



Fera Science Limited (Fera)

STANDARD TERMS AND CONDITIONS FOR PROFICIENCY TESTING SCHEMES

1 DEFINITIONS

As used in this Agreement the following terms and expressions have the meanings set out below:

"Bespoke Report" means specially commissioned reports using Fapas[®] Data and tailored to individual Customer requirements.

"Bespoke Services" means specially commissioned services delivered by Fera and tailored to individual Customer requirements.

"Capita Group" means Capita PLC a company incorporated in England and Wales under number 02081330) whose registered office is situated at 71 Victoria Street, London, SW1H 0XA.

"the Contract" means the agreement concluded between Fera and the Customer for the participation in the Fapas[®] Programme and the supply of the Fapas[®] Products which are relevant to the Contract and also such of these Terms and Conditions as are included (with or without modification) expressly or by reference in the terms and conditions of the Contract.

"the Customer" means the person or laboratory that ordered Fapas[®] Products and Services under the Contract.

"Dispatch Date" means the working day that Fera dispatches Fapas[®] Products as part of the Proficiency Test to the Customer as detailed on the order form

"Fapas[®] Data" means the data derived from Proficiency Tests.

"Fapas[®] Guidelines" means the Fapas[®] Quality Manual, as edited by Fera from time to time in accordance and compliance with the ISO/IEC 17043, "Development and Operation of Laboratory Proficiency Testing Schemes" and the IUPAC International Harmonised Protocol for the Proficiency Testing of Analytical Chemistry Laboratories.

Fapas[®] Programme means the proficiency testing schemes Fapas Food Chemistry, Fapas Food Microbiology (FEPAS[®]), Fapas Water and Environmental (LEAP[®]), Fapas GM (GeMMA) and Bespoke Services.

"Fapas[®] Protocol" means the documents, as edited by Fera from time to time, that deal with the requirements, organisation and statistical analyses employed in Fapas[®] proficiency testing schemes.

"Fapas[®]" is a Registered Trade Mark of Fera Science Ltd. and is a proficiency testing service run by Fera Science Ltd.

"Fapas[®] Products" means Quality Control Samples, Reference Materials and/or Bespoke Reports supplied or distributed by Fera together with any paper work supplied with the Quality Control Samples, Reference Materials and/or Test Material and Test Reports provided either separately or as part of a Proficiency Test and any additional Test Reports and additional Fapas[®] Products requested by the Customer.

"Fera" means Fera Science Limited of Sand Hutton, York, YO41 1LZ (a company incorporated in England and Wales under number 9413107) whose registered office is situated at 17 Rochester Row, London, SW1P 1QT which is part of the Capita Group.

"Instructions" means the paperwork accompanying the Test Material which includes details of the analysis to be performed, the units to be used and the date by which analysis results must be returned to Fera.

"Intellectual Property Rights" means all intellectual and industrial property rights, including copyright, database rights, registered and unregistered design rights, know-how, models, patents, topography rights, registered and unregistered trademarks, rights in confidential information and any rights in any discovery, invention or process, and applications for and rights to apply for each of these in any country.

"Person" includes a corporation.

"the Price" means the Price exclusive of Value Added Tax, payable by the Customer for the Proficiency Test, as set out in Fera's current Price List.

"Proficiency Test(s)" means the distribution of one or more Fapas[®] Products, by Fera as part of a Proficiency Testing Scheme, for the analysis of one or more analytes by the Customer who will return their analysis results to Fera by the date specified in the Instructions accompanying the Fapas[®] Products. Fera will then prepare a Test Report containing an assessment or discussion of the Customer's performance usually within 6 weeks of the date specified for the return of results. The assessment may not be in the form of a z-score.

"Proficiency Testing Scheme" means a system for objectively checking laboratory results by means of an external agency including comparison of a laboratory's results at intervals with other laboratories, establishing trueness and assessing accuracy and the phrase Proficiency Testing shall be construed accordingly.

"Programme Year" means the Fera Proficiency Testing programme year, which runs from 1 January to 31 December.

"Quality Control Sample" means surplus proficiency test material, stable at least for the duration of the proficiency test, with assigned values and satisfactory ranges (± 2 standard deviations for proficiency assessment) derived from the overall proficiency test statistics.

"Reference Material" means quality control material that has undergone formal stability testing. The parameter values are derived from subsets of proficiency test data (ideally traceable to the International Standard). Parameter values are provided with associated uncertainties, derived from a combination of subsets of proficiency test data, homogeneity testing and stability testing.



“**Test Materials**” means substances suitable for conducting a Proficiency Test supplied for distribution on request to a Customer for analysis of one or more parameters and “Test Material” shall be likewise construed accordingly.

“**Test Report**” means the report prepared by Fera that describes the outcome of a Proficiency Test.

“**Working Day**” means a day other than a public holiday in the United Kingdom or a Saturday or Sunday.

2 APPLICATION

2.1 These Terms and Conditions shall apply to the exclusion of any terms and conditions supplied by the Customer.

2.2 No variation can be made to these Terms and Conditions without the written consent of Fera.

3 WAIVER

3.1 A waiver of any right or remedy under this Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

3.2 The failure or delay by either party at any time to enforce any provision of the Contract shall in no way affect its right thereafter to require complete performance by the other party, nor shall the waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of any such provision or be a waiver of the provision itself.

3.3 A failure or delay by Fera to exercise a waiver of any breach of the Customer's obligations shall not constitute a waiver of any other prior or subsequent breach.

4 SEVERABILITY

4.1 If a provision of this Contract is found to be unenforceable by a court that provision shall be deemed to be amended to the minimum extent necessary to make it enforceable. The unenforceability of a provision of this Contract shall not affect its continuance in force or any of its other provisions.

5 AMENDMENTS AND VARIATIONS

5.1 No amendment or variation of this Contract shall be effective unless it is in writing and signed by a duly authorised representative of Fera and the Customer.

6 ORDER, CANCELLATION AND DELIVERY OF FAPAS® PRODUCTS

6.1 On receipt of an order for taking part in one or more Proficiency Tests and payment of the Price, the Customer shall be entitled to participate in the Proficiency Tests relating to that order and Fera shall use its reasonable endeavours to dispatch Fapas® Products to the Customer on the date specified in the order for Fapas® Products dispatch.

6.2 The Customer may cancel the order within fourteen (14) days of placing the Proficiency Test order. Cancellations should be sent by email to info@fapas.com and i) the payment that is due shall be cancelled and ii) any payment made in advance shall be refunded within 14 days of receipt of the cancellation.

6.3 If the Customer cancels an order after 14 days of placing it and the Proficiency Test is due to take place in 30 days or more, 50% of the Price shall be paid by the Customer. If a Customer has paid in advance, Fera shall refund 50% of the Price. If the Customer cancels an order after 14 days and the Proficiency Test is due to take place within the next 30 days, the full Price shall be paid by the Customer and/or no refund shall be issued.

6.4 Where additional Test Reports and/or additional Fapas® Products are requested by the Customer, the Customer shall bear the cost of supplying those additional Test Reports and Fapas® Products and Fera shall use its reasonable endeavours to dispatch such within 7 days from receipt of the order.

6.5 Where Fapas® Products are considered temperature or time sensitive by Fera they shall be dispatched by courier (the cost to be borne by the Customer in accordance with condition 10.2).

7 RISK

7.1 Property in the Fapas® Products shall not pass to the Customer until full payment of the Price invoiced for the Fapas® Products has been received by Fera.

7.2 Notwithstanding that the property in the Fapas® Products may not have passed to the Customer, the risk in the Fapas® Products shall pass to the Customer as soon as the Fapas® Products have been delivered by Fera to the courier.

8 LOST, DELAYED AND DAMAGED FAPAS® PRODUCTS

8.1 Subject to conditions 8.2 and 8.4 below, any Fapas® Products arriving at the premises of the Customer in an unusable condition shall, if such unusable condition arises as a result of the negligence of Fera, the postal system or the courier, be promptly replaced, free of charge, by Fera. Fera reserves the right to inspect such Fapas® Products. The Customer shall not dispose of any such Fapas® Products without the written permission of Fera, and shall if requested so to do return such Fapas® Products to Fera at its reasonable expense which Fera shall reimburse.

8.2 Whilst Fera will make every attempt to clearly label samples and attach any relevant documentation supplied by the Customer, Fera is not in any way liable for damage to Fapas® Products which arises as a result of the Fapas® Products being delayed in customs and excise (for whatever reason). Similarly (and in accordance with condition 14.2) Fera is not liable for any loss (whether direct or indirect including loss of profit) if a Customer cannot return the results of their analysis by the deadline specified in the Instructions, which arises as a result of the Fapas® Products being delayed in customs and excise.

8.3 The Customer shall inform Fera if their Fapas® Products has not arrived within 4 days of the advertised Dispatch Date if the Fapas® Products was sent by courier or 10 days of the advertised Dispatch Date if the Fapas® Products was sent by post, unless they have been informed by Fera that the Fapas® Products is delayed. Fera is not responsible for replacement or investigation of the loss of Fapas® Products if the Customer has not informed Fera within these timescales that the Fapas® Products has not arrived.



8.4 Fera is not responsible for replacement of Fapas® Products if the Customer has not informed Fera that they are in unusable condition within 3 days of receipt. The Customer shall be deemed to have accepted the Fapas® Products in usable condition after such time.

9 PAYMENT

9.1 All invoices issued to the Customer will be stated and paid in UK pounds sterling (£) or another currency, which (at Fera's sole discretion) may be agreed with Fera.

9.2 The Customer will be invoiced for all sets of Proficiency Tests ordered at or soon after the time that the order is received by Fera. Additional Test Reports and/or additional Fapas® Products will be invoiced at their time of dispatch. Payments will be due within thirty (30) days of the date of the invoice.

9.3 If a Customer decides at any time to withdraw an order for a Proficiency Test then the charge for cancellation shall be as detailed in Fera's current price list.

9.4 In the event that the Customer does not make payment of Fera's invoice on the due date, Fera reserves the right to withhold any future deliveries pending monies due.

9.5 In accordance with Clause 9.4 if such payment remains unpaid for more than 30 (thirty) days after it was due, Fera shall serve written notice on the Customer specifying the sum due and allowing a further 30 (thirty) days for payment, Fera shall at its total discretion charge interest on the overdue amount of 4% (four percent) per annum above the base rate of the Bank of England from time to time. The parties agree that such interest is a substantial remedy (where "substantial remedy" has the meaning given to it by section 9 of the Late Payment of Commercial Debts (Interest) Act 1998).

9.6 All bank charges associated with payments made by the Customer for the Goods and/or Services (such as, by way of example only, charges levied on payments from overseas) shall be payable by the Customer.

10 OTHER COSTS

10.1 The Customer will be responsible for paying any local customs duties or excise duties where applicable.

10.2 The cost of Fapas® Products delivery by courier (for items considered temperature or time sensitive by Fera, for all Fapas Water and Environment Scheme Fapas® Products or where otherwise requested by the Customer) will be borne by the Customer in line with Fera's current price list. Participants outside of the EU will be asked to contribute to mailing costs in line with Fera's current price list.

10.3 Fera will bear the costs of delivery of Fapas® Products (that are not part of the Fapas Water and Environmental scheme and are not considered temperature or time sensitive by Fera) by 2nd class mail in the UK & EU.

10.4 Fera will publish Test Reports in electronic format as part of the Proficiency Testing Scheme. The Customer will bear the cost of

any Test Report provided in hard copy format in line with Fera's current price list.

10.5 Fera will bear the cost of providing customer contact email services associated with the Proficiency Testing Scheme, which may include e.g. customer satisfaction survey or news of developments in the Proficiency Testing Scheme. Customers may opt out of receiving such contact by emailing info@fapas.com (with the word 'unsubscribe' in the title) requesting to be removed from the circulation list.

11 VALUE ADDED TAX

11.1 The Customer shall pay to Fera, in addition to the Price, a sum equal to the Value Added Tax chargeable at such rate as may be in force from time to time on the value of the supply of any goods or services provided to the Customer in accordance with the Contract where applicable.

11.2 Any invoice or other request for payment of monies due to Fera under the Contract shall be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Value Added Tax Act 1994.

12 OBLIGATIONS OF THE CUSTOMER

12.1 Should the Customer want their results to be incorporated in the report then they must return such results to Fera by the date specified in the Instructions accompanying the Fapas® Products.

13 OBLIGATIONS OF FERA

13.1 Fera will operate Fapas® in accordance with their protocols, which draw upon the requirements set out in ISO/IEC 17043 and the IUPAC International Harmonised Protocol for the Proficiency Testing of Analytical Chemistry Laboratories.

13.2 In the event of Fera not being able to distribute the exact Fapas® Products as advertised for the proficiency test, Fera, after informing the customer, may distribute a suitable alternative.

13.3 In the event of Fera not being able to distribute a scheduled Proficiency Test due to any circumstances beyond its control the Customer may elect:-

- (a) a refund of the fee paid for that Proficiency Test; or
- (b) a credit equivalent to one Proficiency Test to be used within eighteen months of the delayed Proficiency Test.

In default of any notification having been received by Fera of the option elected by the Customer before the expiry of one month after the end of the Programme Year in which the option arose, option (b) will be deemed to have been selected.

13.4 The customer will have access to a Test Report for each Proficiency Test the Customer has ordered regardless of whether the Customer has returned results or not.

14 INDEMNITIES

14.1 Fera shall be liable for any loss, damage, personal injury or death (other than death or personal injury suffered as a result of



negligence on the part of Fera) which results from the operations of the Customer whether or not in relation to Fapas®.

14.2 Notwithstanding anything contained in these Terms and Conditions Fera shall only be liable to the Customer for direct loss and shall not be liable for any loss of profits, business or anticipated savings or for any indirect or consequential loss or damage whatsoever even if previously advised thereof and whether arising from negligence, breach of these Terms and Conditions or howsoever.

14.3 In any event, and notwithstanding anything contained in these Terms and Conditions, Fera's liability in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with the Contract shall be limited to the Price for the Proficiency Test or Fapas® Products giving rise to such liability.

14.4 Save as expressed in the Contract, Fera does not grant any warranties in relation to Fapas® Products or the supply of analytical services or distribution of the Proficiency Test and all other conditions, warranties, stipulations or other statements whatsoever, whether express or implied, by statute, at common law or otherwise howsoever, relating to the Fapas® Products, analytical services or Proficiency Tests are hereby excluded. In particular, (but without limitation to the foregoing) no warranties are granted regarding the fitness for purpose, performance, use, quality or merchantability of the Fapas® Products, whether express or implied, by statute, at common law or otherwise howsoever.

14.5 Any customer placing any order involving any third party in relation to Fapas® Products, analytical services or Proficiency Tests warrants to Fera that it has the permission and full authorisation so to act on behalf of the said third party in regard of that order.

15 FORCE MAJEURE

15.1 Neither Fera nor the Customer shall be considered in breach of the Contract for non-performance, part performance, defective performance or delay in performance which is directly or indirectly caused by or is a result of any circumstance beyond the reasonable control of the parties.

16 OWNERSHIP OF INTELLECTUAL PROPERTY

16.1 Fera shall retain all rights of ownership, title, Copyright and Intellectual Property Rights in the Test Reports Fera produces in performing its functions under the Contract and in the Fapas® Protocols. All analysis results submitted to Fera and the statistical outputs created from the Proficiency Testing Schemes shall at all times remain the property of Fera.

17 SPECIAL PROVISIONS

17.1 In the case of any conflict or inconsistency between these Terms and Conditions and any conditions contained within the Contract, the latter conditions shall prevail.

18 Entire Agreement

18.1 The Contract contains the whole agreement between the parties and supersedes all representations, undertakings, understandings or other statements whether written or oral made prior to the date of the Customer's application to participate in Fapas® by or on behalf of Fera to the Customer of any nature whatsoever.

19 TERMINATION

19.1 The Contract may be terminated by Fera on giving one (1) months written notice.

19.2 Fera may terminate the Contract immediately by written notice if the Customer:

19.2.1 enters into liquidation or receivership;

19.2.2 suffers the appointment of an administrator, administrative receiver, manager or provisional liquidator (or similar officer to any of the foregoing in the relevant jurisdiction) over the whole of or a substantial part of the relevant party's assets or undertakings.; or

19.2.3 is deemed unable to pay its debts (within the meaning given by section 123 of the Insolvency Act 1986);

19.2.4 is impacted by a Force Majeure event that has prevailed for more than 30 (thirty) Working Days;

19.2.5 is not a company or limited liability partnership incorporated in England and Wales and an event substantially equivalent to those described in clauses 19.2.1, 19.2.2 or 19.2.3 (Termination) occurs, or in the case of a partnership occurs to any partner;

19.2.6 undergoes a change of control (where "control" has the meaning given to it by section 1124 of the Corporation Tax Act 2010);

19.2.7 is assigned a credit score (as measured by Creditsafe Business Solutions Limited or another independent third party selected by Fera) of less than 40 (forty); and

19.2.8 breaches any provision of these Terms and Conditions

20 GOVERNING LAW AND JURISDICTION

20.1 The Contract shall be governed by and construed in accordance with English law and the parties submit to the jurisdiction of the English courts.

20.2 The authentic language of the Contract is English.