

GENERAL TERMS AND CONDITIONS OF SERVICE

Bureau Veritas Group in Australia

1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions apply to these General Conditions.

Acceptance Form means the standard form document stating, among other things, that the Client accepts these General Conditions.

Affiliate means any company, legal entity or partnership that:

- (a) either directly or indirectly controls a Party; or
- (b) either directly or indirectly is controlled by
 - (i) a Party; or
 - (ii) a company, legal entity or partnership that directly or indirectly controls a Party.

Agreement means all agreements and other arrangements between the Company and the Client in respect of the provision of the Services by the Company to the Client including these General Conditions and the terms contained in, or referred to in, the Proposal.

Bureau Veritas Group means the Company and all Affiliates of the Company.

Client means the person who acquires Services from the Company.

Client Information means all documents, instructions, specifications, codes, requirements, samples, measurements and other information and materials provided by the Client to the Company in relation to the performance of the Services.

Company means Bureau Veritas Australia Pty Ltd ABN 15 090 874 570 or its Affiliate as specified.

Control means, in the case of a corporation or other legal entity, the right to exercise 50% or more of the voting rights in the meeting of shareholders of that company or other legal entity and, in the case of a partnership, the ability to determine material business decisions.

Corporations Act means the *Corporations Act 2001* (Cth).

Fees means the fees payable by the Client to the Company in respect of the Services, as specified in the Proposal.

Force Majeure Event means any occurrence or non-occurrence as a direct or indirect result of which a Party is prevented from or delayed in performing any of its obligations (other than a payment obligation) under these General Conditions and that is beyond the reasonable control of that Party, including an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion, unrest or riot, forces of nature and natural disasters, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a Government Agency including changes in law, a failure of a supplier, public utility or common carrier or a computer disruption other than through the acts or omissions of the Party seeking relief.

General Conditions means these General Terms and Conditions of Service.

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

Insolvency Event means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event under the laws of any applicable jurisdiction.

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Intellectual Property means all present and future rights conferred by law in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable. These rights include:

- (a) all rights in all applications to register these rights;
- (b) all renewals and extensions of these rights; and
- (c) all rights in the nature of these rights.

Party means the Company or the Client.

Probability of Detection means the statistical probability that a given test method or technique properly applied (being a method or technique used in connection with the provision of the Services) will detect a specific discontinuity.

Proposal means any proposal, quotation or other documentation of the Company that sets out the Services, the Fees and any other information or terms and conditions in relation to the performance of those Services.

Report means all reports and other documents created by the Company or its representatives and consultants in the course of providing the Services.

Services means the services to be performed by the Company under the Agreement as more particularly specified in the Proposal relevant to those Services or as otherwise agreed between the Parties. For the avoidance of doubt, "Services" do not include re-testing or the provision of any computer software by the Company.

Site means the place where the Services are to be performed.

Term means the period during which the Services are to be performed, as specified in the Proposal.

1.2 Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting these General Conditions, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a Party to these General Conditions or to any other document or agreement includes a permitted substitute or a permitted assign of that Party;
 - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to these General Conditions includes the agreement recorded by these General Conditions and by any document incorporated in these General Conditions by attachment or by reference.
- (g) A reference to **information** is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.



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- (h) A reference to a **representative** of a Party is to an employee, officer, agent or subcontractor of the Party.
- (i) A reference to **dollars** or **\$** is an amount in Australian currency.
- (j) Where these General Conditions contemplate that a Party may agree or consent to something (however it is described), the Party may:
 - (i) agree or consent, or not agree or consent, in its absolute discretion; and
 - (ii) agree or consent subject to conditions,unless these General Conditions expressly contemplate otherwise.

2. GENERAL

- 2.1 The Company will provide the Services to the Client in accordance with these General Conditions and any other terms and conditions of the Agreement.
- 2.2 These General Conditions prevail over any inconsistent terms (including the Client's standard terms and conditions) and, to the extent permitted by law, any inconsistent terms implied by law, trade custom, usage or practice or course of dealing.
- 2.3 If the Client signs the Acceptance Form, accepts a Proposal or otherwise allows performance of all or any portion of the Services, the Client is taken to have accepted these General Conditions and to have made an offer to purchase the Services in accordance with these General Conditions. An offer made by the Client is taken to be accepted by the Company when the Company acknowledges, whether orally or in writing, that it accepts the offer or performs all or any portion of the Services.
- 2.4 The relationship of the Company and the Client under the Agreement is that of principal and contractor. The Agreement does not make either Party a joint venturer, partner, employee or agent of the other. No act or omission of either Party is to bind the other Party except as expressly set out in the Agreement.
- 2.5 The Company must not accept any instructions in relation to the Services other than from the Client or its representatives identified in the Proposal, or as otherwise notified to the Company in writing by the Client.

3. TERM

Subject to clause 17, the Company must perform the Services during the Term.

4. STANDARD OF SERVICES

- 4.1 In providing the Services, the Company, in its capacity as an independent third party, will supply information to the Client in the form of ascertainment, advice, assessment or recommendations, relative to regulatory requirements, applicable industry standards and/or any other standards that may be mutually agreed by the Parties.
- 4.2 The Company must, with the degree of care, skill and diligence reasonably expected of a competent testing body experienced in the testing and inspection industry and performing services of a similar nature to the Services under similar circumstances, perform the Services in accordance with:
 - (a) the quality system set out in the Agreement;
 - (b) the Client's reasonable and lawful instructions, if any, as confirmed by the Company in writing;
 - (c) any relevant professional standard;
 - (d) such methods as the Company considers to be suitable and appropriate; and
 - (e) any applicable laws and the terms of any authorisations, permits or licences required to be held by the Company in connection with the provision of the Services.

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4.3 In providing the Services, the Company does not provide the services of, and does not take the place of designers, architects, builders, contractors, manufacturers, producers, operators, transporters, owners or other third parties, who, notwithstanding the provision of the Services by the Company, are not released from any of their respective obligations of whatever nature to the Client. In particular, any information and/or advice supplied by the Company in connection with the provision of the Services shall not be held or construed to amount to approval or acceptance of the items in connection with which the information and advice is supplied. Such parties are responsible for acting as they see fit, according to the information and advice provided by the Company.

5. INFORMATION

5.1 The Client must provide the Company with all of the Client Information required to enable the Company to perform the Services. The Client Information will remain the property of the Client.

5.2 In performing the Services, the Company may collect additional information in relation to the Client including information obtained by taking samples and conducting surveys, inspections, verifications, assessments, audits and appraisals.

5.3 Any samples taken by the Company in performing the Services will be retained by the Company after the end of the Term for such period as is required by law and/or the requirements of applicable industry bodies and will be disposed of by the Company after that period, unless otherwise agreed in writing by the Client. If the Client requires the samples to be retained after that period, the Company is entitled to charge the Client reasonable storage costs for the samples. Neither the Company nor its representatives will be liable for any loss, deterioration, destruction or damage to any of the samples.

5.4 The Client must reimburse the Company for all costs associated with the safe disposal of any Client Information or samples in accordance with any applicable legislation or the requirements of applicable industry bodies.

5.5 The Client must notify the Company if any Client Information to be received by the Company includes material which is classified as a dangerous substance or which requires special handling procedures.

5.6 All materials, equipment, tools and information provided by the Company to the Client will be and remain the exclusive property of the Company. The Client will be responsible for holding such materials, equipment, tools and information in its safe custody and at its own risk until returned to the Company. The Client must not dispose of or use such materials, equipment, tools and information other than in accordance with the Company's written instructions or authorisation.

5.7 The Company will not be liable for any incorrect information, advice, judgment, recommendation, finding, decision, conduct or Report, which is based upon any inaccurate or incomplete Client Information, or where any change is made to the Client Information without prior notification to the Company.

5.8 The Company will not be liable for a delay or failure to perform the Services if there is a failure or delay by the Client or its representatives:

- (a) in providing the Company with Client Information or access to the Site; or
- (b) in approving the performance of the Services.

If any of these events occur, the Term will be extended for the same period as the period of failure or delay and the Company may charge the Client for any additional costs and expenses incurred in performing the Services at the Company's usual hourly rate, unless otherwise agreed in writing by the Company.

6. REPORT

6.1 The Company will communicate the information collected by it, and any analysis of that information, to the Client in a Report in such form as the Company considers appropriate.

6.2 The Company must provide one original version of any Report to the Client, unless otherwise agreed in writing by the Parties. The Client must not reproduce a Report or make a copy of a Report without the prior written consent of the Company. Neither the Client nor any third party is entitled to rely upon any reproduction or copy of a Report for which the written consent of the Company has not been obtained.

6.3 A Report is for the sole use of the Client and must not be distributed by the Client or relied upon by any third party without the prior written consent of the Company.

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6.4 If the Client anticipates the use of all or any part of a Report directly or indirectly in connection with any:

- (a) legal proceeding, arbitration, dispute resolution forum or other proceeding;
- (b) fundraising activity;
- (c) financing activity;
- (d) valuation exercise being undertaken by the Client or a third party; or
- (e) communication or provision of information to a regulator (collectively **Relevant Uses**),

it must notify the Company in writing prior to the performance of the Services or, if not practicable prior to the performance of the Services, prior to the use of a Report for any Relevant Use. The Company has no obligation to provide an expert witness or witness of fact at any legal proceeding, arbitration, dispute resolution forum or other proceeding, unless required by law or where the Company gives its prior written consent to do so.

6.5 The Client acknowledges that:

- (a) a Report is prepared by the Company by reference to the Client Information and information that is recorded by the Company at the time of its attendance at the Site; and
- (b) the Services are performed by the Company on a random sampling basis, and any conclusions contained in any Report cannot be considered exhaustive and must be interpreted by reference to the limits of the instructions provided by the Client in relation to the Services.

6.6 The Client (not the Company or its representatives) is solely and exclusively responsible for any decision or action undertaken by the Client or any third party on the basis of any Report provided by the Company.

6.7 The Company is under no obligation to refer to or report upon any facts or circumstances which are outside the scope of the Services and accepts no liability for not referring to or reporting on such facts or circumstances.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 All Intellectual Property Rights arising out of or in connection with the performance of the Services, including any Reports, will be owned by the Company and will vest in the Company immediately on creation. To the extent that the Client may at any time acquire any such Intellectual Property Rights the Client, by these General Conditions, assigns to the Company all such Intellectual Property Rights.

7.2 Nothing in the Agreement gives the Client any interest in any Intellectual Property Rights of the Company at any time arising out of or in connection with the performance of the Services.

7.3 The Client grants the Company including its representatives and Affiliates, a non-exclusive, royalty-free, perpetual, transferable and worldwide licence to make use of any Intellectual Property Rights owned by the Client for the purposes of performing its obligations under the Agreement.

7.4 If, as part of the Services, computer software is to be provided by the Company to the Client, a separate contract between the Company and the Client will govern the terms and conditions of the provision of such computer software.

7.5 The Client must not contest the validity of any Intellectual Property Rights or take any action that might impair the value or goodwill associated with the marks or the image or reputation of the Bureau Veritas Group.

8. SITE

8.1 The Client must provide the Company with unrestricted access to the Site to enable the Company to perform the Services.

8.2 The Company will make all reasonable efforts not to interfere with the Client's business and operations when providing the Services and otherwise performing its obligations under the Agreement.

8.3 Unless otherwise agreed, the Company's representatives are not required to be in permanent attendance at the Site and their visits may be intermittent or unannounced.

8.4 If access to the Site is unavailable for any reason (other than due to the fault of the Company) and the Company's representatives are available and on standby to access the Site, the Client must pay the Company its usual hourly rate for those representatives for the standby time, unless otherwise agreed in writing by the Company.

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- 8.5 If the fee for the Services is charged on a time basis, the Client must pay for the travel time of the Company's representatives to the Site at the Company's usual hourly rate for those representatives, unless otherwise agreed in writing by the Company. The Company may also charge the Client for all reasonable accommodation and meal costs incurred by the Company and/or the Company's representatives related to or in connection with the Services.
- 8.6 The Client must ensure that the Company has access at the Site to power, water, telecommunications infrastructure, toilets and any other amenities and general utilities necessary to allow the Company to provide the Services.
- 8.7 The Client must ensure that the Site complies with all applicable laws.
- 8.8 If the Company considers in its reasonable opinion that the Site is unsafe, the Company may suspend the performance of the Services until such time as the Client makes the Site safe. In such circumstances, the Client must reimburse the Company for all costs and expenses incurred during the period of suspension at the Company's usual hourly rate, unless otherwise agreed in writing by the Company and the Term will be extended for the same period as the period of failure or delay.
- 8.9 The Company is authorised to take any and all measures that the Company considers appropriate in connection with the health and safety of its representatives at any Site from or on which Services are conducted.

9. NON-DESTRUCTIVE TESTING

- 9.1 Without limitation to the other provisions of these General Conditions, the following clauses 9.2 to 9.5 (inclusive) shall apply in relation to any non-destructive testing to be performed by the Company as part of any Services to the Client.
- 9.2 If the Company requires any specialised equipment which it must rent or hire to enable it to perform the Services, the Company may charge the Client an amount equal to the cost of the hire or rental plus 15%.
- 9.3 Without limitation to clauses 9.5 or 14.3, the Client must ensure that for radiographic, magnetic particle or penetrant interpretation, the relevant surface the subject of the interpretation complies with the Australian standard or any other standard advised by the Company and that there are no surface indications which could impair the interpretation. The Client must also ensure that for ultrasonic examination, the scanning services have a surface roughness not exceeding 3.2mM.
- 9.4 Notwithstanding clause 9.3, if surface preparation of materials by the Company is required in order to perform the Services, the costs of the surface preparation will be an additional cost and is not included in the Fee. The Company will not be liable for any delay caused while surface preparation is carried out by the Company and the Term will be extended for the same period as the period of the delay.
- 9.5 Without limitation to clauses 6.5, 6.6 and 14.3, the Company will not be liable for any claim, loss, liability, cost or expense which arises in connection with:
- (a) any person relying on a Report or drawing conclusions from any Report which are not expressly stated in that Report;
 - (b) any expectation by any person that any test method or technique carried out as part of the Services will have a higher Probability of Detection than that which is required by applicable industry standards, having regard to the variability in discontinuity, form, size, orientation or texture and the limitations of the test method or technique used in the Services; and
 - (c) any expectation by any person that the measurements referred to in a Report will have a measurement uncertainty less than that required by applicable industry standards.

10. SUBCONTRACTING

- 10.1 The Company at its sole discretion may:
- (a) subcontract the performance of all or a portion of its obligations under the Agreement to a representative or Affiliate of the Bureau Veritas Group without prior notice to the Client; and
 - (b) subcontract all or a portion of its obligations under the Agreement to any other third party with prior notice to the Client.

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10.2 Any subcontracting under clause 10.1 does not discharge or release the Company from any liability for the performance of its obligations under the Agreement. The Company must ensure that any work undertaken by a subcontractor meets the requirements of the Agreement.

11. INSURANCE

The Client must maintain all applicable insurance policies with a reputable insurance company to cover the potential liabilities which the Client may have to the Company arising out of or in connection with the Agreement. The Client must give the Company a copy of the insurance policies or certificates of currency on request.

12. FEES AND PAYMENT

12.1 All Fees and other charges will be invoiced by the Company to the Client on a monthly basis or after completion of the Services unless otherwise specified in the Proposal.

12.2 Invoices must be paid by the Client within 30 days of the date of the invoice and otherwise in accordance with the terms of the relevant Proposal.

12.3 Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Company on the due date, the Company may:

- (a) charge interest on the sum from the due date for payment at the monthly rate of 1.5%, accruing daily and being compounded monthly until payment is made, whether before or after any judgment; and
- (b) suspend all Services until payment has been made in full. Notwithstanding any suspension of the Services, the Client must pay the Company for all Services rendered by the Company up to the date of suspension of the Services, plus all interest and suspension costs and expenses incurred by the Company. The Client must reimburse the Company for all costs and expenses for the collection of the invoiced amount, including reasonable legal fees.

12.4 Unless otherwise agreed in writing, the Fees will be subject to revision by the Company:

- (a) if the duration of the Services exceeds one year;
- (b) where the Services cannot be commenced by the Company (other than due to the fault of the Company) within 30 days after the Client has requested the Services;
- (c) in the case of suspension of the Services; or
- (d) if the Company is notified of any change to the Client Information following commencement of the Services.

12.5 The Client must regularly and on request by the Company provide the Company with the data or documents that will serve as a basis for the calculation of the Fees.

12.6 The Client must reimburse all reasonable expenses incurred by the Company in providing the Services, provided that any expenses in excess of \$1,000 or such greater amount as may be specified in the Proposal are approved in writing by the Client before they are incurred by the Company.

12.7 Any amount referred to in the Agreement is exclusive of GST and any other tax unless it is expressly included. If GST is imposed on any supply (or deemed supply) made by any Party under or in connection with the Agreement, then the consideration for that supply is increased by an amount equal to the amount of that consideration multiplied by the rate at which GST is imposed in respect of that supply. The Party which makes the supply under or in connection with the Agreement must provide to the recipient of that supply a GST tax invoice as required by legislation. Words defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

12.8 The Client may not deduct or set-off from any Fees or moneys otherwise due to the Company by the Client any money due to the Client by the Company (including for any breach of the Agreement).

12.9 If the Client disputes any amount to be paid as set out in an invoice issued by the Company, it must issue a dispute notice under clause 24, in which case:

- (a) the Client must pay the non-disputed component of the invoice (if any) within 30 days of receipt of the invoice;

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- (b) the Client is not obliged to pay the disputed component of the invoice until the dispute has been resolved; and
- (c) on resolution of the dispute, the Client must pay any additional amounts agreed or determined to be payable by the Client, plus interest on that amount (from the due date for payment at the monthly rate of 1.5%, accruing daily and being compounded monthly), accruing daily from the date when the invoiced amount was due for payment until the date on which payment is actually made.

13. FORCE MAJEURE

13.1 If a Party is affected, or likely to be affected, by a Force Majeure Event:

- (a) that Party must immediately give the other prompt notice of that fact including:
 - (i) full particulars of the Force Majeure Event;
 - (ii) an estimate of its likely duration;
 - (iii) the obligations affected by it and the extent of its effect on those obligations; and
 - (iv) the steps taken to rectify it; and
- (b) the obligations under the Agreement of the Party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

13.2 A Party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible. This does not require a Party to settle any industrial dispute in any way that it considers inappropriate.

13.3 If the Company is prevented for any reason beyond its control, including a Force Majeure Event, from performing Services, the Client agrees:

- (a) to reimburse the Company for any expenditures actually made or incurred,
- (b) to pay the proportion of Fees in respect of the Services performed and to release the Company from all responsibility for, or to complete, partial or total non-performance of the Services.

14. LIMITATION OF LIABILITY

14.1 The total aggregate liability of the Company whether arising under or in connection with the Agreement and whether by way of indemnity, statute, in tort or on any other basis in law or in equity is limited to:

- (a) 10 times the amount of the Fees payable for the specific Services which give rise to the claim; or
- (b) if no invoice has been issued by the Company, \$10,000.

14.2 If any claim is made by the Client under this clause 14, the Company will not be liable unless notice of the claim is given to the Company within 30 days of discovery of the facts alleged to justify such a claim, or 6 months from the end of the Term, whichever is the earlier.

14.3 Without limitation to clauses 6.5 and 6.6, the Company will not be liable for any claim, loss, liability, cost or expense which arises in connection with:

- (a) any person relying on a Report or drawing conclusions from any Report which are not expressly stated in that Report;
- (b) any expectation by any person that any test method or technique carried out as part of the Services will have a higher Probability of Detection than that which is required by applicable industry standards, having regard to the variability in discontinuity, form, size, orientation or texture and the limitations of the test method or technique used in the Services; and
- (c) any expectation by any person that the measurements referred to in a Report will have a measurement uncertainty less than that required by applicable industry standards.

14.4 The Company will not be liable for any claim, loss, liability cost or expenses in connection with any failure or technical malfunction of any equipment, computer software or computer hardware used in performance of the Services.

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- 14.5 Neither the Company nor the Client will be liable for any indirect, consequential or special loss including, but not limited to loss of profits or revenue, loss of business opportunity, loss of production or loss of goodwill suffered by the Client or the Company (as the case may be) whether arising under or in connection with or incidental to the Agreement (whether by way of indemnity, by statute, in tort or on any other basis in law or in equity).
- 14.6 The Client will release and indemnify the Company and its officers, employees and agents from and against all claims, losses, liabilities, costs and expenses (including reasonable legal fees) arising from:
- (a) the Client's wrongful acts or omissions, negligence, breach of contract, or breach of statutory duty in connection with the Agreement;
 - (b) a claim against the Company in breach of the releases and limitations of liability set out in this clause 14; and
 - (c) any claim by a third party in connection with the Report, including where the Report is disclosed in full or in part to the third party with the consent of the Company.
- 14.7 Subject to the limitations contained in, or referred to in, this clause 14, the Company will release and indemnify the Client and its officers, employees and agents from and against all claims, losses, liabilities, reasonable costs and expenses (including reasonable legal fees), to the extent arising from the Company's proven negligent performance of the Services or breach of statutory duty in connection with the Agreement.

15. CONFIDENTIALITY

15.1 Confidential information means information that:

- (a) relates to the business, assets or affairs of either Party or its Affiliates;
- (b) is made available by or on behalf of the disclosing Party to the receiving Party, or is otherwise obtained by or on behalf of the receiving Party; and
- (c) is by its nature confidential or the receiving Party knows, or ought to know, is confidential (**Confidential Information**).

Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of the Agreement.

Confidential Information includes:

- (a) information concerning the existence and terms of the Agreement;
- (b) information passing between the Parties; and
- (c) information that is personal information as defined by the *Privacy Act 1988* (Cth).

Confidential Information does not include information that:

- (a) is in or enters the public domain through no fault of the receiving Party or any of its representatives;
- (b) is or was made available to a receiving Party by a person (other than the disclosing Party) who is not or was not then under an obligation of confidence to the disclosing Party in relation to that information; or
- (c) is or was developed by the receiving Party independently of the disclosing Party and any of its representatives.

15.2 A receiving Party which acquires Confidential Information of the disclosing Party must not:

- (a) use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under the Agreement and with the consent of the other disclosing Party; or
- (b) disclose any of the Confidential Information except in accordance with clauses 15.2 and 15.3.

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- 15.3 A receiving Party may disclose Confidential Information to an Affiliate, representative, or legal, financial or other professional adviser if the disclosure is necessary to enable the receiving Party to perform its obligations or to exercise its rights under the Agreement. A receiving Party must ensure that any person to whom Confidential Information is disclosed under this clause 15.3 keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under this clause 15.3. A receiving Party is responsible for ensuring that all persons to whom Confidential Information is disclosed under the Agreement keeps the Confidential Information confidential and does not disclose or divulge the Confidential Information to any unauthorized person or entity, and will assume full responsibility for any breach of its obligations in respect of Confidential Information.
- 15.4 Subject to paragraphs (c)(d) and (e), a receiving Party may disclose Confidential Information that it is required to disclose:
- (a) by law or by order of any court or tribunal of competent jurisdiction; or
 - (b) by any Government Agency, stock exchange or other regulatory body.
- If a receiving Party is required to make a disclosure under this clause 15.4, the receiving Party must:
- (c) to the extent possible, notify the disclosing Party immediately it anticipates that it may be required to disclose any of the Confidential Information;
 - (d) consult with and follow any reasonable directions from the disclosing Party to minimise disclosure; and
 - (e) if disclosure cannot be avoided:
 - (i) only disclose Confidential Information to the extent necessary to comply; and
 - (ii) use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.
- 15.5 The Client consents to the disclosure of Client Information to an accreditation body for the purposes of assessing the Client's competence and compliance with the relevant accreditation criteria.
- 15.6 On expiry or termination of the Agreement or at the direction of either Party, each Party must return or destroy the other Party's Confidential Information which is in its possession or under its control.
- 15.7 The obligations in this clause 15 survive any termination or expiry of the Agreement.

16. RETENTION OF RECORDS

Without limitation to clause 5.3, the Company will retain all pertinent records relating to the Services for a period not exceeding three years following completion of the Services, unless otherwise required by law, an accreditation or other industry body or as agreed by the Parties. For the avoidance of doubt, any samples taken by the Company in performing the Services will be retained for such period as is required by law and applicable industry bodies after the end of the Term and will be disposed of by the Company after that period, unless otherwise agreed in writing by the Client.

17. TERMINATION

- 17.1 Unless the Agreement is terminated earlier, it will expire at the end of the Term.
- 17.2 The Company may terminate the Agreement by giving 30 days notice in writing to the Client if the term of the Agreement is greater than 30 days.
- 17.3 Without limiting any other rights or remedies that may be available to the Parties, either Party may terminate the Agreement by giving 30 days notice in writing to the other Party if that other Party:
- (a) fails to pay any amount due under the Agreement on the due date for payment and remains in default for not less than seven days after being notified in writing to make such payment;
 - (b) commits a material breach of any of the terms of the Agreement and, if such a breach is remediable, fails to remedy that breach within 30 days of that Party being notified in writing of the breach;
 - (c) repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;



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- (d) is affected by an Insolvency Event; or
- (e) suspends or ceases or threatens to suspend or cease to carry on all or a substantial part of its business.

17.4 On termination of the Agreement:

- (a) the Client must immediately pay to the Company all of the Company's outstanding unpaid invoices (and interest, if any, on any outstanding sums) and, in respect of Services performed but for which no invoice has been submitted, the Company may submit an invoice, which will be payable immediately on receipt;
- (b) the Client must return all of the Company's materials, equipment, tools and information and if it fails to do so, then the Company may enter the Client's premises and take possession of the materials, equipment, tools and information;
- (c) the accrued rights and liabilities of the Parties as at termination are not affected; and
- (d) clauses 6, 7, 14, 15, 16, 18, 20, 21, 22, 23 and 24 survive termination.

17.5 A Party must notify the other Party if the first named Party experiences a change of Control or an anticipated change of Control.

18. NON-SOLICITATION OF EMPLOYEES

The Client must not directly or indirectly solicit, employ or otherwise engage any employee of the Company during the term of the Agreement. This restriction will apply during the term of the Agreement and for a period of one year after the termination or expiry of the Agreement.

19. AMENDMENT AND ASSIGNMENT

19.1 These General Conditions can only be amended or replaced by another document executed by the Parties.

19.2 The Company may assign its rights or subcontract its obligations in connection with the performance of the Services in its discretion without the consent of the Client. The Client may only assign its rights under the Agreement with the prior written consent of the Company.

20. WAIVER

20.1 A right may only be waived in writing, signed by the Party giving the waiver.

20.2 No other conduct of a Party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.

20.3 A waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again.

20.4 The exercise of a right does not prevent any further exercise of that right or of any other right.

21. SEVERABILITY

21.1 Any provision of the Agreement which is unenforceable or partly unenforceable is, where possible, to be modified or severed to the extent necessary to make the Agreement enforceable, unless this would materially change the intended effect of the Agreement.

21.2 The Agreement is to be construed and enforced as if such provision has been modified or severed as the case may be.

22. COMPLETE AGREEMENT

22.1 The Agreement contains the entire agreement between the parties in respect of the Services. Any previous understanding, agreement, representation or warranty in respect of the Services is replaced by the Agreement, and has no further effect.

22.2 Any right that a Party may have under the Agreement is in addition to, and does not replace or limit, any other right that the Party may have.



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23. GOVERNING LAW

- 23.1 The Agreement is governed by the laws of Victoria.
- 23.2 Each Party submits to the jurisdiction of the courts of that State or Territory and of any court that may hear appeals from any of those courts, for any proceedings in connection with the Agreement.

24. RESOLUTION OF DISPUTES

- 24.1 If a dispute arises out of or in connection with the Agreement (**Dispute**), a Party may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with this clause 24.
- 24.2 A Party claiming that a Dispute has arisen under or in connection with the Agreement must give written notice to the other Party requesting that the Dispute be submitted to mediation. (**Dispute Notice**).
- 24.3 Upon receipt of a Dispute Notice, the Parties must within 10 calendar days select a mediator by mutual agreement to resolve the Dispute.
- 24.4 If the Parties do not agree on the selection of a mediator or the mediator is unable or unwilling to serve and a replacement mediator cannot be agreed upon by the Parties within 10 calendar days, the Parties must request the President of the Institute of Mediators and Arbitrators Australia to appoint a mediator.