

## TERMS

### 1. Definitions

'**Confidential Information**' of the Client means any information in the Instrument/Artefact except to the extent that information is:

- a) independently developed or known by NMI (including because it is in the public domain); or
- b) required to be disclosed or retained by law.

'**Report**' means the report containing the results of the Services.

'**Report Copyright**' means copyright in the Report.

Terms defined in the Details have the same meaning in other parts of this Contract.

### 2. Instrument or Artefact: The Client:

- a) must organise and pay the costs of transport of Instrument or Artefact to and from NMI;
- b) bears all risk of loss or damage of Instrument or Artefact while in transit or at NMI;
- c) must provide the Instrument or Artefact properly packaged and in good order;
- d) must ensure that the Instrument or Artefact is clearly and permanently marked with a distinguishing number or symbol to ensure identification; and
- e) must ensure that each package contains the following information:
  - I. name, address and telephone number of the Client, including a technical contact person;
  - II. contents of the package;

### 3. NMI Obligations: NMI must:

- a) provide the Services to the Client in accordance with its usual professional standards;
- b) if the Instrument or Artefact is provided by the Delivery Date, use reasonable efforts to deliver a Report by the Target Date for despatch of Report;
- c) if the Instrument or Artefact is provided after the Delivery date, reschedule the services, advise the Client in writing of a revised Target Date for despatch of report and use reasonable efforts to deliver a report by that date; and
- d) after completing the Services, return the Instrument or Artefact to the Client in accordance with the return Instructions.

### 4. Client Obligations and Acknowledgements: The Client:

- a) uses the Report and Report Copyright at its own risk, and indemnifies NMI for all harm (including costs on a solicitor and own client basis) that NMI may suffer as a result of any claim by a third party involving the Client's use of those things;
- b) must if required in writing by NMI maintain and provide evidence of adequate professional indemnity, product liability and third party liability insurance to cover its obligations and exercise of rights under this contract;
- c) acknowledges that NMI:
  - I. may by notice in writing delay the performance of its obligations under this Contract because of its limited resources, other research priorities, or delays by the Client in providing the Instrument or Artefact; and
  - II. is not liable for any failure to carry out part or all of its obligations under this Contract if that failure is due to any cause beyond the reasonable control of NMI.

### 5. Ownership and Rights to Use: NMI:

- a) assigns ownership of the Report to the Client; and

- b) retains ownership of the Report Copyright but, with effect immediately after NMI has been paid the Fee, grants the Client:

- I. subject to paragraph (b), a non-exclusive, royalty free licence to use Report Copyright for the Purpose of reporting measurement results for the Client's own internal and research activities; and
- II. a right to reproduce the Reports, but unless NMI agrees otherwise the Report may only be reproduced in full.

### 6. Payment:

- 6.1 NMI will accept payment of the Fee by Credit Card Debit when it has performed the Services, or as otherwise provided in the Contract.

- 6.2 Clients allowed to pay against NMI invoice, must pay within 30 days of invoice date. NMI reserves the right to remove this facility from Clients who do not do so.

### 7. Confidential Information: NMI agrees:

- a) to keep confidential the Confidential Information; and
- b) to use the Confidential Information only by performing its obligations under this contract.

### 8. Limitations of Liability: NMI:

- a) excludes all terms, conditions and warranties implied by custom, the general law or statute except any implied condition or warranty the exclusion of which contravene any statute or causes any part of this Contract to be void ('**Non-excludable Condition**');
- b) limits its liability to the Client for breach of any Non-excludable Condition, at NMI's option, to NMI re-performing Services or refunding the Fee;
- c) limits its liability to the Client for any claim (whether arising in contract, in tort, or by statute) for loss or damage suffered by the Client in any way relating to this Contract to the amount of the Fee (**Clause 4(a)** overrides this clause to the extent of any inconsistency); and
- d) excludes all liability to the Client for consequential damage (including lost revenue, profit and data) suffered by the Client in any way relating to this Client or to NMI carrying out testing or calibration services for the Client.

9. **Dispute Resolution:** The parties intend to resolve disputes without starting arbitration or court proceedings. Accordingly, each party will negotiate in good faith to resolve any dispute that arises out of this Contract and will involve in those negotiations a senior officer who has not been involved with the Services.

### 10. End of Contract: This Contract will end:

- a) when NMI performs the services and receives the Fee;
- b) if either party ends it which it can do immediately by giving notice to the other party if the other party breaches any provision of this Contract and fails to remedy the breach within 30 days of receiving notice requiring it to do so; or
- c) if NMI ends it which it can do by giving notice to the Client if:
  - I. it determines that the Instrument or Artefact is not suitable for providing the Services;
  - II. it finds a defect or fault in the Instrument or Artefact; or
  - III. a measurement fails to comply with any specification provided by the Client.

11. **After the End of the Contract:** After the end of the Contract:
  - a) if the Services have not been completed:
    - I. NMI will charge a pro rata amount of the Fee for any Services performed to the date on which the contract ended;
    - II. The Client must pay the pro rata amount of the Fee by Credit Card debit, or as otherwise provided in the Contract; and
    - III. NMI will return any Instrument or Artefact in its possession to the Client in accordance with the Return Instructions in the Contract; and
  - b) the following clauses survive: **Clause 4(a) (Client Obligations), Clause 5 (Ownership and Rights to Use), Clause 7 (Confidential Information), Clause 8 (Limitation of Liability), Clause 9 (Dispute Resolution) and Clause 12 (Use of Names and Publication).**
  
12. **Use of Names and Publication:** The Client must obtain written consent from NMI before it:
  - a) uses the names *National Measurement Institute, NMI, or any logo of NMI*; or
  - b) makes a public statement about this Contract.
  
13. **Notices and General**
  - 13.1 A party notifying or giving notice under this Contract must give notice in writing, addressed to the address of the other party specified in the Details, and left at or sent by prepaid post or by fax to that address.
  - 13.2 A notice given in accordance with Clause 13.1 is received on the date of delivery (if left at the recipient's address), 5 days after the date of posting (if sent by prepaid post), or when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice (if sent by fax), as the case may be.
  - 13.3 To avoid inconsistent provisions applying, no confirmation, shipment or delivery docket, invoice, terms and conditions of supply or other document issued by or on behalf of the Client about the Services will vary this Contract.
  - 13.4 If part or all of any clause of this Contract is illegal or unenforceable it will be severed from this Contract and will not affect the continued operation of the remaining provisions.
  - 13.5 This Contract:
    - a) is governed by the laws of the State of New South Wales;
    - b) records the entire agreement between the parties and supersedes all earlier agreements and representations by the parties about its subject matter; and
    - c) may only be altered in writing signed by both parties.