

Standard Terms of Business

PART A: GENERAL TERMS

1. APPLICATION OF TERMS

- 1.1 These Terms apply to all Services supplied by AsureQuality to the Customer. Any request received by AsureQuality from the Customer for the supply of Services will constitute an offer by the Customer to acquire the Services on these Terms only.
- 1.2 All Services supplied by AsureQuality to the Customer will be supplied on these Terms only. Unless expressly agreed by AsureQuality in writing, these Terms take precedence over any other terms or conditions.
- 1.3 If Goods are also supplied to the Customer by AsureQuality, the provisions of Part B of these Terms will also apply and all references to "Services" in these General Terms will be deemed to be references to "Goods and/or Services".

2. DEFINITIONS

Amount Owning means any amount owing by the Customer to AsureQuality from time to time, under these Terms or any other agreement, including any interest payable by the Customer, any liability of the Customer and any enforcement costs incurred by AsureQuality in seeking payment of any Amounts Owning.

AsureQuality means AsureQuality Limited.

Customer means the person that requested AsureQuality to provide Services.

Estimated Price means an estimated Price for Services notified to the Customer by AsureQuality in writing.

Event of Default means an event where: (a) any Amount Owning is overdue; (b) the Customer breaches these Terms or any other agreement with AsureQuality; or (c) the Customer suffers an Insolvency Event.

General Terms means the terms and conditions set out in this Part A of these Terms.

Goods means any goods supplied by AsureQuality to the Customer, including any advice or recommendations in relation to Goods.

Intellectual Property means all present and future rights anywhere in the world resulting from intellectual activity in the industrial, scientific, literary or artistic fields, whether or not registered or capable of registration, including testing, inspection and certification methods, processing systems, procedures, business information, laboratory results, working instructions, controlled documents, supporting documentation and any documentation generated by AsureQuality in connection with the Services.

Insolvency Event means in respect of either party (other than for the purpose of solvent reconstruction or amalgamation): (i) a receiver, receiver and manager, liquidator, statutory manager, trustee, administrator, controller, inspector appointed under any companies or securities legislation, or similar official is appointed in respect of that party or any of its property, or any security over any substantial part of its assets is enforced; (ii) the party ceases to carry on all or substantially all of its business, is unable to pay its debts when due, or is deemed unable to pay its debts under any law, or makes an assignment for the benefit of, or enters into or makes any arrangement or compromise with, that party's creditors or threatens to do so, or stops payments to its creditors generally; (iii) the party is, becomes, or is deemed to be insolvent or bankrupt; (iv) a distress, attachment or other execution is levied or enforced upon or commenced against any substantial part of its assets and is not stayed within 14 days; (v) any other event occurs or information becomes known to AsureQuality, which in AsureQuality's opinion, might materially affect the Customer's creditworthiness, the value of the Goods the subject of a Security Interest, or the Customer's ability or willingness to comply with its obligations under these Terms or any other agreement with AsureQuality; (vi) anything having a similar effect to any of the events specified above happens under the law of any applicable jurisdiction; or (vii) in the event that the party is an individual,

anything having a similar effect to any of the events specified above happens in respect of that individual.

Laboratory Testing Services means any laboratory testing services provided by AsureQuality to the Customer.

Liabilities includes all claims, actions, demands, proceedings, damages, fines, liabilities, compensation, losses, costs, charges, expenses and penalties, including: (a) property damage; (b) internal time costs; (c) legal costs and expenses charged at the usual commercial rates of the relevant legal services provider; and (d) credit recovery costs.

Order has the meaning given to it in clause 3.2.

Price means the price and any other applicable charges for Services: (a) quoted by AsureQuality to the Customer in writing; or (b) to the extent that no written quote is provided, calculated at AsureQuality's then current standard charges for the relevant Services, available from AsureQuality on request.

Related Company has the meaning given to that term in section 2(3) of the Companies Act 1993 (read as if the expression "company" in that section included any body corporate wherever incorporated or established).

Representative means any officer, employee, consultant, agent, contractor or subcontractor of a party, who is involved in the provision of the Services.

Services means any services provided by AsureQuality to the Customer, including Laboratory Testing Services, inspection and certification services and/or related services.

Terms means these Standard Terms of Business as amended by AsureQuality from time to time in accordance with these Terms.

3. SERVICES

3.1 The Customer may submit a request to AsureQuality to provide Services from time to time, in accordance with AsureQuality's order processes advised to the Customer from time to time.

3.2 AsureQuality may accept a request for Services, in whole or in part, by delivering the Services, issuing an invoice in respect of the applicable Services, or otherwise confirming in writing that AsureQuality will provide the Services. AsureQuality may decline a request for Services, in whole or in part, at AsureQuality's discretion. A contract is made only on acceptance of a request for Services by AsureQuality (**Order**).

4. PRICE

4.1 The Customer will pay AsureQuality the Price for all Services supplied by AsureQuality.

4.2 A minimum charge of \$30 will apply to each Order for Laboratory Testing Services to be provided by AsureQuality in any one calendar month.

4.3 Unless expressly agreed otherwise by AsureQuality, Prices and Estimated Prices are: (a) in New Zealand dollars; (b) exclusive of any applicable taxes and duties, including tax payable under the Goods and Services Tax Act 1985; (c) exclusive of reasonable out-of-pocket expenses and disbursements incurred by AsureQuality in connection with the provision of the Services; and (d) exclusive of any freight and delivery costs to and from AsureQuality's premises.

4.4 Any applicable reasonable out-of-pocket expenses and disbursements, taxes and/or freight and delivery costs are payable by the Customer in addition to the Price. The Customer will pay all Amounts Owning to AsureQuality in full, without counterclaim, set off, withholding, deduction or claim of any other nature.

4.5 Any quotation provided by AsureQuality is only valid for 30 days from the date of the quotation. AsureQuality may withdraw any quotation before it is accepted by the Customer.

4.6 If AsureQuality provides an Estimated Price for Services, AsureQuality will use its reasonable endeavours to provide the relevant Services at the Estimated Price using resources

reasonably available to AsureQuality. However, any Estimated Price is indicative only. Without limiting the foregoing, an Estimated Price may be adjusted if the Services are more complex or time consuming than anticipated by AsureQuality, a Force Majeure occurs which directly or indirectly affects the Estimated Price or there is a change in the scope, or timing of the provision of, the Services.

5. PAYMENT

- 5.1 As soon as practicable after the end of each month, AsureQuality will submit an invoice to the Customer which sets out the Amount Owing for the provision of the Services in any previous month, including, at AsureQuality's option, for Services that are not complete and are provided over a period of more than one month.
- 5.2 The Customer will pay all Amounts Owing by the 20th of the month following the date of AsureQuality's invoice.
- 5.3 If the Customer disputes all or any part of an invoice, the Customer must: (a) pay, by the due date, the undisputed portion of the disputed invoice; and (b) notify AsureQuality of the dispute, including the grounds of dispute, with full supporting details.
- 5.4 Failure to notify AsureQuality within 20 Business Days of the date of an invoice will constitute acceptance of that invoice and the Customer will have no further right to dispute such invoice.
- 5.5 If payment in full of all Amounts Owing is not made to AsureQuality by the relevant due date the Customer may, at the discretion of AsureQuality, pay to AsureQuality on demand default interest on any Amount Owing, at a rate of 2% per annum above AsureQuality's bankers overdraft rate, calculated on a daily basis from the date payment is due until the date payment is received by AsureQuality.
- 5.6 AsureQuality may apply any payments received from or on behalf of the Customer in reduction of the Amount Owing in such order and manner as AsureQuality thinks fit, despite any direction to the contrary and whether before or after the occurrence of an Event of Default.

6. CUSTOMER RESPONSIBILITIES

- 6.1 The Customer will provide and arrange for the provision of all relevant information and assistance reasonably required by AsureQuality to enable AsureQuality to provide the Services. The Customer warrants that all information that it provides to AsureQuality is complete, accurate and not misleading and acknowledges that, in the absence of manifest error, AsureQuality will be entitled to rely on the accuracy and sufficiency of such information.
- 6.2 The Customer is responsible for: (a) arranging any transportation to AsureQuality's premises, required for test samples and any other items required for the Services; (b) advising AsureQuality of any specific testing, inspection or certification methods that the Customer requires AsureQuality to follow when providing the Services (and any such specific methods are subject to AsureQuality's written confirmation and approval); (c) complying with any reasonable requirements for test samples notified to the Customer by AsureQuality from time to time; and (d) interpreting all test results as reported by AsureQuality and, if applicable, determining whether to release, retest or reject the materials that the test results relate to.

7. ASUREQUALITY RESPONSIBILITIES

- 7.1 AsureQuality will: (a) use its reasonable skill, care and effort in providing the Services, using resources reasonably available to AsureQuality; and (b) use reasonable industry standard methodology for Services, where applicable.
- 7.2 AsureQuality does not guarantee that any methodology used for a Service is validated as being suitable for the relevant Service or can be relied on as being fit for any particular purpose.
- 7.3 AsureQuality will use reasonable endeavours to provide Services in accordance with any agreed timeframes, however, any such timeframes are indicative only.
- 7.4 AsureQuality will retain routine non-perishable samples provided to AsureQuality in connection with Laboratory Testing Services for a minimum period of 10 days after the release of AsureQuality's final

report in respect of the relevant samples. All other samples will be disposed of by AsureQuality after the release of final report.

8. REPRESENTATIONS

- 8.1 The Customer may not use the AsureQuality logo or make any public reference to AsureQuality or AsureQuality's provision of the Services (**AQ Reference**), including on packaging or in any advertising or promotional material, without the prior written approval of AsureQuality, which approval may be given or withheld in AsureQuality's absolute discretion.
- 8.2 If AsureQuality approves an AQ Reference, the AQ Reference used by the Customer must be strictly limited to the AQ Reference expressly agreed by AsureQuality and any conditions attached to AsureQuality's consent.

9. INTELLECTUAL PROPERTY AND USE OF INFORMATION

- 9.1 Any information obtained by, or disclosed to, AsureQuality under or in connection with these Terms may be used and/or disclosed by AsureQuality and any Related Company of AsureQuality: (a) for a purpose directly related to Services; and (b) for any other purpose, including analytical purposes to improve the services provided by AsureQuality, provided that the information will only be disclosed to a third party in an anonymised and/or aggregated form.
- 9.2 All Intellectual Property rights and all information and data generated or developed by AsureQuality in connection with the Services, is the property of AsureQuality and, except as expressly set out in these Terms, the Customer will not obtain any rights or interests in such information, data and Intellectual Property rights.
- 9.3 The Customer authorises AsureQuality to collect, use, disclose and retain information, including personal information (as defined in the Privacy Act 1993) about the Customer for the purpose of assessing the Customer's creditworthiness and to enforce any payment obligations under these Terms. This may include AsureQuality sharing such personal information with credit reporting and debt recovery agencies, who may retain such personal information, including default information, and use it to provide their credit reporting services.
- 9.4 AsureQuality may retain a copy of all requests for Services, results and supporting documents for auditing and accreditation purposes.

10. EVENT OF DEFAULT AND TERMINATION

- 10.1 If an Event of Default occurs, any Amount Owing will become immediately due and payable and AsureQuality may: (a) suspend or cancel further provision of Services to the Customer; (b) without any prior notice or demand, set-off any of its own outstanding liabilities to the Customer to reduce any payment due or to become due by the Customer to AsureQuality; and (c) withdraw any certification or accreditation issued to the Customer by AsureQuality under these Terms or any other agreement.
- 10.2 Either party may terminate these Terms at any time if there are no outstanding Services to be provided under Orders by AsureQuality.
- 10.3 Either party may suspend or terminate this Agreement by written notice to the other party if an event or circumstance occurs which is beyond its control and prevents it from performing its obligations (other than payment obligations) under this Agreement, and the event or circumstance cannot be rectified within 15 Business Days of the occurrence.

11. LIABILITY

- 11.1 To the extent permitted by law, the maximum liability of AsureQuality for a claim arising under or in connection with these Terms and/or the Services, whether in tort (including negligence), contract, statute or otherwise, is limited, at the option of AsureQuality, to: (a) resupplying the Services that gave rise to the claim; or (b) crediting or repaying the Customer the lesser of \$5,000 and the Price paid by the Customer for the Services that gave rise to the claim in the 12 months preceding the date of the Customer's notice of the claim to AsureQuality.
- 11.2 AsureQuality will not be liable under or in connection with these Terms or the provision of the Services, whether in tort (including negligence), contract, statute or otherwise, for any loss of profits,

- loss of samples or consequential, indirect or special loss or damage of any kind.
- 11.3 The Customer indemnifies AsureQuality and its Representatives upon demand, for all Liabilities incurred by AsureQuality and/or its Representatives in connection with the provision of the Services as a result, whether directly or indirectly, of: (a) an act or omission of the Customer which gives rise to an Event of Default, including a breach of clause 8; (b) a claim or investigation by a regulatory body or other third party, or any statutory obligation, court order or compulsory process, that relates to the Customer; and/or (c) damage to or loss of AsureQuality's property while in the possession or control of the Customer.
- 11.4 All warranties, representations, statements, terms or conditions, whether implied by statute or made by any representative or agent of AsureQuality or otherwise, and whether express or implied, are excluded to the maximum extent permitted by law.
- 11.5 AsureQuality will not be liable to the Customer for any failure or delay in the performance of Services, where such failure or delay is caused by events or circumstances beyond the control of AsureQuality.
- 11.6 In the event of a dispute, the Customer must pay for the Services and then settle any claim with AsureQuality.
- 11.7 The Customer may not make a claim against AsureQuality under or in connection with the Services unless the Customer notifies AsureQuality of the claim as soon as reasonably practicable, and in any event not more than 12 months after the Customer becomes aware of the matter, information, event or circumstance giving rise to, or the subject of, the claim.
12. **FAIR TRADING ACT AND CONSUMER GUARANTEES ACT**
- 12.1 The parties agree that, for the purposes of section 5D of the Fair Trading Act 1986 (**FTA**): (a) to the extent permitted by law, in respect of all matters under or in connection with these Terms, the parties are contracting out of sections 9, 12A and 13 of the FTA; (b) the parties have each had an opportunity to receive advice from a lawyer prior to contracting on these Terms; and (c) it is fair and reasonable for the parties to be bound by this clause.
- 12.2 The Customer acknowledges that the Services are not "consumer" services for the purposes of the Consumer Guarantees Act 1993 (**CGA**) and accordingly, the CGA does not apply to the Services.
13. **NOTICES**
- 13.1 Notices or other communications given by one party to the other in connection with these Terms must be in writing and sent by personal delivery, post or electronic mail to the address of the relevant party as notified to the other party from time to time.
- 13.2 Any notice or other communication is deemed to be received and sufficiently served if: (a) personally delivered, on receipt; (b) posted by pre-paid official postal service, on the second working day after posting; and (c) if sent by electronic mail, on successful transmission or, if dispatched after 5.00 pm (in New Zealand), on the next Business Day after dispatch.
14. **GENERAL**
- 14.1 Subject to clause 8, each party agrees to keep the terms of these Terms confidential, except: (a) as is agreed in writing between the Customer and AsureQuality and, in such case, strictly limited to the terms agreed and any conditions attached to such agreement; (b) to its directors, officers, employees, agents, contractors or representatives, insurers and professional advisers to the extent necessary to obtain the benefit of, or to properly perform its obligations, under these Terms; (c) as required by an applicable law, after first consulting with the other party to the extent practicable about the form and content of the disclosure; (d) where disclosure is by AsureQuality to a Related Company; or (e) where information is already in the public domain, other than as a result of a breach of this clause 14.1.
- 14.2 AsureQuality may amend these Terms at any time by publishing an updated version of the Terms on AsureQuality's website at www.asurequality.co.nz and/or providing an updated version to the Customer, including on AsureQuality's invoices. Any request for Services from the Customer after such notice will be deemed to be acceptance by the Customer of the updated Terms.
- 14.3 Any variation of these Terms must be in writing and signed by AsureQuality.
- 14.4 AsureQuality may sub-contract part or all of the Services, provided that, notwithstanding such sub-contract, AsureQuality will remain solely responsible for all obligations under this Agreement.
- 14.5 The Customer may not assign its rights or obligations under or in connection with these Terms without the prior written consent of AsureQuality.
- 14.6 The rights, powers, remedies and limitations provided for in these Terms are in addition to, and do not limit or exclude (or otherwise adversely affect), any other right, power, remedy or limitation provided to AsureQuality in these Terms or by law.
- 14.7 These Terms, and any variation to these Terms expressly agreed in writing by AsureQuality, constitute the entire agreement of the parties concerning the subject matter of these Terms, and supersede and cancel any previous representations, agreements, understandings or arrangements (whether written or oral) between the parties.
- 14.8 The relationship of AsureQuality (including its Representatives and permitted assigns) to the Customer is that of an independent supplier to its customer. Except as expressly provided in these Terms, nothing in these Terms is intended to constitute a relationship of employment, trust, agency, joint venture, partnership or any other fiduciary relationship between the parties. No party has authority to bind or incur debts on behalf of the other party.
- 14.9 A waiver by AsureQuality of any breach of these Terms or any right, power or remedy under, or in connection with, these Terms (including a right of termination) is not effective unless that waiver is in writing and is signed by AsureQuality.
- 14.10 If any provision of these Terms is illegal, invalid or unenforceable then: (a) where that provision can be modified to give it a valid and enforceable operation of a partial nature, it must be modified to the minimum extent necessary to achieve that result; and (b) in any other case the provision must be severed from these Terms, in which event the remaining provisions of these Terms operate as if the severed provision had not been included.
- 14.11 Termination of these Terms or any Order will not affect any provisions of these Terms which are expressed to, or by implication are intended to, survive termination of these Terms or an Order.
- 14.12 For the purposes of the Contracts (Privity) Act 1982: (a) AsureQuality can enforce its rights under these Terms even if AsureQuality has not signed these Terms; and (b) references in these Terms to AsureQuality's Representatives are intended to confer a benefit on such Representatives and be enforceable by such Representatives.
- 14.13 In these Terms: (a) headings are for convenience only and do not affect interpretation; (b) a reference to a statute is a reference to a New Zealand statute and includes all regulations under and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated; (c) a word importing the singular includes the plural and vice versa; (d) the word person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust or government agency, in each case, whether or not having a separate legal personality; (e) a reference to a party is a reference to a party to these Terms; (f) a reference to a party to these Terms or another document includes that party's successors and permitted assigns and substitutes; (g) references to "including" shall be construed as "including, without limitation"; and (h) these Terms must not be construed adversely to a party just because that party prepared them or caused them to be prepared.
- 14.14 These Terms are governed by and construed in accordance with New Zealand law and the parties hereby submit to the exclusive jurisdiction of the courts of New Zealand.

PART B: TERMS APPLICABLE TO GOODS ONLY

15. APPLICATION

15.1 If Goods are supplied to the Customer: (a) the following Terms apply in addition to the General Terms; and (b) all references to Services in the General Terms will be deemed to include Goods and Services.

16. DEFINITIONS

Delivery Address means AsureQuality's premises, or if applicable, the delivery address agreed by AsureQuality in writing for the delivery of Goods;

PPSA means the Personal Property Securities Act 1999; and

Security Agreement and **Security Interest** have the meaning given to them in the PPSA.

17. DELIVERY

17.1 Delivery of the Goods will be completed by delivery in full or in installments to the Delivery Address.

17.2 If the Customer fails or refuses to accept delivery when notified by AsureQuality that the Goods are ready for delivery, then the Goods will be deemed to have been delivered at the time of such notification at AsureQuality's premises.

18. RISK AND INSURANCE

18.1 Risk of any loss, damage or deterioration of the Goods will be borne by the Customer from the earlier of the delivery of the Goods (or deemed delivery of the Goods pursuant to clause 19.2 of this Part B) and the time the Goods are uplifted for delivery to the Customer (whether by the Customer's agent or contractor or by AsureQuality or its agents or contractor). AsureQuality will have no liability for damage to Goods in transit to the Customer.

18.2 The Customer will insure the Goods for their full replacement value for the benefit of AsureQuality at all times after risk in the Goods has passed to the Customer until ownership of the Goods has passed to the Customer.

19. RESERVATION OF TITLE

19.1 Until AsureQuality has received payment in full of the Amount Owing: (a) all Goods supplied by AsureQuality will remain the property of AsureQuality and title in them will not pass to the Customer; (b) all Goods supplied by AsureQuality and not sold by the Customer to a third party will be in the possession of the Customer as a fiduciary bailee for AsureQuality. The Customer will keep the Goods separate from other Goods and store them so they remain readily identifiable as AsureQuality's property. The Goods must be kept in good condition; and (c) unless AsureQuality directs otherwise, the Customer may use and resell Goods in the ordinary course of your business, provided that the proceeds of such sales shall be received and held by the Customer on trust for AsureQuality to the extent of all Amounts Owing. This authority is deemed to be revoked immediately if any Event of Default occurs; and (d) the Customer must immediately return all Goods if requested to do so by AsureQuality following an Event of Default.

19.2 AsureQuality may bring an action for Amount Owing even where ownership of Goods may not have passed to the Customer.

20. SECURITY INTEREST

20.1 These terms and conditions constitute a Security Agreement creating a Security Interest in the Goods and the proceeds of such Goods, to secure the payment by the Customer to AsureQuality of the Amount Owing.

20.2 The Customer undertakes to: (a) promptly do all things, sign any further document and/or provide any information which AsureQuality may reasonably require to ensure AsureQuality is paid all sums due to AsureQuality and otherwise to protect the interests of AsureQuality under these Terms (including by registration of a financing statement and ensuring that AsureQuality has a first ranking perfected Security Interest in the Goods and the proceeds of the Goods); and (b) give AsureQuality (addressed to the financial controller or equivalent) not less than 14 days prior written notice of any proposed change in the Customer's name and/or any other changes in the Customer's

details (including changes to the Customer's address, facsimile, email trading name or business practice).

20.3 The Customer waives its right to receive a verification statement under section 148 of the PPSA in respect of any financing statement relating to a Security Interest.

20.4 To the extent permitted by law, the Customer and AsureQuality contract out of: (a) section 114(1)(a), 133 and 134 of the PPSA; and (b) the Customer's rights referred to in sections 107(2)(a),(c)-(i) (inclusive) of the PPSA.

20.5 Each Security Interest is a continuing security, notwithstanding any intermediate payments, settlement of accounts or anything else.

20.6 Nothing in these Terms is to be construed as an agreement that a Security Interest under these Terms attaches at a later time than the time specified in section 40(1) of the PPSA.

20.7 The Customer must provide AsureQuality with information and any associated documentation reasonably requested by the Supplier from time to time relating to the Customer's financial status. If at any time AsureQuality considers that the financial status of the Customer is unsatisfactory, AsureQuality may require the Customer to grant additional Security Interests as security for the Amount Owing and AsureQuality may suspend or cancel further deliveries of Goods to the Customer until the Customer has provided such Security Interest.

21. EVENT OF DEFAULT

21.1 If an Event of Default occurs or if any Goods are at risk, AsureQuality may: (a) take possession of any Goods; and/or (b) sell or otherwise dispose of any Goods; in each case in such manner and generally on such terms and conditions as it thinks fit and, in each case, otherwise do anything the Customer could do in relation to these Goods.

21.2 If an Event of Default occurs: (a) AsureQuality and its Representatives may, without prior written notice, enter any land or premises where Goods in the Purchaser's possession or control are kept in order to take possession of and/or remove them, without being responsible for any damage caused in doing so; and (b) the Customer must procure all other rights, including consents, necessary to enable AsureQuality to exercise its rights under this clause.

21.3 AsureQuality may resell any Goods and apply the proceeds of sale in reduction of the Amount Owing.

21.4 The Customer indemnifies AsureQuality and its Representatives upon demand, for all Liabilities incurred by AsureQuality and/or its Representatives as a result, whether directly or indirectly, of the occurrence of an Event of Default, including upon actual or attempted enforcement of any Security Interest granted by the Customer, any action taken by AsureQuality under clause 21.2 of this Part B.

22. LIABILITY

22.1 Without limiting clause 11 of the General Terms, AsureQuality's total liability under or in connection with the supply of Goods, whether in tort (including negligence), contract or otherwise, is limited to, at the option of AsureQuality to: (a) replacement of any defective Goods; or (b) credit or repayment of the Price paid for the defective Goods by the Customer.

22.2 Any liability AsureQuality may have is conditional upon the Customer making a written claim to AsureQuality within 24 hours of delivery of the applicable Goods and returning to AsureQuality, or making available to an independent auditor, nominated by AsureQuality, a sufficient quantity of the Goods to enable a proper examination and sampling.