

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 are on the basis set out below unless otherwise agreed in writing. In the event of any conflict between these 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) "Lab Services" means any laboratory tests requested by the Customer to be performed from time to time by AsureQuality including any specific expected turn-around times set out in the document attached to these Terms **(with terms applicable to only Lab Services set out in section B below)**;
 - (b) "Other Services" means all other services requested by the Customer to be performed from time to time by AsureQuality **(with terms applicable to only Other Services set out in section C below)**;
 - (c) "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 D below)**; and
 - (d) "Services" means both Lab Services and Other Services.
- 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 or order form.
- 1.4 The Customer may not make any public reference to AsureQuality or AsureQuality's provision of the Goods and 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 the Terms with immediate effect by posting the amended Terms on its website (www.asurequality.co.nz) and advising that the 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 Terms.

2 GENERAL PERFORMANCE

- 2.1 AsureQuality will use its reasonable skill, care and effort in providing all Goods and Services, using resources reasonably available to AsureQuality (this being subject in the case of Other Services to clause 10.2).
- 2.2 AsureQuality will use its reasonable efforts to achieve agreed turn-around times in a timely and efficient manner but will not be liable for any failure to do so (this being subject in the case of Other Services to clause 10.3).
- 2.3 Without limiting clause 2.2, AsureQuality will not be liable for any delay or nonperformance in providing Goods or carrying out Services pursuant to these Terms if such delay or nonperformance is attributable (directly or indirectly) to circumstances beyond its reasonable control.
- 2.4 The Customer may not cancel any order for Goods or Services (whether fully or in part) without AsureQuality's 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 or Services made by the Customer, and in its sole discretion may refuse to provide or perform all or any such Goods or Services requested.
- 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.

3 PRICE AND PAYMENT

- 3.1 The price for the Goods and 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 Services applying at the time. Unless expressly stated in writing any stated price is exclusive of GST, and all GST will be charged to and 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 Services to the Customer if AsureQuality's costs in providing such Goods and 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 borne by the Customer, and payable at the same time as the price.
- 3.4 Payment for all Goods and Services is due on the 20th of the month following the date of AsureQuality's invoice. 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 interest (as well as all costs (including legal and credit recovery costs) incurred by AsureQuality resulting from late or non-payment) at a rate of 5% above the average monthly base commercial lending rate from time to time charged by AsureQuality 's bank 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 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 We will not disclose to third parties confidential information relating to you, unless compelled to do so by law. We acknowledge that your confidential information is your property.

4.2 You will not disclose to third parties confidential information relating to us and our processes, ideas, concepts or techniques, unless compelled to do so by law. You acknowledge that our processes, concepts and techniques are our property and are also confidential information.

5 WARRANTIES, LIABILITY AND INDEMNITY

5.1 AsureQuality warrants that it shall exercise all reasonable skill, care and effort in providing any Goods and Services to the Customer pursuant to these Terms.

5.2 Except for the written warranty given in clause 5.1 and any other written warranties given by AsureQuality to the Customer, all warranties and representations (including those expressed or implied by law) in respect of Goods and Services supplied are excluded to the extent permitted by law.

5.3 AsureQuality is not 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 Subject to clauses 5.1 to 5.3, the liability of AsureQuality, whether in contract or pursuant to any cancellation of any contract or in tort or otherwise, in respect of each claim or series of related claims for loss, damage or injury arising:

- from a breach of any of AsureQuality 's obligations arising under or in connection with these Terms;
 - from any cancellation of these Terms; or
 - from any negligence, misrepresentation or other act or omission by AsureQuality, its employees, agents or contractors;
- shall not in aggregate exceed:
- in the case of Goods, the lesser of the total amount paid for the Goods and \$5,000.00 (as the case may be); and
 - in the case of Services, the lesser of the total fee for the particular Services and \$5,000.00 (as the case may be).

5.5 AsureQuality's total liability under any warranty in relation to Goods or Services supplied by AsureQuality is limited at AsureQuality's option to:

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

5.6 AsureQuality and the Customer agree that any Goods and Services supplied pursuant to these Terms are for the purposes of a business and hence the statutory guarantees of the Consumer Guarantees Act 1993 do not apply. Should those statutory guarantees apply, these Terms shall be interpreted subject to the Consumer Guarantees Act 1993.

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 Services to the Customer and payment of all monies owing by the Customer under these Terms;
- (b) in the case of Other Services, in accordance with clause 11.1;
- (c) at the option of AsureQuality, in accordance with clause 3.6;
- (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 MISCELLANEOUS

7.1 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.

- 7.2 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.
- 7.3 All notices shall be delivered by hand or be sent by facsimile, fastpost or email. Any notice sent by facsimile will be deemed to have been received on the following business day in the place of receipt, any notice sent by fastpost 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. Notices shall be given to the parties at the address, facsimile number or email addresses set out in the document attached or such other addresses, facsimile numbers or email addresses as they may from time to time advise in writing.
- 7.4 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.
- 7.5 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.
- 7.6 "GST" means goods and services tax payable under the Goods and Services Tax Act 1985 (as amended).
- 7.7 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.
- 7.8 The Terms shall be governed by the laws of New Zealand and AsureQuality and the Customer agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand. The parties irrevocably:
- 7.8.1 waive any objections which they may have now or in the future to the venue of any proceedings brought in the Courts of New Zealand; and
- 7.8.2 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.

B. TERMS APPLICABLE TO ONLY "LAB SERVICES"

8 PERFORMANCE OF LAB SERVICES

- 8.1 Reasonable Industry Standard methodology for the Lab Services will be applied where applicable, and unless otherwise expressly agreed AsureQuality does not guarantee that such methodology is validated or fit for the Lab Services requested.
- 8.2 The Customer is responsible for the cost of and arranging transportation of items to be tested to and from AsureQuality's premises (including without limitation the cost of all freight charges, and all applicable duties and taxes).

9 MINIMUM CHARGE

- 9.1 A minimum charge of \$30 will be made for laboratory testing requested by the Customer to be performed in any one calendar month.

C. TERMS APPLICABLE TO ONLY "OTHER SERVICES"

10 PERFORMANCE OF OTHER SERVICES

- 10.1 For the performance of any Other Services, the Estimated Price, Estimated Completion Date and Work Objectives are set out in the relevant document attached to these Terms.
- 10.2 AsureQuality will use its reasonable skill, care and effort to achieve the Work Objectives at the Estimated Price using resources reasonably available to AsureQuality.
- 10.3 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.
- 10.4 Without limiting clause 10.3, 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.

11 RIGHT OF TERMINATION

- 11.1 AsureQuality may by notice in writing to the Customer terminate AsureQuality's 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 the Customer advises AsureQuality within 14 days of being informed of such likelihood, that it wishes to terminate the contract).

D. TERMS APPLICABLE TO ONLY "GOODS"

12 TITLE AND SECURITY IN GOODS (PERSONAL PROPERTY SECURITIES ACT 1999 ("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 The Customer acknowledges that through its acceptance of these Terms, the Customer grants a purchase money security interest (by virtue of the retention of title held under clause 12.1) to AsureQuality in all Goods supplied by AsureQuality to the Customer.
- 12.3 Unless otherwise agreed in writing the Customer agrees that (to the maximum extent permitted by law):

- a) the Customer waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest created by these Terms;
 - b) the Customer waives its rights and, with AsureQuality's agreement, contracts out of the Customer's rights under the sections referred to in section 107(2)(c) to (i) of the PPSA;
 - c) nothing in sections 114(1)(a), 133 and 134 of the PPSA applies to these Terms and, with AsureQuality's agreement, contracts out of such sections; and
 - d) with AsureQuality's agreement, section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for as long as AsureQuality is not the secured party with priority over all other secured parties in respect of those Goods.
- 12.4 AsureQuality's security interest in the Goods continues in any new goods into which those Goods are attached, fixed or incorporated, and in any proceeds, book debts or accounts receivable arising from the sale of the Goods.
- 12.5 The Customer gives irrevocable authority to AsureQuality 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] and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. AsureQuality shall not be liable for and the Customer hereby indemnifies AsureQuality in respect of any costs, damages, expenses or losses incurred by the Customer 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. AsureQuality may either resell any repossessed Goods and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and credit the Customer's account with the invoice value thereof less such sum as AsureQuality reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
- 12.6 Where Goods are retained by AsureQuality the Customer waives the right to receive notice under section 120 of the PPSA and to object under section 121 of the PPSA.
- 12.7 The following shall constitute defaults by the Customer:
- a) Non payment of any sum by the due date;
 - b) The Customer intimates that it will not pay any sum 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 bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets;
 - f) A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days;
 - g) Any material adverse change in the financial position of the Customer; or
 - h) If the Credit (Repossession) Act 1997 applies to any transaction between the Customer's present and after acquired property that AsureQuality has performed Services on or to or in which Goods or materials supplied or financed by AsureQuality have been attached or incorporated.
- 12.8 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.

13 RETURN OF GOODS AND USE OF GOODS

- 13.1 Any Goods returned by the Customer to AsureQuality must be returned freight paid, though the Customer may claim for any reasonable freight charges.
- 13.2 Without limiting anything in clause 5 or this clause 13, the Customer must use any Goods supplied by AsureQuality in accordance with all instructions given by the manufacturer of such Goods.