

HASTA TERMS AND CONDITIONS OF SERVICE

1. Scope

1.1 These Terms and Conditions of Service (**Service Terms**) govern the provision of drug testing and analysis services by Racing Analytical Services Limited trading as HASTA.

1.2 In these Service Terms:

- (a) “we” and “us” refer to Racing Analytical Services Limited trading as HASTA
- (b) “you” and “your” refers to our customer
- (c) “Services” refers to testing, analytical and any other services that we provide to you
- (d) “Service Order” is any document, in any media including email or via the internet that sets out the Services to be provided to you by us.

1.3 You agree that these Service Terms are incorporated into any agreement that we enter into with you.

1.4 Once we have received and accepted a Service Order from you, we may refer to these Service Terms and the Service Order as our agreement with you (**Agreement**). You agree that by accepting our offer to provide our Services, you have notice of these Service Terms and we are entitled to assume that you have read them and agree to them.

1.5 We may update, amend or replace these Service Terms from time to time without reference to you and we are entitled to assume that you have read the new Service Terms and agree to them.

1.6 If there is any inconsistency between these Service Terms and the Service Order, unless otherwise stated on the Service Order and approved by us in writing, these Service Terms will prevail.

2. Pricing and Payment Terms

2.1 Unless specified otherwise:

- (a) prices quoted exclude any applicable taxes. In addition to payment of the quoted price, you must pay all taxes (including GST) imposed on or in relation to services we supply to you;
- (b) we will supply you with a tax invoice for the price, which you must pay in full

within 30 days from the date of the tax invoice.

2.2 Any balances remaining unpaid after the due date may be subject to interest calculated in accordance with the current rate under the *Penalty Interest Rates Act 1983(Vic)*.

2.3 Failure to make payments within the time specified in the tax invoice shall be deemed an event of default under the Agreement. If legal action or collection proceedings are necessary to enforce payment, you agree that you are liable for our costs of collection, including collection agency and legal fees.

2.4 We reserve the right, prior to performing any Services, to require from you satisfactory security for payment or full or part payment of the Services in advance.

3. Services

3.1 We warrant that we are accredited by National Association of Testing Authorities (NATA) to provide the Services.

3.2 We will use reasonable efforts to carry out the Services in accordance with generally accepted scientific processes.

3.3 We may change the substances or classes of substances that we test for, and our testing methodologies, from time to time.

3.4 Laboratory testing and analysis services necessarily involve margin for error and may generate occasional false positive or false negative results. You accept that the Services are not guaranteed to detect the presence of a particular substance or class of substance in a sample, despite the substance or class of substance in fact being present in that sample.

4. Reporting of and use of Results

4.1 We will provide you with the outcome of the Services performed in an agreed form or report or otherwise at our discretion, including without limitation, in a Drug Screening Certificate (**Results**). You agree that the Results will be based solely on the information and samples you supply to us.

4.2 You agree that all Results provided by us to you are solely for the purpose for which we were engaged to provide the Services and for use by persons having the requisite

professional skills to interpret and understand the Results. We assume no responsibility and you waive all actions, proceedings, suits, causes of action, claims of any nature, costs and expenses (Claims) against us resulting from the interpretation or misuse of such Results.

- 4.3 You acknowledge and agree that all Results provided to you including a Drug Screening Certificate may not be distributed or reproduced except in full; nor can they be altered, amended or relied upon by any other person or entity without our prior written consent, (which may be given or withheld in our complete discretion). You must not at any time misrepresent the content of the Results or other information received from or relating to us or our work on behalf of you.

5. Liability

- 5.1 To the extent that you acquire services from us as a consumer within the meaning of the Australian Consumer Law, you may have certain rights and remedies (including consumer guarantee rights) that cannot be excluded, restricted or modified by agreement.

- 5.2 Nothing in these Terms operates to exclude, restrict or modify the application of any implied condition or warranty, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other law where to do so would:

- (a) contravene that law; or
- (b) cause any term of these Terms to be void

(Non-Excludable Conditions).

- 5.3 Except in relation to Non-Excludable Conditions, all conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied by custom, under the general law or by statute are expressly excluded under these Service Terms.

- 5.4 Except in relation to Non-Excludable Conditions, our liability to you arising directly or indirectly under or in connection with these Service Terms or the performance or non-performance under these Service Terms and whether arising under any indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity is limited as follows:

- (a) we will have no liability whatsoever to you for any loss, harm, damage, cost or expense (including legal fees), or in the nature of special, indirect or

consequential loss or damage (including consequential, special, punitive, indirect or economic loss or damage, loss of contract, loss of production or from production stoppage, or loss of profit, revenue or opportunity); and

- (b) the aggregate of our liability to you is otherwise limited to an amount not exceeding the consideration paid by you for the Services.

- 5.5 In relation to Non-Excludable Conditions (other than a guarantee as to title, encumbrances or quiet possession conferred by the Australian Consumer Law), except for services of a kind ordinarily acquired for personal, domestic or household use or consumption (in respect of which our liability is not limited under these Service Terms), our liability to you for a failure to comply with any Non-Excludable Condition is limited at our option to the cost of supplying the services again or payment of the cost of having the services supplied again.

6. Indemnity

- 6.1 You must indemnify us and must keep us indemnified against all claims, suits, actions, demands, loss (including consequential, special, punitive, indirect or economic loss or damage, loss of contract or loss of profit, revenue or opportunity), liability, costs, expenses (including legal expenses on a full indemnity basis), judgments and awards (**Losses**) made or claimed against us or incurred by us to the extent that the Losses are caused (directly or indirectly) by you or any of your officers, employees, agents, representatives or contractors as a result of:

- (a) a breach of these Service Terms;
- (b) any negligent act or omission or breach of duty; or
- (c) any other breach of any applicable laws, rules, standards or regulations.

- 6.2 The indemnity in this clause is a continuing indemnity and is in addition to any statutory rights or remedies we may have or exercise against you.

7. Cancellation or Suspension of Order

- 7.1 We may, in our absolute discretion, consider a written request for cancellation or suspension of a Service Order after it has been accepted.

- 7.2 If we agree to the cancellation or suspension of a Service Order, you must pay in full for all Services provided by us to you, up to and

including the date of acceptance of the cancellation or suspension as the case may be.

8. Confidentiality and Intellectual Property

- 8.1 Neither party may disclose confidential information about the other party without its prior written consent, unless required to do so by law.
- 8.2 All intellectual property (**IP**) in or relating to the Services and the Results remains our property. IP includes without limitation all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, confidential information including trade secrets and know how, registered designs, circuit layout and all other proprietary rights resulting from intellectual activity in the scientific, industrial, literary or artistic fields.
- 8.3 You shall not, without our prior written consent, use our name, trademark, logo or any Results prepared by us in connection with any promotion, marketing or advertising in any form including but not limited to any publication, website, email or newsletter in any manner whatsoever.
- 8.4 You acknowledge and agree that we have a separate product certification program which, among other things, permits the licensed use of our trademark.

9. Dispute Resolution

- 9.1 The Parties will attempt in good faith to resolve any dispute or claim arising out of or in relation to this Agreement through negotiations between a Director of each of the Parties with authority to settle the relevant dispute.
- 9.2 If the dispute cannot be settled within 14 days from the date on which either Party has served written notice on the other of the dispute then the dispute shall be submitted to mediation in accordance with and subject to the Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules.
- 9.3 Notwithstanding the existence of a dispute each party shall continue to perform its duties under this Agreement.

10. Miscellaneous

- 10.1 This Agreement is governed by the laws of the State of Victoria and both parties submit to the exclusive jurisdiction of the courts of Victoria.

- 10.2 Failure by us to enforce any of these Terms shall not be construed as a waiver of any of our rights.
 - 10.3 If any one of these Service Terms is unenforceable it shall be read down so as to be enforceable or, if it cannot be so read down, the term shall be severed from these Service Terms without affecting the enforceability of the remaining terms.
 - 10.4 A notice given under this Agreement must be in writing and handed personally or sent by facsimile or prepaid mail to the last known address of the addressee. Notices sent by prepaid post are deemed received 3 business days after posting. Notices sent by facsimile are deemed received on the facsimile machine confirming transmission.
 - 10.5 You may not assign or novate any or all of your rights or obligations under these Service Terms to a third party or purport to do so without our prior written consent (which may be given or withheld in our complete discretion).
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