

ASSURED FIT TESTS STANDARD TERMS AND CONDITIONS

These terms and conditions (**Terms**), together with any Client Form (defined in clause 1), set out the agreement (**Agreement**) under the terms of which Michelle Joy Benson trading as Assured Fit Tests ABN 30 238 962 812 (Assured Fit Tests) provides Products and/or Services (defined in clause 2) to you or the company which you represent (**the Client**).

For the avoidance of doubt, each person receiving the Face Fit Testing Services (Participant) must complete and sign the Respirator Fit Testing Consent form. Assured Fit Tests will not provide the Face Fit Testing Services to any Participant who has not completed and signed the Consent.

1 CLIENT FORM, THIS AGREEMENT

- (a) These Terms will apply to all the Client's dealings with Assured Fit Tests, including being incorporated in all agreements, quotations or orders under which Assured Fit Tests is to provide products and/or services to the Client (each a 'Client Form') together with any additional terms included in such Client Form (provided such additional terms are recorded in writing).
- (b) The Client will be taken to have accepted this Agreement if the Client accepts a Client Form, or if the Client signs a Respirator Fit Testing Consent Form or orders, accepts or pays for any products and/or services provided by Assured Fit Tests after receiving or becoming aware of this Agreement.
- (c) In the event of any inconsistency between these Terms and any Client Form, the clauses of these Terms will prevail to the extent of such inconsistency, except that any "Special Conditions" (being terms described as such in a Client Form) will prevail over these Terms to the extent of any inconsistency.
- (d) Assured Fit Tests may update any part of the Terms at any time without notice to the Client. The Client continuing to order, accept or pay for any products and/or services provided by Assured Fit Tests following such an update will represent an agreement by the Client to be bound by the Terms as amended. The Client is encouraged to check the date at the top of the Terms to see when Assured Fit Tests last updated the Terms.

2 SERVICES

2.1 GENERAL

- (a) In consideration for the payment of the fees set out in the Client Form (**Fees**), Assured Fit Tests will provide the Client with services set out in a Client Form (**Services**).
- (b) Unless otherwise agreed, Assured Fit Tests may, in its discretion:
 - (i) not commence work on any Services until the Client has paid any Fees payable in respect of such Services; and
 - (ii) withhold delivery of Services until the Client has paid an invoice in respect of such Services.

2.2 FACE FIT TESTING

- (a) As part of the Services, Assured Fit Tests will provide quantitative face fit testing (**Face Fit Testing**).
- (b) Face Fit Testing will be conducted as per the OSHA protocol- 29 CFR 1910.134 (Fast Filtering or Half/Full Face protocols) and AS/NZS 1715:2009 Selection, use and maintenance of respiratory protective equipment (**RPE**), whilst wearing other site provided personal protective equipment (**PPE**) that may affect the seal and therefore protective function of the RPE.
- (c) Face Fit Testing will be conducted whilst standing and undertaking exercises specified in the protocol, after donning the RPE for 5 minutes. The testing will be conducted by a fit test operator competent in areas listed in ISO 16975-3 Respiratory protective devices- Selection, use and maintenance – Part 3 Fit testing procedures – Section 5.2.

- (d) Face Fit Testing will only be conducted for Participants who are deemed clean shaven, and have no facial hair that interferes with or touches the sealing surface of the respirator (**Clean Shaven**). Assured Fit Tests will determine if a Participant is Clean Shaven at its sole discretion.
- (e) The Client acknowledges and agrees that the Client and any Participant must follow the instructions of Assured Fit Tests at all times, before and after the Face Fit Testing.
- (f) All Participants receiving Face Fit Testing must not have eaten or smoked at least 30 minutes prior to Assured Fit Tests providing them with the Services as it may cause inaccurate results.
- (g) All Participants must complete and sign Assured Fit Tests Respirator Fit Testing Consent Form prior to the Face Fit Testing being undertaken.
- (h) All Participants need to be deemed medically fit to wear a respirator.
- (i) In the event a Participant feels uncomfortable or are suffering ill effects from wearing the RPE, they must inform the Face Fit Testing operator immediately.
- (j) All Participants must advise the Face Fit Testing operator of all other PPE that the Participant wears in the workplace. The Participant must wear such PPE whilst the Face Fit Testing is being conducted.
- (k) All components of the Face Fit Testing equipment that pose a risk to a Participant being tested shall be disinfected with antibacterial wipes prior to the Participant testing.
- (l) Assured Fit Testing may share the results of the Face Fit Testing results with interested parties (e.g. employer, authorized representatives or regulators).
- (m) The Client acknowledges and agrees that all details regarding Participants (including name, employer details and ID number) are true and correct.
- (n) The Client and all Participants must wear RPE in accordance with AS/NZS 1715:2009 Selection, use and maintenance of respiratory protective equipment, RPE manufacturers specifications and any other site or employer requirements. This includes only wearing a respirator when clean shaven and ensuring that no facial hair crosses or interferes with the sealing surface of the respirator.
- (o) For the avoidance of doubt, Assured Fit Tests will not be responsible or liable for how the Client and/or a Participant wears their RPE at any stage after the Face Fit Testing.**

2.3 REPORT

Where the Services include the provision of a report to the Client by Assured Fit Tests (**Report**), the Client acknowledges and agrees that:

- (a) Assured Fit Tests will only provide the Client with the Report upon full payment of the Fees
- (b) the Report has been prepared for the purpose set out in the Client Form and/or Report;
- (c) unless otherwise specified in the Client Form or the Report, the Report has been prepared for the sole use of the Client;
- (d) the Client may only use the Report for the purpose for which it was prepared;
- (e) the Client cannot disclose the Report or permit the report to be disclosed to any other person without the prior written consent of Assured Fit Tests;
- (f) the Client must not permit any other person to use or rely on the Report without the prior written consent of Assured Fit Tests; and
- (g) Assured Fit Tests is not responsible to the Client or any other person for the implementation of any recommendation or preferred course of action identified or referred to in the Report or otherwise in the course of providing the Services.

3 CLIENT OBLIGATIONS

- (a) **(General)** The Client must provide Assured Fit Tests with all documentation, information and assistance reasonably required for Assured Fit Tests to perform the Services.
- (b) **You must, and must ensure that all Participants comply with these Terms at all times.**
- (c) **(Liaison)** The Client agrees to liaise with Assured Fit Tests as it reasonably requests for the purpose of enabling Assured Fit Tests to provide the Services.

- (d) **(Access to site)** The Client will ensure that Assured Fit Tests has access to all sites and buildings as required by or necessary for Assured Fit Tests to undertake the Services. Notwithstanding any other provision in these Terms, Assured Fit Tests will have no liability to the Client or any third party to the extent that the performance of the Services is not able to be undertaken (in whole or in part) due to access to any relevant sites or buildings being prevented or delayed due to the Client or their respective employees or contractors expressing safety or health concerns associated with such access.
- (e) **(Consent form)** The Client acknowledges and agrees that each Participant must complete and sign the Respirator Fit Testing Consent Form **(Consent Form)** as set out in Schedule 1 prior to Assured Fit Tests providing the Services to that Participant. If the Participant does not complete and sign the Consent Form, Assured Fit Tests will not provide the Services for that Participant. In this case, the Client will still be liable for all Fees associated with the Participant and Services.
- (f) **(Compliance with Laws)** The Client is responsible for complying with all applicable Laws, where 'Laws' means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the relevant jurisdiction(s) where Assured Fit Tests provides the Services.

4 PAYMENT

4.1 DEPOSIT

- (a) If we agree that a deposit is payable, you must pay the deposit amount at the times and via the payment method set out in the Client Form **(Deposit)**.
- (b) You acknowledge and agree that Assured Fit Tests may, in its absolute discretion, garnish all or some of the Deposit if you cancel the Services prior to their completion.

4.2 FEES

The Client must pay to Assured Fit Tests the Fees in the amounts, at the times and using the Fee Payment Method set out in the Client Form or as otherwise agreed in writing.

4.3 TIME FOR PAYMENT

Unless otherwise agreed in the Client Form:

- (a) if Assured Fit Tests issues an invoice to the Client, payment must be made by the time(s) specified in such invoice; and
- (b) in all other circumstances, the Client must pay for all goods and services within 14 days of receiving an invoice for amounts payable.

4.4 EXPENSES

Unless otherwise agreed in writing:

- (a) the Client will bear all travel, accommodation related expenses reasonably incurred by Assured Fit Tests in connection with a Client Form; and
- (b) any third party costs incurred by Assured Fit Tests in the course of performing the Services may be billed to the Client, unless specifically otherwise provided for in the Client Form.

4.5 GST

Unless otherwise indicated, amounts stated in a Client Form include GST. In relation to any GST payable for a taxable supply by Assured Fit Tests, the Client must pay the GST subject to Assured Fit Tests providing a tax invoice.

4.6 CARD SURCHARGES

Assured Fit Tests reserves the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa, MasterCard or American Express).

4.7 LATE PAYMENT AND DEBT RECOVERY

If the Client does not pay an amount due under this Agreement on or before the date that it is due:

- (a) the Client must pay Assured Fit Tests interest at the rate of 1% per month on the amount due, calculated daily;
- (b) Assured Fit Tests may seek to recover the amount due by referring the matter to debt collectors;
- (c) the Client must reimburse Assured Fit Tests for any costs it incurs, including any legal costs, in recovering the amount due or enforcing any of its rights under these terms; and
- (d) the Client authorises Assured Fit Tests, its employees and agents to enter any premises occupied by the Client or any other place where Products are located and use reasonable force to retake possession of the Products without liability for trespass or any reasonable damage.

5 CANCELLATION OR NO SHOWS

- (a) Assured Fit Tests reserves the right to cancel the Booking Date and/or provision of the Services at its discretion.
- (b) The Client may cancel a Booking Date at any time by providing written notice to Assured Fit Tests. If the notice under this clause 5(a) is:
 - (i) 1 day prior to the Booking Date, the Client will incur an administration fee of \$60+ GST;
 - (ii) On the Booking Date, the Client will incur a fee of \$60 + GST per Participant booked.
- (c) Either party (**Non-Defaulting Party**) may terminate this agreement immediately by written notice to the other party (**Defaulting Party**) if the Defaulting Party is in breach of this agreement and either:
 - (i) fails to remedy such breach within 14 days of receiving notice from the Non-Defaulting Party requiring it to remedy such breach; or
 - (ii) that breach is not capable of remedy.
- (d) Upon termination of this agreement, the Client must pay all amounts owed for Products or Services already provided as at the date of termination.
- (e) Any clause that by its nature would reasonably be expected to be performed after the termination or expiry of this agreement will survive and be enforceable after such termination or expiry.

6 DEFECTIVE SERVICES

In the event that the Client determines (acting reasonably) that the Services or any part of the Services do not comply with description of the Services set out in the Client Form or are defective, Assured Fit Tests (in its absolute discretion) will either re-supply the defective Services at no cost to the Client or refund the Fees (or a portion of the Fees) which relates to defective Services.

7 THIRD PARTY GOODS AND SERVICES

- (a) Any Service that requires Assured Fit Tests to acquire goods and services supplied by a third party on behalf of the Client may be subject to the terms & conditions of that third party (**Third Party Terms**), including 'no refund' policies.
- (b) The Client agrees to familiarise themselves with any Third Party Terms applicable to any such goods and services supplied and, by instructing Assured Fit Tests to acquire the goods or services on the Client's behalf, the Client will be taken to have agreed to such Third Party Terms.

8 REMOTE SITE

Where the Services are to be provided in a Remote Site, the Client will pay the Remote Area Charges specified in the Client Form.

9 CONFIDENTIALITY

- (a) Except as contemplated by this Agreement, each party must not, and must not permit any of its officers, employees, agents, contractors or related companies to, use or disclose to any person any confidential information disclosed to it by the other party without its prior written consent.
 - a. This clause 10 does not apply to:
 - b. information which is generally available to the public (other than as a result of a breach of this Agreement or another obligation of confidence);
 - (b) information required to be disclosed by any law; or
 - (c) information disclosed by Assured Fit Tests to its subcontractors, employees or agents for the purposes of performing the Services or its obligations under this Agreement.

10 WARRANTIES

- (a) To the maximum extent permitted by applicable law, all express or implied representations and warranties not expressly stated in this agreement are excluded.
- (b) Nothing in this agreement is intended to limit the operation of the Australian Consumer Law contained in the Competition and Consumer Act 2010 (Cth) (**ACL**). Under the ACL, the Client may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services provided.

11 LIABILITY AND INDEMNIFICATION

11.1 LIMITATION OF LIABILITY

- (a) To the maximum extent permitted by applicable law, Assured Fit Tests is not liable for any Claim which relates directly or indirectly to:
 - I. Assured Fit Tests following accepted guidelines in accordance with the Law when supplying the Services to the Client;
 - II. a change in Law (which was applicable during the period in which Assured Fit Tests provided the Services) or technological advance if such change in Law or technological advance occurred after the completion of the Services by Assured Fit Tests; or
 - III. the failure of the Client to comply with any applicable Laws or recommendations provided by Assured Fit Tests or any other negligent or wrongful act or omission of the Client.
- (b) To the maximum extent permitted by applicable law, the maximum aggregate liability of Assured Fit Tests to the Client in respect of loss or damage sustained by the Client under or in connection with this agreement is limited to the total Fees paid to Assured Fit Tests by the Client at the date of the first event giving rise to the relevant liability.
- (c) Assured Fit Tests will not be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue arising under or in connection with this agreement, cancellation of the Services by Assured Fit Tests or any goods or services provided by Assured Fit Tests, except to the extent this liability cannot be excluded under the Competition and Consumer Act 2010 (Cth) or any other applicable law.
- (d) In this clause "Claim" means in relation to any person, a damage, loss, cost, expense or liability incurred by the person or a claim, demand, action, proceeding or judgement made against the person, however arising, whether in contract, tort (including but not limited to negligence), equity, product liability, under any warranty or indemnity, by operation of statute or otherwise, and whether present or future, fixed or unascertained and actual or contingent.

11.2 INDEMNITY

The Client agrees at all times to indemnify and hold harmless Assured Fit Tests and its officers, employees, agents and contractors ("those indemnified") from and against any loss (including reasonable legal costs) or liability incurred or suffered by any of those indemnified where such loss or liability was caused or contributed to by the Client or the Client's officers', employees', agents' or contractors': breach of any term of this agreement; or negligent, fraudulent or criminal act or omission.

12 DISPUTE RESOLUTION

- (a) The parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with this Agreement prior to commencing any proceedings.
- (b) If a party requires resolution of a dispute it must immediately submit full details of the dispute to the chief executive officer of the other party or, if the party is an individual, that individual.
- (c) The parties acknowledge that compliance with this clause 13 is a condition precedent to any entitlement to claim relief or remedy, whether by way of proceedings in a court of law or otherwise in respect of such disputes, except:
 - i. in the case of applications for urgent interlocutory relief; or
 - ii. a breach by another party of this clause 13.

13 FORCE MAJEURE

- (a) If a party becomes unable, wholly or in part, to carry out an obligation under this agreement (other than an obligation to pay money) due to an event beyond its reasonable control (Force Majeure), that party must give to the other party prompt written notice of:
 - i. reasonable details of the Force Majeure; and
 - ii. so far as is known, the probable extent to which that party will be unable to perform or be delayed in performing its obligation.
- (b) Subject to compliance with clause 14(a), the relevant obligation will be suspended during the Force Majeure to the extent that it is affected by the Force Majeure.
- (c) The affected party must use its best endeavours to overcome or remove the Force Majeure as quickly as possible.

14 NOTICES

A notice or other communication to a party under this agreement must be:

- (a) in writing and in English; and
- (b) delivered via email to the other party, to the email address specified in this agreement (**Email Address**). The parties may update their Email Address by notice to the other party.
- (c) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
 - i. 24 hours after the email was sent; or
 - ii. when replied to by the other party,

whichever is earlier.

15 GENERAL

15.1 GOVERNING LAW AND JURISDICTION

This agreement is governed by the law applying in New South Wales, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

15.2 AMENDMENTS

This agreement may only be amended in accordance with a written agreement between the parties.

15.3 WAIVER

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

15.4 SEVERANCE

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

15.5 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

15.6 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

15.7 COUNTERPARTS

This agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this agreement and all together constitute one agreement.

15.8 ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement