



Fera Science Limited

STANDARD TERMS AND CONDITIONS FOR PROFICIENCY TESTING SCHEMES

These terms and conditions govern the delivery of Proficiency Testing services by Fera unless a separate written agreement already exists that expressly sets out terms and conditions for the delivery of Proficiency Testing (a "Separate Agreement").

FAPAS®, FEPAS® and LEAP® are registered trademarks of Fera Science Limited.

1 DEFINITIONS

The definitions and rules of interpretation contained in Schedule 1 (Definitions and Interpretation) shall apply to this Agreement.

2 PERFORMANCE

- 2.1 In consideration of receipt of the Price, Fera agrees to provide Products and/or PT Schemes to Customer in accordance with the terms of this Agreement.
2.2 No Order is binding on Fera unless it has been accepted in writing.
2.3 Nothing in the Agreement implies that Fera will provide Products or PT Schemes or other goods and/or services to Customer exclusively.
2.4 Unless stated to the contrary, stated delivery times are an estimate only and (subject to the other provisions of this Agreement) Fera will not be liable for any Claim in respect of Loss arising from delay in the delivery of Products.

3 APPLICATION

These terms and conditions apply to the exclusion of any terms and conditions supplied by Customer, and no variation to these terms and conditions is effective unless acknowledged in writing by Fera.

4 ORDER, CANCELLATION AND DELIVERY

- 4.1 Following payment of the Price, Customer shall be entitled to participate in the PT(s) detailed in that Order and Fera shall use its reasonable endeavours to dispatch Products to the Customer on the date specified in the Order.
4.2 Customer may cancel Orders by email to: info@fapas.com.
4.3 Cancellation of any Order will not be effective until confirmation of such is received from Fera (not including an automated response to any email).

Table with 3 columns: Cancellation date, Dispatch date, Payment due. It details the payment obligations based on the timing of cancellation and dispatch.

Where Customer has paid in advance and is entitled to a refund in accordance with clause 4.3, Fera will pay the refund within thirty (30) calendar days.

- 4.4 Fera shall use its reasonable endeavours to dispatch Additional Test Reports and/or Products ordered by Customer within seven (7) calendar days from receipt of the Order.
4.5 Products deemed by Fera to be temperature and/or time sensitive will be dispatched by courier.

5 RISK

- 5.1 Property in Products shall pass to Customer on receipt of payment in full of the Price relating thereto.
5.2 Risk in Products shall pass to Customer upon delivery of such Product(s) to the courier.

6 LOST, DELAYED OR DAMAGED PRODUCTS

- 6.1 Subject to clauses 6.3 and 6.4 below, where Products received by Customer are unusable due to the negligence of Fera, the postal system or the courier, Fera will promptly replace such Products at its cost.
6.2 Fera will use its reasonable efforts to label samples and attach relevant documentation at the Customer's request.
6.3 Fera is not liable for damage to Products resulting from delay at border crossings or due to customs procedures (howsoever arising).
6.4 Similarly, 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 Products being delayed in customs and excise.
6.5 Fera shall have no liability to replace any Product where:
a) Customer has not informed Fera of missing Products within ten (10) Working Days of the due date for delivery; or
b) Customer has not informed Fera that delivered Products are unusable within three (3) calendar days of receipt.
6.6 The Customer shall be deemed to have accepted the Fapas Products in usable condition after such time.

7 PAYMENT

- 7.1 All sums due are exclusive of VAT.
7.2 All sums due under this Agreement shall be paid in British pounds sterling (£) except as otherwise expressly agreed by Fera to the contrary.



- 7.3 Fera will invoice Customer for Proficiency Tests upon receipt of each Order. Additional Test Reports and/or additional Products will be invoiced upon dispatch.
- 7.4 Each payment is due within thirty (30) calendar days of the date of invoice.
- 7.5 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.
- 7.6 Fera may (in addition to its other rights and remedies) withhold future deliveries if any sum(s) due remain outstanding past the due date for payment.
- 7.7 In accordance with clause 7.4, 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).

- 7.8 Bank charges associated with payments made to Fera (such as charges levied on payments from overseas) are payable by Customer.

## **8 OTHER COSTS**

- 8.1 Customer is responsible for paying any local customs duties or excise duties where applicable.
- 8.2 Outside of the UK, Products will be delivered by courier. These costs will be borne by the Customer in line with Fera's current Price List.
- 8.3 Within the UK, Customer will bear the costs of delivery of 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 in line with Fera's current Price List. The cost of Products delivered by courier (for items considered temperature or time sensitive by Fera, for all Fapas Water and Environment Scheme Products or where otherwise requested by the Customer) will be borne by the Customer in line with Fera's current Price List.
- 8.4 The Price for a PT includes the provision of Test Reports in electronic format only. Customer will bear the cost of any Test Report provided in hard copy format in line with Fera's current Price List.
- 8.5 Fera will bear the cost of providing customer contact email services associated with the PT Scheme, which may include customer satisfaction survey or news of developments in the PT 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.

## **9 VALUE ADDED TAX**

- 9.1 Where applicable, Customer shall pay to Fera, in addition to the Price, a sum equal to the Value Added Tax chargeable at the prevailing rate.
- 9.2 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 the Value Added Tax Act 1994.

## **10 CUSTOMER OBLIGATIONS**

- 10.1 Customer will return their results to Fera by the date specified in the Instructions.

- 10.2 Customer shall track deliveries of Products made via courier.
- 10.3 Customer shall respond to requests from couriers in relation to the delivery of Products. Customer acknowledges and agrees that failure to respond to a courier request in order to enable the courier to make a delivery could lead to the disposal and/or destruction of the Products.
- 10.4 Customer shall not (unless agreed otherwise by Fera in writing) alter, modify, enhance or change any Products and shall warrant that they shall only use Products to complete and undertake internal quality assurance activities.
- 10.5 For each PT Scheme, Customer will perform the analysis on Products and return its results to Fera by the date specified in the Instructions.

## **11 FERA OBLIGATIONS**

- 11.1 Fera will operate Fapas in accordance with the Guidelines.
- 11.2 For each PT for which Customer returns its results, Fera will issue a Test Report containing an advisory assessment or commentary on Customer's performance. The assessment may not be in the form of a z-score.
- 11.3 If Fera is not able to distribute the advertised Products for a given PT, Fera may distribute suitable replacement alternative Products.
- 11.4 If Fera cannot distribute a scheduled PT due to circumstances beyond its control, Customer shall (at its election):
  - (a) receive a refund of the Fee paid for that PT; or
  - (b) a credit equivalent to one PT to be used within eighteen (18) months of the delayed PT.

If no positive response has been received from Customer within one (1) month from the end of the Programme Year in which PT arose, Customer will be deemed to have selected the option under clause 11.4(b).

- 11.5 The remedy provided by Fera in accordance with clause 11.4 shall be Customer's sole and exclusive remedy in respect thereof.
- 11.6 Customer will have access to the Test Report for each PT it has ordered whether or not it has returned results in respect thereof.

## **12 INDEMNITIES & WARRANTIES**

- 12.1 Nothing in this Agreement shall limit or exclude the liability of either Party for: (a) death or personal injury caused by its negligence; (b) fraud or fraudulent misrepresentation; or (c) any other matter for which it would be unlawful to limit or exclude liability.
- 12.2 Fera shall not be liable for any Claim in respect of Loss (whether foreseeable or not) arising out of or in connection with:
  - a) the preparation of any report;
  - b) any information, findings contained in the Test Report issued as a result of the Proficiency Test; and/or
  - c) Customer's use of the results and/or Data.
- 12.3 Fera shall not be liable for any economic, indirect, or consequential Loss or special damages.
- 12.4 Subject to clause 12.1, the maximum aggregate liability of Fera to Customer arising under or in connection with this Agreement, whether arising under contract or by way of indemnity, negligence (including negligent breach of contract) or other legal theory shall not exceed the lesser

of 100% (one hundred per cent) of the Price paid or payable.

12.5 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NO WARRANTY, CONDITION, UNDERTAKING OR TERM, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE AS TO THE CONDITION, QUALITY, PERFORMANCE OR FITNESS FOR PURPOSE OF THE DELIVERABLES IS ASSUMED BY FERA AND EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT ALL SUCH WARRANTIES, CONDITIONS, UNDERTAKINGS AND TERMS ARE EXCLUDED TO THE EXTENT PERMITTED BY LAW.

12.6 Any Customer placing any order involving any third party in relation to 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.

### 13 FORCE MAJEURE

13.1 Neither Party shall be considered in breach of this Agreement for any failure or delay in performance (except in relation to an obligation to make payment) resulting from circumstances beyond its reasonable control.

### 14 INTELLECTUAL PROPERTY

14.1 Except as expressly stated to the contrary, nothing in this Agreement shall purport or effect to transfer ownership of Intellectual Property Rights between the Parties.

14.2 Foreground IPR in the Test Reports Protocols shall vest in Fera. 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.

### 15 TERMINATION

15.1 Fera may terminate this Agreement immediately on written notice if:

- a) Customer suffers an Insolvency Event;
- b) Customer is impacted by a Force Majeure event that prevailed beyond 30 (thirty) Working Days;
- c) 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);
- d) Customer breaches any provision of these Terms and Conditions.

### 16 CONFIDENTIALITY AND DATA PROTECTION

16.1 Each Party shall treat Confidential Information belonging to the other Party as confidential and shall not disclose it to any person except with the prior written consent of other party, except to such persons and to such extent as may be necessary for the performance of the Proficiency Tests under this Contract.

16.2 The Parties shall comply with their obligations under the Data Protection Legislation. and Fera shall process the Customer's personal data in accordance with either the written instructions from the Customer or as required by law. Fera will have appropriate technical and organisational measures in place when carrying out any such processing.

16.3 Where Fera processes Customer personal data under or in connection with this Contract, Fera shall comply with its obligations under the relevant Articles of the GDPR including providing reasonable assistance in responding to data subject access requests and Customer requests for information within Fera's control.

16.4 the Customer, therefore, agrees to Fera processing personal data in accordance with the privacy notice which can be found at [www.fapas.com](http://www.fapas.com).

16.5 Fera shall be entitled to engage sub-processors and/or use its network of agents, as such the Customer provides consent for Fera to transfer Customer personal data outside the United Kingdom and/or the European Economic Area to its sub-processors or agents in order to enable Fera to deliver the Services.

16.6 Fera shall be entitled to relief from liability from any third-party claims when following the instructions of the Customer or if the Customer breaches any of this clause 16 and the Customer shall fully indemnify Fera against any loss, damage and expenses arising out of any breaches the Customer causes under this clause 16 or under the Data Protection Legislation.

## 17 GENERAL

### 17.1 Assignment and Sub-Contracting

- a) Customer shall not assign or sub-contract this Agreement or any part of it without the prior written consent of Fera. Any attempted or purported assignment in contravention of this clause 17.1 shall be void.
- b) Fera may at any time, on reasonable notice in writing to Customer, transfer or assign all or any rights and/or obligations under this Agreement to a third party within its Group.
- c) Fera shall be free to subcontract the whole or any part of the Deliverables.

### 17.2 Waiver and variation

- a) No amendment or variation of this Agreement shall be effective unless it is in writing and signed by a duly authorised Representative of each Party.
- b) A waiver of any right or remedy under this Agreement or by operation of Law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- c) A failure or delay to exercise any right or remedy provided under this Agreement or by operation of Law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.
- d) No single or partial exercise of any right or remedy provided under this Agreement or by Law shall prevent or restrict the further exercise of that or any other right or remedy.

### 17.3 Legal Relationship

- a) Nothing in this Agreement shall create a partnership or joint venture between the Parties or have the effect of making any Representative of Customer an employee or servant of Fera or of making any Representative of Fera an employee or servant of Customer.
- b) Neither Party shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf.



- c) Where Customer consists of more than one person, the obligations of those persons in respect of this Agreement shall be joint and several.

17.4 Severability. If a provision of this Agreement 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 Agreement shall not affect its continuance in force or any of its other provisions.

17.5 Notices. Notices shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by electronic mail (confirmed by letter) addressed to the other Party at its registered address. Provided the relevant notice is not returned as undelivered, the notice shall be deemed to have been given two (2) Working Days after the day on which the letter was posted (or four (4) hours after sending in the case of electronic mail) provided this was sent on a Working Day, or sooner where the other Party acknowledges receipt of such letters (or electronic mail).

17.6 Third Party Rights. A person who is not a party to the Agreement shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

#### 17.7 Non-Solicitation

- a) For the term of this Agreement and 12 (twelve) months after neither Party shall (except with the prior written consent of the other) approach any Representative of the other with a view to engaging that person as an agent, contractor, or employee either in its own right or on behalf of a third party.
- b) Nothing in this Agreement shall limit the right of either Party to employ any person who has approached it in response to any public advertisement.

#### 17.8 Entire Agreement

- a) This Agreement represents the entire understanding and constitutes the whole agreement between the Parties in relation to its subject matter.
- b) The Parties agree that there are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between them except as specifically set forth herein and neither Party has relied on any other Information, discussion or understanding in entering into and completing the transactions contemplated in this Agreement.

17.9 Publicity. Neither Party shall make any announcement or publicise this Agreement without the prior written consent of the other Party, save that Fera shall be entitled to refer to Customer as its customer generally.

### **18 GOVERNING LAW AND JURISDICTION**

18.1 The Contract shall be governed by and construed in accordance with English law.

18.2 The parties irrevocably submit to the jurisdiction of the English courts.

18.3 The authentic language of the Contract is English.

#### Rules of interpretation

Within this Contract, the terms "controller", "data subject", "personal data", "personal data breach", "process ("processed" to be construed accordingly) and "processor" shall have the same meanings as in the Data Protection Legislation.



## SCHEDULE 1 (DEFINITIONS AND INTERPRETATION)

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

**“Agreement”** means these terms and conditions for the participation in a Fapas Programme (including the supply of Products) together with such other terms and conditions which are expressly included by reference herein;

**“Charges”** means the charges payable by Customer (in addition to the Fee) for additional expenses, including agent fees, carriage and transportation charges, charges for obtaining certificates, import and export licenses, and permits;

**“Claim”** means any action, assertion of right, claim, demand, or request;

**“Confidential Information”** means in respect of a Party (a) all Information in respect of that Party’s business including customer data, financial information, trade secrets, the existence of and contents of this Agreement and other Information of commercial value; (b) all Information of any nature whatsoever which includes, Information which relates to the business, affairs, properties, assets, trading practices, goods/services, developments, Intellectual Property rights, know-how, personnel, customers and suppliers of that Party; and (c) any Information which has either been designated as confidential by that Party in writing or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored);

**“Customer”** means the person or persons to whom the Agreement is issued;

**“Data”** means data derived from PTs;

**“Data Protection Legislation”** means the Data Protection Act 2018 and the General Data Protection Regulation (EU 2016/679) and any replacement legislation applicable in England and any other applicable Laws relating to the processing of personal data;

**“Dispatch Date”** means the Working Day that Fera dispatches Products to Customer;

**“FAPAS Programme”** means the PT Schemes: Fapas Food Chemistry (FAPAS), Fapas Food Microbiology (FEPAS), Fapas Water and Environmental (LEAP), Fapas GM (GeMMA);

**“Protocols”** means the documents produced by Fera from time to time, that address the requirements, organisation and statistical analyses employed in PT Schemes;

**“Fee”** means the fees for a PT or Product as detailed in the Price List;

**“Fera”** means Fera Science Limited (a company incorporated in England and Wales under number 9413107) whose registered office is at 65 Gresham Street, London, EC2V 7NQ;

**“Guidelines”** means the Fera quality manual published by Fera from time to time in compliance with ISO/IEC 17043 and the IUPAC International Harmonised Protocol for the Proficiency Testing of Analytical Chemistry Laboratories;

**“Instructions”** means the instructions provided with Test Material, including details of the analysis to be performed, units to be used and the date by which 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;

**“Loss”** means any loss, cost, charge, damages, or expense of any kind including interest, expenses fines, legal and other professional expenses, and disbursements;

**“Order”** means an order from Customer for the provision of PT Schemes and/or Products;

**“Price”** means collectively the Fees and Charges;

**“Price List”** means the list of Fees and Charges as shown and documented on the website [www.fapas.com](http://www.fapas.com) as part of the ordering process;

**“Products”** means Test Material, Test Reports, Quality Control Samples, and/or Reference Materials supplied by Fera together with supporting information 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.

**“Proficiency Test”** or **“PT”** means the distribution of Products by Fera for Customer’s analysis of one or more analytes as part of a PT Scheme;

**“PT Scheme”** means a system for the objective verification of laboratory results by an external agency, including comparison of that laboratory’s results at intervals with other laboratories, establishing trueness and assessing accuracy (with the phrase Proficiency Testing construed accordingly);

**“Programme Year”** means the 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 ( $\pm 2$  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 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;

**“Representative”** means, in respect of a Party, an agent, contractor, director, employee, officer, professional advisor, representative, servant or member of staff;

**“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; and

**“UK”** means United Kingdom of Great Britain and Northern Ireland;

**“Working Day”** means a weekday other than a public holiday in the United Kingdom.