



INSPECTORATE AUSTRALIA INSPECTION & ASSAY PTY LTD  
TRADING AS

# C.R.COX & ASSOCIATES (AUSTRALIA)

(ABN 47062854362)



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## **INSPECTORATE AUSTRALIA (ASSAY) PTY LIMITED (hereinafter called "The Company")**

### **GENERAL TERMS AND CONDITIONS OF BUSINESS (JANUARY 2009 EDITION)**

1. Unless otherwise specifically agreed in writing the Company undertakes services in accordance with these general conditions (hereinafter called "General Conditions") and accordingly all offers or tenders of service are made subject to these General Conditions. All resulting contracts, agreements or other arrangements will in all respects be governed by these General Conditions. These General Conditions shall be governed by the laws of the State of Western Australia.
2. The Company is an enterprise engaged in the trade of inspection and testing.  
As such, it:
  - 2.1. carries out such standard services as are referred to in General Condition 6.
  - 2.2. renders advisory and special services as may be agreed by the Company and as referred to in General Condition 7.
  - 2.3. issues reports and/or certificates as referred to in General Condition 8
3. The Company acts for the persons or bodies from whom the instructions to act have originated (hereinafter called "the Principal"). No other party is entitled to give instructions, particularly on the scope of inspection or delivery of report or certificate, unless so authorized by the Principal and agreed by the Company. The Company will however be deemed irrevocably authorized to deliver at its discretion the report or the certificate to a third party if following instructions by the Principal a promise in this sense had been given to this third party or such a promise implicitly follows from circumstances, trade custom, usage or practice.
4. The Company will provide services in accordance with:
  - 4.1. the Principal's specific instructions as confirmed by the Company;
  - 4.2. the terms of the Company's Standard Order Form and/or Standard Specification Sheet if used;
  - 4.3. any relevant trade custom, usage or practice;
  - 4.4. such methods as the Company shall consider appropriate on technical, operational and/or financial grounds.
5. .
  - 5.1. All enquiries and orders for the supply of services must be accompanied by sufficient information specifications and instructions to enable the Company to evaluate and/or perform the services required.
  - 5.2. Documents reflecting engagements contracted between the Principal and third parties, or third parties' documents, such as copies of contracts of sale, letters of credit, bills of lading, etc., are (if received by the Company) considered to be for information only, without

extending or restricting the mission or obligations accepted by the Company.

6. The Company's standard services may include any or all of the following:
  - 6.1. quantitative and/or qualitative inspection;
  - 6.2. inspection of goods, plant, equipment, packing, tanks, containers and means of transport;
  - 6.3. inspection of loading or discharging;
  - 6.4. sampling;
  - 6.5. laboratory analysis or other testing;
  - 6.6. surveys and audits.
7. Special services which exceed the scope of standard services as referred to in General Condition 6 will only be undertaken by the Company by particular arrangement.

Such special services may include but are not limited to:

- 7.1. qualitative and/or quantitative guarantees;
  - 7.2. tank calibration, meter calibration and meter proving;
  - 7.3. supply of technicians and other personnel;
  - 7.4. pre-shipment inspection under government mandated import or customs schemes;
  - 7.5. supervision of complete industrial project schemes, including engineering review, expediting and progress reporting;
  - 7.6. advisory services.
8. .
    - 8.1. Subject to the Principal's instructions as accepted by the Company, the Company will issue reports and certificates of inspection which reflect statements of opinion made with due care within the limitation of instructions received but the Company is under no obligation to refer to or report upon any facts or circumstances which are outside the specific instructions received.
    - 8.2. Reports or certificates issued following testing or analysis of samples contain the Company's specific opinion on those samples only but do not express any opinion upon the bulk from which the samples were drawn. If an opinion on the bulk is requested special arrangements must be made in advance with the Company for the inspection and sampling of the bulk.
  9. The Principal will:
    - 9.1. ensure that instructions to the Company and sufficient information are given in due time to enable the required services to be performed effectively;
    - 9.2.
    - 9.3. procure all necessary access for the Company's representatives to enable the required services to be performed effectively;
    - 9.4. supply, if required, any special equipment and personnel necessary for the performance of the required services;

- 9.5. ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of service and will not rely, in this respect, on the Company's advice whether requested or not;
- 9.6. take all necessary steps to eliminate or remedy any obstruction to or interruptions in the performance of the required services;
- 9.7. inform the Company in advance of any known hazards or dangers, actual or potential, associated with any order or samples or testing including, for example, presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution or poisons;
- 9.8. fully exercise all its rights and discharge all its liabilities under any related contract whether or not a report or certificate has been issued by the Company failing which the Company shall be under no obligation to the Principal.
10. The Company shall be entitled at its discretion to delegate the performance of the whole or any part of the services contracted for with the Principal to any agent or subcontractor.
11. All technicians and other personnel supplied by the Company in the performance of any services shall at all times remain employees, agents or sub-contractors (as the case may be) of the Company. As such, all such persons shall be answerable to and subject to the instructions of the Company at all times. Unless otherwise agreed by the Company, such persons shall not be obliged to follow any instructions of the Principal.
12. If the requirements of the Principal necessitate the analysis of samples by the Principal's or by any third party's laboratory the Company will pass on the result of the analysis but without responsibility for its accuracy. Likewise where the Company is only able to witness an analysis by the Principal's or by any third party's laboratory the Company will provide confirmation that the correct sample has been analyzed but will not otherwise be responsible for the accuracy of any analysis or results.
13. Due to the potential stratification nature of some cargoes and/or limitations placed on us by closed/restricted sampling systems, the Company cannot guarantee that such samples are representative of the cargo on board or test results obtained and reported on our certificates of quality are representative of said cargo.
14. .
  - 14.1. The Company undertakes to exercise due care and skill in the performance of its services and accepts responsibility only where such skill and care is not exercised and negligence against the Company is proven.
  - 14.2. The liability of the Company in respect of any claims for loss, damage or expense of whatsoever nature and howsoever arising in respect of any breach of contract and/or any failure to exercise due skill and care by the Company shall in no circumstances exceed a total aggregate sum equal to 10 (ten) times the amount of the fee or commission payable in respect of the specific service required under the particular contract with the Company which gives rise to such claims provided however that the Company shall have no liability in respect of any claims for indirect or consequential loss including loss of profit and/or loss of future business and/or loss of production and/or cancellation of contracts entered into by the Principal. Where the fee or commission payable relates to a number of services and a claim arises in respect of one of those services the fee or commission shall be apportioned for the purposes of this paragraph by reference to the estimated time involved in the performance of each service.

- 14.3. The limit of liability of the Company under the terms of Condition 14.2 may be increased upon request received by the Company in advance of the performance of the service to such figure as may be agreed upon payment of additional fees equal to an appropriate fraction of the increase in such compensation or as may be agreed upon.
- 14.4. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these General Conditions.
- 14.5. Nothing in these General Conditions limits or excludes the liability of the Company:
- 14.5.1. for death or personal injury resulting from negligence; or
  - 14.5.2. for any damage or liability incurred by the Principal as a result of fraud or fraudulent misrepresentation by the Company; or
  - 14.5.3. for any liability which cannot be restricted or excluded by law.
  - 14.5.4. This Condition 14 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Principal in respect of any breach of these General Conditions, any use made by the Principal of the services and any representation, statement or tortious act or omission (including negligence) arising in connection with these General Conditions.
15. The Principal shall guarantee, hold harmless and indemnify the Company and its officers, employees, agents or subcontractors against all claims made by any third party for loss, damage or expense of whatsoever nature and howsoever arising relating to the performance, purported performance or non-performance of any services to the extent that the aggregate of any such claims relating to any one service exceed the limit mentioned in Condition 14.
16. Every officer, employee, agent or subcontractor of the Company shall have the benefit of the limitation of compensation and the indemnity contained in these General Conditions and so far as relates to such limitations any contract entered into by the Company is entered into not only on its own behalf but also as agent and trustee for every such person as aforesaid.
17. In the event that any unforeseen problems or expenditure arise in the course of carrying out any of the contracted services the Company shall be entitled to make additional charges to cover additional time and cost necessarily incurred to complete the service.
- 18.
- 18.1. The Principal will punctually pay not later than 30 (thirty) days after the relevant invoice date or within such other period as may have been agreed in writing by the Company all proper charges rendered by the Company failing which, and without prejudice to any other rights or remedies available to the Company, interest will become due at the rate of 15 (fifteen) per cent per annum from the date of invoice until payment.
  - 18.2. All prices quoted and charges due under these General Conditions shall, unless the Company confirms otherwise in writing, be exclusive of any value added or sales tax which shall be charged in addition at the prevailing rate.
  - 18.3. The Principal shall not be entitled to retain or defer payment of any sums due to the Company on account of any dispute, cross claim or set off which it may allege against the Company.
  - 18.4. In the event of any suspension of payment arrangement with creditors, bankruptcy, insolvency, receivership or cessation of business by the Principal the Company shall be entitled to suspend all further performance of its services forthwith and without liability and all sums payable to the Company shall become immediately due and payable.

19. In the event of the Company being prevented by reason of any cause whatsoever outside the Company's control from performing or completing any service for which an order has been given or an agreement made, the Principal will pay to the Company

19.1. the amount of all abortive expenditure actually made or incurred,

19.2. a proportion of the agreed fee or commission equal to the proportion (if any) of the service actually carried out;

and the Company shall be relieved of all responsibility whatsoever for the partial or total non-performance of the required service.

20. The Company shall be discharged from all liability to the Principal for all claims for loss, damage or expense unless proceedings are issued and served on the Company within 6 (six) months after the date of the performance by the Company of the service which gives rise to the claim or in the event of any alleged non-performance within 6 (six) months of the date when such service should have been completed.

21. Without prejudice to any other rights or remedies which it may have, the Company may terminate any or all contracts for the provision of services pursuant to these General Conditions without liability to the Principal immediately on giving notice to the Principal if:

21.1. the Principal commits a material breach of any of the terms of these General Conditions and (if such a breach is remediable) fails to remedy that breach within 30 days of the Principal being notified in writing of the breach; or

21.2. an order is made or a resolution is passed for the winding up of the Principal, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the Principal; or

21.3. an order is made, or documents are filed with a court of competent jurisdiction, for the appointment of an administrator to manage the affairs, business and property of the Principal; or

21.4. a receiver is appointed of any of the Principal's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Principal; or

21.5. the Principal makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

21.6. the Principal ceases, or threatens to cease, to trade; or

21.7. the Principal takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

22. On termination of any or all contracts for the provision of services for any reason:

22.1. the Principal shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt; and

22.2. the accrued rights of the parties as at termination shall not be affected.

23. The Company is neither an insurer nor a guarantor and disclaims all liability in such capacity. Principals seeking a guarantee against loss or damage should obtain appropriate insurance.
24. No alteration, amendment or waiver of any of these General Conditions shall have any effect unless made in writing and signed by an officer of the Company.
- 25.
- 25.1. If any provision (or part of a provision) of these General Conditions is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.
- 25.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.
26. Each of the parties acknowledges and agrees that, in entering into any contract for the provision of services pursuant to these General Conditions it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these conditions or not) relating to the subject matter of these General Conditions, other than as expressly set out in or referred to in these General Conditions.
27. All contracts for the provision of services entered into pursuant to these General Conditions are made for the benefit of the Company and the Principal only and (where applicable) their successors and permitted assigns and are not intended to benefit, or be enforceable by, anyone else.
28. Notices given under these General Conditions shall be in writing, sent for the attention of the person, and to such address or fax number as the relevant party may notify to the other party from time to time and shall be delivered personally, sent by courier or sent by pre-paid, first-class mail or certified mail. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of pre-paid first class post or certified mail, 48 hours from the date of mailing and, if deemed receipt under this Condition 28 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was properly addressed and posted.
- 29.
- 29.1. Any dispute or claim arising out of or in connection with these General Conditions or their subject matter, shall be governed by, and construed in accordance with, the laws of the State of Western Australia.
- 29.2. The parties irrevocably agree that the courts of the State of Western Australia shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these General Conditions or its subject matter.