

# Food and Environment Research Agency (Fera)

## STANDARD TERMS AND CONDITIONS FOR PROFICIENCY TESTING SCHEMES

### 1. Interpretations

In these Conditions:

"the Authority" means the Secretary of State for Environment, Food and Rural Affairs acting through the Food and Environment Research Laboratory, ("Fera")

"the Contract" means the agreement concluded between the Authority and the Customer for the participation in the FAPAS<sup>®</sup> Programme and the supply of the FAPAS<sup>®</sup> 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<sup>®</sup> Products and Services under the Contract.

"Dispatch Date" means the working day that Fera dispatches Test Materials as part of the Proficiency Test to the Customer as detailed on the order form

"FAPAS<sup>®</sup> Guidelines" means the FAPAS<sup>®</sup> Quality Manual, as edited by Fera from time to time in accordance and compliance with the ISO/IEC Guide 43, "Development and Operation of Laboratory Proficiency Testing Schemes" and the international IUPAC/AOAC/ISO harmonised "Protocol for the Proficiency Testing of Chemical Analytical Laboratories".

"FAPAS<sup>®</sup> Protocol" means the document, as edited by Fera from time to time, that deals with the requirements, organisation and statistical analyses employed in FAPAS<sup>®</sup>.

"FAPAS<sup>®</sup>" is a Registered Trade Mark of the Department for Environment, Food and Rural Affairs and means the Food Analysis Performance Assessment Scheme run by the United Kingdom Department for Environment, Food and Rural Affairs;

"FAPAS<sup>®</sup> Products" means Test Materials supplied or distributed by Fera together with any paper work supplied with the Test Material and Test Reports as part of a Proficiency Test and any additional Test Reports and additional Test Materials requested by the Customer.

"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.

"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 Test Materials, 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 Test Material. 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 April to 31 March.

"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 the Authority.

2.3 These Terms and Conditions in every respect also relate to FEPAS<sup>®</sup> (Food Examination Performance Assessment Scheme), with the term 'analysis' replaced by the term 'examination', the LEAP Scheme (Laboratory Environmental Analysis Proficiency Scheme), the PhytoPAS scheme (Plant Health) and GMO proficiency testing scheme (GeMMA) run by Fera; see [www.fapas.com](http://www.fapas.com).

### 3. Waiver

The failure of 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.

### 4. Severability

If any condition, clause or provision of the Contract not being of a fundamental nature be held to be unlawful or unenforceable by a court in any proceedings relating to the Contract the validity or enforceability of the remainder of the Contract shall not be affected thereby.

### 5. Amendments and Variations

No amendment or variation in the terms of the Contract will be valid unless previously agreed in writing between the Authority and the Customer.

## **6. Order 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 best endeavours to dispatch Test Materials to the Customer on the date specified in the order for Test Material dispatch.

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

6.3 Where Test Materials 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 Test Materials shall not pass to the Customer until full payment of the Price invoiced for the Test Materials has been received by Fera.

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

## **8. Lost, Delayed and Damaged Test Materials**

8.1 Subject to conditions 8.2 and 8.4 below, any Test Materials 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 Test Materials. The Customer shall not dispose of any such Test Materials without the written permission of Fera, and shall if requested so to do return such Test Materials 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 Test Materials which arises as a result of the Test Materials 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 Test Materials being delayed in customs and excise.

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

8.4 Fera is not responsible for replacement of Test Materials 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 Test Materials 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 may (at Fera's discretion) 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 Test Materials 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.

## **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 Test Material delivery by courier (for items considered temperature or time sensitive by Fera, for all LEAP Scheme Test Materials 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 Test Materials (that are not part of the LEAP 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](mailto:info@FAPAS.com) (with the word 'unsubscribe' in the title) requesting to be removed from the circulation list.

## **11. Obligations of the Customer**

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 Test Material.

## **12. Obligations of Fera**

12.1 Fera will operate FAPAS<sup>®</sup> in accordance with the FAPAS<sup>®</sup> Protocol which is based on the international IUPAC/AOAC/ISO Harmonised "Protocol for the Proficiency Testing of Chemical Analytical Laboratories".

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

12.3 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.

12.3 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.

## **13. Value Added Tax**

13.1 The Customer shall pay to Fera, in addition to the Price, a sum equal to the Value Added Tax chargeable on the value of the supply of any goods or services provided to the Customer in accordance with the Contract where applicable.

13.2 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.

## **14. Indemnities**

14.1 Neither the Authority nor 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 the Authority or Fera) which results from the operations of the Customer whether or not in relation to the FAPAS<sup>®</sup>.

14.2 Notwithstanding anything contained in these Terms and Conditions neither the Authority nor Fera shall be liable to the Customer for loss (whether direct or indirect) 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, the Authority's and 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 giving rise to such liability.

14.4 Save as expressed in the Contract, neither the Authority nor Fera grants any warranties in relation to FAPAS<sup>®</sup> 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<sup>®</sup> 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<sup>®</sup> 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<sup>®</sup> Products, analytical services or Proficiency Tests warrants to the Authority 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**

Neither the Authority 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**

The Authority or where applicable the Crown 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<sup>®</sup> 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**

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**

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<sup>®</sup> by or on behalf of the Authority to the Customer of any nature whatsoever.

## **19. Governing Law and Jurisdiction**

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

19.2 The authentic language of the Contract is English.