

# 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 The provisions of (a) Part A of these Terms apply to all Goods and Services; (b) Part B of these Terms apply to Goods only; and (c) Part C of these Terms apply to Digital Services only, in each case, supplied to the Customer by AsureQuality.

### 2. DEFINITIONS

**Amount Owing** 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 Owing;

**AsureQuality** means AsureQuality Limited;

**Business Day** means any day other than a Saturday, Sunday, or a statutory public holiday in New Zealand;

**Customer** or **you** means the person that requested AsureQuality to provide Services;

**Customer Data** means all information that the Customer provides to AsureQuality in connection with or for the purposes of a Service;

**Data** means any data or information provided to the Customer by AsureQuality pursuant to, or comprised in, Digital Services (whether such data is supplied to or accessed by the Customer);

**Digital Services** means any services provided to the Customer by or on behalf of AsureQuality that involve Data and/or information technology, including any platform or software;

**End User** means any person who is authorised by the Customer to use Digital Services for and on behalf of the Customer;

**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 Owing is overdue; (b) the Customer breaches these Terms or any other agreement with AsureQuality; or (c) the Customer suffers an Insolvency Event;

**Force Majeure** means circumstances beyond the reasonable control of the relevant party including: act of God; war; acts of terrorism; nuclear fusion; epidemics or pandemics; fire; explosions; flood; subsidence; insurrection or civil disorder; government restraint; expropriation; prohibition; intervention; direction or embargo; strikes; lock-outs or other industrial disputes of any kind; failures or fluctuations in electrical power; heat or light and any circumstances are beyond the reasonable control of the relevant party. The insolvency or financial position of a party will be deemed to be not beyond the reasonable control of that party;

**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;

**Health and Safety Legislation** has the meaning given to it in clause 8.1;

**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 rights of or in connection with testing, inspection and certification methods, processing systems, procedures, know how, business information, laboratory results, working instructions, controlled documents, supporting documentation, confidential information, databases, domain names 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) debt collection costs for recovery of any Amount Owing;

**Order** has the meaning given to it in clause 3.2;

**Personal Information** has the meaning given to it in the Privacy Act 2020;

**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;

**Safety Plan** has the meaning given to it in clause 10;

**Services** means any services (as well as, if applicable, Goods) provided by AsureQuality to the Customer, including Laboratory Testing Services, inspection and certification services, Digital Services and/or related services; and

**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 or granting access to the Services (in whole or in part), 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**).
- 3.3 The Customer acknowledges that Services that involve testing are limited to providing the results of the specific tests that the Customer has requested and that AsureQuality has agreed to provide. It is solely the Customer's responsibility to determine which tests are required for the Customer's particular purpose and to interpret the results of those tests.

### 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 Owing 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 (unless expressly agreed otherwise in writing in respect of a particular Service).
- 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 will pay to AsureQuality on demand default interest on any Amount Owing, at a rate of 5% 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 will use reasonable endeavours to provide Services in accordance with any agreed timeframes, however, any such timeframes are indicative only.
- 7.3 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. **OCCUPATIONAL HEALTH AND SAFETY**

- 8.1 AsureQuality shall at all times comply with its legal obligations for health and safety under the Health and Safety at Work Act 2015 (as may be amended from time to time) and any replacement legislation, and all regulations, rules, standards, approved codes of practice and any other applicable law relating to health and safety (**Health and Safety Legislation**).
- (a) AsureQuality shall while performing its duties under this Agreement at the sites owned and/or operated by the Customer ensure that it and each of its Representatives comply with the safety rules policies and procedures operating at the sites, as advised by the Customer;
- (b) The Customer Shall
- (i) ensure, so far as is reasonably practicable, the health and safety of AsureQuality Representatives in relation to any workplace under the Customer's supervision or control, in accordance with the Health and Safety at Work Act 2015;
- (ii) notify AsureQuality of any known hazards to which AsureQuality personnel may be exposed at any workplace under the Customer's management or control, and ensure that AsureQuality is fully aware of any variations associated with the product or work, which may pose a risk to its premises, equipment, personnel, other materials or products;
- (iii) so far as is reasonably practicable, consult, co-operate with, and coordinate activities with AsureQuality where health and safety duties are owed by both parties in relation to the same matter; and
- (iv) notify AsureQuality of any Customer policies and procedures in relation to Health and Safety that need to be adhered to by its Representatives.
- (c) The Customer and AsureQuality shall consult, cooperate and coordinate activities where the parties have shared health and safety duties under Health and Safety Legislation in relation to the same matter.
- (d) AsureQuality shall notify the Customer in writing, as soon as practicable, of any accident, "near miss", or environmental incident that any of its Representatives cause or experience on the Customer's property.

9. **HEALTH AND SAFETY OF REPRESENTATIVES**

- 9.1 AsureQuality shall ensure that prior to the delivery of Services at sites owned and/or operated by the Customer, that its Representatives have undergone a site specific induction.

10. **SAFETY PLAN**

- 10.1 Where Services are provided at sites owned and/or operated by the Customer AsureQuality shall prepare a **Safety Plan** for the Services. The Safety Plan shall identify how AsureQuality intends to manage health and safety matters in relation to the Services, including the identification of risks and control measures, emergency procedures, competency of Representatives, and procedures for reporting incidents.
- 10.2 The Customer may request a copy of the Safety Plan to review, comment, and offer suggestions to AsureQuality.
- 10.3 AsureQuality shall and shall procure its Representatives comply, with the safety plan. AsureQuality shall also review and if necessary update the Safety Plan in any case;
- (a) Following any serious incident; and/or
- (b) At any time AsureQuality or the Customer reasonably considers that new or increased risks or hazards have arisen in the provision of Services.
- 10.4 During the Term, the Customer may request any changes to Safety Plan that it considers are reasonably necessary to manage any new or increased risks or hazards. Where new or increased costs would be incurred by the requested change, AsureQuality may seek an agreed variation to cover those costs.

11. **REPRESENTATIONS**

- 11.1 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.
- 11.2 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.

12. **INTELLECTUAL PROPERTY AND USE OF INFORMATION**

- 12.1 AsureQuality acknowledges that, notwithstanding any other provision of these Terms, the Customer (or its licensors) owns all Intellectual Property rights in any information or data provided by the Customer to AsureQuality and nothing in these Terms is intended to transfer any such Intellectual Property rights to AsureQuality.
- 12.2 The Customer grants AsureQuality and any Related Company or Representative of AsureQuality a non-exclusive, royalty free licence, during the Term, to use any of the Customer's Intellectual Property obtained by, or disclosed to, AsureQuality including any data generated from the provision of the Services that is owned by the Customer: (a) for the provision of the Services; (b) for the purpose of improving the Services; and (c) for analytical purposes including providing trends and insights, provided that information relating to the Customer will only be disclosed to a third party for analytical purposes in an anonymised and/or aggregated form. You warrant that you have the right to grant the licence set out in this clause 12.2 and indemnify AsureQuality for any costs, expenses or liabilities suffered or incurred by AsureQuality as a result of a breach of this warranty.
- 12.3 All Intellectual Property rights and all information and data generated or developed by or on behalf of AsureQuality in connection with the Services, will automatically vest in AsureQuality and, except as expressly set out in these Terms, the Customer will not obtain any rights or interests in such Intellectual Property rights.
- 12.4 The Customer authorises AsureQuality to collect, use, disclose and retain information, including personal information (as defined in the Privacy Act 2020) about the Customer, its Representatives and End Users for the purpose of (as applicable), providing the Services, assessing the Customer's creditworthiness and enforcing any payment obligations under these Terms. This may include AsureQuality sharing such Personal Information with credit reporting and debt recovery agencies and with third party services providers. Credit reporting and debt collection agencies may retain such Personal Information, including default information, and use it to provide their services (which may include the disclosure of Personal Information to other customers). Individuals have the right to access and request correction of their Personal Information by contacting AsureQuality using the details set out on our website: <https://www.asurequality.com/privacy-statement/>.
- 12.5 We may transfer information, including Personal Information, outside New Zealand, including for storage purposes or where our service providers are located overseas.
- 12.6 If you provide AsureQuality with any Personal Information about a third party, you confirm that you have the authorisation of the relevant individual to disclose their Personal Information to AsureQuality, and to authorise AsureQuality to use such information, in accordance with this section 12 and have notified any such individual of their rights to access and request correction of their Personal Information. AsureQuality may retain a copy of all requests for Services, results and supporting documents for auditing and accreditation purposes.

13. **EVENT OF DEFAULT AND TERMINATION**

- 13.1 If an Event of Default occurs, any Amount Owed 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.
- 13.2 Either party may terminate these Terms at any time if there are no outstanding Services to be provided under Orders by AsureQuality.
- 13.3 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.

14. **LIABILITY**

- 14.1 To the extent permitted by law, the maximum aggregate liability of AsureQuality for an claim arising under or in connection with these Terms and/or the Customer's use of (or inability to use) any 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.
- 14.2 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, loss of Data, or consequential, indirect or special loss or damage of any kind.
- 14.3 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 11; (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.
- 14.4 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.
- 14.5 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.
- 14.6 In the event of a dispute, the Customer must pay for the Services and then settle any claim with AsureQuality.
- 14.7 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.

15. **FAIR TRADING ACT AND CONSUMER GUARANTEES ACT**

15.1 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.

15.2 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.

16. **NOTICES**

16.1 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.

16.2 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.

17. **GENERAL**

17.1 Subject to clause 12, each party agrees to keep the terms of these Terms and any information acquired by them pursuant to 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 17.1.

17.2 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](http://www.asurequality.co.nz) (or, in respect of Digital Services, any other website that is applicable to the relevant Digital Services) 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.

17.3 The acts and omissions of the Customer's Representatives and End Users will be deemed to be the acts and omissions of the Customer.

17.4 Any variation of these Terms must be in writing and signed by AsureQuality.

17.5 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.

17.6 A handling fee to cover reasonable administration and courier fees will be payable by the Customer, in addition to the other Fees and Charges, in respect of any Services that are sub-contracted by AsureQuality on request from the Customer.

17.7 The Customer may not assign its rights or obligations under or in connection with these Terms without the prior written consent of AsureQuality.

17.8 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.

17.9 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.

17.10 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.

17.11 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.

17.12 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.

17.13 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.

17.14 For the purposes of Part 2, Subpart 1 (Contractual Privy) of the Contract and Commercial Law Act 2017: (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 and Related Companies are intended to confer a benefit on such Representatives and Related Companies and be enforceable by them.

17.15 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.

17.16 In these Terms, any reference to "writing" or "notice" includes email (and any other permanent record by electronic means) and where execution of these Terms or any document referred to in these Terms is required, the parties authorise execution by electronic means in accordance with Part 4 (Electronic Transactions) of the Contract and Commercial Law Act 2017.

- 17.17 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**

### **18. APPLICATION**

- 18.1 If Goods are supplied to the Customer: (a) clauses 18 –24(inclusive) 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.

### **19. 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.

### **20. DELIVERY**

- 20.1 Delivery of the Goods will be completed by delivery in full or in installments to the Delivery Address.
- 20.2 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.

### **21. RISK AND INSURANCE**

- 21.1 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 20.2 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.
- 21.2 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.

### **22. RESERVATION OF TITLE**

- 22.1 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.
- 22.2 AsureQuality may bring an action for Amount Owing even where ownership of Goods may not have passed to the Customer.

### **23. SECURITY INTEREST**

- 23.1 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.
- 23.2 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).
- 23.3 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.
- 23.4 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.
- 23.5 Each Security Interest is a continuing security, notwithstanding any intermediate payments, settlement of accounts or anything else.
- 23.6 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.
- 23.7 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.

### **24. EVENT OF DEFAULT**

- 24.1 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.
- 24.2 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.
- 24.3 AsureQuality may resell any Goods and apply the proceeds of sale in reduction of the Amount Owing.

- 24.4 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, and any action taken by AsureQuality under clause 23.7 of this Part B.
25. **LIABILITY**
- 25.1 Without limiting clause 14 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.
- 25.2 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.
- PART C: TERMS APPLICABLE TO DIGITAL SERVICES ONLY**
26. **APPLICATION**
- 26.1 The provision of Digital Services by AsureQuality, is subject to: (a) any specific terms and conditions (including, if applicable, third party terms and conditions) and AsureQuality policies notified to the Customer by AsureQuality from time to time (**Specific Terms**); (b) the General Terms; and (c) clauses 26–34 (inclusive). To the extent of any inconsistency, the order of priority set out in this clause 26.1 will apply (with the Specific Terms having the highest priority).
27. **LICENCE**
- 27.1 AsureQuality grants the Customer a non-exclusive, non-transferable, revocable licence to use and access (as applicable) the Digital Services that it expressly agrees in writing to provide to the Customer, subject to this clause 27.
- 27.2 Unless expressly agreed otherwise in writing, the licence referred to in clause 27.1: (a) will continue until, and terminate immediately upon, termination of the applicable Digital Services; and (b) is limited to use by the Customer and the Customer's authorised End Users solely for the Customer's internal business purposes.
- 27.3 You must not: (a) sub-licence or resell any Digital Services (including to a Related Company) without AsureQuality's prior written consent; (b) reverse engineer, derive the source code of, or tamper with, any software, or circumvent any technological measures contained in any Digital Services that are designed to prevent unauthorised use or access to any part of a Digital Service; (c) engage in any form of systematic extraction of all or part of any data in the Digital Services; (d) cause disruption to the Digital Services or to other Users of the Digital Services; (e) introduce any virus, malware or computer programming code which may impair, deny or otherwise adversely affect the Digital Services or AsureQuality's and/or its Representative's equipment; or (f) remove, copy or delete any part of the Digital Services, except as expressly permitted in writing by AsureQuality.
- 27.4 You must comply with any restrictions applicable to End Users set out in the Specific Terms (including any restrictions on the permitted number of End Users).
28. **LOGIN DETAILS**
- 28.1 If the Digital Services include a username and/or password (**Login Details**) the Customer must: (a) only allow the Customer's authorised Representatives to use the Customer's Login Details; and (b) change the Customer's password and contact AsureQuality immediately if the Customer becomes aware of any unauthorised use of the Customer's Login Details or any other breach of security. AsureQuality may treat any access to or use of any Digital Services at any time by the use of the Customer's Login Details as access to or use of the Digital Services by the Customer, notwithstanding that they may be been used by another person without the Customer's knowledge or authority.
- 28.2 You must implement and maintain security measures that effectively restrict access to Digital Services only to the Customer's authorised End Users and protect Digital Services from unauthorised use, alteration, access, publication and distribution.
29. **EXCLUSION OF WARRANTIES**
- 29.1 The Customer acknowledges that Data may be provided to AsureQuality by third parties. AsureQuality makes no representations and gives no warranties in relation to the accuracy and completeness of any Data.
- 29.2 AsureQuality expressly excludes any warranties and guarantees (whether express, implied or statutory) that any Digital Services (including Data) are: (a) free from errors, omissions or interruptions; (b) suitable for any particular purpose (even if any particular purpose is made known to AsureQuality); (c) capable of being processed on the Customer's and/or any End User's information technology system; or (d) free of any virus, malware or computer programming code which may impair, deny or otherwise adversely affect information technology, including software or equipment. You are responsible for installing the most up to date antivirus and malware protection.
30. **CUSTOMER DATA AND PERSONAL INFORMATION**
- 30.1 The Customer must supply AsureQuality with any information, including particulars of individuals or organisations, that AsureQuality notifies the Customer from time to time is required in order for AsureQuality to supply or maintain the Digital Services.
- 30.2 The Customer represents and warrants that: (a) the Customer holds all necessary legal rights, title, consents and authority to provide Customer Data to AsureQuality for the applicable purpose; (b) all Customer Data is accurate, up to date and complete at the time it is provided; and (c) the Customer will supply AsureQuality with all relevant information to correct or update Customer Data.
- 30.3 You grant AsureQuality (and its Related Companies and Representatives) a non-exclusive, perpetual, irrevocable, royalty-free licence to use Customer Data in accordance with clause 12.2.
- 30.4 AsureQuality may also collect, use and disclose any Personal Information that you provide to us, or authorise us to collect, in accordance with clause 12 and any specific privacy terms and/or policy notified to you by AsureQuality in connection with a Digital Service.
- 30.5 The Customer undertakes that it will: (a) comply with the Privacy Act 2020 and any other applicable privacy laws (including any code or guidelines issued under the Privacy Act) (**Privacy Laws**), so far as they apply to the Customers use of Digital Services, including implementing and maintaining security measures that protect Personal Information from unauthorised use, alteration, access, publication and distribution; and (b) do all things reasonably necessary to enable AsureQuality to comply with Privacy Laws, including complying with the Special Conditions set out in a Work Order.

31. **MONITORING**

- 31.1 AsureQuality may electronically monitor (through the Customer's IP addresses, cookies, or otherwise) the Customer's access and use of Digital Services for such purposes as ensuring compliance with these Terms and preventing fraudulent use. You must ensure that End Users are made aware of and consent to such monitoring.

32. **CHANGES TO DIGITAL SERVICES**

- 32.1 AsureQuality reserves the right to withdraw, reconfigure, modify, and/or substitute (each a **Change**) all or part of any Digital Services without prior notice, including to comply with new legislation, or as a result of new technologies, or where a third party changes the terms upon which a product or service is supplied to AsureQuality. If any Change materially alters the performance or functionality of a Digital Service, we will notify the Customer and allow the Customer the option to terminate.

33. **SUSPENSION AND TERMINATION**

- 33.1 AsureQuality may suspend all or part of any Digital Service without prior notice if AsureQuality reasonably suspects that the Customer has breached a material term of these Terms or the Specific Terms.
- 33.2 Upon termination or expiry of a Digital Service for any reason: (a) each licence granted by AsureQuality or by the Customer (other than a perpetual licence) in respect of that Digital Service automatically terminates; and (b) the Customer must immediately cease using the relevant Digital Service and delete all copies of Data and AsureQuality's Confidential Information provided in connection with the applicable Digital Service (and, upon request, certify to AsureQuality that you have done so).

34. **THIRD PARTY DATA SOURCE**

- 34.1 If Digital Services utilise, or involve the provision of, third party data, the Customer must comply with the applicable third party data source terms and conditions. The Customer acknowledges that AsureQuality does not independently verify third party data and has no control over the availability of third party data.