

AsureQuality Australia Pty Ltd - Standard Terms of Business for the Provision of all Goods and Services

A. TERMS APPLICABLE TO ALL GOODS AND SERVICES

1. GENERAL

- 1.1 All Goods and Services provided by AsureQuality Australia Pty Limited (**AsureQuality**) are on the basis set out below unless otherwise agreed in writing. In the event of any conflict between these terms (**Terms**) and any subsequent written contract between AsureQuality and the Customer, the terms of the subsequent written contract shall prevail.
- 1.2 For the purposes of these Terms:
- (a) "Services" means all services requested by the Customer to be performed from time to time by AsureQuality (**with terms applicable to only Services set out in section B below**); and
 - (b) "Goods" means all goods requested by the Customer to be provided from time to time by AsureQuality (**with terms applicable to only Goods set out in section C below**).
- 1.3 If the Customer accepts Goods and/or Services provided by AsureQuality, the Customer's actions will be deemed to be acceptance of these Terms, notwithstanding anything which may be stated to the contrary in the Customer's enquiries, order form or statement of work.
- 1.4 The Customer may not make any public reference to AsureQuality or AsureQuality's provision of the Goods and/or Services, including, without limitation, in any advertising or promotional material, without the prior written consent of AsureQuality, which consent may be given or withheld in AsureQuality's sole discretion.
- 1.5 AsureQuality may at any time amend any of these Terms with immediate effect by posting the amended Terms on its website (www.aqdiagnostics.com) and advising that these Terms have been amended on the Customer's invoice. By continuing to order Goods or Services from AsureQuality after AsureQuality has posted the amended Terms on its website, the Customer is deemed to have accepted such amended Terms.

2. GENERAL PERFORMANCE

- 2.1 AsureQuality will use its reasonable skill, care and effort in providing all Goods and/or Services, using resources reasonably available to AsureQuality.
- 2.2 AsureQuality will use its reasonable efforts to achieve agreed delivery times agreed in writing with the Customer in a timely and efficient manner, but will not be liable for any failure to do so.
- 2.3 Without limiting clause 2.2, AsureQuality will not be liable for any delay or non-performance in providing Goods and/or carrying out Services pursuant to these Terms if such delay or non-performance is attributable (directly or indirectly) to circumstances beyond its reasonable control.
- 2.4 The Customer may not cancel any order for Goods and/or Services (whether fully or in part) without AsureQuality's prior written consent, which may be given or withheld in its sole discretion.
- 2.5 Notwithstanding any other provision of these Terms, AsureQuality is not obliged to accept any order for Goods and/or Services made by the Customer, and in its sole discretion may refuse to provide or perform all and/or any such Goods and/or Services requested by the Customer.
- 2.6 AsureQuality may withdraw any quotation before it is accepted by the Customer, and in any event any quotation will lapse without notice 30 days after it is given to the Customer.

3. PRICE AND PAYMENT

- 3.1 The price for the Goods and/or Services will be either as quoted by AsureQuality to the Customer in writing or, if no written quote is provided, at AsureQuality's standard charges for such Goods and/or Services applying at the time which Goods and/or Services are supplied or performed by AsureQuality. Unless expressly stated in writing, also prices are exclusive of GST, and all GST will be charged to and be borne by the Customer, and payable at the same time as the price.

- 3.2 Unless otherwise agreed in writing, any quoted price may be altered by AsureQuality prior to the provision of the Goods and/or Services to the Customer if AsureQuality's costs in providing such Goods and/or Services will fluctuate materially.
- 3.3 Unless otherwise agreed in writing, all relevant freight and delivery charges will be additional to any quoted price, and will be charged to and be borne by the Customer, and payable by it at the same time as the price.
- 3.4 Payment for all Goods and/or Services is due by the 20th of the month following the date of AsureQuality's invoice (the **Due Date**). AsureQuality may at its option issue a monthly interim invoice for work greater than one month's duration.
- 3.5 If the Customer wishes to query any invoice submitted by AsureQuality, the Customer must give written notice to AsureQuality of the query within 30 days of the date of the invoice. If the Customer has not raised any query on the invoice within 30 days of the date of such invoice, the Customer is deemed to have accepted the invoice and must pay the invoice in full by the Due Date.
- 3.6 The Customer will be required to pay all costs (including legal and credit recovery costs) incurred by AsureQuality resulting from late or non-payment and interest at a rate of 2% above the current penalty interest rate fixed under the *Penalty Interest Rates Act 1983* on any moneys outstanding from the due date until the date of payment, but without prejudice to AsureQuality's other rights or remedies in respect of the Customer's default in failing to make payment on the due date. Interest shall be calculated monthly and shall be payable on demand.
- 3.7 Payment by credit card (VISA and Mastercard only) is acceptable. A 1.5% surcharge will be applied to all payments made by credit card.
- 3.8 AsureQuality requires the Customer to have a registered account with AsureQuality. The Customer must complete an account application form and a user declaration form to set up a registered account.
- 3.9 If the Customer is in breach of these Terms or any other contract with AsureQuality, AsureQuality may, without prejudice to its other rights or remedies, terminate all or any of its obligations under these Terms or any other contract, and/or withhold or suspend the provision of Goods and/or Services under these Terms or any other contract, and/or withdraw any certification or accreditation issued to the Customer by AsureQuality under these Terms or any other contract.

4. **CONFIDENTIALITY OF INFORMATION**

- 4.1 AsureQuality will not disclose to third parties confidential information relating to the Customer, except:
 - (a) to the extent compelled to do so by law; or
 - (b) to its insurers and professional advisers.

AsureQuality acknowledges that the Customer's confidential information is its property.

- 4.2 The Customer will not disclose to third parties any confidential information relating to AsureQuality, including in relation to the Goods and/or Services (or any component of them), and its processes, ideas, concepts and techniques, including in relation to the Goods and/or Services (or any component of them), unless compelled to do so by law. The Customer acknowledges that AsureQuality's processes, concepts and techniques, including in relation to the Goods and/or Services (or any component of them), are its intellectual property and are confidential information for the purpose of these Terms.

5. **WARRANTIES, LIABILITY AND INDEMNITY**

- 5.1 Except for any written warranty given by AsureQuality to the Customer, all warranties and representations (including those expressed or implied by law) in respect of the Goods and/or Services supplied and or performed by AsureQuality are excluded to the extent permitted by law.
- 5.2 The liability of AsureQuality and its employees, agents or contractors, whether in contract or pursuant to any cancellation of any contract, in tort or otherwise, in respect of each claim or series of related claims for loss, damage or injury arising:
 - (a) from a breach of any of AsureQuality's obligations arising under or in connection with these Terms;
 - (b) from any cancellation of these Terms; or

- (c) from any negligence, misrepresentation or other act or omission by AsureQuality, its employees, agents or contractors,

shall not, in aggregate, exceed:

- (a) in the case of Goods, the lesser of the total amount paid for the particular Goods and A\$5,000.00 (as the case may be); and
- (b) in the case of Services, the lesser of the total fee for the particular Services and A\$5,000.00.

5.3 None of AsureQuality its employees, agents or contractors are liable, whether in contract, tort or otherwise, for any loss of profits or any special, indirect, incidental or consequential damage, loss or injury of any kind suffered by the Customer arising directly or indirectly from any breach of AsureQuality's obligations under or in connection with these Terms or from any termination of these Terms or from any negligence, misrepresentation or other act or omission on the part of AsureQuality, its servants, agents or contractors.

5.4 AsureQuality's total liability under any written warranty given by AsureQuality in relation to the Goods and/or Services supplied by AsureQuality pursuant to those Terms is limited at AsureQuality's option to:

- (a) re-performing the Services or repairing or replacing the Goods; or
- (b) refunding the price for the Goods paid by the Customer or the charge for the Services,

provided that where AsureQuality elects to re-perform the Services or repair or replace the Goods, it will use reasonable endeavours to do so as soon as practicable but will not be liable for any delay in such re-performance, replacement or repair.

5.5 In relation to the Goods and/or Services, should a third party make any claim against AsureQuality or its employees, agents or contractors, or should any regulatory body undertake any investigation, the Customer agrees to indemnify AsureQuality for any costs, damages or other losses suffered by AsureQuality or its employees, agents or contractors in relation to any such claim or investigation suffered or incurred by AsureQuality or its employees, agents or contractors in defending, responding to or settling any such claim or investigation.

5.6 Certain laws provide non-excludable statutory guarantees, conditions or warranties for the supply of certain goods or services. Nothing in these Terms is to be taken to exclude, restrict or modify any guarantee, condition or warranty that AsureQuality is prohibited by law from excluding restricting or modifying. If such a statutory guarantee, condition or warranty applies to these Terms and AsureQuality breaches that guarantee, condition or warranty, AsureQuality accepts liability for such breach, but, where it is lawful to do so and fair and reasonable to do so, AsureQuality's liability is limited to the resupply of the relevant goods and/or service or payment of the costs of resupplying the relevant goods and/or service. To the extent permitted by law, all other implied warranties or representations are excluded, other than those expressly referred to in these Terms.

6. TERMINATION

6.1 AsureQuality may by notice in writing to the Customer terminate AsureQuality's obligations under these Terms:

- (a) upon the provision of the Goods and/or Services to the Customer and payment by the Customer to AsureQuality of all monies owing to it under these Terms;
- (b) at the option of AsureQuality, in accordance with clause 3.7;
- (c) at the option of AsureQuality, in accordance with clause 9.1;
- (d) if the Customer commits any act of bankruptcy, enters into any arrangement with its creditors or (in the case of a company) does any act which would render it liable to be liquidated, or if a resolution is passed or proceedings commenced for the liquidation or voluntary administration of the Customer or if a receiver, statutory manager or similar functionary is appointed in respect of all or any of its assets; or
- (e) upon mutual agreement of the parties.

6.2 Termination will not affect the rights of either party in respect of any breach of these Terms in existence prior to termination.

7. **FORCE MAJEURE**

- 7.1 **Force Majeure Event:** A party's obligations under these Terms (other than any obligation to make payment) shall be suspended for the period of Force Majeure if the party is prevented from complying with that obligation by an event of Force Majeure. A party who is affected by an event of Force Majeure shall give the other party details of the event as soon as practicable, and shall take all reasonable steps to remove or mitigate the event of Force Majeure
- 7.2 **Meaning of "Force Majeure":** For the purposes of this clause 7, "**Force Majeure**" means circumstances beyond the reasonable control of the relevant party including: act of God; war, acts of terrorism nuclear fusion; fire; explosions; flood; subsidence; insurrection or civil disorder; government restraint; expropriation; prohibition; intervention; direction or embargo; strikes; lock-outs or other industrial disputes of any kind; failures or fluctuations in electrical power; heat or light and any circumstances that are beyond the reasonable control of the relevant party. The insolvency or financial position of a party shall be deemed to be not beyond the reasonable control of that party.

B. **TERMS APPLICABLE TO ONLY SERVICES**

8. **PERFORMANCE OF SERVICES**

- 8.1 For the performance of any Services, the Estimated Price, Estimated Completion Date and Work Objectives are set out in the relevant order form or written contract.
- 8.2 AsureQuality will use its reasonable skill, care and effort to achieve the Work Objectives at the Estimated Price using resources reasonably available to AsureQuality.
- 8.3 AsureQuality will use its reasonable efforts to achieve the Work Objectives on or before the Estimated Completion Date but will not be liable for any delay beyond that date.
- 8.4 AsureQuality will not be liable for any delay or non-performance or for exceeding the Estimated Price if it is attributable (directly or indirectly) to circumstances beyond its reasonable control.

9. **RIGHT OF TERMINATION**

- 9.1 AsureQuality may by notice in writing to the Customer terminate its obligations under these Terms where it appears to AsureQuality that it is likely that the cost of achieving the Work Objectives will exceed the Estimated Price by 20% or more (provided that AsureQuality advises the Customer within 14 days of being informed of such likelihood, that it wishes to terminate the contract).

C. **TERMS APPLICABLE TO ONLY GOODS**

10. **STATEMENT OF WORK – MANUFACTURED GOODS**

- 10.0 The Customer and AsureQuality will, prior to AsureQuality manufacturing any Goods for the Customer, agree the manufacturing specifications in writing in a statement of work. In addition to setting out the manufacturing specifications, the statement of work must specify:
- (a) the delivery address for AsureQuality to deliver the Goods to the Customer;
 - (b) the product release criteria for the release of the Goods by AsureQuality to the Customer; and
 - (c) any special terms for the manufacture of the Goods agreed between the parties, which terms shall vary these Terms to the extent of any inconsistency or conflict,
- (the **Statement of Work**).
- 10.1 All Goods manufactured by AsureQuality for the Customer will be manufactured in accordance with the specifications set down in "ISO 9001" and the Statement of Work.
- 10.2 Once the product release criteria for the Goods is met, the Goods will be released by AsureQuality and the delivery of such Goods to the Customer may occur.

11. DELIVERY OF GOODS

- 11.0 Delivery of Goods by or on behalf of AsureQuality will be completed by delivery in full or in instalments to the delivery address specified in the Statement of Work or order form, unless otherwise agreed in writing between AsureQuality and the Customer.
- 11.1 The Customer is responsible for checking that Goods are received in acceptable condition. Unless agreed otherwise in writing, the Customer must report, to AsureQuality, any concerns regarding the condition of Goods received within seven days of receipt of Goods. Goods are deemed to be received in an acceptable condition if no concerns have been raised within seven days of the Customer's receipt of Goods.
- 11.2 If the Customer fails or refuses to accept delivery of any Goods when notified by AsureQuality that such Goods are ready for delivery, then the Goods will be deemed to have been delivered to the Customer at the time of such notification by AsureQuality.

12. TITLE AND SECURITY IN GOODS (PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA"))

- 12.1 Ownership in the Goods will not pass on delivery, but will remain with AsureQuality until full payment for all monies owing pursuant to clause 3 by the Customer to AsureQuality in respect of such Goods has been made.
- 12.2 Risk in respect of any Goods sold will pass to the Customer when the Goods are delivered to the Customer or any carrier, or the time the Customer pays for the Goods (whichever is the earlier). Risk in any Goods which are in AsureQuality's possession for repair remains with the Customer.
- 12.3 AsureQuality has a security interest (for the purposes of the PPSA) in Goods and any proceeds until title for such Goods passes to the Customer in accordance clause 12. This security interest secures all moneys owing by the Customer to AsureQuality. This security interest is a "purchase money security interest" under the PPSA to the extent that it secures payment of the amounts owing in relation to the Goods. The security interest arising under this clause 12 attaches to the Goods when AsureQuality (or any person on its behalf) obtains possession of the Goods and the parties confirm that they have not agreed that any security interest arising under this clause 12 attaches at any later time.
- 12.4 AsureQuality may register any security interest in connection with these Terms or the Goods for the purposes of the PPSA (including a security interest arising under this clause 12). The Customer must do anything (such as obtaining consents, signing and producing receipts and documents, getting documents completed and signed and supplying information) which AsureQuality asks and considers necessary for the purposes of ensuring that each such security interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective.
- 12.5 In relation to any security interest in connection with these Terms or the Goods:
- (a) AsureQuality need not give any notice under the PPSA (including a notice of a verification statement) in relation to such security interest unless the notice is required by the PPSA and cannot be excluded;
 - (b) AsureQuality need not comply with any of the provisions of the PPSA that would otherwise apply to the extent the law permits them to be excluded; and
 - (c) the Customer may not exercise rights under sections 142 (redemption of collateral) or 143 (reinstatement of security interest) of the PPSA to the extent the law permits them to be excluded.
- 12.6 The Customer gives irrevocable authority to AsureQuality (and its employees, officers and agents) to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after default by the Customer (or before default if AsureQuality believes a default is likely) to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated, and AsureQuality may sell or otherwise dispose of those Goods or other property in any way and on any terms (including price) that it chooses. These rights are in addition to any rights AsureQuality may have under Chapter 4 of the PPSA. Neither AsureQuality nor any of its employees, officers or agents shall be liable for, and the Customer hereby indemnifies each of them in respect of, any costs, damages, expenses or losses incurred by AsureQuality, its employees, officers or agents or any third party as a result of this action, or liability either in contract or in tort or otherwise in any way whatsoever, unless by operation of law such liability cannot be excluded.
- 12.7 For the purposes of the PPSA, the Customer will be in default where:
- (a) there is non payment of any sum by the due date;

- (b) the Customer indicates that it will not pay any sum to AsureQuality by the due date;
 - (c) any Goods are seized by any of the Customer's creditors or creditor and/or any such creditor or creditors intimate(s) that it/they intend(s) to seize Goods;
 - (d) any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to AsureQuality remains unpaid;
 - (e) the Customer is insolvent or put into liquidation or an administrator or receiver is appointed to the Customer or any of the Customer's assets;
 - (f) a Court judgment is entered against the Customer and remains unsatisfied for seven (7) days; or
 - (g) any material adverse change in the financial position of the Customer.
- 12.8 If the Customer holds any security interests in the Goods for the purposes of the PPSA, the Customer agrees to perfect (as that term is defined in the PPSA) those security interests with the highest ranking priority reasonably possible (such as perfecting a purchase money security interest) and provide evidence of such perfection to AsureQuality.

12.9 Everything the Customer is required to do under this clause 12 is at the Customer's expense. The Customer agrees to pay or reimburse the costs of AsureQuality in connection with anything the Customer is required to do under this clause 12.

13. RETURN OF GOODS AND USE OF GOODS

- 13.1 No Goods can be returned by the Customer without the prior written approval of AsureQuality.
- 13.2 Any Goods returned by the Customer to AsureQuality must be returned freight paid, though the Customer may claim for any reasonable freight charges.
- 13.3 Without limiting anything in clause 5 or this clause 13, the Customer must use any Goods supplied by AsureQuality in accordance with all instructions for such Goods as provided by the manufacturer of such Goods, including AsureQuality (where applicable).

14. RETURN OF RAW MATERIALS

- 14.1 Any raw materials provided by the Customer to AsureQuality in connection with it manufacturing Goods for that Customer will not be returned to the Customer unless agreed in the Statement of Work or in writing between the Customer and AsureQuality.
- 14.2 Any raw materials returned to the Customer by AsureQuality will be at the Customer's expense.

15. MISCELLANEOUS

- 15.1 The Customer may not assign all or any of its rights or obligations under these Terms without the prior written consent of AsureQuality, which may be given or withheld in its sole discretion.
- 15.2 All the rights, powers, exemptions and remedies of AsureQuality remain in full force despite any neglect, omission or delay in the enforcement thereof. AsureQuality is not deemed to have waived any provision or right unless the waiver is in writing under signature of AsureQuality or its authorised officer and any such waiver, unless the contrary is expressly stated, applies to and operates only in a particular transaction, dealing or matter.
- 15.3 All notices shall be delivered by hand or be sent by express mail or email. Any notice sent by express mail will be deemed to have been received two business days after posting and any notice sent by email will be deemed to have been received on the date and time at which it enters the addressee's information system. Notices shall be given to the parties at the address, or email addresses set out in the document attached or such other addresses, or email addresses as they may from time to time advise in writing.
- 15.4 These Terms constitute the entire agreement between the Customer and AsureQuality with respect to the matters contemplated by these Terms and supersedes all previous agreements, arrangements or understandings between the Customer and AsureQuality including any earlier forms or versions of these Terms.

- 15.5 The Customer must advise AsureQuality of any relevant safety hazards pertaining to the Services requested by the Customer and provide all relevant Material Safety Data Sheets.
- 15.6 "GST" means goods and services tax payable under A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time.
- 15.7 If any provision of these Terms shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected.
- 15.8 These Terms shall be governed by the laws of Victoria and AsureQuality and the Customer agree to submit to the nonexclusive jurisdiction of the Victorian Courts. The parties irrevocably:
- (a) waive any objections which they may have now or in the future to the venue of any proceedings brought in the Victorian Courts; and
 - (b) agree that any final judgment (after appeal or expiration of time for appeal) entered into by such Court shall be conclusive and binding on the parties and may be enforced in the courts of any other jurisdiction to the fullest extent permitted by law.