

1. Purpose and Application

- 1.1. These terms and conditions govern the delivery of Proficiency Testing programmes, Reference and Quality Control Materials, DataChek products and services and all other Goods and Services as provided from time to time by Global Proficiency, unless the Customer and Global Proficiency expressly agree in writing that these terms and conditions will not apply.
- 1.2. Any request received by Global Proficiency from the Customer for the supply of Goods or Services will constitute an offer by the Customer to acquire the Goods or Services on the terms of this Agreement only. All other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification, or other document) are expressly excluded.

2. Definitions

Agreement means the agreement between the Customer and Global Proficiency on these terms and conditions for the provision of Goods and/or Services by Global Proficiency to or for the Customer;

Amount Owing means any amount owing by the Customer to Global Proficiency under these standard terms and conditions or any other agreement, including any interest payable by the Customer, any liability of the Customer, and any enforcement costs incurred by Global Proficiency in seeking payment of any Amounts Owing;

Customer means the company, organisation or individual which accepts the supply of Goods and/or Services from Global Proficiency;

Customer Provisions includes laboratory results, data, goods, samples, equipment, materials or information provided by the Customer to Global Proficiency in connection with the Goods and/or Services;

Estimated Price means an estimate or quotation given by Global Proficiency to the Customer for the supply of Goods and/or Services;

Global Proficiency refers to both Global Proficiency Limited and Global Proficiency Pty Limited;

Goods means the goods, samples, equipment and materials including without limitation reference materials, chemical or biological materials, proficiency testing samples, custom synthetic products, analytical data, results, reports, certificates of analysis, data summaries and safety data sheets to be provided to the Customer by Global Proficiency under the Agreement;

Liability means any and all liability, including liability for the acts or omissions of Personnel: (a) for any breach of the Agreement; (b) for any misrepresentation, misstatement, or act or omission, including without limitation, negligence arising under or in connection with the Agreement; (c) for any breach of statutory duty; and/or (d) otherwise arising in connection with the performance or contemplated performance of the Agreement, including under indemnification provisions (if any);

Personal Information has the meaning given to it in the Privacy Act 2020;

Personnel means any employees, agents or providers of external services or products;

Price means the price charged by Global Proficiency for the Goods and/or Services and payable by the Customer in accordance with this Agreement;

Related Company has the meaning given to that term in section 2(3) of the Companies Act 1993 (read as if the expression “company” in that section included any body corporate wherever incorporated or established);

Representative means any officer, employee, consultant, agent, contractor or subcontractor of a party;

Services means the services, including without limitation any proficiency testing services, customised services, analysis of data, interpretation of results, production of reports, training, distribution of samples and/or related services to be provided to the Customer by Global Proficiency under the Agreement.

3. Orders of Goods and Services

- 3.1. Registration for proficiency testing participation is an annual process, typically scheduled in October to obtain Customers’ commitment to the selected Services in the upcoming calendar year.
- 3.2. Ad hoc enrolments for the supply of Goods and/or Services throughout the year may also be accepted, subject to availability.
- 3.3. The Customer shall adhere to all schedules provided by Global Proficiency and promptly supply to Global Proficiency at the Customer’s cost the Customer Provisions and any other materials or information required for Global Proficiency to execute the Customer’s order for the supply of Goods and/or Services, and the Customer hereby acknowledges that its failure to do so may preclude or delay the supply of the Goods and/or Services.
- 3.4. Global Proficiency reserves the right at its sole and absolute discretion to refuse orders from Customers for the supply of Goods and/or Services, including without limitation to countries or individuals where the supply of Goods and/or Services would contravene any relevant export controls, economic sanctions, or other trade embargoes or restrictions imposed by its suppliers.

4. Delivery and Damage

- 4.1. Global Proficiency shall endeavour to supply the Goods and/or Services as per pre-determined schedules where applicable, or within the time agreed, and if no time is agreed, within a reasonable time.
- 4.2. Any dates specified by Global Proficiency for supply of the Goods and/or Services are intended to be an estimate. Global Proficiency is not liable for non-delivery, or late delivery of Goods where the Customer, or local agent has not provided the required documentation (including importation

permits), or has not paid local taxes or duties, or other factors outside Global Proficiency's control. Global Proficiency may make delivery of the Goods and/or Services by instalments and the Customer shall accept such instalments.

- 4.3. Where products received by the Customer are unusable due to an error made by Global Proficiency or the courier or freight company, Global Proficiency may, at Global Proficiency's sole discretion, replace such products at Global Proficiency's cost or issue a credit note.
- 4.4. Any Goods which are damaged, defective or incorrect when delivered to the Customer must be reported to Global Proficiency within three (3) calendar days of receipt. Global Proficiency may at its sole and absolute discretion elect to replace or refund the Customer in respect of such Goods, and any claim for refund or replacement must be made by the Customer within 30 (thirty) days of delivery to the Customer. Subject to any matters outside Global Proficiency's control, any replacement Goods will be despatched within a reasonable time. All Goods must be stored in accordance with any instructions made known to the Customer and Global Proficiency will not be required to refund or replace the Goods where those instructions have not been followed by the Customer.

5. Warranty and Liability

- 5.1. Any statements (whether written or oral) as to the Goods supplied or Services carried out and all/any opinions in any reports or other communications provided by Global Proficiency to the Customer are made in good faith and on the basis of the Customer Provisions.
- 5.2. Except where expressly stated otherwise in this Agreement, all warranties, conditions, representations, rights, obligations, liabilities, and other terms whether express or implied by statute or common law in connection with the Goods and/or Services (including without limitation any relating to performance, care and skill or compliance with representations) are, to the fullest extent permitted by law, excluded from the Agreement.
- 5.3. The parties agree that, for the purposes of section 5D of the Fair Trading Act 1986 (FTA): (a) to the extent permitted by law, in respect of all matters under or in connection with this Agreement, the parties are contracting out of sections 9, 12A and 13 of the FTA; (b) the parties have each had an opportunity to receive advice from a lawyer prior to entering this Agreement; and (c) it is fair and reasonable for the parties to be bound by this clause.
- 5.4. The Customer acknowledges that the Goods and Services are not consumer services for the purposes of the Consumer Guarantees Act 1993 (CGA) and accordingly, the CGA does not apply.
- 5.5. Global Proficiency shall have no Liability for the use made by the Customer of the Goods and/or Services, for advice supplied by Global Proficiency to the Customer, and/or for any decisions taken by the Customer (or costs incurred by the Customer) in consequence of such use.
- 5.6. To the extent permitted by law, the maximum aggregate liability of Global Proficiency for a claim arising under or in connection with this Agreement and/or the Customer's use of (or inability to

- use) any Goods or Services, whether in tort (including negligence), contract, statute or otherwise, is limited, at the option of Global Proficiency, to: (a) resupplying the Goods or Services that gave rise to the claim; or (b) crediting or repaying the Customer the lesser of \$5,000 and the Price paid by the Customer for the Goods or Services that gave rise to the claim in the 12 months preceding the date of the Customer's notice of the claim to Global Proficiency.
- 5.7. Global Proficiency shall have no Liability for loss of profit, loss of business or revenue, loss of anticipated savings, depletion of goodwill, any third-party claims, or any indirect or consequential loss or damage, which arise out of or in connection with any Agreement.
- 5.8. Global Proficiency will not be liable to the Customer for any failure or delay in the performance of Goods or Services where such failure or delay is caused by events or circumstances beyond the control of Global Proficiency.
- 5.9. In the event of a dispute, the Customer must pay all Amounts Owing and then settle any claim with Global Proficiency.
- 5.10. The Customer may not make a claim against Global Proficiency under or in connection with the Goods or Services unless the Customer notifies Global Proficiency of the claim as soon as reasonably practicable, and in any event not more than 12 months after the Customer becomes aware of the matter, information, event or circumstance giving rise to, or the subject of, the claim.
- 5.11. To the extent permitted by law, the Customer shall: (a) fully indemnify Global Proficiency and Global Proficiency's Personnel or Representatives against any loss, damage or injury (including injury resulting in death) to property or person sustained by (i) Global Proficiency and/or its Personnel or Representatives, (ii) the Customer and/or its Personnel, and (iii) any third party, where such loss, damage or injury is caused by the negligent act or omission of the Customer or the Customer's Personnel; and (b) fully indemnify Global Proficiency against all damages, costs, expenses (including professional fees) and losses suffered or incurred by Global Proficiency as a result of, or in connection with any third party claim brought against Global Proficiency resulting from death, injury, damage or loss occasioned by the use made of the Goods and/or Services including without limitation any report or other information or advice of Global Proficiency.

6. Health and Safety

- 6.1. The Customer shall ensure that all appropriate safety measures and legislation are observed when sending any Customer Provisions to Global Proficiency and/or Goods are sent to the Customer and shall ensure that any hazardous material is clearly marked. Where the Customer knows or suspects that any substance or procedure it is providing may give rise to a hazard, the Customer shall make Global Proficiency aware in writing of the nature of that hazard before arranging for delivery or before any Personnel or Representative are exposed to the hazard.

- 6.2. Global Proficiency shall ensure that Personnel attending premises in connection with the Goods and/or Services comply at all times with all health and safety measures, procedures and protocols in place on the visited premises and with such other directions regarding safe working as directed.
- 6.3. The Customer shall ensure that the Customer's Personnel attending Global Proficiency's premises in connection with the Goods and/or Services comply at all times with all health and safety measures, procedures and protocols in place on Global Proficiency's premises and with such other directions regarding safe working as Global Proficiency may direct. Global Proficiency reserves the right at its absolute discretion to refuse to admit to or remove from its premises any of the Customer's Personnel who in Global Proficiency's opinion are unable to comply with this clause.

7. Risk and Title

- 7.1. Any risk associated with Goods sent from Global Proficiency shall pass to the Customer upon delivery. However, title in all Goods shall remain with Global Proficiency and shall not pass to the Customer until payment in full of all amounts payable by the Customer under the Agreement has been received by Global Proficiency.
- 7.2. Until such time as title in the Goods has passed to the Customer: a) Global Proficiency shall have absolute authority to re-take, sell or otherwise deal with any of the Goods which have not yet been used by the Customer; and b) Global Proficiency shall be reasonably entitled to require the Customer to reimburse Global Proficiency for the cost of providing the Goods.
- 7.3. Responsibility and liability in respect of the safe storage and handling, use and subsequent disposal of Goods will transfer to the Customer on delivery, and the Customer shall ensure that all Goods are handled appropriately on and after delivery at all times by suitably qualified Personnel.

8. Price

- 8.1. The Customer will pay Global Proficiency the Price for all Goods and Services supplied by Global Proficiency.
- 8.2. Unless expressly stated otherwise by Global Proficiency, Prices and Estimated Prices are: (a) in New Zealand dollars; (b) exclusive of tax payable under the Goods and Services Tax Act 1985 and any other applicable taxes and duties; (c) exclusive of reasonable out-of-pocket expenses and disbursements incurred by Global Proficiency in connection with the provision of the Goods or Services; and (d) unless stated otherwise in writing, exclusive of any freight and delivery costs to and from Global Proficiency's premises.
- 8.3. Any applicable reasonable out-of-pocket expenses and disbursements, taxes and/or freight and delivery costs are payable by the Customer in addition to the Price. The Customer will pay all

Amounts Owing to Global Proficiency in full by the due date for payment, without counterclaim, set off, withholding, deduction or claim of any other nature.

- 8.4. Any Quotation provided by Global Proficiency will expire if not accepted within 6 weeks of the date of the Quotation. Global Proficiency may withdraw any Quotation before it is accepted by the Customer.
- 8.5. If Global Proficiency provides an Estimated Price for Goods or Services, Global Proficiency will use its reasonable endeavours to provide the relevant Goods or Services as per the Estimated Price using resources reasonably available to Global Proficiency. However, any Estimated Price is indicative only. Without limiting the foregoing, an Estimated Price may be adjusted if the Services are more complex or time consuming than anticipated by Global Proficiency, a Force Majeure event occurs which directly or indirectly affects the Estimated Price, or there is a change in the scope, or timing of the provision of, the Goods or Services.

9. Payment

- 9.1. As soon as practicable during each month, Global Proficiency will submit an invoice to the Customer which sets out the Amount Owing for the supply of the Goods and provision of the Services in the current or any previous month, including, at Global Proficiency's option, for Services that are not complete and are provided over a period of more than one month.
- 9.2. The Customer will pay all Amounts Owing by the 20th of the month following the date of Global Proficiency's invoice (unless expressly agreed otherwise in writing in respect of a particular Service).
- 9.3. If the Customer disputes all or any part of an invoice, the Customer must: (a) pay, by the due date, the undisputed portion of the disputed invoice; and (b) notify Global Proficiency of the dispute, including the grounds of dispute, with full supporting details.
- 9.4. Failure to notify Global Proficiency of any dispute under clause 9.3 within 20 Business Days of the date of an invoice will constitute acceptance of that invoice and the Customer will have no further right to dispute such invoice.
- 9.5. If payment in full of all Amounts Owing is not made to Global Proficiency by the relevant due date the Customer will pay to Global Proficiency on demand default interest on any Amount Owing, at a rate of 5% per annum above Global Proficiency's bank's then current overdraft rate, calculated on a daily basis from the date payment is due until the date payment is received by Global Proficiency. In the case of Proficiency Testing Programmes, Global Proficiency also reserves the right to withhold reports until full payment is received.
- 9.6. Global Proficiency may apply any payments received from or on behalf of the Customer in reduction of the Amount Owing in such order and manner as Global Proficiency thinks fit, despite any direction to the contrary and whether before or after a breach of this Agreement.

10. Intellectual Property

- 10.1. Unless otherwise agreed in writing, the ownership of any and all rights in and to any data, results, reports, certificates of analysis, data summaries, safety data sheets, copyright, patents, designs, conceptual solutions, inventions, software, databases, know-how, confidential information, and any other rights in intellectual property (whether registered or unregistered) (“IP”), other than third party rights, arising as a result of Global Proficiency providing the Goods and/or Services (“Global Proficiency IP”), shall either remain vested, or automatically vest upon creation (as the case may be), in Global Proficiency.
- 10.2. The Customer shall not without the prior written consent of Global Proficiency use, exploit, divulge, or disclose to third parties any Global Proficiency IP which may be communicated to or gained by the Customer in connection with or as a result of Global Proficiency providing the Goods and/or Services, save that Global Proficiency shall grant the Customer a non-exclusive, non-transferable, non-sublicensable, revocable licence to use the IP in any Goods provided by Global Proficiency to the Customer in accordance with the terms of this Agreement.
- 10.3. Global Proficiency in respect of the Goods and/or Services, and the Customer in respect of the Customer Provisions and its use of the Goods and/or Services, shall each indemnify and keep indemnified the other against all liability (including professional costs) incurred by the other arising out of or in connection with any claim alleging infringement or misuse of a third party’s IP.
- 10.4. The Customer grants Global Proficiency or any Representative of Global Proficiency a non-exclusive, royalty free licence, during the Term, to use any of the Customer’s Intellectual Property obtained by, or disclosed to, Global Proficiency including any data generated from the provision of the Goods or Services that is owned by the Customer: (a) for the provision of the Goods or Services; (b) for the purpose of improving the Goods or Services; and (c) for analytical purposes including providing trends and insights, provided that information relating to the Customer will only be disclosed to a third party for analytical purposes in an anonymised and/or aggregated form. The Customer warrants that it has the right to grant the licence set out in this clause and indemnifies Global Proficiency for any costs, expenses or liabilities suffered or incurred by Global Proficiency as a result of a breach of this warranty.

11. Restrictions on Use

- 11.1. Global Proficiency Goods and Services are intended for laboratory use only and unless otherwise indicated are not to be used for any other purpose. The Customer shall remain responsible for handling and use of any Goods supplied hereunder while in their control and in particular shall ensure compliance with all applicable law and regulation relating to the use, handling and disposal of the Goods.

- 11.2. The Customer shall not use Global Proficiency's name or brand in any way to imply endorsement or otherwise by Global Proficiency of Goods or Services offered by the Customer, or of any process, information, advice, product, or service provided, marketed or sold by the Customer.
- 11.3. The Customer assumes all risk and responsibility in connection with the receipt, handling, storage, disposal, use and any misuse or other wrongdoing with respect to the Goods supplied by Global Proficiency. The Customer agrees that any handling or other activity undertaken in its laboratory with such products will be conducted in compliance with all applicable laws and regulations. The Customer shall indemnify and keep indemnified Global Proficiency against all loss, actions, costs, claims, expenses, and liabilities incurred by Global Proficiency by reason of any breach by the Customer of this Agreement.

12. Confidentiality

Subject to clauses 10 and 11, both parties shall use reasonable endeavours to keep confidential for a period of seven (7) years from the acceptance date of the supply of Goods and/or Services any confidential information (oral or written) provided or disclosed by or on behalf of the other. This clause shall not apply to any information which at the time of disclosure is (or subsequently becomes) published or generally available to the public (other than as a breach of the receiving party's obligation under this clause), which at the time of disclosure was already in the possession of the receiving party (other than under an obligation to the disclosing party), which subsequently legally comes into their possession from another source, which was independently developed, or which is required to be disclosed in order to comply with a legal requirement.

13. Cancellation

- 13.1. If the Customer cancels, extends or delays (or purports to cancel) the Agreement or part thereof, or fails to accept supply of the Goods and/or Services at the time agreed or if no time is agreed within a reasonable time, then the Customer shall be liable for (without prejudice to any other rights of Global Proficiency) and shall indemnify and keep indemnified Global Proficiency against any resulting loss, damage or expense or additional costs incurred by Global Proficiency in connection with the supply or non-supply of the Goods and/or Services including without limitation the cost of any services, material, plant or tools used or intended to be used therefor and the cost of labour and other overheads, including a percentage in respect of profit.
- 13.2. In case of pre-registered enrolment to the proficiency testing participation, cancellation of any order placed can only be applied in writing and will be accepted up to one calendar month prior to the scheduled despatch date.
- 13.3. For orders cancelled within one month prior to the scheduled despatch date, the Customer will pay 100% of the Price for those Goods or Services ordered.

14. Termination

- 14.1. Global Proficiency may terminate the Agreement with immediate effect by giving notice in writing to the Customer if: (a) clause 15 applies; or (b) the Customer is in material breach of the Agreement; or (c) the Customer is in breach of this agreement and, where such breach is remediable, the Customer fails to remedy the same within 30 (thirty) days of the receipt of a written request from Global Proficiency to do so.
- 14.2. Either party has the right to terminate the Agreement with immediate effect by giving notice in writing to the other party if the other party (each of the following events being an Event of Default (which will be deemed to be a breach of this Agreement)): (a) is unable to pay its debts; (b) is insolvent; (c) enters any form of bankruptcy, either compulsorily or voluntarily; (d) is subject to a receiver or other third party being appointed over or taking or attempting to take possession of any the party's assets; (e) takes or suffers any steps that could lead to the appointment of any insolvency office holder; or (f) undergoes any analogous occurrence under foreign law.
- 14.3. The termination of the Agreement shall be without prejudice to the rights and duties of either party accrued prior to termination. The clauses in the Agreement which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination. The Customer shall pay the Price in respect of any Goods and/or Services (or part thereof) supplied prior to termination, regardless of the reason for termination.

15. Force Majeure

If Global Proficiency is unable (whether temporarily or permanently) to procure any services or goods necessary to enable it to supply the Goods and/or Services or if the supply of the Goods and/or Services is prevented or hindered by reason of any cause beyond Global Proficiency's reasonable control (including but not limited to acts of God, governmental action, war or national emergency, acts of terrorism, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, currency restrictions, strikes or other labour dispute, or restraints or delays affecting shipping or carriers), Global Proficiency may cancel the Agreement by notice in writing to the Customer so far as it relates to the Goods and/or Services not then supplied or work not then done and such cancellation shall not give rise to any claims by the Customer and the Customer shall remain liable to pay for the Goods and/or Services supplied prior to the date of such cancellation.

16. Customer Data and Personal Information

- 16.1. The Customer must supply Global Proficiency with any information, including particulars of individuals or organisations, that Global Proficiency requires to maintain the delivery of Goods and Services.

- 16.2. The Customer authorises Global Proficiency to collect, use, disclose and retain information, including personal information (as defined in the Privacy Act 2020) about the Customer and its Representatives for the purpose of (as applicable), providing the Goods and Services, assessing the Customer's creditworthiness and enforcing any payment obligations under this Agreement. This may include Global Proficiency sharing such personal information with credit reporting and debt recovery agencies and with third party services providers.
- 16.3. The Customer represents and warrants that: (a) the Customer holds all necessary legal rights, title, consents and authority to provide customer data and Personal Information to Global Proficiency for the applicable purpose; (b) all customer data and Personal Information is accurate, up to date and complete at the time it is provided; and (c) the Customer will supply Global Proficiency with all relevant information to correct or update customer data or Personal Information.

17. General

- 17.1. The Customer shall not assign this Agreement or any part thereof without the prior written consent of Global Proficiency. Global Proficiency may assign Global Proficiency's interest in the Agreement or any part thereof to any member of the Global Proficiency Group or its successors or Related Companies. Global Proficiency shall be entitled to subcontract any part of the Services to be provided hereunder without the consent of the Customer provided that Global Proficiency will remain responsible for its subcontractor's performance of its obligations under this Agreement.
- 17.2. Each right or remedy of Global Proficiency under the Agreement is without prejudice to any other right or remedy of Global Proficiency whether under the Agreement or otherwise at law.
- 17.3. If any provision of the Agreement shall be held to be illegal, invalid or unenforceable in whole or in part, either under enactment or rule of law, such provision or part shall to that extent be deemed not to form part of the Agreement but the legality, validity and enforceability of the remaining provisions of the Agreement shall not be affected.
- 17.4. Global Proficiency reserves the right to announce publicly that it is providing Goods and/or Services to the Customer with the prior written consent of the Customer, not to be unreasonably withheld.
- 17.5. Any waiver by Global Proficiency of any breach of, or any default under, any provision of any Agreement by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms or conditions of the Agreement.
- 17.6. Notices or other communications given by one party to the other in connection with this Agreement must be in writing and sent by personal delivery, post or electronic mail to the address of the relevant party as notified to the other party from time to time.

- 17.7. Any notice or other communication is deemed to be received and sufficiently served if: (a) personally delivered, on receipt; (b) posted by pre-paid official postal service, on the second working day after posting; and (c) if sent by electronic mail, on successful transmission or, if dispatched after 5.00 pm (in New Zealand), on the next Business Day after dispatch.
- 17.8. Global Proficiency may amend these terms at any time by publishing an updated version on Global Proficiency's website and/or providing an updated version to the Customer, including on Global Proficiency's quotations or invoices. Any request for Goods or Services from the Customer after such notice will be deemed to be acceptance by the Customer of the updated terms.
- 17.9. This Agreement is governed by and construed in accordance with New Zealand law and the parties hereby submit to the exclusive jurisdiction of the courts of New Zealand.
- 17.10. A reference to a statute is a reference to a New Zealand statute and includes all regulations under and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.
- 17.11. For the purposes of Part 2, Subpart 1 (Contractual Privity) of the Contract and Commercial Law Act 2017: (a) Global Proficiency can enforce its rights under this Agreement even if Global Proficiency has not signed this Agreement; and (b) references in this Agreement to Global Proficiency's Representatives and Related Companies are intended to confer a benefit on such Representatives and Related Companies and be enforceable by them.