

## AsureQuality Motabaqah Motabaqah Ltd Standard Terms of Business for the Provision of all Goods and Services

### A. TERMS APPLICABLE TO ALL GOODS AND SERVICES

#### 1. GENERAL

- 1.1 All Goods and Services provided by AsureQuality Motabaqah Limited (**AsureQuality Motabaqah**) are on the basis set out below unless otherwise agreed in writing. In the event of any conflict between these terms (**Terms**) and any subsequent written contract between AsureQuality Motabaqah and the Customer, the terms of the subsequent written contract shall prevail.
- 1.2 For the purposes of these Terms:
- (a) "Lab Services" means any laboratory tests requested by the Customer to be performed from time to time by AsureQuality Motabaqah including any specific expected turn-around times set out in the document attached to these Terms (**with terms applicable to only Lab Services set out in section B below**);
  - (b) "Other Services" means all other services requested by the Customer to be performed from time to time by AsureQuality Motabaqah (**with terms applicable to only Other Services set out in section C below**);
  - (c) "Goods" means all goods requested by the Customer to be provided from time to time by AsureQuality Motabaqah (**with terms applicable to only Goods set out in section D below**); and
  - (d) "Services" means both Lab Services and Other Services.
- 1.3 If the Customer accepts Goods and/or Services provided by AsureQuality Motabaqah, the Customer's actions will be deemed to be acceptance of these Terms, notwithstanding anything which may be stated to the contrary in the Customer's enquiries or order form.
- 1.4 The Customer may not make any public reference to AsureQuality Motabaqah or AsureQuality Motabaqah's provision of the Goods and Services, including without limitation in any advertising or promotional material, without the prior written consent of AsureQuality Motabaqah, which consent may be given or withheld in AsureQuality Motabaqah's sole discretion.
- 1.5 AsureQuality Motabaqah may at any time amend any of the Terms with immediate effect by posting the amended Terms on its website ([www.aqmfoodsafety.com](http://www.aqmfoodsafety.com)) and advising that the Terms have been amended on the Customer's invoice. By continuing to order Goods or Services from AsureQuality Motabaqah after AsureQuality Motabaqah has posted the amended Terms on its website, the Customer is deemed to have accepted such Terms.

#### 2. GENERAL PERFORMANCE

- 2.1 AsureQuality Motabaqah will use its reasonable skill, care and effort in providing all Goods and Services, using resources reasonably available to AsureQuality Motabaqah (this being subject in the case of Other Services to clause 9.2).
- 2.2 AsureQuality Motabaqah will use its reasonable efforts to achieve agreed turn-around times in a timely and efficient manner but will not be liable for any failure to do so (this being subject in the case of Other Services to clause 9.3).
- 2.3 Without limiting clause 2.2, AsureQuality Motabaqah will not be liable for any delay or nonperformance in providing Goods or carrying out Services pursuant to these Terms if such delay or nonperformance is attributable (directly or indirectly) to circumstances beyond its reasonable control.

- 2.4 The Customer may not cancel any order for Goods or Services (whether fully or in part) without AsureQuality Motabaqah's written consent which may be given or withheld in its sole discretion.
- 2.5 Notwithstanding any other provision of these Terms, AsureQuality Motabaqah is not obliged to accept any order for Goods or Services made by the Customer, and in its sole discretion may refuse to provide or perform all or any such Goods or Services requested.
- 2.6 AsureQuality Motabaqah may withdraw any quotation before it is accepted by the Customer, and in any event any quotation will lapse without notice 30 days after it is given.

### 3. **PRICE AND PAYMENT**

- 3.1 The price for the Goods and Services will be either as quoted by AsureQuality Motabaqah to the Customer in writing or, if no written quote is provided, at AsureQuality Motabaqah's standard charges for such Goods and Services applying at the time.
- 3.2 Unless otherwise agreed in writing, any quoted price may be altered by AsureQuality Motabaqah prior to the provision of the Goods and Services to the Customer if AsureQuality Motabaqah's costs in providing such Goods and Services will fluctuate materially.
- 3.3 Unless otherwise agreed in writing, all relevant freight and delivery charges will be additional to any quoted price, and will be charged to and borne by the Customer, and payable at the same time as the price.
- 3.4 Payment for all Goods and Services is due by the 20th of the month following the date of AsureQuality Motabaqah's invoice (the **Due Date**). AsureQuality Motabaqah may at its option issue a monthly interim invoice for work greater than one month's duration.
- 3.5 If the Customer wishes to query any invoice submitted by AsureQuality Motabaqah, the Customer must give written notice to AsureQuality Motabaqah of the query within 30 days of the date of the invoice. If the Customer has not raised any query on the invoice within 30 days of the date of such invoice, the Customer is deemed to have accepted the invoice and must pay the invoice in full by the Due Date.
- 3.6 The Customer will be required to pay all costs (including legal and credit recovery costs) incurred by AsureQuality Motabaqah resulting from late or non-payment on any moneys outstanding from the due date until the date of payment, but without prejudice to AsureQuality Motabaqah's other rights or remedies in respect of the Customer's default in failing to make payment on the due date.
- 3.7 A penalty of 0.02% of the invoice value shall be charged for every day outstanding from the due date until the date of payment.
- 3.8 If the Customer is in breach of these Terms or any other contract with AsureQuality Motabaqah, AsureQuality Motabaqah may, without prejudice to its other rights or remedies, terminate all or any of its obligations under these Terms or any other contract, and/or withhold or suspend the provision of Goods and/or Services under these Terms or any other contract, and/or withdraw any certification or accreditation issued to the Customer by AsureQuality Motabaqah under these Terms or any other contract.

### 4. **CONFIDENTIALITY OF INFORMATION**

- 4.1 We will not disclose to third parties your confidential information, except:
  - (a) to the extent compelled to do so by law; or
  - (b) to our insurers and professional advisers.
- 4.2 You will not disclose to third parties confidential information relating to us and our processes, ideas, concepts or techniques, unless compelled to do so by law. You acknowledge that our processes, concepts and techniques are our property and are also confidential information.

### 5. **WARRANTIES, LIABILITY AND INDEMNITY**

- 5.1 Except for any written warranty given by AsureQuality Motabaqah to the Customer, all warranties and representations (including those expressed or implied by law) in respect of Goods and Services supplied are excluded to the extent permitted by law.
- 5.2 The liability of AsureQuality Motabaqah, whether in contract or pursuant to any cancellation of any contract or in tort or otherwise, in respect of each claim or series of related claims for loss, damage or injury arising:

- from a breach of any of AsureQuality Motabaqah's obligations arising under or in connection with these Terms;
- from any cancellation of these Terms; or
- from any negligence, misrepresentation or other act or omission by AsureQuality Motabaqah, its employees, agents or contractors;

shall not in aggregate exceed:

- in the case of Goods, the lesser of the total amount paid for the Goods and SAR 12,500.00 (as the case may be); and
- in the case of Services, the lesser of the total fee for the particular Services and SAR 12,500.

5.3 AsureQuality Motabaqah is not liable, whether in contract, tort or otherwise, for any loss of profits or any special, indirect, incidental or consequential damage, loss or injury of any kind suffered by the Customer arising directly or indirectly from any breach of AsureQuality Motabaqah's obligations under or in connection with these Terms or from any termination of these Terms or from any negligence, misrepresentation or other act or omission on the part of AsureQuality Motabaqah, its servants, agents or contractors.

5.4 AsureQuality Motabaqah's total liability under any written warranty given by AsureQuality Motabaqah in relation to Goods or Services supplied by AsureQuality Motabaqah is limited at AsureQuality Motabaqah's option to:

- (a) re-performing the Services or repairing or replacing the Goods; or
- (b) refunding the price for the Goods paid by the Customer or the charge for the Services; provided that where AsureQuality Motabaqah elects to re-perform the Services or repair or replace the Goods it will use reasonable endeavours to do so as soon as practicable but will not be liable for any delay in such re-performance, replacement or repair.

5.5 In relation to the Goods and Services, should a third party make any claim against AsureQuality Motabaqah or should any regulatory body undertake any investigation, the Customer agrees to indemnify AsureQuality Motabaqah for any costs, damages or other losses suffered by AsureQuality Motabaqah in relation to any such claim or investigation or incurred by AsureQuality Motabaqah in defending, responding to or settling any such claim or investigation (unless such amounts are finally and judicially determined to have been caused primarily by the negligence of AsureQuality Motabaqah).

## 6. TERMINATION

6.1 AsureQuality Motabaqah may by notice in writing to the Customer terminate AsureQuality Motabaqah's obligations under these Terms:

- (a) upon the provision of the Goods and Services to the Customer and payment of all monies owing by the Customer under these Terms;
- (b) in the case of Other Services, in accordance with clause 10.1;
- (c) at the option of AsureQuality Motabaqah, in accordance with clause 3.7;
- (d) if the Customer commits any act of bankruptcy, enters into any arrangement with its creditors or (in the case of a company) does any act which would render it liable to be liquidated, or if a resolution is passed or proceedings commenced for the liquidation or voluntary administration of the Customer or if a receiver, statutory manager or similar functionary is appointed in respect of all or any of its assets; or
- (e) upon mutual agreement of the parties.

6.2 Termination will not affect the rights of either party in respect of any breach of these Terms in existence prior to termination.

## 7. FORCE MAJEURE

7.1 **Force Majeure Event:** A party's obligations under this agreement (other than any obligation to make payment) shall be suspended for the period of Force Majeure if the party is prevented from complying with that obligation by an event of Force Majeure. A party who is affected by an event of Force Majeure shall

give the other party details of the event as soon as practicable, and shall take all reasonable steps to remove or mitigate the event of Force Majeure.

- 7.2 **Meaning of "Force Majeure":** For the purposes of this clause 7, "**Force Majeure**" means circumstances beyond the reasonable control of the relevant party including: act of God; war, acts of terrorism nuclear fusion; 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 shall be deemed to be not beyond the reasonable control of that party.

## **B. TERMS APPLICABLE TO ONLY "LAB SERVICES"**

### **8. PERFORMANCE OF LAB SERVICES**

- 8.1 Reasonable Industry Standard methodology for the Lab Services will be applied where applicable, and unless otherwise expressly agreed AsureQuality Motabaqah does not guarantee that such methodology is validated or fit for the Lab Services requested.
- 8.2 The Customer is responsible for the cost of and arranging transportation of items to be tested to and from AsureQuality Motabaqah's premises (including without limitation the cost of all freight charges, and all applicable duties and taxes).
- 8.3 The customer will indemnify AsureQuality Motabaqah for the cost of AsureQuality Motabaqah property damaged or lost while in customer care.

### **9. MINIMUM CHARGE**

- 9.1 A minimum charge of SAR 75.00 will be made for laboratory testing requested by the Customer to be performed in any one calendar month.

## **C. TERMS APPLICABLE TO ONLY "OTHER SERVICES"**

### **10. PERFORMANCE OF OTHER SERVICES**

- 10.1 For the performance of any Other Services, the Estimated Price, Estimated Completion Date and Work Objectives are set out in the relevant document.
- 10.2 AsureQuality Motabaqah will use its reasonable skill, care and effort to achieve the Work Objectives at the Estimated Price using resources reasonably available to AsureQuality Motabaqah.
- 10.3 AsureQuality Motabaqah will use its reasonable efforts to achieve the Work Objectives on or before the Estimated Completion Date but will not be liable for any delay beyond that date.
- 10.4 Without limiting clause 9.3, AsureQuality Motabaqah will not be liable for any delay or non-performance or for exceeding the Estimated Price if it is attributable (directly or indirectly) to circumstances beyond its reasonable control.

### **11. RIGHT OF TERMINATION**

- 11.1 AsureQuality Motabaqah may by notice in writing to the Customer terminate AsureQuality Motabaqah's obligations under these Terms where it appears to AsureQuality Motabaqah that it is likely that the cost of achieving the Work Objectives will exceed the Estimated Price by 20% or more (provided that AsureQuality Motabaqah advises the Customer within 14 days of being informed of such likelihood, that it wishes to terminate the contract).

## **D. TERMS APPLICABLE TO ONLY "GOODS"**

### **12. TITLE AND SECURITY IN GOODS**

- 12.1 Ownership in the Goods will not pass on delivery, but will remain with AsureQuality Motabaqah until full payment for all monies owing pursuant to clause 3 by the Customer to AsureQuality Motabaqah in respect of such Goods has been made.

- 12.2 The Customer acknowledges that through its acceptance of these Terms, the Customer grants a purchase money security interest (by virtue of the retention of title held under clause 11.1) to AsureQuality Motabaqah in all Goods supplied by AsureQuality Motabaqah to the Customer.
- 12.3 Unless otherwise agreed in writing the Customer agrees that (to the maximum extent permitted by law):
- (a) the Customer waives its right to receive a verification statement in respect of any statement relating to the security interest created by these Terms;
- 12.4 AsureQuality Motabaqah's security interest in the Goods continues in any new goods into which those Goods are attached, fixed or incorporated, and in any proceeds, book debts or accounts receivable arising from the sale of the Goods.
- 12.5 The Customer gives irrevocable authority to AsureQuality Motabaqah to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after default by the Customer or before default if AsureQuality Motabaqah believes a default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. AsureQuality Motabaqah shall not be liable for and the Customer hereby indemnifies AsureQuality Motabaqah in respect of any costs, damages, expenses or losses incurred by AsureQuality Motabaqah, the Customer or any third party as a result of this action, or liability either in contract or in tort or otherwise in any way whatsoever, unless by operation of law such liability cannot be excluded. AsureQuality Motabaqah may either resell any repossessed Goods and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and credit the Customer's account with the invoice value thereof less such sum as AsureQuality Motabaqah reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
- 12.6 The following shall constitute defaults by the Customer:
- (a) Non payment of any sum by the due date;
  - (b) The Customer intimates that it will not pay any sum by the due date;
  - (c) Any Goods are seized by any of the Customer's creditors or creditor and/or any such creditor or creditors intimate(s) that it/they intend(s) to seize Goods;
  - (d) Any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to AsureQuality Motabaqah remains unpaid;
  - (e) The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets;
  - (f) A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days; or
- 12.7 Any material adverse change in the financial position of the Customer Remove because this applies to specific NZ legislation. Risk in respect of any Goods sold will pass to the Customer when the Goods are delivered to the Customer or any carrier, or the time the Customer pays for the Goods (whichever is the earlier). Risk in any Goods which are in AsureQuality Motabaqah's possession for repair remains with the Customer.

### 13. RETURN OF GOODS AND USE OF GOODS

- 13.1 Any Goods returned by the Customer to AsureQuality Motabaqah must be returned freight paid, though the Customer may claim for any reasonable freight charges.
- 13.2 Without limiting anything in clause 5 or this clause 12, the Customer must use any Goods supplied by AsureQuality Motabaqah in accordance with all instructions given by the manufacturer of such Goods.

### 14. MISCELLANEOUS

- 14.1 The Customer may not assign all or any of its rights or obligations under these Terms without the prior written consent of AsureQuality Motabaqah, which may be given or withheld in its sole discretion.
- 14.2 All the rights, powers, exemptions and remedies of AsureQuality Motabaqah remain in full force despite any neglect, omission or delay in the enforcement thereof. AsureQuality Motabaqah is not deemed to have waived any provision or right unless the waiver is in writing under signature of AsureQuality Motabaqah or its authorised officer and any such waiver, unless the contrary is expressly stated, applies to and operates only in a particular transaction, dealing or matter.

- 14.3 All notices shall be delivered by hand or be sent by facsimile, fastpost or email. Any notice sent by facsimile will be deemed to have been received on the following business day in the place of receipt, any notice sent by fastpost will be deemed to have been received two business days after posting and any notice sent by email will be deemed to have been received on the date and time at which it enters the addressee's information system. Notices shall be given to the parties at the address, facsimile number or email addresses set out in the document attached or such other addresses, facsimile numbers or email addresses as they may from time to time advise in writing.
- 14.4 These Terms constitute the entire agreement between the Customer and AsureQuality Motabaqah with respect to the matters contemplated by these Terms and supersedes all previous agreements, arrangements or understandings between the Customer and AsureQuality Motabaqah, including any earlier forms or versions of these Terms.
- 14.5 The Customer must advise AsureQuality Motabaqah of any relevant safety hazards pertaining to the Services requested by the Customer and provide all relevant Material Safety Data Sheets.
- 14.6 If any provision of these Terms shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected.
- 14.7 The Terms shall be governed by the laws of the Kingdom of Saudi Arabia, and AsureQuality Motabaqah and the Customer agree to submit to the nonexclusive jurisdiction of The Kingdom of Saudi Arabia Courts. The parties irrevocably:
- (a) waive any objections which they may have now or in the future to the venue of any proceedings brought in the Courts of The Kingdom of Saudi Arabia; and
  - (b) agree that any final judgment (after appeal or expiration of time for appeal) entered into by such Court shall be conclusive and binding on the parties and may be enforced in the courts of any other jurisdiction to the fullest extent permitted by law.