

ATS Labs – Terms & Conditions of Trade

1. Definitions	1.1 'Supplier' means Asbestos Testing & Sampling Pty Ltd T/A ATS Labs, its successors and assigns or any person acting on behalf of and with the authority of Asbestos Testing & Sampling Pty Ltd T/A ATS Labs, its successors and assigns or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and: (a) if there is more than one Client, is a reference to each Client jointly and severally; and (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and (c) includes the Client's executive administrators, successors and permitted assigns. 1.2 'Client' means the persons or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and: (a) if there is more than one Client, is a reference to each Client jointly and severally; and (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and (c) includes the Client's executive administrators, successors and permitted assigns. 1.3 'Incidental Items' means any goods, documents, reports, designs, drawings or materials supplied, consumed, created or deposited incidentally by the Supplier in the course of it conducting, or supplying to the Client, any Services. 1.4 'Services' mean all Services supplied by the Supplier to the Client at the Client's request from time to time. 1.5 'Price' means the price payable (plus any GST where applicable) for the Services as agreed between the Supplier and the Client in accordance with clause 6 of this contract. 1.6 'GST' means Goods and Services Tax (GST) as defined within the 'A New Tax System (Goods and Services Tax) Act 1999' (Cth).	16.2	16.2 The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any money paid by the Client for the Services to the Supplier. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation. 16.3 In the event that the Client cancels delivery of the Services the Client shall be liable for all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
2. Acceptance	2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, signs a quotation, giving notice to the Supplier by either written or electronic form to proceed, or accepts Services provided by the Supplier. 2.2 These terms and conditions may only be amended with both parties consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Supplier.	17.1	17.1 Privacy Act 1988 The Client agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Supplier. 17.2 The Client agrees that the Supplier may exchange information about the Client with those credit providers and with related body corporates for the following purposes: (a) to assess an application by the Client; and/or (b) to notify other credit providers of a default by the Client; and/or (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years. 17.3 The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit. 17.4 The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by): (a) the provision of Services; and/or (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or (d) enabling the collection of amounts outstanding in relation to the Services. 17.5 The Supplier may give information about the Client to a CRB for the following purposes: (a) to obtain a consumer credit report; (b) allow the CRB to create or maintain a credit information file about the Client including credit history. 17.6 The information given to the CRB may include: (a) personal information as outlined in 17.1 above; (b) name of the credit provider and that the Supplier is a current credit provider to the Client; (c) whether the credit provider is a licensee; (d) details of the Client's credit history; (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested); (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for overdue payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Supplier has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments); (g) information that, in the opinion of the Supplier, the Client has committed a serious credit infringement; (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
3. Electronic Transactions Act	3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (New South Wales & South Australia), the Electronic Transactions Act 2001 (Australian Capital Territory), the Electronic Transactions (Victoria) Act 2000, the Electronic Transactions Act 2003 (Western Australia), the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (Tasmania) (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.	17.7	17.7 The Client shall have the right to request (by e-mail) from the Supplier: (a) a copy of the information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect information; and (b) that the Supplier does not disclose any personal information about the Client for the purposes of direct marketing. 17.8 The Supplier will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law. 17.9 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au .
4. Errors & Omissions	4.1 The Client acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s): (a) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this contract; and/or (b) contained/omitted in/from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Services. 4.2 In the event of such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or willful misconduct of the Supplier, the Client shall not be entitled to treat this contract as repudiated nor render it invalid.	18.1	18.1 Other Applicable Legislation In the event of a dispute, if there are any disputes or claims for unpaid Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Construction Contracts Act 2004 (Western Australia), Building and Construction Industry Security of Payments Act 2004 (Queensland), Construction Contracts (Security of Payments) Act 2009 (Tasmania), Building and Construction Industry Security of Payments Act 2009 (South Australia) and Building and Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) may apply. 18.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 18.1 (each as applicable), except to the extent permitted by the Act where applicable.
5. Change in Control	5.1 The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number, change of trustees or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.	19.1	19.1 Service of Notices Any written notice given under this contract shall be deemed to have been given and received: (a) by handing the notice to the other party, in person; (b) by leaving it at the address of the other party as stated in this contract; (c) by sending it by registered post to the address of the other party as stated in this contract; (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract; and/or (e) if sent by email to the other party's last known email address. Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
6. Price and Payment	6.1 At the Supplier's sole discretion the Price shall be either: (a) as indicated on any invoice provided by the Supplier to the Client; or (b) the Supplier's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days. 6.2 The Supplier reserves the right to change the Price if a variation to the Supplier's quotation is requested. Any variation from the plan of scheduled services or specifications (including, but not limited to, any variation as a result of additional services required due to unforeseen circumstances such as limitations to accessing the site, prerequisite work by any third party not being completed or as a result of any increase to the Supplier in the cost of materials and labour) will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Client shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion. 6.3 At the Supplier's sole discretion a non-refundable deposit may be required. 6.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be: (a) on delivery of the Services; (b) before delivery of the Services; (c) by way of instalments/progress payments in accordance with the Supplier's payment schedule; (d) thirty (30) days following the end of the month in which a statement is issued by email or post to the Client's address or address for notices; (e) the date specified on any invoice or other form as being the date for payment; or (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client. 6.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge may apply per transaction) or by any other method as agreed to between the Client and the Supplier. 6.6 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute. 6.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for providing the Supplier's Services. The Client must pay GST, together with any other taxes, duties, levies, penalties, interest and on and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.	20.1	20.1 Trusts If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust (Trust) then whether or not the Supplier may have notice of the Trust, the Client covenants with the Supplier as follows: (a) The Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund; (b) The Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity. (c) The Client will not without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events: (i) the removal, replacement or retirement of the Client as Trustee of the Trust; (ii) any alteration to or variation of the terms of the Trust; (iii) any advancement or distribution of capital of the Trust; or (iv) any resettlement of the trust property.
7. Delivery of Services	7.1 At the Supplier's sole discretion delivery of the Services shall take place when: (a) the Services are supplied to the Client at the Supplier's address; or (b) the Services are supplied to the Client at the Client's nominated address. 7.2 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement. 7.3 The Supplier may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions. 7.4 Any time specified by the Supplier for delivery of the Services is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Services as agreed solely due to any action or inaction of the Client then the Supplier shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.	21.1	21.1 General The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired. 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the State or Territory (where applicable) and are subject to the jurisdiction of the courts in Tasmania. 21.3 Subject to clause 12.2 the Supplier shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions (alternatively the Client's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods). 21.4 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent. 21.5 The Client cannot licence or assign without the written approval of the Supplier. 21.6 The Client may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier. 21.7 The Client agrees that the Supplier may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Supplier to provide Goods to the Client. 21.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party. 21.9 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.
8. Risk	8.1 Irrespective of whether the Supplier retains ownership of any Incidental Items all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as the Supplier may repossess the Incidental Items in accordance with clause 10.3(f). The Client must insure all Incidental Items on or before delivery. 8.2 The Supplier reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Incidental Items as a result of the Client's failure to insure in accordance with clause 8.1. 8.3 Any samples provided by the Client that require additional and/or specialist testing or repeat testing by the Supplier shall be treated as a variance under clause 6.2 and invoiced accordingly. 8.4 The Supplier may at its discretion notify the Client that it requires to store at the site plant, equipment and sampling equipment and tools, or plant and tools required for the provision of Services, in which event the Client shall supply the Supplier a safe area for storage and shall take all reasonable efforts to protect all items so stored from possible destruction, theft or damage. In the event that any such items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Client's responsibility.	22.1	22.1 Cancellation Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Services to the Client. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
9. Compliance with Laws	9.1 The Client and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services including, but not limited to, the requirements under ISO 17025.	23.1	23.1 Intellectual Property Where the Supplier has designed, drawn or developed Incidental Items for the Client, then the copyright in any Incidental Items shall remain the property of the Supplier. 23.2 The Client warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement. 23.3 The Client agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any Incidental Items which the Supplier has created for the Client.
10. Title	10.1 The Supplier and the Client agree that where it is intended that the ownership of Incidental Items is to pass to the Client that such ownership shall pass until: (a) the Client has paid the Supplier all amounts owing for the Services; and (b) the Client has met all other obligations due by the Client to the Supplier in respect of all contracts between the Supplier and the Client. 10.2 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Supplier's ownership or rights in respect of the Incidental Items shall continue. 10.3 It is further agreed that: (a) the Client is only a bailee of the Incidental Items and must return the Incidental Items to the Supplier immediately upon request by the Supplier; (b) the Client holds the Incidental Items on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed; (c) the Client must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Client sells, disposes or parts with possession of the Incidental Items then	24.1	24.1 Default and Consequences of Default 24.1.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment. 24.1.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to interest on the Supplier's loan to a solicitor and own client basis, the Supplier's contract default fee, and bank dishonour fees). 24.1.3 Further to any other rights or remedies the Supplier may have under this contract, if a Client has made payment to the Supplier by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 15 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement. 24.1.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if: (a) the Client does not pay the Supplier when it falls due; or (b) the Client has exceeded any applicable credit limit provided by the Supplier; (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.



CLIENT INFORMATION FORM

Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

Client's Details: <input type="checkbox"/> Individual <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Other:		
Full or Legal Name:		
Physical Address:	State:	Postcode:
Billing Address:	State:	Postcode:
Email Address:		
Phone No:	Fax No:	Mobile No:
Personal Details: <i>(please complete if you are an Individual)</i>		
D.O.B.:	Driver's Licence No:	
Business Details: <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>		
Trading Name:		
ABN:	ACN:	Date Established <i>(current owners)</i> :
Contact Person:	Phone No.:	
Nature of Business:		
Directors / Owners / Trustee: <i>(if more than two, please attach a separate sheet)</i>		
(1) Full Name:	D.O.B.:	
Private Address:	State:	Postcode:
Driver's Licence No:	Phone No:	Mobile No:
(2) Full Name:	D.O.B.:	
Private Address:	State:	Postcode:
Driver's Licence No:	Phone No:	Mobile No:

I certify that the above information is true and correct and that I accept the supply of credit by the Supplier *(if applicable)*. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Asbestos Testing And Sampling Pty Ltd T/A ATS Labs which form part of, and are intended to be read in conjunction with this Client Information Form and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. **I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.**

SIGNED (CLIENT): _____ SIGNED (SUPPLIER): _____

Name: _____ Name: _____

Position: _____ Position: _____

WITNESS TO CLIENT'S SIGNATURE:

Signed: _____ Name: _____ Date: _____

OFFICE USE ONLY		
Account / Ref. No.	DATA INPUTTED	DATE
		/ /

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