

General Terms

1. Application

- (a) These Terms apply to the Services we (**Independent Quality Compliance Pty Ltd** ABN 20 668 350 712) supply to you.
- (b) To the extent permitted by law, these Terms apply to the exclusion of all other terms and conditions (including any you may purport to impose, whether in any order you submit to us or otherwise, and any implied terms and conditions).
- (c) In the event of an inconsistency between a Special Condition in an Order and any other provision of these Terms, the Special Condition will prevail to the extent of the inconsistency. Unless expressly stated, any Special Conditions apply in respect of the relevant Order only.

2. Services

2.1 Services and Deliverables

- (a) We agree to provide you with the Services and the Deliverables in accordance with the relevant Order.
- (b) Where the Deliverable is a certificate or report, you agree that you will only use the certificate or report in accordance with the scope and any limitations included in that certificate or report.

2.2 Our obligations

- (a) We will:
 - (1) perform the Services with due care, skill and diligence;
 - (2) use reasonable endeavours to conduct the Services in accordance with any specifications or testing directions notified to and agreed by us in advance; and
 - (3) use reasonable endeavours to provide the Services in accordance with any agreed timeframes or otherwise in a timely manner.
- (b) We cannot guarantee that the Deliverables will be supplied by a particular date. We are not responsible for any delay in the provision of any Services or Deliverables resulting from any delay or failure by you to perform your obligations under clause 2.3.
- (c) Where the Services require us to travel to access the Customer Material, we will use reasonable endeavours to attend this location at the agreed time to provide the Services.
- (d) You acknowledge and agree that we are not responsible if the Customer Materials (or any part thereof) have been discharged by a third party or are missing or damaged before we are able to access those Customer Materials.
- (e) We may subcontract all or part of the Services and agree to remain responsible for the acts and omissions of any subcontractor.

2.3 Your obligations

- (a) You agree to provide us with:
 - (1) the Customer Material in accordance with any specifications and timeframes notified to you; and
 - (2) any other information or assistance reasonably requested by us to provide Services and Deliverables.
- (b) You are responsible for all costs incurred in sending the Customer Materials to us and we are not responsible for any Customer Materials we do not receive.
- (c) You acknowledge and agree that:
 - (1) we may reject Customer Materials if they do not meet any specifications notified to you in advance;

- (2) Customer Materials may be destroyed as part of the Services; and
 - (3) except as set out in these Terms, we will not return Customer Materials to you on completion of the Services or on termination/expiry and will destroy or delete any Customer Materials.
- (d) You warrant that the Customer Materials provided to us meet the required specifications notified to you in advance of you providing those Customer Materials to us.

3. Fees

- (a) You agree to pay us the Fees in accordance with the payment terms in an Order or otherwise within 14 days of receiving a valid invoice.
- (b) You agree to reimburse us for any out-of-pocket expenses reasonably incurred by us in performing the Services which you approve in writing.
- (c) Unless otherwise expressly stated, all Fees and other sums payable or consideration to be provided under these Terms are exclusive of GST. If GST is payable, you agree to pay us an amount equal to the GST payable on the supply.
- (d) Words and expressions not defined in this clause 3 have the same meaning given to those terms in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

4. Ownership

- (a) We grant you a perpetual, non-exclusive, royalty free licence to use the Deliverables solely in the ordinary conduct of your business, provided you pay us the applicable Fee.
- (b) You agree that ownership of all Intellectual Property Rights in the Deliverables automatically vests in us immediately upon creation, without the need for any further formality or documentation. Any rights that you may otherwise possess in these Intellectual Property Rights will be deemed automatically assigned and transferred by you to us by this agreement, and you agree to execute any documents reasonably necessary to confirm this fact.

5. Confidential information

- (a) Each party must keep the Confidential Information of the other secret and confidential, and must not use or disclose such Confidential Information for any purpose other than to the extent strictly necessary for it to perform its obligations under these Terms or as required by an applicable law.
- (b) The obligations of confidence under these Terms do not apply to any information that:
 - (1) is in the public domain (other than through any breach of these Terms);
 - (2) a party can prove was known to it at the time of disclosure by the other, free from any obligation of confidence; or
 - (3) a party is required by law to disclose.
- (c) These obligations of confidentiality survive termination of the Terms and your engagement with us.

6. Personal information

- (a) If you provide us with any Personal Information, we will deal with that Personal Information in accordance with applicable laws.
- (b) You warrant that we are entitled to collect, use and disclose any Personal Information you provide to us in order to provide you with the Services.

7. Risk

- (a) To the extent permitted by law:
- (1) any term, condition or warranty that may otherwise be implied into these Terms is excluded; and
 - (2) we are not liable for any loss, damage or cost as a result of your failure to comply with clause 2.3, a breach of the warranties or your failure to provide adequate Customer Materials.
- (b) Each party's aggregate liability to the other under these Terms is limited to the amount paid or payable by you in the 12 months immediately preceding the loss or \$10,000, whichever is lower, but nothing in this clause 7(b) limits or removes your obligation to pay the Fees in full.
- (c) To the extent permitted by law, neither party is liable to the other party for any loss, damage or cost that is indirect or consequential, including any loss of profits or revenue, suffered or incurred by the other party, however caused or arising.
- (d) To the extent permitted by law, our liability under any rights in relation to the supply of services that cannot be excluded is limited to (at our discretion):
- (1) supplying the Services again or supplying equivalent services; or
 - (2) payment of the cost of having the services supplied again.

8. Term and Termination

8.1 Term

- (a) These Terms commence once accepted by the parties and continue until terminated in accordance with clause 8.2.
- (b) You are deemed to have accepted these Terms if you place an Order with us.

8.2 Termination

- (a) If there are no outstanding Orders, either party may terminate these Terms immediately with written notice to the other party.
- (b) A party may terminate these Terms if the other party commits a breach of these Terms and that breach has not been remedied within 14 calendar days of notice.
- (c) Upon termination or expiry of these Terms for any reason:
- (1) we will invoice you for, and you will pay, any Fees for Services provided up until the date of termination; and
 - (2) provided you have paid the Fee, we will provide you with any Deliverables which are complete (and will not provide you with any Deliverables that are incomplete).
- (d) Without limiting or impacting upon the continued operation of any clause which as a matter of construction is intended to survive the termination or expiry of these Terms, clauses 4, 5 6, 8.2(c) and this clause 8.2(d) survive the termination or expiry of these Terms.

9. General

- (a) Neither party may assign any of its rights under these Terms without the prior written consent of the other.
- (b) A waiver of a right, remedy or power must be in writing and signed by the party giving the waiver and such waiver is only effective in relation to the particular instance in respect of which it is given.
- (c) If a provision in these Terms is wholly or partly void, illegal or unenforceable in any relevant jurisdiction, that provision must, to that extent, be treated as deleted from these Terms for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of these Terms.

- (d) Each party agrees that these Terms are governed by and are to be construed under the laws in force in South Australia and submits to the non-exclusive jurisdiction of the courts in South Australia.
- (e) Each party must, at its own expense, do all things and execute all further documents necessary to give full effect to these Terms and the transactions contemplated by it.
- (f) These Terms state all of the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

10. Definitions and interpretation

10.1 Definitions

In these Terms:

- (a) **Confidential Information** means all trade secrets, know-how, commercially sensitive information, financial information and other commercially valuable information and any information that is designated as or is by its nature confidential of whatever description and in whatever form whether disclosed before or after commencement of these Terms.
- (b) **Customer Material** means any materials, samples, information, reports or data required to be provided to us under these Terms, including as specified in an Order.
- (c) **Deliverable** means any certificate, report or materials developed by us for you as part of the Services.
- (d) **Fee** means the amount specified in a Quote or otherwise as calculated in accordance with our standard rates notified to you.
- (e) **Intellectual Property Rights** means all rights throughout the world in relation to patents, copyright, designs, registered and unregistered trade marks, trade secrets, know-how, Confidential Information and all other intellectual property and any right to register those rights, whether created before or after the date of these Terms, and in all cases for the duration of those rights and any renewal.
- (f) **Order** means an order submitted to and approved by us.
- (g) **Personal Information** has the meaning given in the *Privacy Act 1988* (Cth).
- (h) **Services** means services provided by us to you under these Terms and as set out in an Order.
- (i) **we** or **us** means Independent Quality Compliance Pty Ltd ABN 20 668 350 712.

10.2 Interpretation

In these Terms, unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of these Terms;
- (b) a reference to a clause, schedule or recital is a reference to a clause, schedule or recital of these Terms;
- (c) a reference to a statute or regulation includes an amendment or re-enactment to that legislation and subordinate legislation in force under it;
- (d) the singular includes the plural and vice versa and a reference to a gender includes reference to every gender;
- (e) 'includes' and similar expressions are not words of limitation;
- (f) a provision of these Terms will not be interpreted against a party just because that party prepared the provision; and
- (g) a person includes an individual, a body corporate, a joint venture, a trust, an agency or other body.