

## General Terms and Conditions of Service

### 1. AGREEMENT BETWEEN CCS AND THE CLIENT as follows; -

- (a) Except as expressly provided in this document, these terms together with any specifications attached to this document (if any) constitute the entire agreement entered into between CCS and the Client for any of the Services provided to the Client to the exclusion of any other terms, conditions, representations or warranties howsoever expressed or implied including in any Client's conditions of order.
- (b) By instructing CCS to provide any Services, the Client is representing that the Client has the authority to enter this Agreement and that the Client has read and fully understands and agrees to the Terms and Conditions contained herein.
- (c) Accepting the terms and conditions contained in this Agreement does not guarantee the provision of the Services, and CCS reserves the right to deny or provide the Services at its discretion.

### 2. DEFINITIONS AND INTERPRETATION

#### (a) Definitions

"Agreement" means this agreement;

"Certificate" means the certificate issued by CCS;

"CCS" means Conformity Certification Services Pty Ltd ACN 161 881 401;

"Client Guidelines" means those Guidelines issued by CCS in accordance with the relevant certification scheme.

"Confidential Information" means any oral or written proprietary information that a party may acquire from the other party pursuant to the Agreement or information as to the business of the other party provided however the Confidential Information shall not include any information which:-

- (i) is or hereafter becomes generally known to the public;
- (ii) was available to the receiving party on a non-confidential basis prior to the time of its disclosure by the disclosing party;
- (iii) is disclosed to a party by an independent third party with a right to make such disclosure;

"Force Majeure" means any circumstance or event that is not within the control of the party affected, including: an act of God; fire; lightning; explosions; flood; subsidence; insurrection or terrorist activity or civil disorder or military operations; government restraint, expropriation, prohibition, intervention; strikes, lock-outs or other industrial disputes of any kind not relating solely to the party affected;

"GST" means the goods and services tax as provided for by the GST law;

"GST Act" means *A New Tax System (Goods & Services Tax) Act 1999* as it stands from time to time;

"GST law" means the GST Act and associated legislation including without limitation delegated legislation;

"International Standard" means the standard set out in ISO/IEC 17065 Conformity Assessment - Requirements for Bodies certifying products, processes and services as amended from time to time;

"Services" means the provision of a system certification or product conformity certification in respect of the items referred to in the Application attached.

Where in this Agreement the following words appear they shall be given the meaning as set out in the International Standards: -

- (iv) Certification Requirements;
- (v) Certification Scheme;
- (vi) Evaluation;
- (vii) Product Requirement.

#### (b) Interpretation

- Headings in these terms and conditions are inserted for convenience and do not form part of the terms and conditions.
- The singular includes the plural and vice versa. Persons include incorporated and unincorporated entities. Words implying one gender include the other. A reference to a clause or sub clause is a reference to a clause or a sub clause in these terms and conditions.
- A waiver of any provision of this document by CCS must be in writing. No delay by CCS in exercising any right or power pursuant to this document will operate as a waiver of that right or power nor will any single or partial exercise of any right or power preclude any other or further exercise of that right or power.
- The Client may not assign this agreement without CCS's prior written consent.

- No party to this document has the power to obligate or bind any other party. Nothing in this document will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties.
- It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this document.
- The warranties, undertakings, agreements and continuing obligations in this document do not merge on completion.
- In the interpretation of this document, no rule of construction applies to the disadvantage of the party preparing the document on the basis that it put forward this document or any part of it.
- If any covenant, undertaking or condition of this Agreement is found to be void or unenforceable at law, that covenant, undertaking or condition will not affect any other term of this Agreement and, as far as is possible, will be read down to the extent required to make it enforceable. If necessary, the parties will, in good faith, negotiate a valid and enforceable replacement term to express their intention.
- Errors and Omissions are Excepted.

### 3. SERVICES

(a) This document covers the provision of the services ("the Services") which CCS shall provide to the Client and which the Client will accept from CCS.

(b) Certification, suspension, withdrawal or cancellation of a Certificate shall be in accordance with the applicable Client Guidelines.

(c) CCS may engage sub-contractors to provide all or part of the Services. The entry by CCS into a sub-contract neither: -

- (i) creates any contractual relationship between the Client and any sub-contractor; nor
- (ii) relieves CCS from liability for the performance of its obligations under this Agreement.

### 4. CLIENT

The Client shall: -

- (a) provide to CCS all necessary documents and materials to enable CCS to provide the Services;
- (b) ensure that it maintains and will fulfil the Certification Requirements including implementing appropriate changes when communicated by CCS.
- (c) ensure that if the Certification applies to on-going production the certified product continues to fulfil the Product Requirements.
- (d) make all necessary arrangements for: -
  - (i) the conduct of the Evaluation;
  - (ii) investigation of complaints;
  - (iii) participation of observers, if applicable.
- (e) ensure it makes its claims regarding certification consistent with the scope of the Certificate.
- (f) ensure it does not use the product certification in such a manner as to bring CCS into disrepute and does not make any statement regarding the product certification that CCS may consider misleading or unauthorised.
- (g) upon suspension, withdrawal or termination of certification discontinue its use of all advertising matter that contains any reference thereto and takes action as required by CCS, including the return of certification documents and takes any other reasonably required measures to discontinue its use of the Certificate.
- (h) ensure that upon the provision of copies of the certification document to third parties those documents shall be reproduced in their entirety or as specified in the Certification Scheme.
  - (i) ensure that in making reference to its product certification in communication media such as documents, brochures or advertising it complies with the requirements of CCS or as specified by the Certification Scheme.
  - (j) ensure that it complies with any requirements that may be prescribed in the Certification Scheme relating to the use of marks of conformity and on information related to the product.
  - (k) ensure that it keeps a record of all complaints made known to it relating to compliance with Certification Requirements and makes those records available to CCS when requested and: -
    - (i) takes appropriate action in respect of such complaints and any deficiencies found in products that affect compliance with requirements for certification;

- (ii) documents the action taken.
- (l) ensure it informs CCS without delay of changes that may affect its ability to conform with the Certification Requirements.

(m)

#### 5. DELIVERY

- (a) CCS shall deliver the Services in accordance with the agreed service levels to the Client. These agreed levels may form part of a fixed service level agreement, or be made on a project basis prior to commencement and agreed in principle by both CCS and the Client and documented in writing.
- (b) To ensure CCS meets the agreed service levels, representative samples, instructions, technical documents, test reports, marking information, packaging information and special requirements must be provided in a timely manner when requested by CCS.
- (c) The timeframes for completion specified by CCS and any estimated completion dates provided are indicative only. Whilst CCS shall use reasonable endeavours to complete the work by the estimated completion date or within the specified timeframe, it shall not be liable for any delay beyond the estimated completion date/indicative timeframe, or any resulting circumstances, for any reason whatsoever. The estimated completion dates and indicative timeframes only apply where the Client provides the necessary product samples and any requested information when required. Indicative timeframes may not apply where multiple projects are submitted simultaneously, or during periods of excessive workloads.
- (d) The use of any specific consultant or test laboratory will not guarantee certification nor will it influence CCS's certification decision.

#### 6. ACCEPTANCE OF SERVICES

- (a) The Services are deemed to be accepted by the Client if CCS does not receive a notification within five (5) business days after delivery to the Client. Failure to comply will, to the extent permitted by law, prevent any later notice being given or the claim being pursued by the Client.
- (b) CCS shall be given the opportunity to rectify or amend any of the Services rejected by the Client within a reasonable and mutually agreed timeframe of receipt of a notice of rejection.

#### 7. PRODUCT SAMPLES

##### (a) Provision of Product Samples

The Client agrees to provide CCS with appropriate product samples if requested to the location specified by CCS from time to time at the sole cost of the Client including shipping and handling.

- (b) CCS shall not be liable for any damage to product samples submitted to CCS while in transit or during performance of the Services for any reason whatsoever.

##### (c) Disposal of Product Samples

Samples will be disposed of without notification fourteen (14) days after conclusion of the certification process. Unless other arrangements are made by the Client, CCS will be free to dispose of the samples in the manner it deems appropriate and all costs associated with the disposal will be borne solely by the Client. Where the Client requests that samples be returned, any costs will be borne solely by the Client.

#### 8. FEES

- (a) Unless otherwise agreed in writing, the fees charged by CCS will be calculated in accordance with the rates current at the time of the provision of the Services. A fee schedule or quotation will be provided to the Client upon request.
- (b) In case of Services that are rendered under flat-fee arrangements, no detailed statement of Services will be provided.
- (c) At CCS's discretion, additional fees may be payable if there have been significant additional or unusual costs, effort, or attendances required on the part of CCS for the completion of the Services beyond that reasonably anticipated by CCS as at the time of agreeing to provide the Services.
- (d) All fees quoted are subject to change without notice.
- (e) All Services are subject to the Goods and Services Tax (GST) unless the Services are classified as GST exempt.

#### 9. GOODS AND SERVICES TAX

If GST applies to any fees and charges payable under this Agreement by the Client then:-

- (a) no amount specified as payable is inclusive of any GST applying to such payments;
- (b) the Client must pay the GST payable in respect of any such payments in addition to such payments; and
- (c) the GST in respect of the payments will be payable on each occasion that the payment falls due.

#### 10. PAYMENTS AND DEPOSIT

- (a) Invoices issued by CCS must be paid by the Client within 7 days of the date of the invoice. This is an essential term of this Agreement.

- (b) Accepted methods of payment are by EFT, Credit Card, BPAY, PayPal or cheque made payable to CCS. Payments made directly to CCS's bank account must state the invoice number.

- (c) Invoices are only payable in the currency of the invoice.

- (d) Payment of accounts that remain overdue after 14 days of presentation will accrue interest at the rate of 15% per annum compounded monthly on the balance from the date of the invoice until full payment.

- (e) If the Client fails to make payment as required then (without limitation to its other rights) CCS may by verbal notice suspend or terminate this Agreement and any other agreement between CCS and the Client.

- (f) The Client acknowledges that it will be liable for all costs, fees, charges and other amounts that may become payable to CCS irrespective of whether the Client is entitled to be reimbursed by any other person.

- (g) The Client agrees that it is liable for all costs, fees, charges and other amounts that may become payable to CCS regardless of whether CCS grants its certification in respect of the service or not.

- (h) In certain circumstances the Client may be required to pay a non-refundable deposit or payment in advance of the provision of Services.

- (i) CCS may, at its sole discretion, require payment for any previously issued invoice prior to the provision of any further Services to the Client.

- (j) CCS may also, at its sole discretion and without liability, suspend, withdraw or cancel any Certification or suspend the provision of Services, pending payment of any invoice which has not been paid in full by the due date or if the Client commits an act of bankruptcy as defined in the Bankruptcy Act 1966.

- (k) Any use by the Client of any Certificate or information contained in any report therein is conditional upon the timely payment of all fees and charges.

- (l) The Client shall not be entitled to retain or defer payment of any sums due to CCS on account of any dispute, counterclaim or set off which may be alleged against CCS.

- (m) CCS may, at its sole discretion, refer overdue invoices to the agency of its choice for debt recovery. The Client is liable to CCS for all costs and expenses incurred by CCS in recovering money or in connection with the exercise of any of its rights or remedies under these terms and conditions, including commissions, debt collection agency fees and legal costs on a solicitor and client basis.

#### 11. COPYRIGHT

Copyright to all documents including joint copyrights and certifications and expert opinions, reports, raw data calculations, descriptions etc which are produced by CCS during performance of the Services remain the sole property of CCS. All such documents, certifications, expert opinions, reports, raw data calculations, descriptions etc may be used by the Client only for their intended purposes. Duplicate Certificates are available upon request for external communication purposes. The Client shall not alter or misrepresent the contents of such documents in any way.

#### 12. CONFIDENTIALITY

Each party (the "recipient") agrees in relation to Confidential Information of the other party (the "owner"):-

- (a) to use the Confidential Information only for the purposes of this Agreement; and
- (b) to keep that Confidential Information confidential and not disclose it or allow it to be disclosed to any third party except:-
  - (i) with the consent of the owner; or
  - (ii) to officers, employees and consultants or advisers of the recipient and of the recipient's related bodies corporate who have a need to know (and only to the extent that each has a need to know) and are aware that the Confidential Information must be kept confidential;and the parties must take or cause to be taken reasonable precautions necessary to maintain the secrecy and confidentiality of the Confidential Information.

#### 13. PRIVACY

- (a) The information collected by CCS will only be used by us and not provided to a third party as per the Australian Privacy Principles in the Privacy Amendment (Enhancing Privacy Protection) Act 2012 as extracted from the Privacy Act 1988 (Cth).

#### 14. CLIENT WARRANTIES

The Client warrants that it has:-

- (a) the full authority to engage in any transactions undertaken;
- (b) the approval for the performance of the Services from all persons with an ownership or other proprietary interest in the product;
- (c) the ability and expectation that it will be able to meet its debts as and when they fall due and payable;
- (d) provided true and accurate information to CCS to the best of its knowledge.

#### 15. CCS WARRANTIES

CCS makes such warranties as may from time to time be implied or required by law in respect of the Services but otherwise makes no warranty or guarantee and excludes any excludable implied term.

#### 16. INDEMNITY

The Client hereby indemnifies and keeps indemnified:-

(a) CCS and its officers, directors, employees, agents, successors and assigns against all actions, claims, demands, losses and/or damages, and suits (including, but not limited to, court and legal costs on a solicitor and client basis) which are made or brought by any person against CCS arising out of or consequential upon the use by CCS of any equipment, systems, programs, products or procedures provided and/or authorised by the Client in providing the Services under this Agreement.

(b) CCS from and against all actions, claims, demands, losses and/or damages and liabilities arising out of or consequential upon: -

(i) any breach by the Client of this Agreement; or  
(ii) any act or omission, including any negligence, unlawful conduct or wilful misconduct, by the Client in breach of this Agreement, or any breach by the Client's officers, directors, employees, agents, successors and assigns relating to the subject matter of this Agreement.

(c) CCS against any breach of this Agreement and any claims made against CCS by any third party in respect of any such loss, damage, death or injury as in the preceding clause and the Client further indemnifies CCS against all losses and expenses which CCS or its contractors, employees or agents may suffer or incur (including dishonour fees, debt collection and legal costs on an indemnity basis) due to the failure of the Client to fully observe its obligations under the Agreement or any other wilful or neglectful conduct by any person at or in connection with the premises.

Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this document.

#### 17. LIMITATION OF LIABILITY

(a) All warranties and conditions implied by the *Competition and Consumer Act 2010* (Cth) or other legislation are expressly excluded except to the extent that such warranties and conditions cannot be excluded.

(b) The liability of a party ('the party at fault') for loss or damage sustained by the other party will be reduced proportionately to the extent that such loss or damage has been caused by the other party's failure to comply with its obligations and responsibilities under this Agreement and/or to the extent that the negligence of the other party has contributed to such loss or damage, regardless of whether a claim is made by the other party for breach of agreement or for negligence.

(c) In the case of any warranties and conditions implied by legislation that cannot be excluded, the liability of CCS is limited to the extent allowed by that legislation, and in particular, in relation to warranties implied under the *Competition and Consumer Act*, CCS's liability is limited to (at CCS's option) in the case of services: -

(i) the supplying of the Services again; or  
(ii) the payment of the cost of having the Services supplied again.

Under no circumstances will CCS be liable to the Client for any indirect, consequential, incidental, special or exemplary damages (including, without limitation, damages for loss of business profits, loss of revenue, business interruption, loss of business information or otherwise) arising from any provision of Services under this Agreement, or failure to perform any obligation under this Agreement, even if CCS has been notified of the possibility of such damages being incurred.

#### 18. AMENDMENTS

(a) CCS may at its discretion make changes to this Agreement from time to time.

(b) CCS will provide the Client with written notice of any such amendment.

(c) Such amendments will become effective without any further action by either party and will not apply to any Services procured prior to the effective date of the amendments.

#### 19. DEFAULT AND TERMINATION

##### (a) Default

An Event of Default in relation to a party will occur if: -

- (i) it defaults in carrying out any of its obligations under this Agreement, and such default is not capable of rectification;
- (ii) it defaults in carrying out any of its obligations under this Agreement, and such default, if capable of rectification, is not rectified within fourteen (14) days or a mutually agreed period of the other party giving it a notice in writing requiring rectification of that default;
- (iii) it engages in wilful misconduct, fraud or dishonesty in connection with this Agreement;
- (iv) it engages in conduct which causes (or is likely to cause) harm to the reputation of the other party;
- (v) a petition is lodged, an order is made or a resolution is passed for the winding up of the party or to place the party under official management, or if any meeting is convened for the purpose of considering any such petition, order or resolution;
- (vi) an administrator, a receiver, a receiver and manager or an official manager of the undertaking or property of the party (or any part thereof) is appointed;

(vii) the party suspends payment of its debts (within the meaning of those words in Section 40 of the *Bankruptcy Act 1966* (Cth)) or ceases (or threatens to cease) to carry on all, or a substantial part, of its business;

(viii) an inspector of all or any part of the affairs of the party is appointed pursuant to Division 1 of Part 3 of the *Australian Securities Commission Act 1989* (Cth) or if an application is made pursuant to such Act for the appointment of such an inspector;

(ix) a compromise or arrangement is proposed between the party and its creditors or any class of them; or

(x) the party is unable to pay its debts or makes an assignment for the benefit of, or enters into any arrangement or composition with, its creditors.

##### (b) Termination

If any party commits or incurs an Event of Default, the other party may terminate this Agreement immediately and without notice.

#### 20. FORCE MAJEURE

(a) If a party is delayed or interrupted in, or prevented from, performing its obligations (other than an obligation to pay money) under this Agreement by an event of Force Majeure, that party will not be in breach of this Agreement and the time for performance of its obligations will be extended by a period of time equal to the duration of the cause of the delay, interruption or prevention.

(b) A party affected by an event of Force Majeure must give the other party prompt written notice of the particulars of the event and take reasonable steps to remove or mitigate the relevant event of Force Majeure.

#### 21. GOVERNING LAW

(a) This Agreement is governed by, and will be interpreted in accordance with, the laws from time to time in force in the State of New South Wales, Australia; and the parties submit to the exclusive jurisdiction of the courts of Sydney, New South Wales, and the Commonwealth of Australia.

(b) The parties waive any rights they have to object to an action being brought in those courts including, but not limited to, claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

(c) All services provided by CCS will be deemed to be provided in New South Wales, Australia.