



## TERMS AND CONDITIONS

### PERFORMANCE TESTING AND CONSULTING SERVICES

- 1.1 These terms and conditions apply to each agreement for the provision of performance testing service or consulting service (“the Services”).
- 1.2 APN Consultivate Pty. Ltd. (“APN”, Australian Business Number 14 616 703 443) trading as APN Performance Testing (“APN”, “our” “we” and “us”) and the client (“you”) are the parties to each agreement.
- 1.3 Any order you place with us or receipt of test results on your part after receiving notice of these terms and conditions constitutes acceptance of these terms.
- 1.4 Unless agreed otherwise in writing, these are the only terms and conditions that apply to each Agreement for the provision of the Services. These terms and conditions supersede and exclude all prior and other discussions, representations and arrangements relating to the Services. Any different or additional term must be agreed to in writing.
- 1.5 We may amend these terms and conditions at any time by notifying you in writing and/or referring to our amended terms and conditions by posting the amended terms and conditions on our website. Your continued use of our Services after such notice will constitute acceptance of the amendment.
- 1.6 We will appoint an appropriately qualified laboratory/ies to conduct performance testing service. The laboratory/ies may be located in Australia or overseas. If there are any country/ies or laboratory/ies you do or do not want to be appointed, you must notify us in writing. We work with a host of Australian and overseas laboratories that are known to possess due professional care and skill; and are accredited independently to ISO/IEC 17025 *General requirements for the competence of testing and calibration laboratories*. Where warranted, we may appoint a laboratory not accredited to ISO/IEC 17025. We may appoint one or more laboratories to conduct the Services depending on factors such as - but not limited to – your choice or otherwise, the laboratory’s technical capabilities and any known limitations, speed and quality of service and any other relevant factors known to us at the time we enter into contract with you for the provision of the Services.

#### **2 – No warranties**

- 2.1 You agree that APN’s obligations in respect of the Services shall be limited to research, analysis or reporting referred to on the Test Request form and nothing in these terms and conditions will require APN to guarantee any proof of concept, potential use or outcome, nor to provide support for any action or litigation entered into by you in the absence of prior written agreement.
- 2.2 Except as expressly provided to the contrary in these terms and conditions, all terms, conditions, warranties and representations whether expressed, implied, statutory or otherwise relating in any way to the Services are excluded. APN shall not be under any liability to you in respect of any loss or damage, including consequential loss or damage, howsoever caused, which may be suffered or incurred, or which may arise directly or indirectly in respect of the failure or omission on part of APN to comply with its obligations under these terms and conditions.

### **3 – Samples and Test Results**

- 3.1 You agree to provide a written certification to APN detailing the nature and accurate description of the samples provided to APN and any matters which might reasonably affect APN's handling, use and storage of samples.
- 3.2 You must ensure that each package containing samples is accompanied by a completed Test Request form.
- 3.3 You must organize and pay the costs of transport of samples to and from APN or nominated laboratory/ies, and must bear all risk of loss or damage of, or alteration to, samples while in transit or with APN or our laboratory/ies. We accept no responsibility for alteration of samples while in transit. You acknowledge that samples may be altered, damaged or destroyed whilst the Services are being conducted.
- 3.4 APN nominated laboratory/ies will retain the samples remaining after testing at the completion of the Services for a period of four weeks.
- 3.5 You are responsible for ensuring that all samples are properly representative, and for retaining any duplicate or controlled samples.
- 3.6 When test results fail to meet the desired quality or characteristic, and/or fail to be suitable given the end use intended for the sampled material, we are not liable for any loss you suffer. We do not warrant that the test results will meet or exceed any specifications expected by you. The test results relate only to the sample(s) tested.

### **4 – Fees and Turnaround Time**

- 4.1 We will provide you with a confidential quote soon after we receive your enquiry. Our quote clearly includes any Goods & Services Tax (GST), where applicable and additional line items, if any. Provided you have pre-paid us for the Services in entirety in accordance with our quote, we will commence as soon as we receive samples. All payments are in Australian dollars (AUD).
- 4.2 While we make all reasonable efforts to complete the Services promptly, we are not liable for any loss arising from delay in carrying out a Service or producing a test report or letter of opinion. All turnaround times are targeted times in working days from the receipt of samples and payment.

### **5 – Termination and Suspension of Contract**

- 5.1 If you terminate or suspend the Contract prior to us providing you with the deliverable(s) of test report and/or letter of opinion, we will retain in full or a portion of the pre-paid fees consistent with expenses incurred in carrying out work until advised of the termination including a loss of opportunity charge.
- 5.2 We may totally or partially suspend an Agreement during any period in which we may be prevented or hindered from arranging testing, delivery or supply test report or letter of opinion due to any circumstances beyond our reasonable control or where such testing, delivery or supply is materially more expensive to us. We shall refund your fees in full in such circumstances and attempt to return sample, where possible. We shall not incur any liability to you in such suspension.

### **6 – Governing Law**

- 6.1 Each Agreement is governed solely by the law of the state of Victoria, Australia; and you and we each submit to the non-exclusive jurisdiction of the courts of that State.