

**Terms for Product Testing and Related Advisory Services****1. Application of these Terms**

- 1.1 These terms apply to each agreement or accepted application or accepted signed quotation for the provision of a product testing service or related advisory service (“**the Agreement**”).
- 1.2 The parties to each agreement are SAI Global (NZ) Limited (“**SAI**” or “**we**”) and the Client (“**You**”).
- 1.3 Any order or payment of fees or completed SAI Application Form or quotation acceptance which you place with SAI or receipt by You of test results after receiving notice of these terms constitutes acceptance of these terms. Both parties must agree in writing to any additional or different term.

**2. Samples**

- 2.1 You warrant the suitability of the samples for the purpose of the testing service and the accuracy of your description of the samples.
- 2.2 You must ensure that each package containing samples is accompanied by a completed Test Request form or sufficient material to identify the test samples and details of testing.
- 2.3 You must organise the transport of samples to and from SAI’s nominated premises, and must bear all risk of loss or damage of, or alteration to, samples while in transit or at SAI’s premises. SAI accepts no responsibility for alteration of samples while in transit. You must pay any charges SAI may impose on you for the test sample storage (if it is required beyond testing period), disposal and transport costs to and from SAI’s nominated premises.
- 2.4 While SAI shall use reasonable endeavours to ensure that minimal damage or alterations shall be caused to samples during testing, You acknowledge that samples may be altered or damaged unavoidably during the normal conduct of the testing service requested.
- 2.5 All articles and sample material remaining after testing remains the property of You. Where practicable we will retain such articles and sample material not consumed in the testing service for a period of at least [1 month]. If not collected by You during the month, articles and sample material will be disposed of after this time.

**3. SAI’s Obligations**

We will carry out the testing service with due professional care and skill, and in accordance with our NATA (National Association of Testing Authorities, Australia) or IANZ (International Accreditation New Zealand) or other relevant accreditation where applicable.

**4. Test Results**

- 4.1 If you specifically request a particular test, we are not liable for any loss you suffer because we perform that test when another test would have been more suitable given the quality or characteristic which you wish us to test or the end use which you intend for the sampled material.
- 4.2 If you do not specifically request a particular test, you are responsible for providing clear, accurate and comprehensive instructions, including descriptions of the samples, whether in writing or orally (as evidenced in SAI’s records), on the following:
  - the Australian Standard or other Standard, or quality or characteristic (“the Nominated Standard”) against which you wish us to test.
- 4.3 We are not liable for any loss you suffer (including where we have recommended a test) because the test results fail to demonstrate compliance with the Nominated Standard, and/or fail to be suitable given the end use intended for the sampled material, where that failure arises from incorrect, misleading or incomplete instructions on your part.
- 4.4 We do not warrant that the test results will meet or exceed the requirements of the Nominated Standard or any specifications hoped for by you.
  - The test results relate only to the sample or samples tested.
  - Due to the many scientific variables involved in carrying out our testing services, we do not warrant that any test results derived from a sample will be identical or substantially similar to test results previously derived from a similar sample, using the same testing service, by SAI or a third party.
  - You acknowledge that the tests may involve an element of subjective judgment.

**5. Related Advisory Services**

Where you request us to provide a related advisory service, you are responsible for providing clear, accurate and comprehensive instructions (including about the objectives which you wish the advisory

service to achieve) and all relevant information and assistance. We are not liable for any loss you suffer because the advisory service fails to achieve any objective.

## **6. Fees**

- 6.1 We will calculate the fee according to one of the following:
- the SAI Product Testing Fees List in force from time to time; or
  - an agreed fee or quotation for the particular testing service, letter of opinion or related advisory service.
- 6.2 Unless clause 6.3 applies, [payment is required prior to provision of the test report, letter of opinion or related advisory report, after we have issued our invoice for the relevant amount.]
- 6.3 If you have applied for and been granted a credit account with SAI, you must pay the fees within 30 days of the end of the month in which our invoice is issued for the credit account to remain open.
- 6.4 All payments must be made in the currency stipulated in the invoice.

## **7. Taxes**

You must pay any tax, levy or impost imposed on the services provided under an agreement, including but not limited to any goods and services tax, in addition to our fees at the same time that you pay our fees.

## **8. Delays**

While we make all reasonable endeavours to complete testing services and related advisory services promptly, we are not liable for any loss arising from delay in carrying out a testing service or related advisory service or producing a test report or letter of opinion. Product failure during testing may delay the expected completion date due to possible redesign, retesting or requirement of other corrective measure.

## **9. Liability**

- 9.1 You acknowledge that we have not made any statement or other representation, not expressly stated in these terms, which has induced you to enter into an agreement.
- 9.2 Subject to clause 10, we are not liable for any loss or damage whatsoever (including loss of profits or other consequential loss) arising in connection with the Agreement (including because of negligence by us).

## **10. Implied Terms**

- 10.1 Unless clause 10.2 applies, any condition or warranty which would otherwise be implied in this agreement is excluded.
- 10.2 Where legislation implies in this agreement any condition or warranty, SAI's liability for any breach of such condition or warranty is limited, at SAI's option to one or more of the following:
- the supplying of the testing service or related advisory service again; or
  - the payment of the cost of having the testing service or related advisory service supplied again.

## **11. Test Reports and Letters of Opinion**

You must not alter or allow alteration of test reports or letters of opinion. You must not reproduce or allow the reproduction of test reports or letters of opinion except in full.

## **12. Abstracts and Advertising**

Any extract, abstract or interpretation of a test report or letter of opinion must be approved by us in writing prior to its release. A test report, letter of opinion, the names SAI Global or its related bodies corporate or SAI may be used in advertising, providing the content and format of the advertisement have been approved in advance by SAI.

## **13. Confidential Information**

- 13.1 "Confidential information" means:
- any information disclosed to us by you which you designate as confidential or which we know or ought to know is confidential;
  - includes the information in test results, test reports, letters of opinion and related advisory reports;
  - does not include information to the extent that the information is:
    - independently developed or known by us (including because it is in the public domain);

- independently known to a third party who contacts us about the information; or
- required to be disclosed by law.

13.2 We must not disclose confidential information without your prior written consent, except to our officers, employees, contractors and agents for the purpose of an agreement with you.

#### **14. Copyright**

We retain copyright in all written material produced under an agreement.

#### **15. Governing Law**

Each agreement is governed solely by the law of New Zealand.

#### **16. Early Termination by the Client**

If at any time after placing an order for a testing service you purport to terminate and/or repudiate or cancel the agreement entered into with us, then, and without prejudice to any other rights or remedies which we may have, we are entitled to recover from you such proportion of the fee as is equivalent to the proportion of work already performed to the total of the work required to complete the agreement, together with an additional 10% of this amount, representing a “loss of bargain” component. A written statement by our authorized officer stating the proportion of the fee to be paid under this clause is conclusive evidence of the amount payable by you.

#### **17. Dispute Resolution**

17.1 The parties must attempt to resolve any dispute as quickly as possible, but if such dispute is not resolved within 20 business days of notification by one of the parties to the other of the particulars of the dispute, before issuing proceedings at court, either one of the parties may refer the dispute to mediation, administered by the Commerce Commission of New Zealand in accordance with its guidelines for commercial mediation. Each of us must bear our own costs of the mediation.

17.2 If the matter is referred to mediation under clause 17.1, neither one of the parties may commence court proceedings concerning a matter in dispute unless the matter has not been resolved within 90 days of the referral.

#### **18. Severance**

If any provision of these terms is held to be invalid or unenforceable, such provision will be struck out and the remaining provisions will remain in force.

#### **19. Indemnities**

You must at all times indemnify and hold harmless us and our officers, employees, contractors and agents (“those indemnified”) against any loss (including reasonable legal costs and expenses) or liability arising from any proceedings against those indemnified where such loss or liability was caused by:

- a breach by you of an agreement; or
- or incurred by those indemnified in enforcing any rights under an agreement with you.

#### **20. Termination**

Without limiting the generality of any other clause in these terms, we may cease to fulfil work in progress or refuse to commence new work for you if you are in breach of any term of an agreement.

#### **21. Amendment of these Terms**

21.1 We may amend these terms at any time by notifying you, including in any one or more of the following ways:

- printing the amended terms on our Test Request forms; or
- posting the amended terms and conditions on our internet site.

21.2 Your continued use of the testing services or related advisory services after such notice will constitute acceptance of the variation.

#### **22. Force Majeure**

22.1 Non-performance by either of the parties of any obligation required by an agreement as a result of force majeure will be excused during the time and to the extent that such performance is prevented, wholly or in part, by force majeure.

22.2 Force majeure means a circumstance beyond the reasonable control of one of the parties which results in one of the parties being unable to observe or perform on time an obligation under the agreement. Such circumstances include but are not limited to acts of God, explosions, fires, and strikes.

**23. Sub-Contracting to External Laboratories**

SAI may at its discretion contract all or any part of the service provided under this agreement to a 3<sup>rd</sup> party provided that

- The 3<sup>rd</sup> party has appropriate qualifications;
- Test Reports issued to you identify the nominated scope of the activity undertaken by the 3<sup>rd</sup> party; and
- The service of the 3<sup>rd</sup> party is delivered in accordance with the Terms of this agreement as if we had performed all of the testing services ourselves.

**24. Waiver**

Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches.