Ex Testing and Certification Pty Limited

# GENERAL TERMS AND CONDITIONS

## 1. Scope

1.1 These general terms and conditions (**Terms**) apply to each Client (**Client**) of Ex Testing and Certification Pty Limited ("ExTC") who enters into an agreement (**Services Agreement**) with ExTC for any of the services (**Services**) described or contemplated in that Services Agreement or any order for Services (**Order**) under that Services Agreement.

1.2 No terms and conditions of a Client will at any time form part of any Order or agreement between the Client and ExTC, even if they are not expressly rejected by ExTC.

## 2. Legal Effect

2.1 No Services Agreement is binding upon ExTC until the earlier of its execution by ExTC and the Client or the commencement of the Services by ExTC to the Client.

2.2 No Order (whether an application for certification, testing or other) is binding upon ExTC until the earlier of ExTC accepting the Order in writing or commencing performance of the Services of that Order.

## 3. Scope and Provision of Services

3.1 The scope of the Services to be provided will be determined and governed by the applicable Order, these Terms, and the relevant testing and/or certification standards. In the event of a conflict of inconsistency, these Terms shall prevail to the extent of the inconsistency.

3.2 ExTC will provide the Services in a manner consistent with accepted good practice and in accordance with any and all applicable standards and regulations to the Services, as such are in force at the time of ExTC's acceptance of the relevant Order.

3.3 ExTC is entitled to determine (in its sole discretion) the method and nature of the provision of Services unless otherwise agreed in writing, or if the law requires a specific procedure to be followed in relation to the relevant Services.

3.4 The Client accepts and agrees that ExTC does not give any warranty or guarantee as to the quality, correctness or working order of the Client's tested or examined item, product, parts or process nor of any Client product or process as a whole (including, without limitation, upstream and/or downstream processes, use and application in accordance with regulations, any systems on which the item, part or product is based or installed). In particular, no responsibility shall be assumed for the construction, selection of materials or assembly of product or parts examined, nor for their use and application in accordance with any law unless such matters are expressly agreed by ExTC in writing as part of the Services in an Order.

3.5 Where ExTC agrees to undertake inspection work, ExTC shall not be responsible for the accuracy or verification of the safety programs or safety regulations on which the inspections are based, unless otherwise expressly agreed by ExTC in writing.

3.6 Testing services at any Client facility is subject to ExTC's prior written consent and on such conditions (and at such direction) as ExTC deems fit or requires.

3.7 Client attendance at the performance of any testing services is only with ExTC's prior written consent and on such conditions (and at such direction) as ExTC deems fit or requires. The Client releases and indemnifies ExTC from and against all claims, loss and damage the Client (and, without limitation, the Client's employees, contractors and agents) of any kind suffer or may suffer by attendance at the performance of any testing services.

## 4. Delivery Times

4.1 Time of performance of the Services will be an estimate agreed between the Client and ExTC and specified in each Order. Delivery times will be estimated by ExTC by reference to the extent of the work required and according to particulars and information supplied by the Client.

4.2 Periods for delivery of Services shall not commence until the Client has submitted to ExTC all documents and information required by ExTC.

4.3 The Client acknowledges and agrees that all estimated or agreed periods or dates for delivery of the Services are estimates and are also subject to clauses 4.2, 5 and 10 of these Terms. ExTC is not liable to the Client for any Client loss or claims to the extent Services are not performed within or before any agreed or estimated delivery date or period.

## 5. Client Cooperation

5.1 Without limiting any obligation under the Services Agreement, the Client must ensure that all cooperation required by ExTC of the Client, the Client's agents, employees or any third party in connection with the Services (as such may be reasonably directed by ExTC or specified in the Services Agreement or Order), will be provided in a timely manner and at no cost to ExTC. All documentation and materials, supplies, auxiliary staff, etc., necessary and reasonably required for the performance of the Services by ExTC must be made available by the Client to EXTC without any cost to ExTC.

5.2 In cooperating with ExTC, the Client must comply with all legal requirements and industry safety regulations and standards.

5.3 The Client will bear any additional cost incurred as a result of work having to be redone or delays resulting from untimely, incorrect or incomplete information or lack of proper cooperation by the Client.

5.4 Notwithstanding a fixed or maximum price for the Services may have been agreed between the parties, ExTC will be entitled to charge additional fees to offset additional expenses incurred as a result of the Client's failure to provide timely, correct or complete information, for lack of timely or proper cooperation or for compliance with any provision of these Terms.

5.5 The Client agrees ExTC may charge and invoice the Client for the costs in clauses 5.3 and 5.4 and acknowledges such costs as a debt due to ExTC.

5.6 Without limiting the operation of provisions of the Terms, the Client agrees to provide to ExTC all technical documentation that enables certification services to be performed, such that the conformity of the product (or, if applicable, process, site facility, service or other item) may be assessed against the requirements of the applicable standards. Technical Documentation shall (as applicable) cover the design, manufacture and operation of the product, process, site or facility and should include:

(a) a general type-description; design and manufacturing drawings and layouts of components, sub-assemblies, circuits, etc,

(b) a list of critical components;

(c) detailed colour photographs;

(d) a list of standards referred to in the design, applied in full or in part, and descriptions of the solutions adopted to meet the requirements of the standards;

(e) results of design calculations made, examinations carried out (whether by the Client or another party);

(f) labelling, packaging, instructions for use, care, installation and maintenance;

(g) a recognised Test Report (as defined in the Schemes); and

(h) a factory inspection report.

## 6. Payment Conditions and Fees

6.1 Unless otherwise agreed in writing in the Services Agreement or an Order containing a fixed price or quotation, fees charged by ExTC will be calculated and charged in accordance with ExTC's then current rates in effect at the time of delivery of the Services. A fee schedule (**Fee Schedule**) or quotation will be provided to the Client upon request.

6.2 The Client agrees that its obligations to pay ExTC's fees (including any disbursements or other charges) exists independently from the results of any investigation, certification or testing undertaken as part of the Services, and are not dependent on whether a certification or a licence is issued to the Client. Invoices are payable in the currency of the invoice which shall be Australian dollars (AUD) if not otherwise specified.

6.3 Unless otherwise agreed in writing, invoices for fees and other charges for and in connection with the Services will be issued at such time ExTC determines. For invoices that are rendered

under fixed fee or quotation arrangements, no detailed statement of Services will be provided.

6.4 All invoice amounts must be paid by the Client to ExTC without deduction fourteen (14) days after issuance of the invoice. The Client agrees that all government, bank, credit and institution fees, charges and duties and any other financial impost or charge in connection with the payment of ExTC invoices is the responsibility of the Client. The Client also agrees to be responsible for any currency exchange charges and any currency conversion risks associated with payment of ExTC invoices. The Client agrees that any of the costs, charges and loss in this clause 6.4 will be (if incurred) a debt due (and/or reimbursable) to ExTC.

6.5 The higher of:

(a) an interest charge of 1.5% per month; or

(b) the highest interest rate permitted by law;

calculated on the total of all amounts outstanding to ExTC by the Client shall be charged and accrue to all full amounts outstanding if not paid by the Client within thirty (30) days of the invoice date. If collection procedures, costs and expenses are incurred by ExTC, the Client agrees to pay and reimburse ExTC for all such costs and expenses including, without limitation, court and legal fees. The accrual or receipt by ExTC of interest under this clause is without prejudice to all of ExTC's rights and claims and will not constitute a waiver by ExTC of any right to terminate an Order or the Services Agreement.

6.6 Unless otherwise agreed, payments to ExTC must be made by the Client by direct funds transfer to the bank account stated on ExTC's invoice, stating the invoice number and Client name with payment. Objections to any invoice must be submitted to ExTC in writing within fourteen (14) days after the Client's receipt of the invoice.

6.7 Subject to clause 6.8, if an Order is cancelled and/or the Services Agreement is terminated by the Client for any reason prior to commencement of Services, ExTC is entitled to be paid (and, if applicable, retain) a cancellation fee (**Cancellation Fee**), being the greater of:

(a) 10% of the fixed price or quotation for the Services; or

(b) the amount of ExTC's loss determined by ExTC in its absolute discretion, acting reasonably, that ExTC has incurred or is likely to incur as a result of the cancellation.

The Client agrees that the Cancellation Fee is a reasonable estimate of the amount of the loss ExTC has suffered or will suffer as a result of the cancellation of the Services Agreement and/or Order prior to commencement of the relevant Services.

6.8 Where the Client cancels an Order with ExTC for a certification service (that Order having been accepted by ExTC), the Client agrees it is liable for and shall immediately pay the full fee applicable for the certification service as a cancellation fee which the Client agrees represents ExTC's loss.

6.9 No extension to payment terms of ExTC's invoices or other settlements of debt or amounts outstanding to ExTC will be permitted without written authorisation by a director of ExTC.

6.10 If the Client fails to pay any amount due, ExTC may, without notice to the Client, suspend all Services provided under the Services Agreement with the Client or in ExTC's sole and absolute discretion, terminate any Order and/or the Services Agreement.

6.11 Fees and charges for Services rendered under these Terms do not include any GST or similar taxes, which are payable by the Client. GST is payable by the Client in accordance with clause 18.

6.12 Services rendered outside normal working hours at the request of the Client and Services required to be rendered at short notice, (e.g. within a period of time that is shorter than the initially estimated or agreed delivery period), may be subject to extra charges advised or otherwise listed in ExTC's Fee Schedule. The Client agrees to such extra charges being charged.

6.13 Travel fees and expenses and other material and additional costs will be charged separately unless such costs are included in a fixed fee or quotation.

6.14 Material and additional costs are external costs (including, for example, subcontractor costs) associated with the Services, costs incurred for the use of special laboratories or special measuring equipment (use of equipment costs) and miscellaneous costs (e.g. photographic work, disposal of test samples (hazardous waste), packaging, shipping and customs duties) (**Material and Additional Costs**). A 10% fee for administrative overhead cost will be added to Material and Additional Costs which the Client agrees to pay to ExTC.

6.15 Travel expenses incurred in connection with Services (**Travel Expenses**) will be charged at cost plus a 10% fee for administrative expenses which the Client agrees to pay to ExTC. Travel Expenses include a daily allowance, overnight allowance, transportation expenses and any other costs incurred. In addition, travel time of ExTC employees will be charged based on the hourly rates of the ExTC employees engaged in the performance of the agreed Services or as defined in the quotation.

6.16 The Client acknowledges and agrees that ExTC may require advance payments for any part of the fees (including any Material and Additional Costs, Travel Expenses and other costs). The Client agrees to make such advance payments within five (5) days of a written request from ExTC.

6.17 Client credits remaining with ExTC longer than one year will be deemed an administration fee paid to ExTC. An administration fee is not refundable to the Client.

6.18 Where the Client fails to make full payment of any ExTC invoice within thirty (30) days of the date that invoice or where any balance outstanding to ExTC exceeds a credit limit agreed by ExTC in respect of the Client for amounts outstanding, all credit limits applicable to the Client are subject to suspension without notice.

## 7. No Right of Setoff

The Client has no right of setoff against any payments due, whether on account of any claims or alleged claims against ExTC under these Terms or otherwise. Where ExTC asserts a right to receive payment from the Client, ExTC may set off or deduct any amount to which ExTC is entitled against any invoice or payment due from the Client.

## 8. Confidentiality

8.1 **"Confidential Information"** means any scientific, technical, trade or business information (whether provided orally or in writing) which is given by one party to the other and which is treated by the disclosing party as confidential or proprietary or each party knows or ought to know is confidential. Confidential Information does not include information that:

(a) is in possession of the receiving party at the time of disclosure, as reasonably demonstrated by written records and without obligation of confidentiality;

(b) is or later becomes part of the public domain through no fault of the receiving party; or

(c) is received by the receiving party from or developed independently by the receiving party without use of, reference to, or reliance upon the disclosing party's Confidential Information by individuals who did not have access to Confidential Information.

The disclosing party must, to the extent practical, use reasonable efforts to label or identify as confidential, at the time of disclosure all such Confidential Information that is disclosed in writing or other tangible form.

8.2 The Client acknowledges that ExTC may be in possession of documents and other information including Confidential Information that the Client has disclosed or provided to TUV. The Client authorises ExTC to use these documents and information for the purposes of the Services Agreement and any Order and ExTC agrees to keep confidential the Confidential Information that the Client has disclosed or provided to TUV.

8.3 Each party agrees:

(a) to keep confidential the Confidential Information of the other party and these Terms and the terms of the Services Agreement and each Order;

(b) not to disclose the other party's Confidential Information to any third party without the prior written consent of such other party; and

(c) to use such Confidential Information only as necessary to fulfill its obligations or in the reasonable exercise of rights granted to it under these Terms and the terms of the Services Agreement. A party may disclose:

(i) Confidential Information of the other party to its related bodies corporate, and to its and their directors, employees, consultants, and agents in each case who have a specific need to know such Confidential Information and who are bound by a like obligation of confidentiality and restriction on use to those in this clause 8; or

(ii) Confidential Information of the other party to the extent such disclosure is required to comply with applicable law or to defend or prosecute litigation;

provided however, that in each case the receiving party is liable for any breach of confidentiality and restriction of use requirements under clause 8.3(c)(i) and in the circumstances of clause 8.3(c)(ii), provides prior written notice of such disclosure to the disclosing party and takes reasonable and lawful actions to avoid or minimise the degree of such disclosure. The obligation in this clause 8.3 survives expiration or termination of this Services Agreement for a period of three (3) years from the date of such expiration or termination.

8.4 Except to the extent required by law, neither party may make any public statements or releases concerning these Terms or the terms of the Services Agreement or Order or the transactions contemplated by them without obtaining the prior written consent of the other party, which consent must not be unreasonably withheld or delayed.

8.5 On termination of this Services Agreement the receiving party agrees, at the disclosing party's direction, to return to the disclosing party or destroy the disclosing party's Confidential Information, providing written confirmation to the disclosing party of compliance with such direction. Notwithstanding this clause 8.5, ExTC shall be entitled to keep a copy of Confidential Information of the Client in respect of the Services for the purpose of corporate governance, insurance and as evidence of performance of the Services.

## 9. Privacy

Any personal information collected by ExTC will be stored and may only be used by ExTC in accordance with the *National Privacy Principles in the Privacy Amendment (Private Sector) Act 2000* as extracted from the *Privacy Act 1988 (Cth)*.

## 10. Provision of Product Samples

The Client must provide ExTC with appropriate product samples required for the testing and/or certification process (**Product Samples**). Product Samples must be provided at the location specified by ExTC from time to time, at the sole cost of the Client, including shipping, handling, customs, taxes and duties. ExTC will not be responsible or liable for damage to or loss of Product Samples while in transit or during the performance of the Services. The Client warrants that each Product Sample to be tested or certified in the Services is representative of, and the same as the product manufactured, produced, constructed, assembled or otherwise procured in all respects.

## 11. Disposal of Product Samples

The Client acknowledges and agrees that Product Samples submitted for testing and/or certification may be destroyed or damaged during the testing and/or certification process. Unless otherwise instructed by the Client, if required by the applicable certification standards or as provided in the relevant Scheme, ExTC will retain all Product Samples, damaged or not, for a period of thirty (30) days after the conclusion of the testing and/or certification process. Unless, before the end of the thirty (30) day period, ExTC receives instructions from the Client that the Client wishes to reclaim the Product Samples, ExTC will be free to dispose of the product samples in any manner it deems appropriate. All costs associated with the safe and proper disposal of hazardous materials will be borne solely by the Client. All shipping and handling costs associated with the return of Product Samples to the Client (including any taxes, duties or imposts), will be borne solely by the Client. The Client agrees any costs incurred by ExTC in this clause are a debt due by the Client to ExTC .

## 12. Copyrights

The copyrights to all documents, including but not limited to joint copyrights in certifications, expert opinions, reports, test results, raw data, calculations, descriptions and which are produced or procured by ExTC during the performance of the Services will remain the sole property (and intellectual property) of ExTC . All such documents, certifications, expert opinions, reports, test results, raw data, calculations and descriptions may be used by the Client only for their intended purpose under the Services Agreement or relevant Order.

## 13. Use of Certificates

Subject to clause 12, Certificates may be utilised at the Client's discretion but only if the Certificate is reproduced and provided in full. Certificates cannot be reproduced or provided in part.

## 14. Use of Certification Marks, Licence

14.1 Certification trade marks (of ExTC or third party certification bodies by licence (or otherwise) to ExTC may only be used by the Client in strict compliance with the relevant standards, terms and directions issued by ExTC or other applicable certification body, unless otherwise expressly authorised in writing by ExTC, and then only in the form and manner specified (**Licence**).

14.2 The Client's failure to use certification trade marks in strict compliance with the Licence in clause 14.1, or the Client's failure to pay fees due to ExTC , may result in the termination without notice (at ExTC's sole and absolute discretion) of the Services Agreement, Order(s) and/or the Licence (and Client's right to use any or all of the certification trade marks), and any or all certification(s) issued to the Client.

14.3 In the event of any breach of the Licence by the Client or an infringement of the certification trade marks by the Client, the Client indemnifies ExTC against all loss and claims, and further agrees that ExTC is entitled to seek injunctive relief, without the requirement to post a bond, to protect their rights in the certification trade marks.

## 15. Inspections and Production Controls

15.1 The Client must ensure that products receiving certifications under the Services are manufactured in conformity with all applicable standards and requirements. Without any liability or obligation to do so, ExTC may investigate and determine the Client's compliance with this requirement by inspection of manufacturing facilities of the Client. The Client grants ExTC and their respective representatives, free access to any facilities of the Client in the manufacture, distribution or servicing of the products, as well as to all relevant production processes, as is required to establish that the Client is in compliance with the applicable standards. All costs of such inspections must be borne by the Client and are reimbursable to ExTC to the extent incurred.

15.2 Where the Client is not the manufacturer of the products, the Client agrees to procure (and shall be responsible for) the manufacturer's compliance with the requirements of this clause 15.

## 16. Acceptance of Services

The Services will be deemed to be accepted by the Client unless a written notice describing any deficiency is received by ExTC within five (5) business days from the date of delivery of the relevant Service (or installment of such Service) to the Client. Any part of the Services ordered by the Client which is complete in itself may be presented by ExTC for acceptance as an installment to the Services. Nothing in this clause 16 affects the Client's payment obligations to ExTC.

## 17. Warranty and Limitation of Liability

17.1 ExTC warrants that all Services performed by ExTC will be performed in accordance with the applicable testing and certification standards and in a workmanlike manner by qualified personnel. ExTC will not be liable under any circumstances to the Client or any other person if:

(a) the Services or work products prepared in connection with the Services are not used for the intended purpose;

(b) any report, certification or other document prepared by ExTC was subsequently modified without ExTC's written consent;

(c) the Client has not complied with the provisions of these Terms and the Special Conditions which the Client acknowledges are necessary and a condition for the proper provision of the Services; or

(d) the Client has not disclosed to ExTC all material facts known to the Client with respect to the products or matters in any Order for the Services.

17.2 With the exception of any right or guarantee the Client may have under the Australian Consumer Law (Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent state or territory legislation) or other rights in relation to the supply of goods or services that cannot lawfully be excluded (**Consumer Guarantees**), ExTC excludes:

(a) any term, condition or warranty that may otherwise be implied by custom, law or statute;

(b) any liability for loss caused by the negligence of ExTC .

17.3 To the extent permitted by law, the liability of ExTC in respect of any breach of or failure to comply with any Consumer Guarantee is limited, at the option of ExTC, to any one or more of the following:

(a) in the case of goods, to:

(i) the replacement of the goods or the supply of equivalent goods;

(ii) the repair of the goods;

(iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or

(iv) the payment of the cost of having the goods repaired; and

(b) in the case of the Services, to:

(i) the supplying the Services again; or

(ii) the payment of the cost of having the Services supplied again.

17.4 No person acting without the express written authority of a Director or the General Manager of ExTC is authorised to give or make on behalf of ExTC any undertaking, assertion, statement, warranty, admission or other representation in respect of the Services or their provision inconsistent with the Services Agreement.

17.5 Notwithstanding any provision of this Services Agreement:

(a) no party shall have any liability to the other party for any loss or damage suffered by a party or any other person that is indirect or consequential, including but not limited to loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, loss of use, loss of interest, damage to credit rating or loss or denial of opportunity, whether in contract, tort (including for negligence), statute or otherwise; and

(b) the maximum liability of ExTC, whether in contract, tort (including for negligence), statute or otherwise under or in connection with:

(i) an individual Order, is limited to three (3) times the fees charged by ExTC and paid to ExTC in the aggregate; and

(ii) this Services Agreement (including all Orders whatsoever) is limited to AUD$250,000 in the aggregate.

## 18. GST

18.1 Words or expressions used in this clause that are defined in *A New Tax System (Goods and Services Tax) Act 1999* (**GST Act**) have the same meaning given to them in that Act.

18.2 Unless otherwise stated, any amount specified in this Services Agreement as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.

18.3 If a party makes a taxable supply under this Services Agreement (**Supplier**), then the recipient of the taxable supply (**Recipient**) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.

18.4 Notwithstanding the foregoing, the Recipient is not obliged under this Services Agreement to pay the amount of any GST payable until the Supplier provides it with a valid tax invoice for the taxable supply.

18.5 If an adjustment event arises in relation to a taxable supply made by a Supplier under this Services Agreement, the amount paid or payable by the Recipient pursuant to clause 18.3 will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.

18.6 If a third party makes a taxable supply and this Services Agreement requires a party to this Services Agreement (**Payer**) to pay for, reimburse or contribute to (pay) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.

18.7 This clause does not merge on completion of any Services and will continue to apply after expiration or termination of this Services Agreement or any Order.

## 19. Indemnification

The Client must indemnify and hold harmless ExTC and ExTC's Officers, Directors, Employees, Associates, Suppliers and Agents (each an **ExTC Indemnified Person**) against any losses, claims, damages, liabilities, penalties, actions, proceedings or judgments of any kind (including all reasonable legal fees and expenses) to which an ExTC Indemnified Person may become subject out of claims by anyone including but not limited to: the Client's clients or any third party, related to or arising out of any breach by the Client of any provision of the Services Agreement; or these Terms; any misrepresentation in, or breach of, any representations and warranties contained in the Services Agreement; any activities or performance by the Client related to the Services Agreement, which is not expressly authorised in the Services Agreement.

## 20. Severability

If any provision of these Terms is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of these Terms, and the remainder of these Terms will be enforced. In addition, the invalid, illegal or unenforceable provision will be deemed to be automatically modified, and, as so modified, to be included in these Terms, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. However, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under these Terms by one party to the other, the remaining provisions of these Terms will also be modified to the extent necessary to equitably adjust the parties' respective rights and obligations under these Terms.

## 21. Variations

21.1 ExTC reserves the right to discontinue or modify any of the Services or to revoke or change prices or terms, except when otherwise indicated in these Terms. If, at any time, ExTC determines it necessary to discontinue Services to the Client, to revoke or modify any provisions of these Terms, the provision of Services, ExTC will take whatever action which it, in its sole and absolute judgment, deems appropriate.

21.2 ExTC may amend these Terms from time to time. ExTC will provide the Client with written notice of any such amendment, provided, that any such amendments will become effective without any further action by any party and that such amendments will not apply to any Orders placed and accepted prior to the effective date of such changes, revisions, amendments or modifications.

## 22. No Waiver

22.1 Any failure by ExTC at any time to enforce any one of these Terms will not be interpreted as a change of the Terms, or as ExTC's waiver to exercise any of its rights under these Terms. Any waiver by ExTC must be in writing.

22.2 Without prejudice to ExTC's right to payment for Services performed, ExTC will have no obligation to provide Services if the Client is in breach of any of its obligations under these Terms, or any other agreement between the Client and ExTC at the time the Services were scheduled to be provided.

## 23. Entire Agreement

These Terms, together with the Services Agreement (and any schedules or specified documents to those documents), is the entire agreement between the parties with respect to the subject matter contained in them and supersede any oral or written communications, understandings, acknowledgements, representations, or agreements.

## 24. Notice

Any notice under the Services Agreement must be in writing and will be deemed to be duly served if sent by prepaid registered mail or email to the address or email address of the party as provided in the Services Agreement or as may be subsequently notified by the other. If a notice is provided by email, the notice will be deemed sent when the email (including any attachment) is sent to the receiving party, unless the sending party receives a notification of delivery failure within 24 hours of the email being sent.

## 25. Termination, Survival

25.1 Subject to ExTC's right of termination of this Services Agreement for the Client's breach of these Terms or the Scheme, either party may terminate the Services Agreement by giving six months' written notice to the other party. On and after termination, ExTC will be entitled to invoice the client for the work performed and costs and expenses incurred to the termination date. For the avoidance of doubt, expiry or suspension of a Certificate does not imply or deem termination of the Services Agreement.

25.2 Clauses 8, 9, 17, 18, 19, 20, 22, 23, 25.2, 26 and 27 of these Terms survive expiration or termination of the Services Agreement.

## 26. Disputes and Complaints

26.1 Any dispute or complaint by the Client in respect of the Services, an Order or the Services Agreement (**Dispute**) will be dealt with in accordance with the dispute provisions in this clause 26 and the Scheme.

26.2 The Client must give ExTC written notice of a Dispute detailing all particulars of the Dispute (Dispute Notice).

26.3 Within twenty (20) business days after receipt of a Dispute Notice ExTC will:

(a) respond to the Client in writing with its decision or position in respect of the Dispute; or

(b) refer the Dispute to senior representatives of the Client and ExTC (Senior Representatives) for resolution.

26.4 Where 26.3(b) applies, the Senior Representatives will meet within twenty (20) business days after the date of referral by ExTC. Acting in good faith, the parties will at any meeting(s) use reasonable endeavours to resolve the Dispute.

26.5 If a Dispute is not resolved within forty (40) business days after the date of a Dispute Notice, the Client may commence legal proceedings in respect to the Dispute in the Dispute Notice.

26.6 All correspondence and communications in respect of a Dispute are:

(a) confidential; and

(b) without prejudice,

and shall not be used as evidence in any legal proceeding before any court or tribunal or if applicable, in an arbitration. However, ExTC may rely on the Dispute Notice to enforce the process of resolution in this clause.

26.7 Subject to clause 26.8, the Client may not issue legal proceedings in respect of a Dispute unless the Client has complied with dispute provisions in the Scheme.

26.8 Nothing in an Order or the Services Agreement will prevent a party seeking urgent equitable or injunctive relief.

**The Client is not relieved from performance of the Client's obligations under an Order or the Services Agreement despite the existence of a Dispute.**

26.9 Modern Slavery is as defined in the *Modern Slavery Act 2018* (Cth) as including any conduct constituting a modern slavery offence (as defined within the Act), and/or any conduct involving the use of any form of slavery, servitude or forced labour to exploit children or other persons taking place in the supply chains of government agencies or nongovernment agencies.

26.10 Modern Slavery legislation means both the *Modern Slavery Act 2018* (Cth) and any applicable State or Territory Modern Slavery legislation.

26.11 You warrant you comply with Modern Slavery legislation.

26.12 You warrant that there are no outstanding investigations and you have not been convicted of any offence under applicable Modern Slavery legislation.

26.13 Where Tin, Tungsten, Tantalum, or Gold (3T&G) are used, you must maintain source of origin or smelter records, which can be provided to us when requested.

26.14 You must comply with any requests made by us to provide assistance, information, documents or interview any person as required, to enable us to discharge our obligations under Modern Slavery legislation.

## 27. Governing Law and Jurisdiction

27.1 These Terms are governed by the law of New South Wales, Australia and the parties submit to the non-exclusive jurisdiction of the courts of that state.

27.2 All Services provided by ExTC will be deemed to be provided in New South Wales, Australia.

## 28. Definitions

**Certificate/s** means Certificates of Type Approval and/or Certificates of Conformity issued in accordance with the Schemes.

**Scheme/s** means any or all of the following:

1. Australian Program for the Certification of Equipment for Explosive Atmospheres, referred to as the ANZEx Scheme;
2. International Electrotechnical Commission System for certification to standards relating to equipment for use in explosive atmospheres (IECEx System)
3. Atmosphères Explosibles referred to as the ATEX scheme.
4. UKCA referred to UK Conformity Assessed marking

**TUV** means TUV Rheinland Australia Pty Limited ACN 124 175 953 and its related bodies corporate.

**Ex Testing and Certification Pty Ltd**
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