



1. Agreement

- i. The following contains the terms and conditions (“**Terms**”) under which ARC Laboratory Services Pty Ltd ACN 656 442 723 T/A as ARC Laboratory Services (“**ARC**”) will provide laboratory testing and analysis services to Clients.
- ii. All Quotes and orders for Services are made and/or accepted by ARC on and subject to these Terms. The Client’s terms and conditions, howsoever provided, do not form part of these Terms (even if any representative of ARC signs those terms and conditions and/or they are annexed to these Terms or any Quote or order).
- iii. If a Client places an order with ARC after receiving these Terms, the Client shall be deemed to have read and unconditionally agreed to these Terms.
- iv. ARC reserves the right to accept or decline, in whole or in part, any order for Services placed by a Client.
- v. If there is any inconsistency between the Quote, the Special Conditions, the Specifications and these Terms, the order of priority for the purpose of construction is:
 - a. the Special Conditions;
 - b. the Specifications;
 - c. these Terms; and
 - d. the Quote (other than the Special Conditions).

2. Definitions and interpretation

- i. In these Terms, unless the context requires otherwise, the following definitions apply:

ARC’s Confidential Information means all information or data the Client receives from ARC, including (without limitation) information concerning technology, procedures, and methods used by ARC in completing its work for the Client, formulas, trade secrets, ideas, computer programs, inventions, the format and content of work completed for the Client and any Intellectual Property, whether oral, graphic, electronic, written or in any other form and which ARC reasonably regards as confidential;

Business Day means a day that is not a Saturday, Sunday or public holiday in the state in which the Service takes place;

Client means the Party identified in the Quote as the Party to whom Services are being provided by ARC;

Client’s Confidential Information means all information or documents relating to the Client’s business provided to ARC, whether oral, graphic, electronic, written or in any other form and which the Client reasonably regards as confidential.

Confidential Information means both the Client’s Confidential Information and ARC’s Confidential Information;

Corporations Act means the *Corporations Act 2001* (Cth).

GST has the same meaning given to that term in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time.

Insolvency Event means in relation to the Defaulting Party any one or more of the following events or circumstances:

- a. where the Defaulting Party enters into a compromise or arrangement (or announces one) under section 411 of the Corporations Act;
- b. where a managing controller is appointed over the whole (or substantially the whole) of the Defaulting Party’s property; or
- c. where the Defaulting Party enters into voluntary administration.

Intellectual Property means the intellectual property of ARC or the Client including but not limited to its trade marks, designs, inventions, logos, patents and business reputation.

Hazardous Substance means any substance, whether solid, liquid, or gas that may present a direct or indirect risk or harm to human health and includes all chemicals which meet the criteria of a hazardous chemical within the Globally Harmonised System of Classification and Labelling of Chemicals as amended from time to time.

Party means ARC or the Client, and **Parties** mean both of them;

Price means the price (including all costs and disbursements incurred by ARC in providing the Services) set out in the Quote, as varied in accordance with clause 12(viii);

Project means the project specified in the Quote.

Quote means the quote, proposal, invoice or response to query or order provided by ARC to the Client in relation to the Services;

Services means the services to be provided by ARC as set out in the Quote;

Special Conditions means the special conditions set out in the Quote (if any);

Specifications means the specifications, standards or technical requirements described in the Quote (if any).

- ii. In these Terms unless the contrary intention appears:
 - a. the singular includes the plural and vice versa;
 - b. the word “person” includes a firm, a body corporate, an unincorporated association or an authority;
 - c. the words “include” and “including” are to be construed without limitation;
 - d. a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure to these Terms;
 - e. headings in these Terms are for convenience and will not affect interpretation of these Terms;
 - f. reference to a day or month means a calendar day or calendar month;
 - g. a reference to “AUD”, “A\$”, “\$A”, “dollar” or “\$” is a reference to Australian currency;
 - h. a reference to any Legislative Requirement includes all amendments, consolidations, re-enactments, or replacements to or of it, and all regulations or statutory instruments issued under it;
 - i. if the due date for anything to be done under these Terms falls on a day that is not a Business Day, then it must be done on the next Business Day; and
 - j. no provision of these Terms will be construed to the disadvantage of a Party because that Party was responsible for the preparation of these Terms.

3. ARC Obligations

- i. Subject to clause 4(i), ARC will provide the Client with a Quote. A Quote will remain valid for 30 days from the date on the Quote, unless otherwise stated in the Quote. Any extension of this period is at the discretion of ARC.
- ii. ARC shall perform the Services with reasonable skill, care and diligence.
- iii. ARC shall communicate with the Client by and through a ARC representative, who shall have authority to bind ARC in respect of all matters arising out of or in connection with these Terms.
- iv. ARC shall consult with the Client throughout the performance of the Services.
- v. Unless otherwise agreed, ARC is entitled to rely on and treat all documentation and directions provided by the Client as accurate and correct.
- vi. If ARC considers that any documentation made available to it by the Client is insufficient to enable ARC to provide the Services or is incorrect, then ARC shall notify the Client accordingly.
- vii. If ARC becomes aware of any matter that will change the scope, character, quality, sequence or timing of the Services, then ARC shall promptly notify the Client of that matter.
- viii. ARC will procure and maintain appropriate professional indemnity, public liability and workers compensation insurance.

4. Client Obligations

- i. The Client shall promptly provide ARC with all documentation and directions necessary to enable ARC to provide the Services together with the submission of their samples, a completed and signed chain of custody form with a defined scope of work (“**Scope of Work**”) and a complete and thorough written disclosure of the known or suspected presence of any Hazardous Substances that may impact upon the provision of the Services.
- ii. Unless otherwise agreed, the Client shall promptly obtain all access, approvals, authorities, licences and permits necessary to enable ARC to provide the Services.
- iii. The Client shall communicate with ARC by and through the Client’s representative, who shall have authority to bind the Client in respect of all matters arising out of or in connection with these Terms.

- iv. If the Client becomes aware of any matter that will change the scope, character, quality, sequence or timing of the Services, then the Client shall promptly notify ARC of that matter.
- v. The Client shall cooperate with ARC and shall not interfere with or obstruct the performance of the Services.
- vi. The Client shall ensure that all documentation and information provided to ARC in order to perform the Services is complete and accurate.
- vii. The Client shall procure and maintain adequate public liability and contract works insurances for the duration of the Project.

5. Works Order and Sample Receipt, Acceptance & Disposal / Return

- i. Clients may order Services by submitting a written purchase order or a written request for analysis.
- ii. ARC recognises that time is of the essence in completing the Services, and upon timely delivery of samples, ARC will use best endeavours to meet mutually agreed upon turnaround times.
- iii. Sample Delivery Acceptance is defined as the point in time after which ARC has received and inspected the samples and received project guidance from the Client regarding the work to be done and resolved any discrepancies in the chain of custody forms and made a determination that it can proceed with the defined work.
- iv. ARC (acting reasonably) reserves the right to refuse or reject samples that it deems to:
 - a. be of unsuitable volume;
 - b. pose a health, safety, environmental or other risk;
 - c. be a sample that will fail to meet holding times; or
 - d. be unsuitable for the provision of the Services for any reason ARC considers relevant in its absolute discretion.
- v. If ARC does not refuse or reject samples for the reasons referred to in clause 5(iv) above, ARC will confirm Sample Delivery Acceptance with the Client.
- vi. The Client warrants that all relevant disclosures have been made to ARC about the presence of Hazardous Substances and agree that it will be liable and will pay all costs and damages incurred by ARC as a result of a failure by the Client to disclose to ARC the presence of a sample containing or suspected to contain a Hazardous Substances.
- vii. Clients are liable for all costs and damages resulting from their failure to comply with any Law regarding the sample or Hazardous Substances.
- viii. ARC will dispose of all remaining soil samples three months following receipt of samples. Should a Client desire ARC to retain the samples for longer periods the Client must notify ARC in writing. The Client, will be required to pay an additional sample retention charge in effect at the time of the request.

6. Shipment

- i. ARC will ensure that any substances and/or containers shipped to a Client for purposes of facilitating sampling are shipped in compliance with all applicable Laws and agrees to be liable for the cost of such shipping. The Client shall be liable for the cost shipping substances and/or containers to ARC and such cost will be handled by the Client independently.
- ii. The Client bears sole responsibility for determining the applicability of compliance with all Laws applicable to the shipment of samples back to the ARC laboratory.
- iii. The Client assumes full responsibility for any injury, harm, or damages arising out of the collection, handling, storage of substances, products or samples under its control.

7. Laboratory Testing and Methods

- i. Where required, laboratory tests are charged in accordance with the ARC' schedule of rates for standard tests, available on request.
- ii. ARC laboratory testing will be carried out in accordance with the following Australian Standards (as amended from time to time):
 - a. AS1289 – "Methods of Testing Soil for Engineering Purposes";
 - b. AS1141 – "Methods for Sampling & Testing Aggregates";
 - c. AS1012 – "Methods of Sampling & Testing Concrete";
 - d. AS4133 – "Rock"; and
 - e. ASTM – "Rock".
 or otherwise in accordance with local standards as agreed between the Parties.
- iii. ARC may deviate from these methodologies where, in ARC's judgment, it is necessary or appropriate to do so. The nature or composition of a sample are examples of factors that may require ARC to deviate from these methodologies. Any deviations from the analytical methodologies set forth above will be made in accordance with recognised industry standards, ARC's quality

assurance plans and/or any relevant referenced standard operating procedures.

8. Reports

- i. Written reports giving a statement of procedures and all field and laboratory results will be provided upon completion of the Services.
- ii. Interpretation and analysis of results and comments thereon will be provided, where and as indicated in the Quote.
- iii. Reports will be based on normally accepted theory and practice and on the limit of information available.
- iv. ARC will not accept responsibility for variations between the interpreted conditions and the extrapolated or interpolated conditions and those that are revealed subsequently. The Client should be aware that many factors, either artificial or natural, may result in the ground, contamination, ecology, groundwater or nearby surface water conditions, either chemical or physical being different to that which existed at the time of the investigation.

9. Choice of Laboratory

Unless the Client has specified, in a timely manner, a particular location where ARC is to perform its Services for the Client, ARC may perform Services for the Client at any laboratory in its network. ARC retains the right, at its discretion, to subcontract Services ordered by the Client to another laboratory or other laboratories.

10. Professional Conduct

- i. ARC employees will undertake the Services in accordance with accepted industry practices and standards. ARC will use reasonable endeavours to ensure that the Services are performed in a timely and professional manner and that all findings are technically valid.
- ii. A request by a Client to amend or alter a report or omit specific information will only be done in circumstances where there is a written request by the Client, there are valid technical grounds for doing so, and in accordance with ARC's NATA accreditation, the new report notes that the previous report has been superseded and the reason for the change is noted in the new report.
- iii. Where ARC accepts a request by the Client to amend or alter a report, ARC will inform the Client of the fees associated with such amendment or alteration and obtain the Client's approval to proceed on the basis of the proposed fees.
- iv. Any failure on the part of ARC to perform in accordance with industry standards will be corrected, provided such failure was a direct result of acts or omissions by ARC in respect of factors deemed to be within ARC's Scope of Work specified in the Quote (or as otherwise agreed between the Parties) and within the exclusive control of ARC.

11. Site Safety

- i. Where ARC is performing the Services at a location that is under the Client's control then the Client must ensure a safe working environment, without risks to health and safety, is provided for ARC agents, employees and contractors. If it is not possible for the Client to reasonably ensure a safe work environment without risks to health and safety then the Client must give ARC full details of the known or suspected site hazards or risks as soon as possible but no later than prior to ARC entering the site.
- ii. The Client's responsibilities in relation to clause 11(i) include, but are not limited to, ensuring so far as is reasonably practicable:
 - a. the provision and maintenance of safe plant, equipment, structures and safe systems of work;
 - b. the safe use, handling and storage of plant, equipment, structures and substances;
 - c. the provision of adequate facilities for the welfare at work of ARC employees, contractors and subcontractors in carrying out the Services, including ensuring access to those facilities; and
 - d. the provision of any information, training, instruction or supervision that is necessary to protect and maintain the health and safety of all of ARC employees, contractors and subcontractors.

12. Payment

- i. In consideration for performance of the Services, the Client agrees to pay ARC's fees as set out in the Quote, or to the

extent not specified in the Quote, as set out in an invoice issued by ARC to the Client.

- ii. Following completion of the Services, ARC will issue an invoice to the Client which the Client must pay within 30 days from the invoice date (**Due Date**), unless a payment extension is granted by ARC at its sole discretion.
- iii. Interest shall accrue on any amount not paid by the Due Date at a rate of 4% per annum, calculated on a daily basis from the Due Date up to and including the date of payment of the outstanding amount.
- iv. If the Client breaches 12(ii), ARC may, in addition to charging interest:
 - a. suspend the provision of the Services going forward, and where a timeframe for such Services has been given, an extension of time shall be granted to ARC to undertake the Services equivalent to the period of suspension;
 - b. require the Client to return to ARC all reports and other documents and copies that have been provided by ARC in performance of the Services. The Client shall comply with any demand made by ARC pursuant to this clause 12(iv); and/or
 - c. require the Client to pay ARC' fees in full before any further Services are undertaken.
- v. The Client shall pay on demand all costs and expenses (including, without limitation, legal costs) incurred by ARC in pursuing any overdue payments.
- vi. If the Client disputes a portion of an invoice issued by ARC, then the Client shall provide to ARC a payment schedule (or notice of dispute in WA) within 15 Business Days of the date of the invoice for the Services.
- vii. If the performance of the Services is delayed by an act, omission or default of the Client or its employees, agents, consultants or contractors, then the Client shall reimburse ARC for all reasonable costs and expenses it incurs as a result of the delay.
- viii. The Client must pay the agreed price, or where no price is agreed then the reasonable costs of all variations to the Services in addition to the price quoted. The reasonable costs of a variation will be calculated by ARC at reasonable rates for labour, materials and services and may include a reasonable administration charge, allowance for overheads and profit and other costs incurred by ARC as a result of the variation. ARC will take reasonable steps to limit these costs once informed of the variation.
- ix. All amounts in the Quote, these Terms or in any other documents provided to the Client by ARC are exclusive of GST (unless expressly stated to the contrary).

13. Australian Consumer Law

The Australian Consumer Law (**ACL**) requires us to give you the following notice about the consumer guarantees it provides, which apply in addition to any warranties contained in these Terms:

Our Services come with guarantees that cannot be excluded under the ACL. For major failures with the service, you are entitled:

- to cancel your service contract with us; and
- to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure you are entitled to have problems with the Service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.

14. Limitation of Liability

- i. In the event any Services supplied by ARC under these Terms being defective, to the extent permitted by law, the liability of ARC (if any) shall be limited to the Client's rights under the ACL.
- ii. To the extent permitted by law, ARC' liability under any condition or warranty which cannot legally be excluded is limited to:
 - a. the supplying of the Services again; or
 - b. the payment of the cost of having the Services supplied again.
- iii. ARC shall not be liable to the Client for:
 - a. the acts, omissions or defaults of other contractors or consultants engaged by the Client (including consultants or contractors engaged by ARC as agent for the Client);
 - b. any changes, alterations or additions to the Services made by others without the express approval of ARC;
 - c. the accuracy of any quantity and cost estimates;

- d. any loss of use, opportunity or production, loss of interest, earnings or profit, holding or financial costs, business interruption or any indirect or consequential losses; and
- e. any loss, damage or claim to the extent that such loss, damage or claim was caused or contributed to by the Client or its employees, agents, consultants or contractors.

ARC shall be deemed to have been discharged from all liability in respect of the Services, whether under the law of contract, tort or otherwise, at the expiration of one year from the completion of the Services, and the Client (and persons claiming through or under the Client) shall not be entitled to commence any action or claim whatsoever against ARC (or any employee contractor or subconsultant of ARC) in respect of the Services after that date.

- v. ARC shall not be liable to any third party for any claim whatsoever arising out of or in connection with the Services.
- vi. The Client shall indemnify ARC in respect of any loss, damage or claim whatsoever that ARC may suffer as a result of:
 - a. the Client's breach of this agreement; or
 - b. any act, omission or default of the Client or its employees, agents, consultants, contractors or any other third party in respect of this agreement.

15. Dispute Resolution

- i. If a dispute arises out of or in connection with these Terms, then either Party may by notice in writing served on the other Party require that such dispute be resolved in accordance with this clause.
- ii. Within 14 days after service of a notice under clause 15(i), senior representatives of each Party must meet and use their best endeavours and act in good faith to resolve the dispute or agree on a process for resolving the dispute. If the dispute is not resolved or a process for resolving the dispute is not agreed to within 28 days of service of the notice referred to in clause 15(i), then the dispute may be resolved through litigation.
- iii. Nothing in this clause 15 prevents ARC from making an adjudication application under the *Building and Construction Industry (Security of Payment) Act 2020* (WA), if applicable.

16. Force Majeure

- i. A Party (**Affected Party**) is not liable for any delay or failure to perform an obligation (other than to pay money) under these Terms caused by an act of God, fire, war, insurrection or other armed conflict, riot, vandalism or sabotage, strike, lockout, ban, transport or port accident or congestion, pandemic, epidemic, quarantine of persons or goods, limitation of work or other industrial disturbance or any law, rule, regulation, order, requirement or restraint imposed by any government or governmental agency whether local, state, national or international (other than an order, requirement or restraint resulting from the Affected Party's breach of any law, permit or authorisation).
- ii. The Affected Party must notify each other Party as soon as practical of any anticipated delay or failure caused by an event specified in clause 16(i) (**Event**).
- iii. The performance of the Affected Party's obligation is suspended for the period of delay caused by the Event to the extent performance is prevented by the Event from the date notice is given under clause 16(ii) and any such non-performance or delay in performance of this agreement will not be a breach of these Terms.
- iv. Any Party may terminate this agreement at the expiration of not less than 7 days' notice to the other Party if prevention of performance of a material obligation by an Event, or a delay caused by the Event, exceeds 60 days.
- v. If a Party terminates this agreement under clause 16(iv), all money previously paid under this agreement for which no Services or other consideration has been provided will be refunded.

17. Confidentiality

- i. Subject to clause 17(ii):
 - a. ARC shall keep the Client's Confidential Information confidential and not disclose or use it for any purpose other than for providing the Services. ARC shall obtain the Client's written consent prior to any disclosure of the Client's Confidential Information not otherwise permitted by these Terms; and

- b. the Client shall keep ARC's Confidential Information iv. confidential and not disclose or use it without the prior written consent of ARC.
- ii. This provision does not prevent either Party from disclosing and/or using Confidential where:
 - a. known to the receiving Party before being obtained from the transmitting Party;
 - b. where the Confidential Information is available to the public without the receiving Party's fault at any time before or after it is acquired by the transmitting Party;
 - v. that is obtained or acquired in good faith by the receiving Party from a third party who has the same information in good faith and who is not under obligation to the receiving party with respect thereto;
 - d. where written consent is obtained by the receiving Party from the transmitting Party; or
 - e. disclosure is required by Law, provided the receiving Party shall notify the transmitting Party and afford it an opportunity to resist or narrow the requirement to disclose.

18. Copyright and Intellectual Property

- i. The Client grants to the ARC a limited, non-exclusive licence to use the Client's Intellectual Property to assist ARC in performing the Services.
- ii. Copyright and the intellectual property in all drawings, reports, specifications, bills of quantities, calculations and other documents produced by ARC in connection with the Services shall vest in the Client upon payment of the Price (including any interest) in full.
- iii. ARC may with the prior consent of the Client (which shall not be unreasonably withheld) publish, either alone or in conjunction with others, articles, photographs and other illustrations relating to the Project.
- iv. If during the course of providing the Services, ARC researches, develops, discovers or first reduces to practice a concept, product or process which is capable of being patented or commercialised, then such concept, product or process shall be and remain the property of ARC and the Client shall not use, infringe or otherwise appropriate the same without first obtaining the written consent of ARC. ARC shall be solely responsible for the cost of commercialisation of any such concept, product or process.

19. Termination

- i. A Party ("**Non-defaulting Party**") may terminate these Terms at any time by written notice to the other Party ("**Defaulting Party**") if any of the following apply:
 - a. the Defaulting Party fails to carry out any provision of these Terms, the failure is capable of remedy and the Defaulting Party does not remedy that failure within 14 days after written notice to the Defaulting Party requiring it to be remedied;
 - b. an order for payment is made or judgment for an amount exceeding \$5,000 is entered or signed against the Defaulting Party which is not satisfied within 7 days;
 - c. the Defaulting Party suspends or delays payment of its debts;
 - d. the Defaulting Party is unable to pay its debts as and when they fall due or goes into bankruptcy;
 - e. the Defaulting Party (being a corporation) has a liquidator appointed to it, or has a mortgagee of the corporation assume control of, or a receiver appointed to any of the assets or undertakings of the Defaulting Party (not being an Insolvency Event);
 - f. the Defaulting Party (being a corporation) is deregistered;
 - g. the Defaulting Party breaches a credit arrangement; or
 - h. to the extent permitted by law, the Defaulting Party is subject to an Insolvency Event.
- ii. The Defaulting Party will be responsible for, and will indemnify the Non-Defaulting Party against, any damages, costs (including, without limitation, legal fees on a solicitor-client basis), losses and expenses, incurred by the Non-Defaulting Party as a result of the breach.
- iii. These Terms may be terminated by ARC at any time effective immediately upon the giving of notice if a change occurs in the Client's circumstances which, in WGL's reasonable opinion, may have a material adverse effect on the Client's ability to comply with its obligations under these Terms. Examples include (but are not limited to):
 - a. a change in the Purchaser's financial position up and until an Insolvency Event occurring;
 - b. the Client factoring its debts; or
 - c. the Client becoming party to litigation, arbitration or any other administrative proceeding.

If the Client is the Defaulting Party under these Terms (or any of the events under clause 19(iii) occur), ARC may, at its option, exercise any or all of the following rights in addition to any other rights it may have under these Terms or at law:

- a. suspend the performance of the Services, whether under these Terms or otherwise; and/or
- b. withdraw any credit facilities which may have been extended to the Client and require immediate payment of all moneys owed to ARC by the Client.

On termination of these Terms under this clause 19:

- a. ARC is entitled to payment by the Client of a sum equal to the cost of Services provided and then unpaid by the Client. If ARC has received monies under these Terms for which no Services have been provided then such monies will be refunded to the Client; and
- b. each Party retains its rights against the other Party in respect of any past breach, in addition to any other rights, powers or remedies provided by Law.

20. Notices

- i. A notice, demand, document or other communication relating to these Terms must be in writing in English, signed by the sender or its duly authorised representative and may be delivered by prepaid post, by hand or email to a Party and marked for the attention of the person identified in the Quote, or if the recipient has notified otherwise, then marked for attention in the way last notified.
- ii. A notice or other communication is effective:
 - a. if delivered by hand, when delivered;
 - b. if delivered by express post, 3 business days after posting;
 - c. if sent by email, at the time when the email is received in the recipient's email server.
- iii. A notice or other communication received after 5pm in the place of receipt or on a non-Business Day is taken to be received at 9am on the next Business Day.

21. General

- i. These Terms supersede and exclude all prior and other discussions, representations between the Parties (contractual or otherwise) and arrangements relating to the supply of the Services or any part of the Services whether written or oral, including, without limitation, those relating to the performance of the Products or any part of the Products or the results that ought to be expected from using the Products.
- ii. The failure of any Party to enforce a provision of these Terms or to exercise any of its rights expressed in these Terms is not a waiver of such provisions or rights and does not affect the enforcement of these Terms.
- iii. These Terms does not create or evidence a partnership or joint venture between the Parties.
- iv. If any part of these Terms is, or becomes, void or unenforceable, that part is, or will be, severed from these Terms so that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.
- v. The Client acknowledges and agrees that it has been given the opportunity to obtain legal advice with regard to the meaning and operation of these Terms.
- vi. A Party must not assign, novate, transfer or otherwise deal with these Terms except with the prior written consent of every other Party.
- vii. The warranties in these Terms are personal to the Client and cannot be transferred to third parties except with the prior written consent of ARC.
- viii. These Terms are governed by the law of Western Australia and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.