

These terms and conditions, together with any proposal, estimate or fee quote, form the agreement between you (the Client) and the Intertek entity (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) **Affiliate** shall mean any entity that directly or indirectly controls, is controlled by, or is under common control with another entity;
 - (b) **Agreement** means this agreement entered into between Intertek and the Client;
 - (c) **App** means an application owned by Intertek, which the Client can download onto a mobile device and use to assist the Inspector when performing Remote Inspections;
 - (d) **Charges** shall have the meaning given in Clause 5.1;
 - (e) **Confidential Information** means all information in whatever form or manner presented, which:
 - (i) is disclosed pursuant to, or in the course of the provision of Services pursuant to, this Agreement; and
 - (ii) is (1) disclosed in writing, electronically, visually, orally or otherwise, howsoever and is marked, stamped or identified by any means as confidential by the Disclosing Party at the time of such disclosure; and/or (2) information, howsoever disclosed, which would reasonably be considered to be confidential by the Receiving Party.
 - (f) **Intellectual Property Right(s)** means copyrights, trademarks, patents, patent applications (including the right to apply for a patent), service marks, design rights, trade secrets and other rights (whether registered or unregistered), howsoever existing;
 - (g) **Report(s)** mean any material or deliverables (including, but not limited to memoranda, laboratory data, calculations, measurements, estimates, notes and certificates) prepared by Intertek in the course of providing the Services and delivered to the Client, together with status summaries or any other communication in any form describing the results of any work or services performed;
 - (h) **Sanctions Regime** means any trade, economic or financial sanctions laws, regulations, or embargoes imposed, administered or enforced by the United Nations, the United Kingdom, the European Union, the United States of America (including the Office of Foreign Assets Control of the US Department of the Treasury), Switzerland, Australia or any other applicable government or authority with jurisdiction over any Party or the performance of these Terms and Conditions;
 - (i) **Services** means the testing, assurance, certification and inspection services provided and subject to Clauses 2 and 17 of this Agreement or in any relevant Intertek Proposal, any relevant Client purchase order, or any relevant Intertek invoice, as applicable, and may comprise or include the provision by Intertek of a Report;
 - (j) **Suppliers** mean any individual, firm, corporation, or other entity that provides, or is engaged to provide, goods, services, or any combination thereof, directly or indirectly, within the Client's supply chain, including, without limitation, the design, manufacture, distribution, or delivery of such goods and services;
 - (k) **Proposal** means the description of the Services and an estimate of our Charges, if applicable, provided to the Client by Intertek;
 - (l) **Remote Inspection** means a form of visual inspection, conducted by the Inspector by directing the Client or the Client's Suppliers to move to certain areas to allow the Inspector to carry out the audit remotely via a direct video link via an app or software technology; and
 - (m) **Inspector** means an Intertek inspector responsible for the performance of the Services.
- 1.2 The headings in this Agreement do not affect its interpretation.
- 1.3 The officers, employees, subsidiaries, Affiliates and related companies and other business entities, agents, representatives, contractors and subcontractors of Intertek shall enjoy the full protection and benefit of this Agreement. Where appropriate, Intertek may elect, and/or the Client may request, for all or part of the Services to be performed by one or more Intertek Affiliate(s).

2. THE SERVICE PROVISION

- 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. This Agreement shall take precedence over any terms and conditions which the Client has provided or may in the future provide to Intertek, whether in a purchase order or any other document.
- 2.2 In the event of any inconsistency between the terms of this Agreement and the Proposal, the terms of this Agreement shall take precedence. Furthermore, this Agreement takes precedence over any terms and conditions set forth in any Client's purchase order or otherwise, all of which the Client terms are hereby rejected. Acceptance of the Services constitutes acceptance of all terms and conditions set forth in this Agreement. Neither Intertek's commencement of performance nor delivery of the Services constitutes an acceptance of the Client's terms or conditions. Once the Client has placed an order, the order may not be cancelled by the Client except on written notice to Intertek and payment of reasonable cancellation charges, including, but not limited to, expenses incurred by Intertek for labour, material, and reasonable profit.
- 2.3 The Client further agrees and acknowledges that the Services are not necessarily designed or intended to address all matters of quality, safety, performance or condition of any product, material, services, systems or processes tested, inspected or certified and the scope of work does not necessarily reflect all standards which may apply to product, material, services, systems or process tested, inspected or certified. The Client understands that reliance on any Reports issued by Intertek is limited to the facts and representations set out in the Reports, which represent Intertek's review and/or analysis of facts, information, documents, samples and/or other materials in existence and made available and/or selected on a samples basis at the time of the performance of the Services only.
- 2.4 Where the Client instructs Intertek to perform a Remote Inspection, the Client agrees and warrants: (i) to provide Intertek, with complete, accurate, and the most current information and documentation to perform the Remote Inspection; (ii) to download the App, if applicable, onto the Client's or their Suppliers' smartphone and use the app solely for the purposes of the Remote Inspection; (iii) to allow the Inspector to direct the camera of the smartphone while using the App, to allow the Inspector to perform the Remote Inspection and (iv) the Client and/or the Client's Suppliers shall be solely responsible for ensuring sufficient internet connectivity to perform the remote inspection. If internet connectivity fails during the Remote Inspection, the Client and/or the Client's Suppliers shall make all efforts to reconnect. If reconnection is not possible, a physical inspection will be rescheduled.
- 2.5 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 or any duty or obligation of any person to the Client.
- 2.6 The parties hereto agree that the Services to be rendered hereunder by Intertek are not exclusive to the Client. Intertek, during the term of this Agreement, Proposal or any extension thereof, may accept from others, concurrent services provided that such services do not interfere, in the opinion of Intertek, acting reasonably, with the Services Intertek is required to perform under this Agreement.
- 2.7 Where Intertek is requested to witness any services, analysis of samples, inspection or intervention by a third party, Intertek shall provide confirmation that the correct methodologies, material, sample has been analysed or the inspection or intervention as occurred within the Client's instruction, but shall not otherwise be responsible for the accuracy of any analysis or findings. Intertek is not responsible for the apparatus, instrumentation and measuring devices, their calibration or working order. The results and conclusions presented in the Report are based on tests and analyses conducted by a third party organisation. While Intertek has taken reasonable steps to ensure the accuracy and reliability of the information provided, Intertek shall not make representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability, suitability, or availability with respect to the test results or the information contained in the Report for any purpose. Any reliance the Client places on such information is strictly at the Client's own risk. Intertek disclaims any liability for any loss or damage, including, without limitation, indirect or consequential loss or damage, or any loss or damage whatsoever arising from the use of, or reliance on, the third party test results contained in the Report. For any questions or concerns regarding the test results, the Client shall directly contact the third party organisation which has performed the testing.

3. INTERTEK'S WARRANTIES

- 3.1 Intertek warrants exclusively to the Client that:
- (a) it has the power and authority to enter into this Agreement and that it will comply with relevant legislation and regulations in force as at the date of this Agreement in relation to the provision of the Services;
 - (b) the Services will be performed in a manner consistent with that level of care and skill ordinarily exercised by other companies providing like services under similar circumstances;
 - (c) it will take reasonable steps to ensure that whilst on the Client's premises, its personnel comply with any health and safety rules and regulations and other reasonable security requirements made known in writing to Intertek by the Client in accordance with Clause 4.3 (d);
 - (d) the Reports produced in relation to the Services will not infringe any legal rights (including Intellectual Property Rights) of any third party. This warranty shall not apply where the infringement is directly or indirectly caused by Intertek's reliance on any information, samples or other related documents provided to Intertek by the Client (or any of its agents or representatives or Suppliers) or any third party on Client's behalf.
- 3.2 In the event of a breach of the warranty set out in Clause 3.1 (b), 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, if the Client notifies Intertek in writing within three (3) months of the completion of the 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 that:
- (a) it has the power and authority to enter into this Agreement and procure the provision of the Services for itself;
 - (b) it is securing the provision of the Services hereunder for its own account and not as an agent or broker, or in any other representative capacity, for any other person or entity;
 - (c) all information, samples, records, and related documents (including but not limited to any clients or Supplier books, code of ethics, internal policies, records (including employment records), information systems) it (or any of its agents or representatives) supplies to Intertek (including its agents, sub-contractors and employees) are, true, accurate, representative, complete and is not misleading in any respect and made available when required by Intertek. 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) in order to provide the Services;
 - (d) it shall comply with Intertek's request to conduct interviews, meetings or discussions with the Client's personnel and the personnel of the Client's Suppliers for any matters relating to the Services within the timeframe as agreed between the parties;
 - (e) 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;
 - (f) in so far applicable to the Services, 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
 - (g) in so far applicable to the Services, it has not entered into an agreement nor has it active certification requests or certificates with other service providers for certification of products and shipments which are covered under this Agreement.
- 4.2 In the event that the Services provided relate 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 Reports or the benefit of any Services. In the absence of such consent, the Client agrees to release Intertek from any liability to such third party.
- 4.3 The Client further agrees that it will:
- (a) 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) provide instructions and feedback in due time to enable Intertek to perform the Services in a timely manner as agreed between the parties;
 - (c) 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 and to any other relevant premises at which the Services are to be provided;
 - (d) prior to Intertek attending any premises for the performance of the Services, inform Intertek in writing of all applicable 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;
 - (e) 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 its premises or otherwise necessary for the provision of the Services;
 - (f) inform Intertek in advance in writing of any applicable import/ export restrictions, including but not limited to any USA-based export controls such as International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR), that may apply to the Services and/or any Confidential Information 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;
 - (g) in the event of the issuance of a certificate, inform and advise Intertek immediately of any changes during the term of the certificate which may have a material impact on the accuracy of the certification;
 - (h) obtain and maintain all necessary licences and consents in order to comply with the relevant legislation and regulations in relation to the Services;
 - (i) not suspend any Services for more than five (5) days and shall pay Intertek each day of suspension the relevant day rate and any other expenses for the duration of the suspension; and
 - (j) not use, nor refer to the any Intellectual Property, including but not limited to the name "Intertek", any Intertek's trademarks, and branding on any labels, products, or for any marketing, advertising, media and promotional materials or any statements made by the Client (or any of its Affiliates) and/or its Suppliers which indicates or implies that product, process or system is listed or approved by Intertek without the prior written consent of Intertek.
- 4.4 Where specifically mentioned in the Proposal, the Client will:
- (a) supply any special equipment and personnel necessary for the performance of the Services;
 - (b) ensure that all necessary measures are taken for the safety and security of working conditions, sites and installations during the performance of the Services and will not rely, in this respect, on Intertek's advice whether requested or not; and
 - (c) take all the necessary steps to eliminate or remedy any obstruction or interruptions in the performance of the Services.
- 4.5 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 obligations as set out in 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 charges as set out in any Proposal or otherwise agreed in writing (the "Charges").
- 5.2 If the Client requests any additional services that are not included in the Proposal or this Agreement, the



- parties shall agree on new charges for such services; otherwise, such work will be charged on a time and material basis.
- 5.3 The Charges are expressed exclusive of VAT and any other applicable taxes. If a withholding tax is applicable, Intertek shall provide the Client with a quoted price including the applicable withholding tax. The Client shall pay any applicable taxes on the Charges at the rate and in the manner prescribed by law, within thirty (30) days of the issue by Intertek of a valid monthly invoice.
- 5.4 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 or other materials provided by the Client.
- 5.5 The Charges represent the total fees to be paid by the Client for the Services pursuant to this Agreement. In the event of any unforeseen problems or expenditure arising in the course of carrying out the Services, Intertek shall be entitled to make reasonable additional charges to cover additional time and cost necessarily incurred to complete the Services.
- 5.6 The Client shall pay all invoiced amounts without any deduction, discount or set-off no later than thirty (30) days after the invoice date. No deduction for bank charges incurred can be made. Payments, which must be denominated in the currency indicated in the invoice, must be made by means of money transfer to a bank account designated by Intertek.
- 5.7 Intertek will issue an electronic invoice to the Client each month as the Services progress. An electronic invoice may be sent by email and will be deemed to have been delivered to the Client upon receipt of such email. Intertek is under no obligation to fulfill any request by the Client for a paper copy to be sent by post. Intertek is entitled to charge the Client a £25 administration fee per invoice if the Client requests: a) to send an invoice by post; b) issue additional copies of an invoice; or c) include any new information, amending invoice details, format or structure from that agreed in the Proposal. Intertek maintains the right to reject such an invoicing amendment request, and such a rejection by Intertek of the Client's request will not exempt the Client from its obligation to pay within the period referred to in Clause 5.3 above.
- 5.8 If Intertek believes that the Client's financial position and/or payment performance justifies such action, Intertek has the right to demand that the Client immediately furnish security or additional security in a form to be determined by Intertek and/or make an advance payment. If the Client fails to furnish the desired security, Intertek has the right, without prejudice to its other rights, to immediately suspend the further execution of all or any part of the Services, and any Charges for any part of the Services which have already been performed shall become immediately due and payable.
- 5.9 If the Client fails to pay within the period referred to above, it is in default of its payment obligations and this Agreement after having been reminded by Intertek at least once that payment is due within a reasonable period. In such a case, the Client is liable to pay statutory interest on the credit balance with effect from the date on which the payment became due until the date of payment. In addition, all collection costs incurred after the Client's default, both judicial and extrajudicial, are for the Client's account. The extrajudicial costs are set at an amount equal to at least 10% of the principal plus interest, without prejudice to Intertek's right to collect the actual extrajudicial costs in excess of this amount. The judicial costs comprise all costs incurred by Intertek, even if they exceed the J TRUST ROYAL BANK PLC. base rate.
- 5.10 If the Client objects to the contents of the invoice, details of the objection must be raised with Intertek within seven (7) days of receipt of the electronic invoice; otherwise, the invoice will be deemed to have been accepted. Any such objections do not exempt the Client from its obligation to pay within the period referred to in Clause 5.3 above.
- 5.11 If actions by the Client delay completion of the Services, Intertek has the right to invoice the Client for the cost of all Services provided to date. In such a scenario, the Client agrees to pay this invoice within the period referred to in Clause 5.3 above.
- 6. INTELLECTUAL PROPERTY RIGHTS AND DATA PROTECTION**
- 6.1 All Intellectual Property Rights belonging to a party prior to entry into this Agreement shall remain vested in that party.
- 6.2 In the event of the provision of certification services, Client agrees and acknowledges that the use of certification marks may be subject to national and international laws and regulations.
- 6.3 The Client agrees and acknowledges that Intertek retains any and all proprietary rights in concepts, ideas and inventions that may arise during the preparation or provision of any Report (including any deliverables provided by Intertek to the Client) and the provision of the Services to the Client, provided that the Client retains the ownership of the data derived from or obtained in the course of the provision of the Services and any other intellectual property provided by the Client. Intertek reserves the right to use such data (or any other data derived from the Services), analysis and intellectual property for its own research and development purposes and for other activities for which it may require the same in future.
- 6.4 Photographs or video recordings of the Client's own project may be taken by the Client only if authorised by Intertek and used for the Client's own internal purposes. Photographs or video recordings may not be used for marketing or publicity, or distributed to a third party or otherwise published without Intertek's prior review and consent in writing. Taking photographs of other Intertek test specimens related to the Client's project is prohibited. The Client agrees to hold in strict confidence and not use any proprietary information disclosed either advertently or inadvertently. The Client shall defend, hold harmless, and indemnify Intertek for any breach of this Clause 6.4.
- 6.5 Both parties shall observe all statutory provisions with regard to data protection, including but not limited to the provisions of the General Data Protection Regulation 2016/679 and Data Protection Act 2018 ("GDPR") and shall comply with all applicable requirements of the GDPR. The Client warrants that the consent of their direct and/or contracted personnel has been obtained prior to any commencement of the Services. 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 its non-compliance with relevant Data Protection Laws and any breach of its obligations as set out in this Clause 6.5.
- 7. CONFIDENTIALITY OBLIGATIONS**
- 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, by 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 regulatory body (as a beneficiary of the Reports or any other outcome of the Services) 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) was already in the possession of the Receiving Party prior to its receipt from the Disclosing Party without restriction on its use or disclosure;
- (b) is or becomes public knowledge other than by breach of this Clause 7;
- (c) is received by the Receiving Party from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
- (d) 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 other authority with the power to compel such disclosure, 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, where permitted to do so by that authority, or equivalent, 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 sub-contractors) with its obligations under this Clause 7.
- 7.6 No licence 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 With respect to archival storage, the Client acknowledges that Intertek may retain in its archive for the period required by its quality and assurance processes, or by the testing and certification rules of the relevant accreditation body, all materials necessary to document the Services provided.
- 7.8 The obligation to maintain confidentiality shall survive for three (3) years after the completion of the Services.
- 8. REPORTS**
- 8.1 All Intellectual Property Rights in any Reports, documents, graphs, charts, photographs or any other material (in whatever medium) produced by Intertek pursuant to this Agreement shall belong to Intertek. The Client shall have the right to use any such Reports, documents, graphs, charts, photographs or other material for the purposes of this Agreement or its genuine business requirements.
- 8.2 The Client acknowledges and agrees that if, in providing the Services, Intertek is obliged to deliver a Report to a third party, Intertek shall be deemed irrevocably authorised to deliver such Report to the applicable third party without any liability either in contract or tort to such third party. For the purposes of this Clause 8.2, an obligation shall arise on the instructions of the Client, or where, in the reasonable opinion of Intertek, it is implicit from the circumstances, trade, custom, usage or practice.
- 8.3 The content of any Report represents Intertek's review of facts and documents in existence at the time of performance of the Services only and within the limits of the instructions received from the Client and is for the benefit of the Client.
- 8.4 The Client is responsible for acting as it sees fit on the basis of such Report. Neither Intertek nor any of its officers, employees, agents or subcontractors shall be liable to the Client nor any third party for any actions taken or not taken on the basis of such Report.
- 8.5 The Client will not use any Reports issued by Intertek pursuant to this Agreement in a misleading manner, and it will only distribute such Reports in their entirety and unredacted with Intertek's prior knowledge and approval, unless specifically provided for in writing between the Parties. Where Intertek issues a Report following a product inspection, the Client must refrain from using that Report in any media communications or marketing materials so as to suggest or imply any outcome, endorsement, or indication contrary to the Report's actual findings.
- 8.6 In no event will the contents of any Reports or any extracts, excerpts or parts of any Reports be distributed or published by the Client or any third party to whom the Client provided the Report without the prior written consent of Intertek (such consent not to be unreasonably withheld) in each instance.
- 8.7 The Parties acknowledge that Intertek, at its discretion, may employ artificial intelligence ("AI") solutions to assist in the delivery of certain Services and the preparation of Reports. Any data or information provided to Intertek may be processed by AI in accordance with applicable privacy and confidentiality obligations set forth in this Agreement.
- 9. AMENDMENT**
- 9.1 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.
- 10. FORCE MAJEURE**
- 10.1 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;
- (d) failures of utilities companies such as providers of telecommunication, internet, gas or electricity services; or
- (e) any other event beyond the reasonable control of a party.
- 10.2 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.
- 10.3 A Party whose performance is affected by an event described in Clause 10.1 (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 endeavours 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.
- 10.4 If the Force Majeure Event continues for more than sixty (60) days after the day on which it started, each Party may terminate this Agreement by giving at least ten (10) days' written notice to the other party.
- 11. LIMITATIONS AND EXCLUSIONS OF LIABILITY**
- 11.1 Neither Party excludes or limits liability to the other party:
- (a) for death or personal injury resulting from the negligence of that party or its directors, officers, employees, agents or sub-contractors; or
- (b) for its own fraud (or that of its directors, officers, employees, agents or sub-contractors).
- 11.2 Subject to Clause 11.1, the maximum aggregate liability of Intertek in contract, tort (including negligence, gross 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 be an amount equal to the fees paid by the Client and/or its Suppliers to Intertek for the Services performed in accordance with this Agreement.
- 11.3 Notwithstanding the above Clause 11.2, Intertek shall not be liable in contract, tort (including negligence and breach of statutory duty) or otherwise for any: (i) loss of profits; (ii) loss of sale or business; (iii) loss of or damage to goodwill or reputation; (iv) cost or expense of making a product recall; (v) loss or use or corruption of software, data or information; (vi) any indirect, consequential, punitive, or special loss (even when advised of their possibility); (vii) any incorrect results in any Reports arising from any false, unclear, incomplete, or misleading information provided to Intertek; and (viii) the Client's failure to comply with requirements of any applicable law and regulation.
- 11.4 Any claim by the Client against Intertek must be made within 90 days after the Client becomes aware of any circumstances giving rise to any such claim. The claim shall be remedied as stipulated in clause 3.2.
- 12. INDEMNITY**
- 12.1 Except in cases of proven negligence or fraud by Intertek, the Client shall indemnify and hold harmless Intertek, its officers, employees, agents, Affiliates, 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 regulatory body or 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 Services provided hereunder by Intertek, its officers, employees, agents, representatives, contractors and sub-contractors;
- (c) the breach or alleged breach by the Client of any of its obligations set out in Clause 4 above;
- (d) any claims made by any third party for loss, damage or expense of whatsoever nature and howsoever arising relating to the performance, purported performance or non-performance of any Services to the extent that the aggregate of any such claims relating to any one Service exceeds the limit of liability set out in Clause 11 above; and
- (e) any claims or suits arising as a result of any misuse, unauthorised or false use of any Reports issued by



- Intertek which may damage the goodwill or reputation of Intertek, including but not limited to any use by the Client of the name "Intertek" or any of Intertek's trademarks or brand names for any media, marketing or publication purposes without obtaining the prior written consent of Intertek.
- 12.2 Intertek shall not be liable for any claim whatsoever relating to deterioration, contamination, damage or loss of samples. The Client shall indemnify and hold harmless Intertek against any claims or legal action resulting from damage, deterioration or loss of samples.
- 12.3 The Client will not hold Intertek liable or attempt to pursue Intertek's liability for the difference between the conclusion drawn by the Report and the conclusion produced or provided by any third party or assist or support any third party to do so.
- 12.4 The obligations set out in this Clause 12 shall survive termination of this Agreement.
- 13. INSURANCE POLICIES**
- 13.1 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.
- 13.2 Intertek expressly disclaims any liability to the Client as an insurer or guarantor against loss or damage thereto and disclaims all liability in any such capacity. The Client seeking a guarantee against loss or damage should obtain appropriate all-risk insurance, and if such insurance is procured, the Client agrees to obtain a waiver of subrogation against Intertek.
- 13.3 The Client acknowledges that although Intertek maintains 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 employer's liability insurance does not provide cover for non-Intertek employees.
- 14. TERMINATION**
- 14.1 This Agreement shall commence upon the first day on which the Services are commenced, or the Client accepts the Agreement in writing, whichever is the earlier, and shall continue, unless terminated earlier in accordance with this Clause 14, until the Services have been provided and all Charges paid in full. Intertek may terminate this Agreement for convenience at any time upon providing thirty (30) days' written notice to the Client.
- 14.2 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; or
- (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 encumbrancer 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.
- 14.3 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 and including the date of termination. This obligation shall survive the termination or expiration of this Agreement.
- 14.4 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.
- 15. ASSIGNMENT AND SUB-CONTRACTING**
- 15.1 Intertek reserves the right to delegate the performance of its obligations hereunder and the provision of the Services to one or more of its Affiliates and/or sub-contractors when necessary. Intertek may also assign this Agreement to any company within the Intertek group on notice to the Client.
- 16. GOVERNING LAW AND DISPUTE RESOLUTION**
- 16.1 This Agreement and the Proposal shall be governed by Kingdom of Cambodia law. The parties agree to submit to the exclusive jurisdiction of the Cambodian Courts in respect of any dispute or claim arising out of or in connection with this Agreement (including any non-contractual claim relating to the provision of the Services in accordance with this Agreement).
- 17. MISCELLANEOUS**
- 17.1 Severability**
- 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 on an alternative arrangement.
- 17.2 No Partnership or Agency**
- 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 legal representative of the other.
- 17.3 Waivers**
- 17.3.1 Subject to Clause 11.4 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.
- 17.3.2 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.
- 17.4 Whole Agreement**
- 17.4.1 This Agreement and the Proposal contain the whole agreement between the parties relating to the transactions contemplated by this Agreement and supersede all previous agreements, arrangements and understandings between the parties relating to those transactions or that subject matter. No purchase order, statement or other similar document will add to or vary the terms of this Agreement.
- 17.4.2 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.
- 17.4.3 Nothing in this Agreement limits or excludes any liability for fraudulent misrepresentation.
- 17.5 Third Party Rights**
- A person who is not party to this Agreement has no right to enforce any of its terms.
- 17.6 Further Assurance
- Each party shall, at the cost and request of any other party, execute and deliver such instruments and documents and take such other actions in each case as may be reasonably requested from time to time in order to give full effect to its obligations under this Agreement.
- 17.7 Non-Solicitation**
- During the terms of this Agreement and for a period of twelve (12) months after the provision of the final Report or the Services, neither party shall directly or indirectly solicit employees of the other party for hire provided, however, that this provision shall not apply to a general solicitation or advertisement of employment opportunities that are not targeted at employees of the other party.
- 17.8 Additional Work**
- If the Client requests Intertek to perform any work under this Agreement which is not within the scope of work, or is not to be performed at the place of performance of work, in each case as agreed as at the date of this Agreement in writing between the Client and Intertek ("Additional Work"), the Client agrees and undertakes as follows:
- (a) Intertek shall not be liable in any way for any performance of, defect or negligence in performance of, or failure to perform such Additional Work;
- (b) Intertek may, in its sole discretion, and acting as agent for the Client, instruct a suitably qualified third party to carry out such Additional Work on behalf of the Client ("Subcontractor"); and
- (c) the Client agrees to indemnify Intertek and hold it harmless against any costs, loss, damages, fees,

expenses, claims or liabilities which Intertek may suffer or incur as a result of, arising from or in connection with any act or omission (including any negligent act or omission) done by the Subcontractor.

18 SANCTIONS

- 18.1 In requesting Intertek to provide the Services, the Client hereby undertakes that the performance of such Services will not constitute a breach of, or cause Intertek to be in breach of, any applicable Sanctions Regime or other legislation or cause Intertek to work for or with an individual or entity designated as a sanctioned entity under the UN, US, UK, EU, Swiss or Australian or any other Sanctions Regimes applicable to the scope of work.
- 18.2 The Client hereby specifically represents and warrants that (i) neither itself nor any of its Affiliates are, nor would it/they likely, be subject to any sanction imposed by any sovereign government or internationally recognised organisation (including without limitation the UN, US, UK, EU, Switzerland or Australia) upon the execution and during the term of this Agreement, (ii) to the best of its knowledge, none of their subcontractors, agents or any other party acting for or on behalf of any of them and none of their Suppliers, clients, business partners with whom the Client or any its Affiliated party deals or transacts with in connection with the Service under this Agreement is or is likely becomes subject to any such Sanction Regime, or subject to the relevant investigation; and (iii) to the fullest extent permitted by the applicable laws and regulations and government decrees, the Client will properly observe, follow and implement the requirements of the Sanctions Regime including without limitation not circumventing sanction measures in any manner such as applying or assisting or facilitating the application of business proceeds or resources for military purpose of the Sanctioned Party or otherwise in favor of them.

19. SERVICE SPECIFIC TERMS

19.1 MOODY INTERNATIONAL

- 19.1.1 When Intertek is obliged to provide welding and metallurgical services, the Client accepts the following terms:
- (a) retesting due to failure or any other legitimate cause, and other additional tests not budgeted for will be charged as an extra; and
- (b) sample material will be retained for a period of one month from the date of completion of the Services, unless instructions are received to the contrary.
- 19.1.2 When Intertek is obliged to provide the certification of vessels under pressure, the Client accepts the following terms:
- (a) inspection at sub vendor premises is excluded unless specifically included in the Proposal;
- (b) material certification costs to EN 10204 3.2 are excluded unless specifically provided in the Proposal;
- (c) no provision has been made for the malperformance of manufacturers or inspection of rework. Any abortive visits, unnecessary call-outs, failure to incorporate comments on documentation submitted for review and approval resulting in additional document reviews, additional meetings necessary to correct out-of-control situations and any work outside of the scope as defined in the Proposal, will be charged as an extra;
- (d) documentation reviews for approval are based on the first review and two resubmissions; and
- (e) documentation submitted piecemeal might result in additional review time. Documentation distribution to clients or managing representatives for the user to foreign countries will be charged per courier charges.
- (f) Electronic drawing transmission/receipt will incur an electronic documentation handling fee.
- (g) Document turnaround time to be agreed upon; the number of working days starting the day after the receipt of the documents. The turnaround time is also subject to the condition that Intertek is placed timeously in possession of a detailed schedule of documents and submission dates in order to plan the availability of our personnel.
- (h) Estimates are strictly in accordance with the specified certification code and specifications.
- (i) Inspection notification by the vendor/manufacturer to Intertek shall be 24 hours in advance and per email in accordance with the approved quality control plan. Any written communication received after 17h00 local time will be deemed to have been received on the next business day.
- (j) Confirmation of total costs to be made subsequent to the pre-manufacture meeting, placing of orders and confirmation of manufacturing time scales, for reimbursable contracts.
- (k) Proposals are based on the assumption that the vendor operates a Quality Management system in accordance with ISO 9001.
- (l) Certificate(s) of compliance shall be deemed to be an original document issued without alterations or modifications.
- (m) Intertek shall attend a pre-manufacturing meeting.
- 19.1.3 Quality management consultation and the resulting quality system documentation, the implementation and maintenance thereof shall be the sole responsibility of the Client unless Intertek is contracted to the contrary.
- 19.2 BUSINESS ASSURANCE SERVICES**
- 19.2.2 Where the Client has instructed Intertek to carry out audit of its Suppliers, the Client must ensure and provide reasonable evidence that Suppliers acknowledge and agree in writing that any Services provided and/or Reports produced by Intertek are done so within the limits of the scope of work agreed with the Client in relation to the Proposal and pursuant to the Client's specific instructions or, in the absence of such instructions, in accordance with any relevant trade custom, usage or practice and Intertek shall provide a copy of the Report to the Client. Furthermore, the Client must ensure that Suppliers accept in writing these terms and conditions prior to Intertek commencing the Services at their sites.
- 19.3 GOVERNMENT TRADE SERVICES**
- 19.3.1 In addition to the warranties and representations provided in Clause 4, the Client warrants and represents:
- (a) to take full responsibility to ensure: (i) the goods shipped are the same goods that were presented for inspection (whether remote or otherwise) or certification at the Client's or third party premises, and (ii) any information (including information with regard to inspection location and goods), samples and related documents provided by the Client in relation to any inspection (remote or otherwise) shall be true, accurate and not misleading in any respect; and
- (b) that all imported goods which are subject to specific programme requirements may be randomly selected for inspection and testing for safety, quality and trade compliance purposes at the customs territory of the importing country. Intertek performs the Services based on a random sampling of their products and on testing of limited parameters through a risk assessment approach. The Client agrees to take responsibility and acknowledges that they are aware of the customs, legislative and regulatory requirements governing the import of their products and commits to comply with those requirements.
- 19.3.2 The Client agrees that all products requested for certification are not affected by any product recalls, nor substandard or counterfeit, to the best of their knowledge. The Client declares under their own responsibility that the products requested for Certification satisfy the requirements of the standards and other regulations applicable to the type of products being exported. The Client agrees that at the time of the submission of the Request for Shipment Certification, the shipment is still in the country of supply and is accessible for inspection, if needed.
- 19.3.3 Insofar as applicable to the Services agreed by the parties, the Client acknowledges that Intertek's internal auditors are authorised to amend or overturn the recent inspection outcome if the result of the Services supports this action. The Services will be conducted in a manner that does not unduly interfere with the export of the products, nor jeopardise the Client's legitimate interests.