

## COMTEST - TERMS & CONDITIONS

Telephone (+613) 9645 5933  
Facsimile (+613) 9645 5944

Unit 1, 570 City Road,  
South Melbourne, Victoria, 3205, Australia

### 1. DEFINITIONS

In this agreement, the following definitions apply:

"ACL" means the Australian Consumer Law schedule of the Competition and Consumer Act;

"consumer" is as defined in the ACL and in determining whether the Customer is a consumer, the determination is made if the Customer is a consumer under this agreement;

"COMTEST" means Comtest Laboratories Pty Ltd (ABN 38 076 747 085), its subcontractors and fully owned subsidiaries including Compliance Folder Management Pty Ltd (ABN 75 082 447 194), incorporated in the State of Victoria, Australia under the Corporations Law, having their principal place of business at Unit 1, 570 City Road, South Melbourne, Victoria;

"Customer" means the person, jointly and severally if more than one, acquiring the Services from COMTEST;

"Equipment" means any equipment specified for testing or certification in the Estimate, as selected and supplied by the Customer, and includes such hardware, data, software, firmware, programs, documentation, specifications and records as may be necessary to enable COMTEST to perform its obligations under this agreement;

"Estimate" means the Estimate submitted to the Customer and which is intended to serve as an indication only of the actual charges that shall be made by COMTEST for its Services;

"Services" means the services as selected by the Customer which may be specified in the Estimate.

### 2. SCOPE OF AGREEMENT

- 2.1 Subject to the terms and conditions of this agreement, COMTEST agrees to provide to the Customer the Services requested by the Customer from the range of services offered by COMTEST in its Estimate or such other Services as are agreed between the parties.
- 2.2 Whether or not the purpose of the provision of the Services is wholly or partly to test or certify the Equipment, the Customer accepts full responsibility and liability for any Equipment which it manufactures, supplies, sells or offers for sale and which does not comply with any applicable standards or regulations, except to the extent of liability imposed on COMTEST under the ACL.
- 2.3 COMTEST may vary or amend the terms and conditions by written notice to the Customer. Any variation or amendments will apply to the Services provided after the notice date.

### 3. REQUEST FOR SERVICES

- 3.1 Prior to the provision of Services by COMTEST, the Customer may submit a request for service.
- 3.2 COMTEST may reject a Customer's application in its absolute discretion.
- 3.3 The Customer must provide COMTEST with its specific requirements, if any, in relation to the Services and accurately disclose the nature of the Services required. COMTEST may rely on such information when quoting and arranging for the provision of Services.
- 3.4 The Services are provided on the basis of information and Equipment provided by the Customer and COMTEST disclaims all liability in relation to any errors, or defects in the Services which are caused as a result of the information and Equipment provided by the Customer, except to the extent of any liability imposed under the ACL.

### 4. CHARGES

- 4.1 In consideration of COMTEST providing the Services, the Customer agrees to pay to COMTEST the charges for the Services calculated in accordance with the rates and charges usually charged by COMTEST for the work performed. **COMTEST reserves the right to be paid in full before releasing test reports or outcomes of the service provided.**
- 4.2 Monthly progressive invoices will apply where upfront payment has not been made.
- 4.3 COMTEST shall make an additional charge in relation to retesting, reassessment, added effort and/or delays due to non-compliant, faulty, modified or defective Equipment, missing documentation or missing data.

## COMTEST - TERMS & CONDITIONS

- 4.4** The Customer shall **pay COMTEST in accordance with the payment terms of the invoice (nominally 14 days or as agreed)**. All fees and charges payable by the Customer under this agreement are exclusive of any taxes, duties, fees or other government levies or charges which may be imposed on or in respect of COMTEST's Services under this agreement or otherwise, and which are payable by the Customer.
- 4.5** Prices quoted are determined in Australian Dollars and may be shown in Australian Dollars and/or an international currency as based on the **exchange rate of that quotation day**. COMTEST reserves the right to **vary charges in the event of changes in exchange rate**. The final invoice(s) may vary from the quoted international currency costs due to variations in the exchange rate.
- The Customer agrees that all transactions are intended to be performed in Australian dollars and agrees to make payment in Australian dollars to COMTEST or to COMTEST's stated Bank Account by electronic transfer. Payments made to COMTEST using an international currency, the exchange rate for that day is to be used to ensure COMTEST is not advantaged or disadvantaged.
- 4.6** The Customer shall pay a **Payment Processing Fee** when a payment is made to a Credit Card of 3% for or all accepted Credit Cards.
- 4.7** Subject to clause 14.2, COMTEST has the right to charge a **Cancellation Fee** when an estimate has been accepted, and then subsequently cancelled or a project is stopped after commencement. A **Cancellation Fee** of \$275.00 or 5% of the agreed estimated price (whichever is greater) can be applied above any testing fees applicable for the work completed.
- 4.8** Subject to clause 14.2, COMTEST has the right to charge a **Cancellation Fee** for a confirmed laboratory booking cancellation. An amount of \$275.00 or 10% of the agreed estimated price (whichever is greater) will be applied if the customer notifies of a cancellation within 24Hrs of the confirmed laboratory booking or fails to notify of a cancellation.
- 4.9** If the Customer requires any variation to the Services outlined in the Estimate, COMTEST may vary its price to take account of any such change by notifying the Customer.
- 4.10** If there is any change in COMTEST's costs incurred in relation to the Services, COMTEST may vary its price to take account of any such change by notifying the Customer.
- 4.11** If the Customer defaults in payment by the due date of any amount payable to COMTEST, all money which would become payable by the Customer to COMTEST at a later date on any account becomes immediately due and payable without the requirement of any notice to the Customer, and COMTEST may, without prejudice to any of its other accrued or contingent rights:
- 4.11.1 charge the Customer interest on any sum due at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 (Vic) plus 4% for the period from the due date until the date of payment in full;
- 4.11.2 charge the Customer for, and the Customer must indemnify COMTEST from, all legal costs and expenses (including without limitation all legal costs and expenses, administration and debt collection costs) incurred by it resulting from the default or in taking action to enforce compliance with these Terms;
- 4.11.3 cease or suspend for such period as COMTEST thinks fit, provision of any further Services to the Customer; and
- 4.11.4 by written notice to the Customer, terminate any agreement with the Customer so far as unperformed by COMTEST.
- 4.12** Clauses 4.11.3 and 4.11.4 can also be relied upon, at COMTEST's option, where the Customer becomes bankrupt or enters into any scheme of arrangement with its creditors or has an administrator or similar functionary appointed in respect of its assets.
- 4.13** If ongoing testing or certification cannot progress due to customer delays of greater than one month after initial testing has commenced, an invoice will be forwarded for work completed to date.

## 5. DELIVERY, RETURN AND COLLECTION OF EQUIPMENT

- 5.1** The Customer will be responsible for delivering to and from COMTEST's premises at the Customer's own cost and risk, any Equipment that may be the subject of the Services being provided by COMTEST. Delivery includes the use of shipping services and couriers.
- 5.2** COMTEST shall not be responsible for any delay in the provision of the Services caused by late arrival, faulty, non-compliant or defective Equipment.
- 5.3** At the expiration or termination of this agreement the Customer shall be responsible for the prompt removal of all Equipment from COMTEST's premises at the Customer's cost and risk, including the use of shipping services and couriers. Equipment will be available for collection during COMTEST's usual business hours.

## COMTEST - TERMS & CONDITIONS

**5.4** COMTEST may agree to deliver the Equipment to the Customer, in which case the Customer will bear all the costs, expenses and risks associated with such delivery. Delivery of Equipment by COMTEST to a third party (including the use of shipping services or couriers) will be deemed to be return of the Equipment to the Customer. The Customer will bear all costs, expenses and risks of such delivery.

**5.5** All Equipment not collected within 21 days of the Customer being advised that it is available for collection will be held by COMTEST at the sole risk of the Customer and COMTEST reserves the right to levy a storage charge in respect of such Equipment.

### **6. PERFORMANCE OF AGREEMENT**

**6.1** Any period or date for the provision of the Services stated by COMTEST is an estimate only and not a contractual commitment. If COMTEST cannot complete the Services by any estimated date, it will do so within a reasonable time.

### **7. EQUIPMENT DAMAGED OR DESTROYED AT COMTEST PREMISES**

**7.1** All Equipment delivered to COMTEST's premises under this agreement will be held by COMTEST for the performance of the Services at the Customer's sole risk.

**7.2** The Customer acknowledges that the Service provided may destroy or damage the Equipment. The Customer agrees to hold COMTEST harmless without liability against the Equipment being destroyed or damaged either accidentally or intentionally while the Service is being provided, except to the extent of any liability imposed under the ACL.

### **8. ADVICE GIVEN**

**8.1** When requested, COMTEST will attempt to provide the most accurate advice available at the time. The information provided will reflect the best judgment of the person consulted. However subject to the application of the statutory guarantees under the ACL and any liability of COMTEST under the ACL for failure of any statutory guarantee, COMTEST gives no warranty in respect of any opinion given and accepts no liability whatsoever for errors.

**8.2** The Client acknowledges that:

**8.2.1** it has not made known, either expressly or by implication, to COMTEST any purpose for which it requires the Services and it has the sole responsibility of satisfying itself that the Services are suitable for its use; and

**8.2.2** it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by COMTEST in relation to the Services or their use or application.

### **9. REPORTS AND CERTIFICATION STATEMENTS**

**9.1** If the Services involve the provision of a report or certification statement, the Customer will be invoiced for the report or certifications statement progressively or when it is finalised. On payment of the invoiced charges in accordance with Clause 4 (Charges) and subject to clause 9.4 (fully reproduce), all property in the report or certification statement will pass to the Customer. The report or certification statement remains the property of COMTEST until full payment is received.

**9.2** The report or certification statement and results held within the report or certification statement only relate to the sample of Equipment tested. If the Equipment has been varied to the Equipment provided for testing or certification by way of construction, performance, materials, components, firmware, software or any other form, then the report or certification statement provided by COMTEST cannot be relied upon as proof of compliance, non-compliance, suitability for use or to be safe for supply or use. COMTEST takes no responsibility for liabilities arising from the Equipment being varied from the test sample supplied by the Customer.

**9.3** The Customer acknowledges that COMTEST is required under the Telecommunications Act, NATA accreditation and the local COMTEST Quality Manual to keep a copy of the report or certification statement and associated documentation, and to make a copy of the report or certification statement available to the ACMA on request, or other authorities as legally required. Subject to these requirements, COMTEST will not copy or cause to be copied or disclose any details of the report or certification statement to a third party without the Customer's prior written consent.

**9.4** The Customer agrees that it will not reproduce, refer to or use the report or certification statement, except in its entirety, for any purpose whatsoever.

### **10. COMPLIANCE WITH LAW**

**10.1** The Customer shall indemnify and hold harmless COMTEST against all costs and liability incurred if COMTEST's possession or processing of the Customer's Equipment constitutes a breach of the governing law or any other relevant law or regulation.

## COMTEST - TERMS & CONDITIONS

**10.2** COMTEST may deliver such Equipment into the custody of a duly authorised law enforcement officer or government representative, officer or agency or provide such persons or instrumentalities with access to such Equipment if COMTEST receives a request or demand from such person or instrumentality for such delivery or access. If authorised, COMTEST will advise the Customer of such deliver or access.

**10.3** The Customer shall indemnify and hold harmless COMTEST against all costs and liability incurred as a result of COMTEST's possession and use of such Equipment or incurred as a result of delivering such Equipment to a third party including, without limitation, any action brought by a third party for breach of that third party's intellectual property rights.

### **11. OWNERSHIP OF EQUIPMENT & CONFIDENTIALITY**

**11.1** COMTEST acknowledges that all Equipment is the property of the Customer.

**11.2** COMTEST acknowledges the confidential nature of, and the Customer's intellectual and industrial property rights in, the Equipment.

**11.3** Subject to being able to make disclosures to employees and sub-contractors for the purpose of enabling the performance of the Services and subject to Clauses 9.3 (keep copy) and 10 (compliance with law) of this agreement, COMTEST shall not without the Customer's prior consent in writing, copy or cause to be copied or disclose any details of the Equipment to a third party.

**11.4** COMTEST's obligations under this clause shall survive the termination of this agreement.

### **12. WARRANTIES AND LIMITATION OF LIABILITY**

**12.1** Except as this agreement specifically states, or as contained in any express warranty provided in relation to the Services, this agreement does not include by implication any other term, condition or warranty in respect of the quality, acceptability, fitness for purpose, description or performance of the Services or any contractual remedy for their failure.

**12.2** If the Customer is a consumer nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against COMTEST for failure of a statutory guarantee under the ACL.

**12.3** Except to the extent of any liability imposed by the ACL, COMTEST is not liable:

12.3.1 to the Customer in any way arising under or in connection with the provision of Services; or

12.3.2 for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.

**12.4** Nothing in this agreement is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the supply of Services which cannot be excluded, restricted or modified.

**12.5** This agreement contains the entire agreement of the parties with respect to the Services and the Customer warrants that it has not relied on any representation made by COMTEST or implied from any descriptions or illustrations or specification contained in any document including any catalogues or publicity material produced by COMTEST which has not been stated expressly in this agreement.

### **13. INDEMNITY**

**13.1** Except where the Customer is a consumer and COMTEST has not used due care and skill, the Customer shall indemnify COMTEST:

13.1.1 its officers, employees, subcontractors and agents during the term of this agreement and thereafter from and against all losses, expenses, claims, proceedings, costs and damages that may be suffered by all or any of them and which are caused by or arise from the provision of the Services including the use or otherwise of the Equipment;

13.1.2 its officers, employees, subcontractors and agents during the term of this agreement and thereafter from and against any action brought by any third party in relation to all losses, expenses, claims, proceedings, costs and damages that may be suffered by any third party and which are caused by or arise from the use or otherwise of the Equipment or the report, including without limitation any breach by the Customer of the conditions contained in Clause 8.4; and

13.1.3 against liability for the death of, or injury to, any person employed by the Customer, its officers, employees, agents or subcontractors whilst the Services are being provided.

### **14. CANCELLATION**

**14.1** If COMTEST is unable to provide the Services, then it may cancel the Customer's order (even if it has been accepted) by written notice to the Customer.

**14.2** No purported cancellation or suspension of an order or any part of it by the Customer is binding on COMTEST once the order has been accepted. If any cancellation or suspension by the Customer is accepted by COMTEST, it may charge the Customer in accordance with clauses 4.7 and 4.8.

## **15. FORCE MAJEURE**

**15.1** In the event that COMTEST shall be wholly or partially prevented from carrying out its obligations under this agreement by reason of causes beyond its reasonable control, including without limitation, industrial disputes, strikes, lockouts, accident, breakdown, acts of God or acts or threats of terrorism or war ("Force Majeure"), then COMTEST will not be liable in any way howsoever arising under the agreement. .

**15.2** COMTEST shall notify the Customer as soon as practicable of any anticipated delay due to Force Majeure.

**15.3** If an event of Force Majeure occurs, COMTEST may suspend or terminate the agreement by written notice to the Customer.

## **16. TERMINATION**

**16.1** Without limiting the generality of any other clause in this agreement, either Party may terminate this agreement by notice in writing if:

16.1.1 the other Party commits a material breach of any of the terms of this agreement and does not rectify this breach within fourteen (14) days of receiving written notification of the said breach; or

16.1.2 it gives fourteen (14) days prior written notice to the other Party of its intention to terminate this agreement.

**16.2** If notice is given to the Customer pursuant to Clause 16.1 (terminate in writing), COMTEST may, in addition to terminating the agreement, retain any monies paid, charge a reasonable sum for work performed in respect of which work no sum has been previously charged, be regarded as discharged from any further obligations under this agreement, and pursue any additional or alternative remedies provided by law.

## **17. NOTICES**

**17.1** All notices, consents or other communications required or permitted to be given under this agreement by any party to another shall be in writing and handed personally or sent by email, facsimile or prepaid mail addressed to the last known address of the intended recipient. In the case of COMTEST the address is as follows, Business Director, COMTEST LABORATORIES PTY LTD, Unit 1, 570 City Road, South Melbourne, Victoria, 3205, Facsimile (03)9645 5944 or email [comtest@comtest.com.au](mailto:comtest@comtest.com.au). In the case of the Customer, to the address of the person who signed the agreement. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.

## **18. SUB-CONTRACTS**

**18.1** The Customer acknowledges that COMTEST may sub-contract the performance of this agreement or any part of this agreement. COMTEST will inform the Customer of the details of the sub-contractor.

## **19. WAIVER**

**19.1** No waiver by COMTEST of any of its rights under this agreement will prejudice its rights in respect of any subsequent breach of the agreement by the Customer. Any failure by COMTEST to enforce any of the provisions of this agreement, or any forbearance, delay or indulgence granted by COMTEST to the Customer, will not be construed as a waiver of its rights pursuant to the agreement.

## **20. SEVERABILITY**

**20.1** In the event of any provision or provisions of this agreement being invalid, unenforceable or illegal for any reason, the agreement shall remain otherwise in full force apart from the said provision or provisions which will be deemed deleted.

## **21. GOVERNING LAW**

**21.1** This agreement will be governed by and construed according to the law of the State of Victoria, Australia.