

Unless otherwise specifically agreed in writing by an authorized Intertek Officer, these terms and conditions, together with any proposal, estimate or fee quote, form the agreement between you ("the Client") and the Intertek USA, Inc. ("Intertek") providing the services contemplated therein.

**1. INTERPRETATION**

1.1 In this Agreement the following words and phrases shall have the following meanings unless the context otherwise requires:

- (a) Agreement means this agreement entered into between Intertek and the Client;
- (b) Services means the services set out in any relevant Intertek proposal, estimate or quote, any relevant Client purchase order, or any relevant Intertek invoice, as applicable, and may comprise or include the provision by Intertek of a report;
- (c) Report or Reports shall have the meaning as set out in Clause 2.3 below;
- (d) Proposal means the proposal, estimate or fee quote, if applicable, provided to the Client by Intertek relating to the Services;
- (e) Intellectual Property Right(s) means copyrights, trademarks (registered or unregistered), patents, patent applications (including the right to apply for a patent), service marks, design rights (registered or unregistered), trade secrets and other like rights however existing; and
- (f) Confidential Information shall mean all information in whatever form or manner presented which: (a) is disclosed pursuant to, or in the course of the provision of Services pursuant to, this Agreement; and (b) (i) is disclosed in writing, electronically, visually, orally or otherwise however and is marked, stamped or identified by any means as confidential by the disclosing party at the time of such disclosure; and/or (ii) is information, however disclosed, which would reasonably be considered to be confidential by an objective observer.

1.2 The headings in this Agreement do not affect its interpretation.

**2. THE SERVICES**

2.1 Intertek shall provide the Services to the Client in accordance with the terms of this Agreement which is expressly incorporated into any Proposal Intertek has made and submitted to the Client.

2.2 In the event of any inconsistency between the terms of this Agreement and the Proposal, the terms of the Proposal shall take precedence.

2.3 The Services provided by Intertek under this Agreement and any memoranda, laboratory data, calculations, measurements, estimates, notes and other material prepared by Intertek in the course of providing the Services to the Client, together with status summaries or any other communication in any form describing the results of any work or services performed ("Reports") shall be only for the Client's use and benefit. The Client acknowledges and understands Reports are issued based on the Service as requested by the client and that reliance on any Report is limited to the facts and representations set out therein.

2.4 In agreeing to provide the Services pursuant to this Agreement, Intertek does not abridge, abrogate or undertake to discharge any duty or obligation of the Client to any other person.

**3. INTERTEK'S WARRANTIES**

3.1 Intertek warrants exclusively to the Client that the Services shall be performed in a manner consistent with that level of care and skill ordinarily exercised by other companies providing like services under similar circumstances.

3.2 In the event of a breach of the warranty set out in Clause 3.1, Intertek shall, at its own expense, perform services of the type originally performed as may be reasonably required to correct any defect in Intertek's performance, of which Intertek is notified in writing within six (6) months of the completion of services.

3.3 Intertek makes no other warranties, express or implied. All other warranties, conditions and other terms implied by statute or common law (including but not limited to any implied warranties of merchantability and fitness for purpose) are, to the fullest extent permitted by law, excluded from this Agreement. No performance, deliverable, oral or other information or advice provided by Intertek (including its agents, sub-contractors, employees or other representatives) will create a warranty or otherwise increase the scope of any warranty provided.

**4. CLIENT WARRANTIES AND OBLIGATIONS**

4.1 The Client represents and warrants:

- (a) that it has the power and authority to enter into this Agreement and procure the provision of the Services for itself;
- (b) that this Agreement has been executed by a duly authorised representative of the Client;
- (c) that any information, samples and related documents it (or any of its agents or representatives) supplied to Intertek (including its agents, sub-contractors and employees) is true, accurate, representative, complete and is not misleading in any respect. The Client further acknowledges that Intertek will rely on such information, samples or other related documents and materials provided by the Client (without any duty to confirm or verify the accuracy or completeness thereof) as basis to perform the Services. Intertek is not under any obligation to verify any of the foregoing as to their accuracy, completeness or truth;
- (d) that any samples provided by the Client to Intertek shall be shipped pre-paid and will be collected or disposed of by the Client (at the Client's cost) within thirty (30) days after testing unless alternative arrangements are made by the Client. In the event that such samples are not collected or disposed of by the Client within the required thirty (30) day period, Intertek reserves the right to destroy the samples, at the Client's cost; and
- (e) that any information, samples or other related documents (including without limitation certificates and reports) provided by the Client to Intertek will not, in any circumstances, infringe any legal rights (including Intellectual Property Rights) of any third party.

4.2 In the event that the Services provided are related to any third party, the Client shall cause any such third party to acknowledge and agree to the provisions in this Agreement and the Proposal prior to and as a condition precedent to such third party receiving any Report or the benefit of any Services.

4.3 The Client further agrees:

- (a) to co-operate with Intertek in all matters relating to the Services and appoint a manager in relation to the Services who shall be duly authorised to provide instructions to Intertek on behalf of the Client and to bind the Client contractually as required;
- (b) to provide Intertek (including its agents, sub-contractors and employees), at its own expense, any and all samples, information, material or other documentation necessary for the execution of the Services in a timely manner sufficient to enable Intertek to provide the Services in accordance with this Agreement. The Client acknowledges that any samples provided may become damaged or be destroyed in the course of testing and undertakes to hold Intertek harmless from any and all responsibility for such alteration, damage or destruction;
- (c) that it is responsible for providing the samples/equipment to be tested together with any specified additional items, including but not limited to connecting pieces, fuse-links, etc;
- (d) to provide instructions and feedback to Intertek in a timely manner;
- (e) to provide Intertek (including its agents, sub-contractors and employees) with access to its premises as may be reasonably required for the provision of the Services;
- (f) to inform Intertek of all health and safety rules and regulations and other reasonable security requirements that may apply at any relevant premises at which the Services are to be provided;
- (g) to notify Intertek promptly of any risk, safety issues or incidents in respect of any item delivered by the Client, or any process or systems used at Intertek's premises or otherwise necessary for the provision of the Services;
- (h) to inform Intertek in advance of any applicable import/export restrictions or government secrecy requirement that may apply to the Services to be provided, including any instances where any products, information or technology may be exported/imported to or from a country that is restricted or banned from such transaction;
- (i) to obtain and maintain all necessary licenses and consents in order to comply with relevant legislation and regulation in relation to the Services;
- (j) that it will not use any Reports issued by Intertek pursuant to this Agreement in a misleading manner and that it will only distribute such Reports in their entirety;
- (k) in no event will the contents of any Report or any extracts, excerpts or parts of any Report be distributed or published without the prior written consent of Intertek in each instance;

and  
(l) that any and all advertising and promotional materials or any statements made by the Client shall not give a false or misleading impression to any third party concerning the services provided by Intertek.

4.4 Intertek shall be neither in breach of this Agreement nor liable to the Client for any breach of this Agreement if and to the extent that its breach is a direct result of a failure by the Client to comply with its obligation as set out in this Clause 4. The Client also acknowledges that the impact of any failure by the Client to perform its obligations set out herein on the provision of the Services by Intertek will not affect the Client's obligations under this Agreement for payment of the Charges pursuant to Clause 5 below.

**5. CHARGES, INVOICING AND PAYMENT**

5.1 The Client shall pay Intertek the fee set out in the Proposal, if applicable, or as otherwise contemplated for provision of the Services ("the Charges").

5.2 The Charges are expressed exclusive of any applicable taxes. The Client shall pay any applicable taxes on the Charges at the rate and in the manner prescribed by law, on the issuance by Intertek of a valid invoice.

5.3 The Client agrees that it will reimburse Intertek for any expenses incurred by Intertek relating to the provision of the services and is wholly responsible for any freight or customs clearance fees relating to any testing samples.

5.4 The Charges represent the total fees to be paid by the Client for the Services pursuant to this Agreement. Any additional work performed by Intertek will be charged on a time and material basis.

5.5 Intertek shall invoice the Client for the Charges and expenses, if any. The Client shall pay each invoice within thirty (30) days upon receipt.

5.6 If any invoice is not paid on the due date for payment, Intertek shall have the right to charge, and the Client shall pay, interest on the unpaid amount, calculated from the due date of the invoice to the date of receipt of the amount in full at a rate equivalent to 3% percent per annum above the base rate of HSBC Bank in the relevant currency.

5.7 Where Intertek is not a party to the claim but is otherwise requested by the Client or a third party to prepare for and/or respond to any discovery requests related to Services for the Client, including participation and preparation for any deposition, testimony or legal proceedings, the Client will pay for the costs incurred, including legal fees and travel expenses, upon invoicing by Intertek. Any fees for technical staff will be charged at Intertek project-specific daily/hourly rate. Intertek retains the right to participate in and observe testimony preparation given the nature of the services provided.

**6. INTELLECTUAL PROPERTY RIGHTS**

6.1 All Intellectual Property Rights belonging to a party prior to entry into this Agreement shall remain vested in that party. Nothing in this Agreement is intended to transfer any Intellectual Property Rights from either party to the other.

6.2 Any use by the Client (or the Client's affiliated companies or subsidiaries) of the name "Intertek" or any of Intertek's trademarks, logos, or brand names for any reason must be prior approved in writing by Intertek. Any other use of Intertek's trademarks, logos or brand names is strictly prohibited, and Intertek reserves the right to terminate this Agreement immediately as a result of any such unauthorised use.

6.3 All Intellectual Property Rights (excluding Client's Confidential Information) in any Report, document, graphs, charts, photographs or any other material (in whatever medium) produced by Intertek pursuant to this Agreement shall belong to Intertek, which includes Intertek's procedure and methodology in provision of the Service. The Client shall have the right to use any such Report, document, graphs, charts, photographs or other material for the purposes of this Agreement.

**7. CONFIDENTIALITY**

7.1 Where a party (the Receiving Party) obtains Confidential Information of the other party (the Disclosing Party) in connection with this Agreement (whether before or after the date of this Agreement) it shall, subject to Clauses 7.2 to 7.4:

- (a) keep that Confidential Information confidential, including but not limited to, applying the standard of care that it uses for its own Confidential Information;
- (b) use that Confidential Information only for the purposes of performing obligations under this Agreement; and
- (c) not disclose that Confidential Information to any third party without the prior written consent of the Disclosing Party.

7.2 The Receiving Party may disclose the Disclosing Party's Confidential Information on a "need to know" basis:

- (a) to any legal advisers and statutory auditors that it has engaged for itself;
- (b) to any regulator having regulatory or supervisory authority over its business;
- (c) to any director, officer or employee of the Receiving Party provided that, in each case, the Receiving Party has first advised that person of the obligations under Clause 7.1 and ensured that the person is bound by obligations of confidence in respect of the Confidential Information no less onerous than those set out in this Clause 7; and
- (d) where the Receiving Party is Intertek, to any of its subsidiaries, affiliates or subcontractors.

7.3 The provisions of Clauses 7.1 and 7.2 shall not apply to any Confidential Information which:

- (a) is or becomes public knowledge other than by breach of this Clause 7;
- (b) is received by the Receiving Party from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
- (c) is independently developed by the Receiving Party without access to the relevant Confidential Information.

7.4 The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent required by law, any regulatory authority or the rules of any stock exchange on which the Receiving Party is listed, provided that the Receiving Party has given the Disclosing Party prompt written notice of the requirement to disclose and where possible given the Disclosing Party a reasonable opportunity to prevent the disclosure through appropriate legal means.

7.5 Each party shall ensure the compliance by its employees, agents and representatives (which, in the case of Intertek, includes procuring the same from any subcontractors) with its obligations under this Clause 7.

7.6 No license of any Intellectual Property Rights is given in respect of any Confidential Information solely by the disclosure of such Confidential Information by the Disclosing Party.

7.7 The obligations of confidentiality shall survive the termination or expiry of this Agreement for a period of seven (7) years from the date of such termination or expiry.

**8. AMENDMENT**

8.1 No amendment to this Agreement shall be effective unless it is in writing, expressly stated to amend this Agreement and signed by an authorised signatory of each party.

**9. FORCE MAJEURE**

9.1 Neither party shall be liable to the other for any delay in performing or failure to perform any obligation under this Agreement to the extent that such delay or failure to perform is a result of:

- (a) war (whether declared or not), civil war, riots, revolution, acts of terrorism, military action, sabotage and/or piracy;
- (b) natural disasters such as violent storms, earthquakes, tidal waves, floods and/or lightning; explosions and fires;
- (c) strikes, and labour disputes, other than by any one or more employees of the affected party or of any Supplier or agent of the affected party; or
- (d) failures of utilities companies such as providers of telecommunication, internet, gas or electricity services.

9.2 For the avoidance of doubt, where the affected party is Intertek any failure or delay caused by failure or delay on the part of a subcontractor shall only be a Force Majeure Event (as defined below) where the subcontractor is affected by one of the events described above.

9.3 A party whose performance is affected by an event described in Clause 9.1 (a Force Majeure Event) shall:

- (a) promptly notify the other party in writing of the Force Majeure Event and the cause and the likely duration of any consequential delay or non-performance of its obligations;
- (b) use all reasonable endeavors to avoid or mitigate the effect of the Force Majeure Event and continue to perform or resume performance of its affected obligations as soon as reasonably possible; and
- (c) continue to provide Services that remain unaffected by the Force Majeure Event.

9.4 If the Force Majeure Event continues for more than sixty (60) days after the day on which it started, the non-affected party may terminate this Agreement by giving at

least ten (10) days' written notice to the affected party.

**10. LIMITATIONS AND EXCLUSIONS OF LIABILITY**

10.1 The maximum aggregate liability of Intertek in contract, tort (including negligence and breach of statutory duty) or otherwise for any breach of this Agreement or any matter arising out of or in connection with the Services to be provided in accordance with this Agreement shall not exceed the Charges for the services rendered on the project in question.

10.2 Neither party shall be liable to the other in contract, tort (including negligence and breach of statutory duty) or otherwise for loss of profit (whether direct or indirect) or for any indirect, consequential, punitive or special loss or damage, including without limitation loss of profits, revenue, business, or anticipated savings (even when advised of their possibility).

10.3 Any claim by the Client against Intertek (always subject to the provisions of this Clause 10) must be made within ninety (90) days after the earlier of (i) the date that Client first becomes aware of any circumstances giving rise to any such claim or (ii) within one year from the date Intertek delivers the applicable Services or Report. Failure to give such notice of claim within the applicable ninety (90) day or one-year period shall constitute a bar or irrevocable waiver to any claim, either directly or indirectly, in contract, tort or otherwise in connection with the provision of Services under this Agreement.

**11. INDEMNITY**

11.1 The Client shall indemnify and hold harmless Intertek, its officers, employees, agents, representatives, contractors and sub-contractors from and against any and all claims, suits, liabilities (including costs of litigation and attorney's fees) arising, directly or indirectly, out of or in connection with:

- (a) any claims or suits by any governmental authority or others for any actual or asserted failure of the Client to comply with any law, ordinance, regulation, rule or order of any governmental or judicial authority;
- (b) claims or suits for personal injuries, loss of or damage to property, economic loss, and loss of or damage to Intellectual Property Rights incurred by or occurring to any person or entity and arising in connection with or related to the Client's samples or products;
- (c) the breach or alleged breach by the Client of any of its obligations set out in Clause 4 above;
- (d) any claims or suits arising as a result of any misuse or unauthorised use of any Report issued by Intertek or any Intellectual Property Rights belonging to Intertek (including trademarks) pursuant to this Agreement; and
- (e) any claims arising out of or relating to any third party's use of or reliance on any Reports or any reports, analyses, conclusions of the Client (or any third party to whom the Client has provided the Reports) based in whole or in part on the Reports, if applicable.

11.2 The obligations set out in this Clause 11 shall survive termination of this Agreement.

**12. INSURANCE POLICIES**

12.1 Each party shall be responsible for the arrangement and costs of its own company insurance which includes, without limitation, professional indemnity, employer's liability, motor insurance and property insurance.

12.2 The Client acknowledges that although Intertek maintains worker's compensation and employer's liability insurance, such insurance does not cover any employees of the Client or any third parties who may be involved in the provision of the Services. If the Services are to be performed at premises belonging to the Client or third parties, Intertek's insurance does not provide cover for non-Intertek employees.

12.3 Intertek expressly disclaims any liability to the Client as an insurer or guarantor to the Client's samples, materials or products.

**13. TERMINATION**

13.1 This Agreement shall commence on the last signature date set forth below and shall continue, unless terminated earlier in accordance with this Clause 13, until the Services have been provided.

13.2 This Agreement may be terminated by:

- (a) either Party if the other continues in material breach of any obligation imposed upon it hereunder for more than thirty (30) days after written notice has been dispatched by that Party by recorded delivery or courier requesting the other to remedy such breach;
- (b) Intertek on written notice to the Client in the event that the Client fails to pay any invoice by its due date and/or fails to make payment after a further request for payment;
- (c) either Party on written notice to the other in the event that the other makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an embarrancer takes possession, or a receiver is appointed, of any of the property or assets of the other or the other ceases, or threatens to cease, to carry on business.

13.3 In the event of termination of the Agreement for any reason and without prejudice to any other rights or remedies the parties may have, the Client shall pay Intertek for all Services performed up to the date of termination. This obligation shall survive termination or expiration of this Agreement.

13.4 Any termination or expiration of the Agreement shall not affect the accrued rights and obligations of the parties nor shall it affect any provision which is expressly or by implication intended to come into force or continue in force on or after such termination or expiration.

**14. ASSIGNMENT AND SUB-CONTRACTING**

14.1 Intertek reserves the right to delegate the performance of its obligations hereunder and the provision of the Services to sub-contractors if approved by the Client. Intertek may also assign this Agreement to any company within the Intertek group on notice to the Client.

**15. GOVERNING LAW AND DISPUTE RESOLUTION**

15.1 This Agreement, and any work performed pursuant to this Agreement, shall be governed by the laws of the jurisdiction within which the Intertek facility making the Proposal is located. Any action brought hereon shall be venue in said jurisdiction.

**16. MISCELLANEOUS**

16.1 If any provision of this Agreement is or becomes invalid, illegal or unenforceable, such provision shall be severed and the remainder of the provisions shall continue in full force and effect as if this Agreement had been executed without the invalid, illegal or unenforceable provision. If the invalidity, illegality or unenforceability is so fundamental that it prevents the accomplishment of the purpose of this Agreement, Intertek and the Client shall immediately commence good faith negotiations to agree to an alternative arrangement.

16.2 Nothing in this Agreement and no action taken by the parties under this Agreement shall constitute a partnership, association, joint venture or other co-operative entity between the parties or constitute any party the partner, agent or local representative of the other.

16.3 Subject to Clause 10.3 above, the failure of any party to insist upon strict performance of any provision of this Agreement, or to exercise any right or remedy to which it is entitled, shall not constitute a waiver and shall not cause a diminution of the obligations established by this Agreement. A waiver of any breach shall not constitute a waiver of any subsequent breach.

16.4 No waiver of any right or remedy under this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing.

16.5 This Agreement and the Proposal contain the whole agreement between the parties relating to the transactions contemplated by this agreement and supersedes all previous agreements, arrangements and understandings between the parties relating to those transactions or that subject matter. No purchase order, invoice, statement or other similar document will add to or vary the terms of this Agreement.

16.6 No modification, waiver or amendment of any of these terms and conditions, including any assignment of the Client's rights and responsibilities hereunder, shall be binding upon Intertek unless agreed to in a writing signed by an agent of Intertek.

16.7 Each party acknowledges that in entering into this Agreement it has not relied on any representation, warranty, collateral contract or other assurance (except those set out or referred to in this Agreement) made by or on behalf of any other party before the acceptance or signature of this Agreement. Each party waives all rights and remedies that, but for this Clause, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.