs, claims, demands or actions by any party arising from such action.

### 7. Risk and Insurance

- 7.1 The risk in the equipment and all insurance responsibility for theft, damage or otherwise will pass to the Client immediately on the equipment being dispatched from Decode Science premises (made available to carrier at Decode Science' premises) or taken from Decode Science' premises.
- 7.2 Damage or loss of goods in transit is the sole responsibility of the Client.
- 7.3 The equipment is sold to the Client on the basis that the Client has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the equipment.
- 7.4 The Client assumes all risk and liability for loss, damage or injury to persons or to property of the Client, or third parties arising out of the use, installation or possession of any of the equipment sold by Decode Science, unless recoverable from Decode Science on the failure of any statutory guarantee under the ACL.

### 8. Performance of Agreement

- 8.1 Any period or date for delivery of equipment or provision of services stated by Decode Science is an estimate only and not a contractual commitment.
- 8.2 Decode Science will use its reasonable endeavours to meet any estimated dates for delivery of the equipment but will not be liable for any loss or damage suffered by the Client or any third party for failure to meet any estimated date.
- 8.3 If Decode Science cannot complete the services by any estimated date, it will complete the services within a reasonable time.

### 9. Delivery

- 9.1 Subject to clause 9.6, Decode Science will arrange for the delivery of the equipment to the Client.
- 9.2 The Client is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the equipment to the Client to the point of delivery.
- 9.3 Decode Science may make part delivery of equipment or provision of services and Decode Science may invoice the Client for the equipment or services provided.
- 9.4 The Client indemnifies Decode Science against any loss or damage suffered by Decode Science, its sub-contractors or employees as a result of delivery, except where the Client is a consumer and Decode Science has not used due care and skill.
- 9.5 If delivery is attempted and is unable to be completed the Client is deemed to have taken delivery of the equipment. The Client is liable for storage charges payable monthly on demand.
- 9.6 If agreed that the Client will collect the equipment:
- (a) the Client must collect the equipment with 7 days of being advised it is ready;
- (b) if the Client does not collect the equipment within this time, the Client is deemed to have taken delivery of the equipment and is liable for storage charges payable monthly on demand.

**DECODE SCIENCE AUSTRALIA PTY LTD**  
**TERMS AND CONDITIONS OF TRADE**

**10. Liability**

- 10.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the equipment or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the equipment or services or any contractual remedy for their failure.
- 10.2 If the Client is a consumer, nothing in these Terms restricts, limits or modifies the Client's rights or remedies against Decode Science for failure of a statutory guarantee under the ACL.
- 10.3 If the Client on-supplies the equipment to a consumer:
- (a) if the equipment or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of Decode Science' liability to the Client;
  - (b) if the equipment or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, then payment of any amount required under section 274 of the ACL is the absolute limit of Decode Science' liability to the Client, howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the equipment or services by the Client or any third party.
- 10.4 If clause 10.2 or 10.3 does not apply, then other than as stated in the Terms or any written warranty statement, Decode Science is not liable to the Client in any way howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the equipment or services by the Client or any third party.
- 10.5 Decode Science is not liable for any indirect or consequential losses or expenses suffered by the Client or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.
- 10.6 The Client acknowledges that:
- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by Decode Science in relation to the equipment or services or their use or application.
  - (b) it has not made known, either expressly or by implication, to Decode Science any purpose for which it requires the equipment or services and it has the sole responsibility of satisfying itself that the equipment or services are suitable for the use of the Client.
- 10.7 Nothing in the Terms is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of equipment or supply of services which cannot be so excluded, restricted or modified.

**11. Cancellation**

- 11.1 If Decode Science is unable to deliver or provide the equipment or services, then it may cancel the Client's order (even if it has been accepted) by written notice to the Client.
- 11.2 No purported cancellation or suspension of an order or any part of it by the Client is binding on Decode Science once the order has been accepted.

**12. Shortages and Exchanges**

- 12.1 Subject to clause 12.2 and 12.7, Decode Science will not be liable for any shortages, damage or non-compliance with the specifications in the Agreement unless the Client notifies Decode Science with full details and description within 10 days of delivery otherwise the Client is deemed to have accepted the equipment.
- 12.2 When any shortages, claim for damaged equipment or non-compliance with the Agreement specifications is accepted by Decode Science, Decode Science may, at its option, replace the equipment, or refund the price of the equipment.
- 12.3 Subject to clause 12.7, Decode Science will not under any circumstances accept equipment for return that:

## DECODE SCIENCE AUSTRALIA PTY LTD

### TERMS AND CONDITIONS OF TRADE

- (a) has been specifically produced, imported or acquired to fulfil the Agreement;
  - (b) is discontinued equipment or no longer stocked by Decode Science;
  - (c) has been altered in any way; or
  - (d) has been **used**.
- 12.4 Subject to clause 12.7, equipment will not be accepted for return unless Decode Science gives its prior written consent.
- 12.5 For return of Stock Line equipment:
- (a) original invoice numbers must be quoted;
  - (b) the equipment and packaging must be in its original condition and free from damage and blemishes;
  - (c) the cost of storage and freight is at the Client's sole expense; and
  - (d) the equipment returned will be subject to a handling fee of 25% of the invoice value of the equipment (if this value is less than \$50, a minimum charge of \$50 will apply).
- 12.6 For return of Indent Line equipment:
- (a) original invoice numbers must be quoted;
  - (b) the equipment and packaging must be in its original condition and free from damage and blemishes;
  - (c) the cost of storage and freight is at the Client's sole expense; and
  - (d) the equipment returned will be subject to a handling fee of 75% of the invoice value of the equipment (if this value is less than \$50, a minimum charge of \$50 will apply).
- 12.7 If the Client is a consumer, nothing in this clause 12 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.
- 13. Force Majeure**
- 13.1 Decode Science is not liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war. If an event of force majeure occurs, Decode Science may suspend or terminate the Agreement by written notice to the Client.
- 14. Miscellaneous**
- 14.1 The law of Victoria from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 14.2 Decode Science' failure to enforce any of these Terms shall not be construed as a waiver of any of Decode Science' rights.
- 14.3 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of the remaining terms.
- 14.4 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.