

## RCPAQAP – Terms of Trade

These Terms govern the supply of any Services ordered by you on the myQAP Portal. By enrolling in a Program, you acknowledge that you agree to accept and be legally bound by these Terms.

### 1 Definitions and interpretation

#### 1.1 Definitions

In these Terms the following words have the meanings set out below:

- (1) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (2) **Confidential Information** means all data and information disclosed to the Customer relating to RCPAQAP's business, Programs, Products or Services, including its business plans or activities, its employees or officers, pricing, marketing and sales information, financial information, surveys and product lines, and any other information which the Customer either has been informed is, or might reasonably expect to be, confidential information of RCPAQAP;
- (3) **Claim** means any demand, claim, action, or proceeding;
- (4) **Customer** or **Participant** means the person or entity who enrolls in a Program;
- (5) **Data Analysis Assessment Criteria Handbook** means the handbook accessible through the myQAP Portal that provides Customers with information regarding procedures and policies for data analysis, assessment criteria and report interpretation across all pathology disciplines;
- (6) **Delivery Date** means the date on which a Product is delivered to the Point of Delivery;
- (7) **Dispute** means a dispute arising between RCPAQAP and the Customer in relation to the Services;
- (8) **Enrolment Certificate** means the certificate issued by RCPAQAP to the Customer which confirms their enrolment in a Program;
- (9) **Enrolment Office** means the RCPAQAP department that is responsible for Customer enrolments in the Programs;
- (10) **Enrolment Year** means 1 January to 31 December;
- (11) **Fees** means the fees payable by the Customer in respect of the Services, as set out in the "Enrolments" tab in the myQAP Portal;
- (12) **Intellectual Property Rights** includes any:
  - (a) copyright;
  - (b) design, patent, trademark, semiconductor or circuit layout (whether registered, unregistered or applied for);
  - (c) trade, business, company or domain name; and

- (d) know-how, inventions, processes, Confidential Information (whether in writing or recorded in any form),

and any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields;

- (13) **Insolvency Event** means any event under which the Customer:
  - (a) becomes insolvent, enters into administration or liquidation (or provisional liquidation), is wound up or has a controller appointed;
  - (b) is subject to any arrangement, assignment, moratorium or composition, is protected from creditors under any statute or dissolved; or
  - (c) is subject to an application or order passed or proposed, or any other action taken, which is preparatory to or could result in any of (a) and (b) above or is otherwise unable or is deemed to be unable to pay its debts when they fall due;
- (14) **Invoice** means an invoice for the Fees payable by the Customer to RCPAQAP in consideration for the provision of the Services, a copy of which is provided by RCPAQAP once the Customer has completed their enrolment through the myQAP Portal and which is also accessible in the "Invoices" tab on the Customer's myQAP Portal;
- (15) **Loss** includes any damage, loss, cost, liability or expense of any kind and however arising (including as a result of any Claim), including penalties, fines and interest and including any that are prospective or contingent and any amounts which for the time being are not ascertained or ascertainable;
- (16) **myQAP Portal** means the RCPAQAP myQAP Customer portal accessible at [www.myqap.com.au](http://www.myqap.com.au);
- (17) **NPAAC** means the National Pathology Accreditation Advisory Council;
- (18) **Participant Handbook** means the handbook accessible through the myQAP Portal that provides information regarding RCPAQAP and the Customer's responsibilities as a Participant in a Program;
- (19) **Personal Information** has the meaning given to that term in RCPAQAP Privacy Policy
- (20) **Personnel** means, in relation to RCPAQAP or the Customer (as the case may be), that party's officers, employees, agents and contractors;
- (21) **Point of Delivery** means the Customer's address as provided in the myQAP Portal or such other address agreed between the parties in writing;
- (22) **Privacy Policy** means RCPAQAP's privacy policy accessible through the myQAP Portal, as amended from time to time;
- (23) **Product Catalogue** means the catalogue accessible through the myQAP Portal that provides information regarding the Programs offered by RCPAQAP for a particular Enrolment Year;
- (24) **Products** means the Participant Handbook, the Data Analysis Assessment Criteria Handbook, data management software and any other handbooks, surveys, samples, slides, reports, clinical case studies or other material or information relating to a Program supplied to the Customer by RCPAQAP as part of the Services;

- (25) **Program** means a quality assurance program or module offered by RCPAQAP, details of which are set out in the Product Catalogue;
- (26) **RCPAQAP** means RCPA Quality Assurance Programs Pty Limited ACN 003 520 072;
- (27) **Services** means the Products and ancillary services supplied by RCPAQAP to the Customer in relation to a Program in which the Customer is enrolled, details of which are set out in the Product Catalogue; and
- (28) **Terms** means this document.

## 1.2 Interpretation

- (1) Reference to:
  - (a) one gender includes the others;
  - (b) the singular includes the plural and the plural includes the singular;
  - (c) a person includes a body corporate;
  - (d) RCPAQAP or Customer (as the case may be) includes the party's executors, administrators, successors and permitted assigns;
  - (e) a thing includes the whole and each part of it separately;
  - (f) a statute, regulation, code or other law or a provision of any of them includes:
    - (i) any amendment or replacement of it; and
    - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
  - (g) dollars means Australian dollars unless another currency is specified.
- (2) "Including" and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings and any table of contents or index are for convenience only and do not form part of these Terms or affect their interpretation.
- (5) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

## 2 Services

- 2.1 RCPAQAP agrees to supply the Services and the Customer agrees to purchase the Services from RCPAQAP in accordance with these Terms.
- 2.2 The Customer must pay the Fees in accordance with these Terms.

## **3 Enrolment**

- 3.1 To enrol in a Program, the Customer must follow the enrolment instructions on the myQAP Portal. At a high level the instructions set out how to select a relevant Program, generate an Invoice and finalise enrolment.
- 3.2 RCPAQAP will issue an Enrolment Certificate once a Customer has finalised their enrolment through the myQAP Portal and paid the relevant Invoice in full. A copy of the Enrolment Certificate will be made available in the "Certificates" tab of the myQAP Portal and also sent to the address notified by the Customer when enrolling.
- 3.3 A Customer is not enrolled in a Program until an Enrolment Certificate has been issued to it by RCPAQAP.
- 3.4 Enrolments in Programs submitted after 31 January of each year are subject to approval by the Enrolment Office. In considering whether to approve an enrolment, the Enrolment Office will take into account the available number of Products required for that Program.
- 3.5 If a quotation for a Program is supplied to a Customer, it will be valid for a period of 30 Business Days from the issue date and shall be exclusive of any applicable GST.

## **4 Delivery**

- 4.1 RCPAQAP will arrange for the Products to be delivered to the Point of Delivery.
- 4.2 Unless otherwise agreed in writing between the parties, RCPAQAP will determine the carrier, packaging, method of transport and route for delivery of any Products.
- 4.3 Any dates specified by RCPAQAP for delivery of the Products are an estimate only and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.
- 4.4 The Customer is responsible for obtaining any permits, licenses or authorisations required to transport and deliver the Products to the Point of Delivery.

## **5 Title to the Products**

- 5.1 Title in the Products does not pass to the Customer. For the duration of the provision of the Services, the Customer is granted a personal, non-exclusive, limited, non-transferable, non-sublicensable licence or sublicense to use the Products solely in relation to the Program in which it is enrolled.
- 5.2 The Customer has no right to sell, assign, transfer, copy, modify or sub-license the use of the Products.

## **6 Inspection of Products and defective Products**

- 6.1 The Customer must inspect the Products on the Delivery Date. Proof of delivery will stand as proof of inspection unless otherwise notified by RCPAQAP.
- 6.2 To the full extent permitted by law, Claims against RCPAQAP for a shortage of Products, incorrect, defective or damaged Products must be made within 5 Business Days of the Delivery Date, otherwise the Customer waives the right to make such a Claim and must pay for the Products in accordance with these Terms.

6.3 If a Customer makes a Claim regarding incorrect, damaged or defective Products in accordance with clause 6.2, it must return such Products to RCPAQAP. Upon receipt of the returned Products, RCPAQAP will inspect the Products. Where the Products:

- (1) are confirmed to be subject to a manufacturer defect;
- (2) have been damaged prior to the Products being delivered to the Point of Delivery; or
- (3) delivered to the Customer differ in type or quantity to the Products ordered,

RCPAQAP will at its option:

- (4) replace the Products, repair the Products or supply equivalent Products; or
- (5) repay the Fee or part of the Fee relating to such Products.

## **7 Changes to and cancellations of enrolments in a Program**

7.1 A request for a change to, or the cancellation of, a Customer's enrolment in a Program must be made using the "Requests" tab in the myQAP Portal.

7.2 Requests to change or cancel a Customer's enrolment in a Program and, subject to clause 7.5, the extent to which a refund of the applicable Fees paid will be given, are subject to approval by the Enrolment Office, at its absolute discretion.

7.3 Requests which are not submitted in accordance with clause 7.1 will not be considered and the full amount of the Fees will remain payable by the Customer.

7.4 The Customer will be liable for any costs associated with a request for a change or cancellation of an enrolment which is accepted by RCPAQAP.

7.5 Cancellations submitted more than 30 days from the date of enrolment, but before any Products are dispatched, and accepted by RCPAQAP will incur a 10% administration fee.

7.6 Refunds will not be considered if any Products have been dispatched by RCPAQAP.

7.7 No requests for enrolment adjustments are permitted after June 30 in the relevant Enrolment Year, even if Products have not yet been dispatched.

7.8 Following cancellation of an enrolment, access to Program documents including reports and Invoices will be provided for a period of 3 months.

## **8 Passing of risk**

8.1 Risk of damage to, or loss of, any Products passes to the Customer upon delivery at the Point of Delivery.

8.2 If RCPAQAP is unable to deliver the Products to the Point of Delivery because the Customer refuses to accept any Products that are not damaged, defective or incorrect and are otherwise delivered in accordance with these Terms, or because the Customer has not provided necessary instructions, documents, permits, licenses or authorisation, RCPAQAP may store the Products until delivery in which case the Customer will be liable for all related costs and expenses (including without limitation, storage and insurance).

8.3 The liability of RCPAQAP for non-delivery of a Product is limited to replacing the Product within a reasonable time or issuing a credit note, at RCPAQAP's discretion.

## 9 Fees

- 9.1 Unless otherwise stated on the Invoice, all Fees are in Australian dollars and are exclusive of all taxes, duties and levies including GST where applicable, which shall be payable in addition to the Fees.
- 9.2 Fees must be paid via the payment methods specified in the Invoice, the myQAP Portal or as advised by RCPAQAP.
- 9.3 Subject to clauses 9.6 and 9.7, transport and delivery costs are included in the Fees.
- 9.4 Pro-rata Fees may apply on enrolments after 31 January of the current Enrolment Year in the discretion of RCPAQAP. Any pro-rata Fees will be calculated according to the number of Products remaining to be supplied to other Customers in the relevant Program for the current Enrolment Year.
- 9.5 The applicable Fees shall be those set out in the "Enrolments" tab in the myQAP Portal on the date of enrolment and will not change for that Enrolment Year, unless otherwise agreed in writing by RCPAQAP and the Customer.
- 9.6 RCPAQAP reserves the right to charge the Customer an additional fee to recover the costs incurred by RCPAQAP in satisfying any special handling, transport or delivery requirements notified or requested by the Customer and agreed to by RCPAQAP.
- 9.7 Where the Customer requires split deliveries, the Customer is liable for any additional transport and delivery costs incurred as a result of the Customer's requirement.

## 10 Payment

- 10.1 The Customer shall pay the Fees to RCPAQAP in Australian dollars (unless RCPAQAP specifies otherwise in the Invoice) within thirty (30) days from the date of the Invoice.
- 10.2 The Customer may not withhold payment of any amount payable to RCPAQAP because of any set-off, counter-claim, abatement or any other deduction.
- 10.3 A Customer is not enrolled in a Program and entitled to the Services until payment in full has been received and an Enrolment Certificate is issued by RCPAQAP.
- 10.4 Without limiting any other right of RCPAQAP, if the Customer fails to comply with its obligations under this clause 10, RCPAQAP is at any time entitled to:
- (1) cancel or suspend the Services;
  - (2) vary or withdraw the Customer's credit at its discretion; and
  - (3) withhold access to all reports, certificates and online submission of results until the outstanding Invoice is paid.
- 10.5 All outstanding Invoices are due immediately upon termination of the provision of the Services.

## 11 Duties and obligations of the Customer

- 11.1 Notwithstanding any other clause in these Terms, the Customer acknowledges and agrees that:
- (1) it will read and comply with the Participant Handbook;

- (2) it will read and, if necessary, ask questions of RCPAQAP to ensure it understands the Data Analysis Assessment Criteria Handbook;
- (3) it will at all times exercise all reasonable precautions to ensure that no person is exposed to risks to their health and safety in relation to their use of the Products;
- (4) to the extent that the Services involve the handling and use of toxic or hazardous reagents and chemicals or potentially infectious substances, they will only be handled by persons who are properly qualified and have the skills and experience to handle such substances;
- (5) it will at all times use the Services solely for the purposes of quality assurance; and
- (6) it will comply with all reasonable requests of RCPAQAP in relation to the Services.

## 12 Indemnity

12.1 Without limiting any other rights RCPAQAP may have, the Customer indemnifies RCPAQAP against all Loss arising directly or indirectly as a result of or in connection with any:

- (1) breach of any of the Customer's obligations under these Terms;
- (2) cancellation of any of the Services by the Customer; and
- (3) any negligent act or omission of the Customer or its Personnel,

except to the extent that such Loss is caused by any negligent act on the part of RCPAQAP or its Personnel, or any failure by RCPAQAP to comply with these Terms.

## 13 Warranties

13.1 To the full extent permitted by law, except for the information in these Terms, the Product Catalogue and in the Enrolment Certificate issued to the Customer, RCPAQAP makes no other representations or warranties to the Customer, express or implied, regarding any matter.

13.2 RCPAQAP represents and warrants to the Customer that:

- (1) it is licensed, registered or qualified under relevant laws, regulations, policies and administrative requirements to provide the Services;
- (2) it has the full power, authority and right to enter into these Terms and perform its obligations under these Terms;
- (3) its compliance with these Terms will not infringe the rights of any third party;
- (4) its obligations under these Terms are valid and binding and enforceable against it in accordance with their terms;
- (5) RCPAQAP and its Personnel will provide the Services with due care, diligence and skill, in good faith and in a professional and effective manner in accordance with the Participant Handbook and the Product Catalogue;
- (6) all Services provided by RCPAQAP will conform to any description of the Services in the Product Catalogue; and
- (7) all Products will be reasonably fit for the proposed purpose.

- 13.3 Where legislation implies into these Terms any condition or warranty that cannot be restricted or modified, RCPAQAP's liability for any breach of such conditions or warranties will (to the full extent permitted by law) be limited to, at the option of RCPAQAP:
- (1) the replacement of the Services, the repair of the Services, or the supply of an equivalent Service; or
  - (2) repayment of the Fee or part of the Fee relating to the Services affected.
- 13.4 The Customer represents and warrants to RCPAQAP that:
- (1) it has the full power, authority and right to enter into these Terms and perform its obligations under these Terms;
  - (2) its compliance with these Terms will not infringe the rights of any third party;
  - (3) its obligations under these Terms are valid and binding and enforceable against it in accordance with their terms;
  - (4) it is a knowledgeable and experienced purchaser of services and goods similar in nature to the Services;
  - (5) it is relying solely on its own expertise and judgment with respect to its participation in the Programs.
- 13.5 To the full extent permitted by law, RCPAQAP shall not be liable to the Customer for a breach of any of its warranties in this clause 13 or otherwise under these Terms and the Customer agrees to release RCPAQAP from any such liability if:
- (1) the Customer makes use of defective Services after it is notified of such defects;
  - (2) the defect arises because the Customer failed to follow RCPAQAP's oral or written instructions as to the storage, installation, commissioning or use of the Services or, if there are none, any relevant industry standards or practices; or
  - (3) the Customer alters or repairs any Services without the prior written consent of RCPAQAP.

## 14 Limitation of Liability

- 14.1 Notwithstanding any other clause in these Terms, and except to the extent that the liability cannot be limited or excluded, the total aggregate liability of RCPAQAP and its Personnel to the Customer arising under or in connection with these Terms or the performance or non-performance of, or anything incidental to, these Terms is limited to the Fees received by RCPAQAP from the Customer in respect of the Services.
- 14.2 RCPAQAP will not be liable to the Customer if, notwithstanding its reasonable endeavours, there is a delay in delivery of the Services.
- 14.3 RCPAQAP shall not be liable to the Customer for:
- (1) any indirect or consequential loss or damage; or
  - (2) any loss of profit, loss of business, loss of opportunity, depletion of goodwill or any interruption to the Customer's business, arising out of or relating to the supply of the Services or a breach of these Terms by RCPAQAP.

## 15 GST

15.1 In this clause 15:

- (1) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (**GST Act**) or any replacement or other relevant legislation and regulations;
- (2) words or expressions used in this clause which have a particular meaning in the **GST law** (as defined in the GST Act), any applicable legislative determinations and Australian Taxation Office public rulings, have the same meaning, unless the context otherwise requires;
- (3) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member; and
- (4) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member.

15.2 Unless GST is expressly included, the consideration to be paid or provided under any other clause of these Terms for any supply made under or in connection with these Terms does not include GST.

15.3 To the extent that any supply made under or in connection with these Terms is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time as the GST exclusive consideration is to be paid or provided.

15.4 A party's right to payment under clause 15.3 is subject to a valid tax invoice being delivered by the supplier to the recipient of the taxable supply.

15.5 To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

15.6 To the extent that any consideration to be paid or provided under these Terms represents a decreasing or increasing adjustment because of an adjustment event in relation to a taxable supply:

- (1) the supplier must notify the recipient of the refund, credit or further amount payable on account of GST by the supplier issuing to the recipient an adjustment note (or a cancellation note together with a tax invoice) within 5 business days of becoming aware of the adjustment event; and
- (2) the supplier must provide a refund or credit to the recipient, or the recipient must pay a further amount to the supplier, as appropriate on account of GST within 10 business days of receipt of the adjustment note or tax invoice.

## 16 Termination

16.1 RCPAQAP may terminate the provision of the Services with immediate effect by notice to the Customer if the Customer:

- (1) commits a material breach of any of these Terms and fails to remedy such breach within 14 days of written notice from RCPAQAP specifying the breach and requiring it to be remedied; or

- (2) is subject to an Insolvency Event.
- 16.2 The expiry or termination of the provision of the Services does not affect any payment obligation arising before the date of expiry or termination, regardless of the circumstances.
- 16.3 On expiry or termination of the provision of the Services, RCPAQAP will be and remains:
  - (1) entitled to payment for all Invoices; and
  - (2) entitled but not obliged to repurchase from the Customer at their Invoice value all or any part of the Services then held by the Customer.
- 16.4 Clauses 8, 9.3, 11, 12, 13, 14, 16, 16.4, 20.2 and 20.8 and any other obligations which by their nature, survive expiry or termination of the Services, will, to the extent necessary to give them effect, survive expiry or termination.

## 17 Confidentiality and Intellectual Property Rights

- 17.1 The Customer acknowledges that, by virtue of these Terms, it may receive or become aware of Confidential Information and agrees that all Confidential Information is provided or has been obtained under an obligation of strict confidence to RCPAQAP as being proprietary, confidential or a trade secret of RCPAQAP.
- 17.2 The Customer must only use Confidential Information in relation to the Program and must not disclose any Confidential Information to any person other than to its Personnel to the extent necessary for fulfilment of its rights and obligations under these Terms.
- 17.3 This clause 17 does not apply to any information which is generally available to the public (other than as a result of the wrongful disclosure by the Customer) or is required to be disclosed by any applicable law.
- 17.4 The Customer acknowledges that all Intellectual Property Rights in the Services and any packaging in which the Services are contained belongs, or has been licensed, to RCPAQAP and the Customer does not by virtue of these Terms obtain any interest in those Intellectual Property Rights. The Customer agrees that it will make no Claim for ownership of any Intellectual Property Rights in the Services.

## 18 Privacy

- 18.1 The collection, use and disclosure of Personal Information provided by a Customer in connection with the Services is governed by RCPAQAP's Privacy Policy.
- 18.2 RCPAQAP shall:
  - (1) comply with the provisions of the *Privacy Act 1988* (Cth) or such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of Personal Information; and
  - (2) take reasonable precautions to protect the Personal Information from misuse and loss and from unauthorised access, modification or disclosure.

## 19 Notices

- 19.1 Any notice required or permitted to be given under these Terms must be in writing and may be delivered personally or by pre-paid post or by electronic mail to the Customer's address recorded in the myQAP Portal or RCPAQAP's address recorded in the Participant Handbook. Notices sent by post will be deemed to be received 3 clear Business Days after posting and

notices sent by electronic mail will be deemed to be received immediately except where the sender receives notification that the transmission did not complete (whether in whole or part). Where a notice is sent by e-mail after 5 PM (in the place of transmission) it will be deemed to be received on the next Business Day following transmission.

## **20 Miscellaneous**

- 20.1 Any Dispute in connection with these Terms will be settled by the parties using their reasonable endeavours to reach an amicable and mutually acceptable agreement.
- 20.2 Notwithstanding clause 20.1 above, RCPAQAP or the Customer may at any time commence court proceedings in relation to any Dispute or Claim arising under or in connection with these Terms.
- 20.3 Any indulgence granted by RCPAQAP to the Customer and any failure by RCPAQAP to insist upon strict performance of these Terms shall not be deemed a waiver of any of RCPAQAP's rights or remedies nor be deemed a waiver of any subsequent default by the Customer.
- 20.4 The invalidity, illegality or unenforceability in whole or in part of any clause shall not affect the validity of the remainder of such clause or these Terms and such clause or part of any such clause is severed from these Terms and the rest of the Terms remains in force and is enforceable.
- 20.5 The Customer must not assign or novate any of its rights or obligations under these Terms without RCPAQAP's prior written consent, which may be subject to any conditions which RCPAQAP in its absolute discretion imposes.
- 20.6 These Terms constitute the entire agreement between the parties relating to the Services and shall supersede all other prior agreements, understandings, negotiations and discussions whether oral or written between the parties relating to the Services. The parties' duties, obligations and liabilities will be limited to those expressly provided in these Terms and no other duties, obligations and liabilities will be implied, except as required by law.
- 20.7 The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of RCPAQAP which is not set out in these Terms, the Product Catalogue or the Enrolment Certificate issued to the Customer.
- 20.8 These Terms are governed by the laws in force in New South Wales and the Commonwealth of Australia. RCPAQAP and the Customer submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.