



“Assisting you to make the process work”

**Terms and Conditions
For Certification
And Assessment Services**



JAS-ANZ Accredited Company
Trademark Licenced
Quality Control Services (Environmental) Pty Ltd

29 April 2014

To be read in conjunction with your application

Terms and Conditions for Certification and Assessment Services

1. APPLICABILITY

These terms and conditions govern the supply of Certification or Assessment Services by QCS(E) to the Client.

These terms and conditions prevail over any other terms that may be communicated by the Client in writing or orally, whether in an order, letter, other document, in negotiations or otherwise.

No person acting or purporting to act on behalf of QCS(E) shall have authority to waive or change these terms orally. Waivers or changes shall have effect only if made in writing and signed by a duly authorized officer of QCS(E).

QCS(E) may vary these terms and conditions at any time by notifying the Client in writing.

2. DEFINITIONS

In these terms and conditions:

'Certificate' means the document issued by QCS(E) to record Certification;

'Certification' means confirmation that a product, process or service has been assessed in accordance with Certification Procedures as meeting specified requirements;

'Certification Mark' means a symbol, word or other sign that signifies that a product, process or service has been certified by a competent person as meeting specified requirements;

'Certification Procedures' means procedures developed by QCS(E) and used in assessing a product, process or service for the purpose of granting or maintenance of Certification. These terms and conditions override any inconsistent Certification Procedures;

'Certification Services' means assessment of a product, process or service in accordance with Certification Procedures. Certification Services includes assessment and verification services, gap analysis and second party audits, whether or not a certificate is issued;

'Client' means the company, organisation or individual seeking Certification;

'Contract' means the contract between QCS(E) and the Client resulting from the Client's application for Certification and License;

'Site' means the location of manufacture of product or of performance of a process or service;

'QCS(E)' means Quality Control Services (Environmental) Pty Ltd ABN 85 102 935 195.

3. CERTIFICATION AND ASSESSMENT SERVICES

Under the Contract, QCS(E) agrees to provide and the Client agrees to accept the Certification and Assessment Services requested by the Client.

QCS(E) may appoint an agent or contractor to provide Certification and Assessment Services, including undertaking all or part of the Certification Procedures.

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4. FEES

The Client must pay to QCS(E) all fees due in respect of Certification and Assessment Services provided by QCS(E) to the Client. **Failure to pay fees in full may result in suspension of certification.**

The fees payable are those set out in the Contract agreed between QCS(E) and the Client.

QCS(E) may from time to time render invoices for fees due and the Client must pay the invoiced amount to QCS(E) in the currency specified **within 14 days of the date of QCS(E)'s invoice.**

QCS(E) reserves the right to amend its Schedule of Fees at the completion of any defined contract period.

5. ASSESSMENT

Access and Co-operation

The Client agrees to comply with the applicable Certification and Assessment Procedures and to provide QCS(E)'s employees, agents and contractors with all co-operation and assistance required by the applicable Certification and Assessment Procedures necessary to enable QCS(E) to provide the Certification and Assessment Services requested by the Client, including reasonable access to the premises, facilities, documents and records of the Client and the Client's contractors and agents.

The Client must promptly comply with any reasonable requirement of QCS(E) in relation to the Client's product, process or service to make appropriate the Certification request by the Client including access to complaints related to their clients.

Safety

The Client accepts responsibility for the safety of QCS(E)'s employees, agents and contractors in activities required under the applicable Certification Procedures, including the provision of all relevant safety or protective clothing and/or equipment and advising QCS(E) appropriately of any safety hazards or special training requirements.

Accuracy of Information Provided to QCS(E)

The Client warrants that all information made available to QCS(E) is, to the best of its knowledge and belief, complete and accurate.

6. CERTIFICATION

If

- a. the Client is not in breach of these terms and conditions; and
- b. after assessment of the Client's products, process or service in accordance with the applicable Certification and Assessment Procedures, QCS(E) is satisfied that Certification is appropriate;

QCS(E) will:

- a. grant Certification;
- b. issue the Client with a Certificate; and
- c. if so requested by the Client, and if relevant, grant or arrange to have granted to the Client a license to use the applicable Certification Mark.

If QCS(E) is not satisfied that Certification is appropriate, QCS(E) must notify the Client.

7. AFTER CERTIFICATION

Duration of Certification

Subject to these terms and conditions, Certification continues until any expiry date referenced in the Certificate, generally every three years.

Maintenance of Certification

The Client must maintain the product, process or service as certified and comply with all reasonable requirements including the payment of fees that QCS(E) considers necessary to ensure that Certification continues to be appropriate, including any requirements listed or referred to in the Certificate.

Changes

The client must promptly inform QCS(E) of any change in relation to the certified product, process or service that is likely to substantially affect the Certification, including change of address of any relevant sites or other premises.

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Use of Certificate

The Client must not, without QCS(E)'s permission, alter, modify, deface or destroy the Certificate.

Subject to these terms and conditions, the Client may publicise the fact that Certification has been granted and use the Certificate as evidence of Certification. The Client may copy the Certificate provided that each copy is clearly identified as a copy, and provide the copy as part of any Company Report to its clients.

The original and any copies of the certificate remain the property of QCS(E) and must be returned immediately if requested by QCS(E).

The Certificate does not imply that any Certification is approved by any accreditation authority or any Government Ministers.

No Misrepresentation of Certification

The Client must not:

- a. engage in any conduct which might mislead, deceive or confuse any person in relation to; or
- b. otherwise misrepresent the nature, status, scope or effect of its Certification by QCS(E).

The Client must promptly comply with any directions given by QCS(E) to correct any conduct or misrepresentation in breach of the Terms and Conditions and the Contract.

Suspension, Cancellation or Expiry of Certification

QCS(E) may suspend the Client's Certification with immediate effect by giving notice to the Client if QCS(E) reasonably believes that Certification is no longer appropriate.

If the Client's Certification is suspended:

- a. QCS(E) must within 30 days of notifying the Client of the suspension, furnish the Client with information outlining the steps that must be taken by the Client to enable the suspension to be lifted;
- b. The Client must immediately take all steps necessary to enable the suspension of its Certification to be lifted; and
- c. The client must take all steps reasonably required by QCS(E) to prevent the public being misled or otherwise harmed.

If QCS(E) is satisfied with the remedial action taken by the Client, QCS(E) may lift the suspension of Certification by notifying the Client.

QCS(E) may cancel the Client's Certification with immediate effect by giving notice to the Client if the Client's Certification has remained suspended for a period of more than 90 days.

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If the Client's Certification expires or is cancelled or the Contract is terminated under clause 14, the Client must immediately:

- a. pay to QCS(E) all amounts due but unpaid by the Client;
- b. cease using any Certification Mark licensed in connection with the Client's Certification (if any);
- c. withdraw from public display and return to QCS(E), as required by QCS(E), the original and all copies of the Certificate;
- d. cease all advertising, promotions or other publication of the fact of Certification;
- e. take any steps reasonably required by QCS(E) to notify staff, customers and/or suppliers of the expiry or cancellation of Certification;
- f. take steps to repaint or redecorate signage or other parts of the Client's premises to remove reference to Certification;
- g. stop using QCS(E)'s confidential information and, at QCS(E)'s option:
 - i) return to QCS(E);
 - ii) destroy and certify in writing to QCS(E) the destruction of; or
 - iii) destroy and permit QCS(E) to witness the destruction of all QCS(E)'s confidential information in the Client's possession or control; and
- h. take all other necessary steps to ensure that third parties are not misled to believe that the Certification has not expired or been cancelled.

8 CONFIDENTIALITY

- 8.1 QCS(E) must ensure that its employees, agents and contractors treat as confidential, and do not disclose to any other third person without the prior written consent of the Client, any proprietary or confidential information belonging to the Client with which QCS(E) becomes acquainted during the term of the Contract except that, where QCS(E) considers it appropriate, QCS(E) may disclose the Client's identity and the nature, status, scope or effect of the Client's Certification.
- 8.2 Nothing in 8.1 restricts QCS(E) from disclosing information obtained as a result of the services provided, to a relevant regulatory body, wherein QCS(E)'s opinion, the health or safety of another party may be compromised.
- 8.3 The Client must treat as confidential and not disclose to any third party without the prior written consent of QCS(E) any proprietary or confidential information belonging to QCS(E).
- 8.4 The obligations of confidentiality under these terms and conditions do not extend to information that:
 - a) is rightfully known to or in the possession or control of the receiving party and not subject to an obligation of confidentiality owed by the receiving party;
 - b) is public knowledge (otherwise than as a result of breach of these terms and conditions);
 - c) is required by an accreditation authority to be disclosed; or
 - d) is required by law to be disclosed.

9 INTELLECTUAL PROPERTY RIGHTS

The Client acknowledges that:

- a) QCS(E) is the owner or licensee of copyright, know-how and other intellectual property rights in the Certification and Assessment Procedures and any associated documentation; and
- b) No right, title or interest in the Certification and Assessment Procedures or that documentation is transferred to the Client under the Contract.

10 LIMITATION OF LIABILITY

- 10.1 QCS(E) excludes from these terms and conditions all conditions and warranties implied by statute (including the Trade Practices Act, 1974), general law or custom except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void ('non-excludable statutory condition').
- 10.2 QCS(E)'s liability to the Client for breach of any express provision of these terms and conditions or any non-excludable statutory condition (other than an implied warranty of title) is limited at QCS(E)'s option to:
 - a) providing the Certification Services again; or
 - b) paying the cost of having the Certification Services supplied again.
- 10.3 Except to the extent prohibited by the Trade Practices Act, 1974 or any other applicable laws, QCS(E) excludes liability for any loss or damage suffered by the Client (whether direct, indirect or consequential) arising in any way out of any services (including defective services) rendered by QCS(E) or out of the Client's product, process or service the subject of Certification by QCS(E) or any negligent act or omission of QCS(E), its officers, employees, agents or contractors, including but not limited to profits lost and damage sustained or incurred as a result of a claim by a third person.

11 INSURANCE

The Client must:

- a) take out and maintain valid and enforceable public liability, professional indemnity and workers' compensation insurance policies to cover potential liability of:
 - (i) the Client arising out of the Contract.
- b) provide QCS(E) with certificates of currency and any other evidence of those policies that QCS(E) may reasonably require, if requested to do so.

12 INDEMNITY

The Client must indemnify QCS(E) from and against all expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against QCS(E)) and QCS(E) may sustain or incur as a result, whether directly or indirectly, of:

- a) any breach of these terms and conditions by the Client, including, but not limited to, a breach in respect of which QCS(E) exercises an express right to terminate these terms and conditions; or
- b) any loss of or damage to any property or injury to or death of any person:
 - (i) caused by any negligent act or omission or willful misconduct of the Client or its officers and employees;
 - (ii) arising out of or in connection with the Client's product, process or service that is the subject of Certification.

The common law in the Commonwealth of Australia allows QCS(E) to exclude itself from professional indemnity insurance required to compensate a client for liability on the part of QCS(E). You should be aware of this position and consider taking out professional indemnity insurance referred to in this clause that covers your organisation against this possibility.

13 NON-SOLICITATION OF PERSONNEL

The Client agrees not to solicit any QCS(E) officers, employees, agents or contractors during the contract or for six months after the termination of the Contract. This agreement by the Client is specifically focused on offers of employment or contract to the QCS(E) employee.

14 TERMINATION OF CONTRACT

14.1 The Client may terminate the Contract at any time by giving 30 days prior notice to QCS(E).

14.2 QCS(E) may terminate the Contract with immediate effect by giving notice to the Client if:

- a) the Client breaches any of these terms and conditions (other than in a manner permitting suspension) and fails to remedy the breach within 30 days after receiving notice requiring it to do so;
- b) the Client breaches a material provision of these terms and conditions where that breach is not capable of remedy; or
- c) any event referred to in clause 14.3 happens to the Client.

14.3 The Client must notify QCS(E) immediately if:

- a) there is any change in the direct or indirect beneficial ownership or control of the Client;
- b) it disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
- c) it ceases to be able to pay its debts as they become due;

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- d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of its assets, operation or business;
- e) any step is taken to enter into any arrangement between the Client and its creditors;
- f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to the whole or any part of its assets or business; or
- g) where the Client is a partnership, any step is taken to dissolve that partnership or a partner dies.

15 AFTER TERMINATION

- 15.1 On termination of the Contract the Client must immediately comply with all its obligations under clause 7.
- 15.2 Clauses 8, 9, 10, 12, 13 and 15 continue after termination of the Contract.
- 15.3 Termination of the contract under clause 14 (Termination) or clause 23 (Force Majeure) does not affect any accrued rights or remedies of either party.

16 APPEALS

The Client may have rights of appeal against decision of QCS(E). Please direct any enquiry to QCS(E) directly.

17 ASSIGNMENT

- 17.1 QCS(E) may assign all or any of its rights under the Contract.
- 17.2 The Client must not assign or otherwise transfer all or any of its rights under the Contract without the prior written consent of QCS(E).

18 SEVERABILITY

If all or any part of the Contract is found by a court of competent jurisdiction to be illegal or unenforceable, the illegal or unenforceable part(s) may be severed from the Contract and the remaining parts of the contract shall continue in force.

19 WAIVER

The failure of QCS(E) at any time to require performance of any obligation under the Contract is not a waiver of its right at any other time to require performance of that or any other obligation under the Contract.

20 RELATIONSHIP

The contract does not create any fiduciary, employment, agency or partnership relationship between QCS(E) and the Client.

21 NOTICE

- 21.1 A party giving notice or notifying under the Contract must do so in writing:
- a) directed to the recipient's address for correspondence as nominated in the Application or varied by any notice; and
 - b) hand delivered or sent by prepaid post or email to that address.
- 21.2 A notice given in accordance with clause 21.1 is taken to be received:
- a) if hand delivered, on delivery;
 - b) if sent by prepaid post, three days after the date of posting; or
 - c) if sent by email, when the sender's email system generates a message confirming successful receipt of the message.

22 HEADINGS

Headings are for ease of reference only and do not affect the meaning of these terms and conditions.

23 FORCE MAJEURE

No party is liable for any failure to perform or delay in performing its obligations under the Contract if that failure or delay is due to flood, fire, earthquake or other occurrence beyond that party's reasonable control. If that failure or delay exceeds 60 days, the other party may terminate the Contract with immediate effect by giving notice to the other party.

24 GOVERNING LAW AND JURISDICTION

- 24.1 The Contract is governed by the law applicable in the State of South Australia.
- 24.2 Each party submits to the non-exclusive jurisdiction of the courts of the State of South Australia.

25 SPECIFIC REQUIREMENTS

Notwithstanding the information set out above, the client must in all cases comply with the following:

- (a) comply with the relevant provisions of the certification program
- (b) make all necessary arrangements for the conduct of the assessment including provision for examining documentation and the access to all areas, records and personnel for the purposes of assessment, surveillance, reassessment and resolution of complaints
- (c) only claim that it is certified with respect to those activities for which it has been granted certification
- (d) does not use its certification in such a manner as to bring the certification body into disrepute, and does not make any statement regarding its certification, which the certification body may consider misleading or unauthorised
- (e) upon suspension or withdrawal of its certification, discontinues use of all advertising material that contains any reference thereto and returns any certification documents as required by the certification body
- (f) ensures that no certification document, mark or report, or any part thereof is used in a misleading manner
- (g) uses certification only to indicate that the management system is in conformity with specified standards or other normative documents, and does not use its certification to imply that a product or service is approved by the certification body
- (h) in making reference to its certification in communication media such as documents, brochures or advertising, complies with the requirements of the certification body
- (j) for OHS certification only, you must notify QCS(E) of any significant (reportable) event and provide a summary of these events (if applicable) to the QCS(E) auditor at each and every audit event