



a **kiwa** company

# TERMS AND CONDITIONS (UK)

## 1. Formation of Contract

- 1.1 These terms and conditions ("**Terms and Conditions**") together with any quotation, proposal, estimate or fee quote ("**Quotation**") provided by or on behalf of the Company (as defined below) shall apply to all contracts for the supply of testing, calibration and/or other services ("**Services**") carried out by NQA Certification Limited (a company registered in England with registered number 09351758) ("**Company**") providing the services contemplated therein to a customer ("**Customer**").
- 1.2 These Terms and Conditions shall supersede and override any terms or conditions contained in or referred to in the Customer's purchase order or acceptance of a quotation or specification and shall prevail over any inconsistent terms or conditions contained or referred to in the Company's confirmation of order, or implied by law (unless the law in question cannot be excluded), trade custom, practice or course of dealing. Any phrase introduced by the terms "**including**", "**include**", "**in particular**" or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.3 Written and oral Quotations shall be valid for sixty (60) days from the date thereof and the Company may withdraw any such Quotation at any time. No Quotation given by the Company shall be an offer to contract with any person and no contract shall come into existence except in accordance with sub-condition 1.4.
- 1.4 The Customer's purchase order or the Customer's acceptance of a Quotation constitutes an offer by the Customer to purchase the Services specified in the Quotation upon these Terms and Conditions. No offer placed by the Customer shall be accepted by the Company other than by a written acknowledgement issued and executed by the Company or (if earlier) by the Company starting to provide the Services, when a contract for the supply and purchase of those Services on these Terms and Conditions will be established (the "**Contract**").
- 1.5 No acceptance or acknowledgement, even if in writing and signed by the Company, of the Customer's purchase order or any other document pertaining to the Services shall constitute acceptance of any provision of the Customer's purchase order or any other document that conflicts with or adds to these Terms and Conditions unless the Company specifically agrees to such a variation of these Terms and Conditions pursuant to and in accordance with sub-condition 3.1.
- 1.6 The delivery to the Company by the Customer of any item for testing or calibration by the Company (a "**Sample**") or the delivery of any request by the Customer to the Company for the provision of any similar services shall, upon acceptance of that Sample or request by the Company, constitute an 'offer' (as referred to in sub-condition 1.4). If the Company begins such testing, calibration or similar services on that Sample, the offer shall be deemed to have been accepted by the Company and a Contract shall be formed. These Terms and Conditions shall apply to that Contract.

## 2. Delivery by the Customer to the Company

- 2.1 The delivery by the Customer to the Company of a Sample shall occur under the Delivery Duty Paid ("DDP") Incoterm 2020 © rules. Pursuant to the DDP rules, the Customer shall assume all responsibilities, risks and costs for the delivery of the Sample to the named place of destination agreed upon between the Company and the Customer in the Contract. The Customer shall be responsible for, but not limited to, (export and import) customs clearance and the payment of any duties and taxes until the Sample has reached its named place of destination.
- 2.2 The Company shall receive the Sample at the named place of destination and may offer assistance to the Customer for the unloading of the Sample upon delivery.

- 2.3 In any event, the Company shall not bear any risks and costs nor assume any responsibilities in respect of the unloading process of the Sample at the named place of destination. The Company shall not be liable in respect of any costs or losses resulting from damage to or destruction of the Sample at the time of the unloading of the Sample.

## 3. Variation including Cancellation, Postponement and Amendment

- 3.1 These Terms and Conditions may not be varied or waived by either party unless the variation or waiver is in writing and is signed by an officer or duly authorised signatory of the Company. The variation or waiver must set out the condition(s) or sub-condition(s) to be varied or waived and the detail of each such variation or waiver.
- 3.2 The Customer may cancel, postpone or amend any order (in whole or in part) at any time, provided that the Customer shall pay to the Company the full amount of the Consideration (as defined in sub-condition 4.1) relating to such order plus all Costs (as defined in sub-condition 4.1) relating to such order incurred by the Company prior to the date of the cancellation, postponement or amendment plus any other losses, expenses and costs incurred by the Company as a result of the cancellation, postponement or amendment.
- 3.3 The Company reserves the right to review and amend any Quotation prices where documentation, specification or other materials relating to the Contract have materially changed since the original Quotation was given or where additional services not envisaged by the Quotation are requested, for example, producing written descriptions of detailed procedures undertaken as part of the Services. For the avoidance of doubt, approval of such additional requests shall remain at the Company's discretion.

## 4. Prices & Payment

- 4.1 Subject to the terms of condition 5.6, the Customer shall pay the Company the charges set out in the Quotation, if applicable, or as otherwise contemplated for the provision of the Services ("**Consideration**") and shall pay the Company on demand for any expenses incurred in the provision of the Services ("**Costs**"), unless expressly agreed otherwise in writing.
- 4.2 The Company may issue invoices in respect of Services:
- 4.2.1 upon completion of the Services; or
- 4.2.2 upon completion to the Company's reasonable satisfaction of separate parts of the Services, in which case, the Company will invoice for that proportion of the total Consideration for the Services performed under the Contract; or
- 4.2.3 in a manner otherwise specified in the Quotation, including individual lines on the Quotation, or order confirmation.
- 4.3 The Customer shall pay the Consideration and Costs stated in any invoice for Services provided pursuant to these Terms and Conditions in full, without deduction or set-off, within thirty (30) days of the date stated on that invoice. The Consideration shall be paid free and clear of, and without deduction for and on account of, tax unless the Customer is required by law to make such payment subject to the deduction of withholding tax, in which case the sum paid by the Customer shall be increased to the extent necessary to ensure that after such deduction or withholding the Company receives an amount equal to Consideration and Costs it would have received had no such deduction or withholding been required.

- 4.4 The Customer shall pay the Consideration and Costs to the Company by electronic bank transfer in cleared funds in the currency specified in the Company's Quotation, proposal or order confirmation. All payments due to the Company shall be payable within the specified time irrespective of whether or not the Customer has recovered payment from a third party and, for the avoidance of doubt, but without prejudice to the generality of the foregoing, this includes payments of fees due to the Company acting as experts or as expert witnesses when instructed by solicitors acting for a party to a dispute.
- 4.5 In default of payment within the thirty (30) days, the Company may: suspend any further Services being carried out for the Customer; withhold the provision of Reports (as defined in sub-condition 5.2); alter or withdraw credit terms; and amend terms, prices or service levels. The amount outstanding from time to time shall bear interest, calculated from the due date of the invoice to the date of receipt of the amount in full at a rate equivalent to 3% per annum above the base rate from time to time of HSBC Bank in the relevant currency.
- 4.6 The Company may retain or set off any sums owed to it by the Customer which have fallen due and payable against any sums due to the Customer under this Contract or any other agreement between the parties or any of their Group Companies. "**Group Company**" means, in relation to a company, that company, any subsidiary or holding company of that company, and any subsidiary of a holding company of that company.
- 4.7 The Customer undertakes that during the provision of the Services and for 6 months following completion thereof, the Customer shall not:
- 4.7.1 solicit or entice away (or assist anyone else in soliciting or enticing away) any member of the Company's staff with whom the Customer has had dealings in connection with the Contract and/or the provision of the Services during the 12 months immediately prior to the earlier of the date of the Customer's purchase order or the date of the Quotation; or
- 4.7.2 employ (directly or through a third party) any person as referred to in sub-condition 4.7.1 or engage them in any way to provide services to the Customer. This undertaking shall not apply in respect of any member of the Company's staff who without having been previously approached directly or indirectly by the Customer responds to an advertisement placed by the Customer or on the Customer's behalf.
- In the event of a breach of this undertaking, which leads to the departure of any person as referred to in sub-condition 4.7.1, the Customer will pay to the Company, on demand, a sum equivalent to 50% of the total annual remuneration package paid by the Company to the individual prior to his or her departure. The Customer acknowledges that this provision is a fair and reasonable term intended to be a genuine assessment of the likely loss to the Company.

## 5. Services

- 5.1 Subject to the remaining sub-conditions of this condition 5, the Company warrants that it will complete the Services in a satisfactory and workmanlike manner, consistent with industry standards. The Customer expressly acknowledges and agrees that the Company gives no warranty that any result or objective can be achieved through the Services and that, where results are based on smaller scale tests and theoretical studies, results may require careful validation in order to be extrapolated to a production scale.
- 5.2 The Company will use its reasonable endeavours to complete Services and provide written information, results, technical reports, certificates, test or inspection records, drawings, recommendations, advice or the like in respect of the Services (the "**Report**") or certificate thereon to the Customer by any date reasonably requested in writing by the Customer, but the Company shall not be liable to the Customer for: (i) any delay in the performance of any obligation under the Contract; or (ii) damages suffered by the Customer by reason of such delay.
- 5.3 The Company's obligation to complete Services under the Contract shall be subject to any obligation it may have to comply with any law or other regulation binding on it which may be in force from time to time.
- 5.4 No employee, agent or other person is authorised to give any warranty or make any representation on behalf of the Company in relation to the Contract, or to assume for the Company any other liability in connection with the Services, unless such warranty, representation or assumption of liability is given to the Customer in accordance with sub-condition 3.1.

- 5.5 In relation to radiography reports and film delivered or interpreted as part of the performance of the Services, the Customer shall notify the Company, within fourteen (14) days from date of issue of such radiography reports and film, of any Customer or third party dispute concerning either the radiographic quality or interpretation of results. If the Customer does not so notify the Company within this fourteen (14) day period, the Customer will be deemed to have accepted the radiography reports and film, together with any interpretation of these, provided by the Company.
- 5.6 In the event of certification services, the Customer agrees that the terms of the annex to these Terms and Conditions entitled "Certification Annex" shall apply.
- 5.7 The Customer represents and warrants to the Company the completeness and accuracy of all documents and information supplied to the Company for the purposes of the Company fulfilling the Services, both at the time of supply and subsequently.
- 5.8 Reports are issued on the basis of information known to the Company at the time that the Services are carried out. Although the Company will use all reasonable endeavours to ensure accuracy, the Services depend, inter alia, on the effective co-operation of the Customer, its staff and on the information submitted to the Company. All Reports are prepared on the basis that:
- 5.8.1 there is no responsibility to any person or body other than the Customer;
- 5.8.2 they are not produced for any particular purpose and no statement is to be deemed, in any circumstances to be or give rise to a representation, undertaking, warranty or contractual condition unless specifically stated;
- 5.8.3 the Report is determined solely by the professional analysis undertaken by the Company's staff on each individual Contract and any forecasts by the Company of the results is an estimate only;
- 5.8.4 the Company is entitled to be paid the Consideration irrespective of the results or conclusions reached in the Report;
- 5.8.5 the results of the Services shall address the items and information submitted only and are not to be regarded as representative of any larger population from which the Sample was taken; and
- 5.8.6 the results are final and approved by the Company. The Company shall be under no liability where the Customer has acted on preliminary, unapproved results or advice.

## 6. Customer's Property

- 6.1 The Customer shall supply as much information as possible, including a unique purchase order number, reference or authorization, about each Sample and/or Service requirement in order to assist in achieving an efficient service. If a Customer provides the Company with detailed instructions in writing as to the treatment and handling of particular items of its property, the Company will use its reasonable endeavours to comply with such instructions.
- 6.2 The Customer shall inform the Company in writing prior to the Company carrying out any Service on a Customer site or Sample that is of a dangerous or unstable nature, as well as notify the Company of any actual or potential health & safety hazards relating to a Sample and arising from the Company's performance of the Services, and shall provide instruction on the safe visiting of the site or safe handling of the Sample. The Customer shall accept full responsibility for appropriate safety labeling pertaining to the Sample and any equipment provided to the Company by the Customer.
- 6.3 The Customer acknowledges and expressly agrees that, subject to sub-condition 6.4 where the Contract specifies that the Services include non-destructive testing of the Sample, the performance of the Services may damage or destroy any and all Samples and any other materials or property delivered by the Customer to the Company in relation to the Contract. Under no circumstances will the Company be responsible for any additional costs or damages, including consequential damages and indirect costs or losses, resulting from destruction or loss of the Customer's property.

**6.4** When testing, analysis or other services are carried out, the Company shall not be liable in respect of any costs or losses resulting from damage to or destruction of any property belonging to the Customer unless the Customer notifies the Company in writing before delivery to the Company and the property itself delivered to the Company is clearly marked "Do Not Destroy or Damage". If such notice is given and the Customer's property is so marked, the Company's liability for damage to or destruction of the Customer's property (other than expressly set out in sub-condition 2.3) is limited to the lesser of:

**6.4.1** the value of Customer's property; or

**6.4.2** the cost of the Services performed on the damaged property pursuant to the Contract.

## **7. Re-Delivery**

**7.1** The Company will at the Customer's reasonable written request, deliver the Customer's property (other than that which is destroyed as part of the Services) back to the Customer after performing Services relating to that property. The Company may use any method of delivery that it reasonably decides and will do so as the agent of the Customer and will not have any liability in respect of any such item so delivered. The Company may at its discretion instruct any person delivering such property to the Customer to invoice that Customer directly in respect of that delivery and the Customer shall make any and all claims for property damaged in transit directly and solely against such delivery company or other person.

**7.2** Unless specifically instructed to the contrary in writing by the Customer, the Company reserves the right to properly dispose of Customer's property after three (3) months from completion of the Services. The Company reserves the right to invoice the Customer for any costs of disposal. Where property of the Customer is, in the sole opinion of the Company, too bulky or too unstable to allow storage time of more than one month, it will be at the absolute discretion of the Company as to the length of time such property is kept before being destroyed.

## **8. Title & Security**

Title to the Customer's property which is delivered to the Company and all risk of loss or damage to such property (except for loss or damage caused by the Company and for which and to the extent that the Company accepts liability under these Terms and Conditions) shall remain with the Customer at all times, who shall be responsible for effecting and maintaining its own insurance cover in relation thereto, it being hereby acknowledged by the Customer that the charges of the Company do not include insurance. The Company may retain all property delivered to it until all sums due and owing to the Company by the Customer have been paid.

## **9. Liability and Indemnity**

**9.1** This condition 9 sets out the entire financial liability of the Company, its employees, agents and sub-contractors to the Customer in respect of any breach of the Contract, any use made of Samples or any part of them on which Services are carried out and any representation, statement or tortious act or omission (including negligence or breach of statutory duty) arising under or in connection with the Contract.

**9.2** Other than as expressly set out herein and as specifically warranted in writing to the Customer by an officer or duly authorised signatory of the Company in accordance with sub-condition 3.1, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

**9.3** SUBJECT TO THE REMAINING SUB-CONDITIONS OF THIS CONDITION 9, THE COMPANY SHALL NOT BE LIABLE, WHETHER IN TORT (INCLUDING FOR NEGLIGENCE OR BREACH OF STATUTORY DUTY), CONTRACT, MISREPRESENTATION OR OTHERWISE FOR:

**9.3.1** LOSS OF PROFITS; LOSS OF BUSINESS, LOSS OF REVENUE; LOSS OF MARKETS; LOSS OR DAMAGE INCURRED AS A RESULT OF A THIRD PARTY CLAIM; DEPLETION OF GOODWILL AND/OR SIMILAR LOSSES; LOSS OF ANTICIPATED SAVINGS; LOSS OF GOODS; LOSS OF CONTRACT; LOSS OF USE; ANY COST OF DECAMPING OR REHOUSING; LOSS OR CORRUPTION OF DATA OR INFORMATION; EX GRATIA PAYMENTS; OR

**9.3.2** ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL LOSS, COSTS, DAMAGES, CHARGES, FINES, PENALTIES OR EXPENSES; OR PURE ECONOMIC LOSS.

**9.4** SUBJECT TO CONDITIONS 9.3 AND 9.10, THE COMPANY'S TOTAL LIABILITY TO THE CUSTOMER IN CONTRACT, TORT (INCLUDING CLAIMS FOR NEGLIGENCE OR BREACH OF STATUTORY DUTY) MISREPRESENTATION, RESTITUTION OR OTHERWISE ARISING IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THE CONTRACT SHALL IN ALL CIRCUMSTANCES BE LIMITED TO THE GREATER OF (i) £5,000 OR

(ii) THE CONSIDERATION FOR THE SERVICES PAYABLE EACH YEAR UNDER THE CONTRACT THAT ARE SUBJECT TO THE CLAIM.

Save in the case of fraud or fraudulent concealment by the Company, the Company shall be under no liability in respect of any claim under the Contract and any such claim shall be wholly barred and unenforceable unless:

**9.4.1** the Customer notifies the Company in detail and in writing of the alleged basis for the claim within two (2) months of the Customer becoming aware thereof and within one year after the completion of the Services to which the claim relates; and

**9.4.2** the Company is permitted to inspect any and all property with respect to which the Services are claimed to have been defective or to which Customer's claim otherwise relates.

**9.5** Without prejudice to the generality of sub-condition 9.4, the Company shall have no liability whatsoever to the Customer (whether in contract, tort (including without limitation negligence or breach of statutory duty), or otherwise) arising out of or in connection with any Cladding Claim, save as may be explicitly agreed in writing between the Company and the Customer. Any such agreement in writing shall, save where it explicitly provides otherwise, be taken (a) to be subject to any other provisions which operate to exclude or limit the Company's liability, including without limitation sub-conditions 9.3 and 9.4 above, and (b) to exclude, if and to the extent not excluded in any event, any liability other than for the direct costs, incurred as a direct result of a negligent act or omission of the Company from which such Cladding Claim arises, of rectifying works. For the purposes of this sub-condition 9.5, "Cladding Claim" means any claim related to any external wall system (including without limitation (i) any aluminium composite material cladding and (ii) any external wall system designed or used for any of the same or similar purposes as such cladding) or any product or material used or intended for use in or in connection with any such system (including without limitation any associated core, filler, insulation, or cavity barrier).

**9.6** Except where the Services are provided to a person who deals as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms express or implied, statutory, customary or otherwise are excluded to the fullest extent permitted by law.

**9.7** The Customer acknowledges that the above provisions of this condition 9 are reasonable and reflected in the price which would be higher without those provisions and the Customer will accept such risk and/or insure accordingly.

**9.8** The Customer agrees to indemnify, keep indemnified and hold harmless the Company from and against all losses which the Company may suffer or incur arising out of or as a result of:

**9.8.1** breach of any law by the Customer in connection with the performance of the Services;

**9.8.2** any claim threatened or made against the Company by any third party arising out of the Services or out of any delay in performing or failure to perform the Services (even if such claim is solely or partly attributable to the fault or negligence of the Company) to the extent such claim is in excess of the Consideration paid for the Services under the Contract that are subject to the claim; or

**9.8.3** any claims arising as a result of any misuse or unauthorized use of any Reports issued by the Company or any Intellectual Property Rights belonging to the Company (including trade marks) pursuant to this Contract.

Notwithstanding any other provision of these Terms and Conditions, the Customer's liability under this indemnity shall be unlimited.



- 9.9 The Company's liability for breach of contract, tort (including claims for negligence or breach of statutory duty) or otherwise in connection with the performance of the Contract shall be limited to such amount as would be just and equitable for the Company to pay having regard to the Company's responsibility for the particular loss or damage.
- 9.10 Nothing in these Terms and Conditions limits or excludes the liability of the Company for:
- 9.10.1 death or personal injury resulting from negligence; or
- 9.10.2 liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company; or
- 9.10.3 any other matter which may not be limited or excluded by law.
- 9.11 This condition 9 shall survive termination of the Contract.

## 10. Intellectual Property Rights

- 10.1 In this condition 10, the following definitions apply:

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights (now existing or hereafter created), in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

- 10.2 All Intellectual Property Rights (including copyright in records, scientific documentary, primary data or electronic means of handling data) produced during any Service shall belong to and remain the property of the Company unless otherwise expressly agreed as part of the Contract.
- 10.3 Ownership and copyright in the Report shall remain with the Company. Upon the Customer discharging all its obligations under the Contract, including payment of the Consideration, the Customer will obtain an irrevocable, royalty-free, non-exclusive licence to use the Report (including the right to sub-license), subject to the terms of sub-condition 10.2 and this sub-condition 10.3.
- 10.4 All Intellectual Property Rights in all service mark(s), trade mark(s), certification mark(s) and other names and logos owned by the Company shall remain the property of the Company and cannot be sold or licensed by the Customer.
- 10.5 When certification is granted the Company shall award a licence to the Customer to use the Company's certification mark(s) and logos for the certification validity period, subject to the applicable terms of use (as amended from time to time) which are issued with every certification and are available on request.
- 10.6 The Customer shall indemnify the Company against all losses to which the Company may become liable as a result of a claim that the use of any data, equipment or other materials supplied by the Customer for the performance of the Services involves the infringement of any Intellectual Property Rights of any third party.
- 10.7 The Customer acknowledges the title and ownership of the intellectual property rights of any third-party certification standard setting body, including but not limited to FSC. In particular, the Customer acknowledges the third-party certification standard setting body's full ownership of all intellectual property rights relating to the third-party certification Standard setting body's name, trademarks, and certification scheme materials, and agrees that nothing in this Contract shall be construed as granting the Customer any rights to use or authorise the use of such intellectual property unless expressly permitted in writing by the third-party certification standard setting body or as part of a valid licence agreement issued under the relevant scheme rules.
- 10.8 Except for the rights to use set forth in condition 11, this Contract does not grant and shall not be construed as granting, any rights to either party to any name or mark of the other party. Neither party is granted any right to the other party's name in connection with any publication and may not give any press release or make any other public announcement regarding this Contract, the Services or any transaction between the parties without the express prior written consent of the other party.

## 11. Use of Reports

- 11.1 The Reports constitute confidential information that is to be protected and shall be used solely to:
- 11.1.1 assist the Customer in completing its internal requirements and the Company in performing Services for the Customer;
- 11.1.2 comply with the Customer's customer and other third party requirements for the delivery and use of the data recited in the Reports;
- 11.1.3 present or respond on a claim in a court of law (provided that, where this is the purpose for which the Report is instructed this has been agreed with the Company in advance of the Report being instructed); or
- 11.1.4 present or respond as required by law or any regulatory body.
- 11.2 The Customer hereby undertakes that it shall not:
- 11.2.1 except as set out in sub-condition 11.1, disclose a Report (or information contained within a Report) to any third party without the prior written consent of the Company;
- 11.2.2 replicate or present a Report except in full as delivered by the Company without the prior written consent of the Company; or
- 11.2.3 use a Report, or any portion thereof, in any manner that might reflect unfavorably upon the Company or its group, or which might be, or might include statements, interpretations or comments that could be, misleading or false.

## 12. Premises

The Company's premises (the "Premises") are a designated security area and:

- 12.1.1 the Company reserves the right to refuse admission to the premises;
- 12.1.2 unless otherwise agreed in advance by the Company, one visitor per Customer may be admitted on request to witness the Services carried out for that Customer; and
- 12.1.3 visitors to the Premises shall conform to the Company's regulations and procedures.
- 12.2 Where any aspect of the Service is undertaken on premises not occupied by the Company or under its direct control, the Customer must ensure that all necessary safety measures are in place to comply with all applicable health and safety regulations, and save as otherwise agreed in writing between the parties or where identification of asbestos is part of the scope of the Services to be provided by the Company to the Customer, the Customer must ensure all asbestos has been removed and/or is safely contained in every area to be visited by the Company's personnel during the visit to said premises.
- 12.3 In addition to any specific Customer obligations set out in the Quotation and the provisions of sub-condition 12.2, where Services are provided at the premises of the Customer, the Customer shall: (i) provide the Company with necessary access to any Customer premises; (ii) ensure that any premises provided by the Customer for the provision of any part of the Service is suitable for that purpose; (iii) provide all usual auxiliary and operating materials (including gas, water, electricity, lighting etc.) relevant to any Customer supplied premises; and (iv) provide the Company with any permits required for the performance of the Service.

## 13. Court and Other Proceedings

- 13.1 In the event that the Customer requires the Company to present the results or findings of Services carried out by the Company in witness statements, court hearings or other legal proceedings, the Customer shall pay to the Company such costs and fees for such presentations and the preparation thereof as the Company may charge to customers generally from time to time for such services and the Customer shall be liable for such costs in addition to the Consideration

**13.2** In the event that the Company is required by a party other than the Customer to present the results or findings of Services carried out by the Company for the Customer in any legal proceedings relating to the Customer, the Customer shall pay all costs and fees arising from any services which the Company is required to do as a result, including the preparation of any witness statement and the preparation for and appearance at any court hearing. The Customer shall pay all such costs, whether or not the Customer has paid all outstanding Consideration under the Contract and whether or not the Company has closed the Customer's file in respect of the matter.

**13.3** If any aspect or element of the Services (including any Sample) is, or is likely to be, the subject of or relevant to legal proceedings, this fact must be notified to the Company in writing before the Services are carried out. If that fact is not disclosed to the Company at that stage, the Company may not, in its absolute discretion, be prepared to provide expert testimony.

**13.4** This condition 13 shall survive termination of the Contract.

## **14. Termination**

For the purposes of this condition 14, "Sanctions Rules" shall mean any applicable trade or economic sanctions, export control, embargo or similar laws, regulations, rules, measures, restrictions, restricted or designated party lists, licences, orders, or requirements, in force from time to time, including without limit those of the European Union, the United Kingdom, the United States and the United Nations.

**14.1** If the Customer becomes subject to any of the events listed in sub-condition 14.2, the Company may terminate the Contract with immediate effect by giving written notice to the Customer.

**14.2** For the purposes of sub-condition 14.1, the relevant events are:

**14.2.1** if the Customer commits a breach of any terms of the Contract or any other contract with the Company which is incapable of remedy or, if capable of remedy, has not been remedied by the Customer in accordance with a written notice from the Company requiring remedy within the period specified in the said notice;

**14.2.2** if the Customer fails to make payment of the Consideration within the specified time;

**14.2.3** the Customer 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 amalgamation or reconstruction) or ceases or suspends payment of any of its debts or is unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986;

**14.2.4** an encumbrancer takes possession, or a receiver or administrator is appointed, over any of the property or assets of the Customer;

**14.2.5** the Customer ceases, or threatens to cease, to carry on business;

**14.2.6** the Company reasonably apprehends that any of the events mentioned at sub-conditions 14.2.1 to 14.2.5 above is about to occur in relation to the Customer and notifies the Customer accordingly; and

**14.2.7** if the Company reasonably apprehends that providing the Services or dealing with the Customer would be in breach of Sanctions Rules, the Customer fails to satisfy due diligence requests made by the Company in connection with compliance with Sanctions Rules or other relevant laws or regulations or the Customer does anything which is in breach of, or would cause the Company to be in breach of, Sanctions Rules.

**14.3** On termination of the Contract for any reason the Customer shall immediately pay to the Company all indebtedness to the Company with applicable interest.

**14.4** Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

**14.5** Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.

**14.6** Additional termination provisions set out in the Annex attached hereto apply where the Company provides certification Services.

## **15. Force Majeure**

The parties shall not be liable for delay in performing, or failure to perform, any obligation under the Contract if such delay or failure to perform is caused directly or indirectly by any act of God, flood, drought, earthquake or other natural disaster, pandemic, epidemic, war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, riot, accident, terrorism, explosion, strike or labour dispute, any law, or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent, delay or default by subcontractor or supplier of materials or services, the existence of any circumstance making performance commercially impracticable or any other cause beyond the party's reasonable control, provided that this condition 15 shall not apply to any obligation to make any payments due to the Company under the Contract.

## **16. Waiver of Compliance**

Waiver by either party hereto of a breach by the other party of any of the provisions of these Terms and Conditions shall not be deemed a waiver of future compliance therewith, and such provisions shall remain in full force and effect.

## **17. Entire Agreement**

**17.1** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter.

**17.2** Each party agrees that it shall have no remedies in respect of any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

## **18. Severability**

If any provision or remedy herein provided for be invalid or unenforceable or unlawful under any applicable law in whole or in part, it shall be deemed to be amended in so far as it is possible to do so in order to make it enforceable whilst retaining its purpose or severed from the Contract if it is not possible to do so and the remaining provisions of these Terms and Conditions, including any remaining default remedies, shall be given effect in accordance with the intent hereof. In the Company's sole discretion it may terminate the Contract by not less than seven (7) days' written notice to the Customer in the event that it considers that such deletion will have a materially adverse effect on its rights under the Contract.

## **19. No Partnership or Agency**

**19.1** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

**19.2** Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **20. Third Parties**

A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

## **21. Data Protection**

For the purposes of this condition 21, "Data Protection Laws" shall mean up to and including 24 May 2018 the Directive 95/46/EC as transposed into domestic legislation of each Member State of the European Economic Area and in each case as amended, replaced or superseded from time to time, and on and from 25 May 2018 the EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council ("GDPR") and/or other applicable data protection legislation in force.

**21.1** Within this condition 21, "Process/Processing/Processed", "Data Controller", "Data Processor", "Data Subject", "Personal Data" and "Personal Data Breach" shall have the same meaning as in the Data Protection Laws.

**21.2** The Customer agrees not to provide or otherwise make available Personal Data to the Company, other than business contact information (for example, business, telephone number, job title, and email address), unless otherwise required for the provision of the Services, in which case such additional Personal Data shall be specifically identified in advance by Customer and agreed to in writing by the Company.

**21.3** Where Personal Data is Processed by a party under or in connection with the Contract that party, as Data Processor, shall:

**21.3.1** not Process, transfer, modify, amend or alter the Personal Data or disclose or permit the disclosure of the Personal Data to any third party other than as required to meet the other party's (as Data Controller) lawful, documented and reasonable instructions (which shall unless otherwise agreed be to process Personal Data as necessary to provide the Services pursuant to the terms of this Contract), unless required by a law to which the Data Processor is subject, provided that in such a case, the Data Processor shall inform the Data Controller of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest. In particular, the Data Controller instructs the Data Processor to transfer data outside the EEA subject to the Data Processor complying with the requirements of Articles 45 to 49 of the GDPR;

**21.3.2** upon becoming aware of a Personal Data Breach:

- (a) notify the Data Controller without undue delay; and
- (b) provide reasonable co-operation (at the cost of the Data Controller) to the Data Controller in connection with the Personal Data Breach;

**21.3.3** upon receiving any request, complaint or communication relating to the Data Controller's obligations under the Data Protection Laws:

- (a) notify the Data Controller as soon as reasonably practicable;
- (b) assist the Data Controller by implementing appropriate technical and organisational measures to enable the Data Controller to comply with any exercise of rights by a Data Subject under any Data Protection Laws in respect of Personal Data processed by the Data Processor under this Contract or comply with any assessment, enquiry, notice or investigation under any Data Protection Laws, provided in each case that the Data Controller shall reimburse the Data Processor in full for all costs reasonably incurred by the Data Processor performing its obligations under this sub-condition 21.3.3;

**21.3.4** ensure that at all times it has in place appropriate technical and organisational measures as required by Article 32;

**21.3.5** ensure that its employees who may have access to the Personal Data are subject to appropriate confidentiality obligations;

**21.3.6** implement appropriate organisation and technical measures to assist the Data Controller in meeting its obligations in relation to Articles 33 to 36 of the GDPR taking into account the nature of processing and the information available to the Data Processor;

**21.3.7** not authorise any sub-contractor to process the Personal Data ("sub-processor") other than with the prior written consent of the Data Controller, it being acknowledged that the Data Controller consents to the appointment of sub-processors who may from time to time be engaged by the Data Processor who in each case are subject to terms between the Data Processor and the sub-processor which are no less protective than those set out in this condition 21, provided that the Data Processor notifies the Data Controller of the identity of such sub-processors and any change to them; and

**21.3.8** cease Processing the Personal Data within ninety (90) days upon the termination or expiry of this Contract or, if sooner, the Service to which it relates and as soon as possible thereafter (at the Data Controller's option), either return, or securely wipe from its systems, the Personal Data and any copies of it or of the information it contains, other than to the extent that the Data Processor is required to retain the Personal Data due to a legal or regulatory requirement, or by a requirement of an accreditation body.

**21.4** The Data Processor shall make available to the Data Controller such further information and (as applicable) allow for and contribute to any audit or review exercise, conducted by the Data Controller or an auditor mandated by the Data Controller to provide assurance that the Data Processor is in compliance with the obligations set out in this condition 21, provided always that this requirement shall not oblige the Data Processor to provide or permit access to information concerning:

- (i) the Data Processor's internal pricing information; (ii) information relating to other clients of the Data Processor; (iii) any Data Processor non-public external reports; or (iv) any internal reports prepared by the Data Processor's internal audit or compliance functions. The Data Processor must immediately inform the Data Controller if, in its opinion, an instruction provided by the Data Controller pursuant to this Contract infringes the GDPR or other EU or Member State data protection provisions.

## 22. Sub-contracting

**22.1** Unless otherwise restricted by the terms of the Contract and/or obligations under any accreditation or governing approval, the Company shall be entitled, in its absolute discretion, to sub-contract the whole of or any part of the Service.

**22.2** The Company may assign, delegate, license or hold on trust, all or any part of its rights or obligations under the Contract.

**22.3** The Contract is personal to the Customer which may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.

## 23. Confidentiality

For the purposes of this condition 23, "**Confidential Information**" shall mean all information which a party may have or acquire before or after the date of the Contract which relates to a party's business, products, developments, trade secrets, know-how or other matters connected with the Services and information concerning a party's relationships with actual or potential clients, customers or suppliers and all other information designated as confidential or which ought reasonably to be considered confidential.

**23.1** Each party (the "**Recipient**") shall keep all Confidential Information of the other party (the "**Disclosing Party**") in the strictest confidence. Save for the purposes of fulfilling its obligations under the Contract, the Recipient shall not, without the prior written consent of the Disclosing Party, disclose, divulge or grant access to the Confidential Information which it has received and shall not permit any of its employees, agents or officers to disclose, divulge or grant access to such Confidential Information.

**23.2** Notwithstanding condition 23.1, a Recipient may disclose Confidential Information which it has received if:

- 23.2.1** it is required to do so by any governmental, local government or regulatory authority, any accreditation body or by law (but then only to the extent it is strictly required to do so);
- 23.2.2** it is strictly necessary for the purpose only of obtaining professional advice in relation to the Contract;
- 23.2.3** it was already known to the Recipient prior to the time of disclosure by the Disclosing Party (where the Recipient can prove the same with documentary evidence); or
- 23.2.4** it is information which subsequently becomes public knowledge other than by breach of the Contract by the Recipient.

**23.3** In the event of an information request being made to a Recipient pursuant to any Freedom of Information legislation or the Environmental Information Regulations 2004 in respect of any Confidential Information then the Recipient shall notify the Disclosing Party and shall not disclose any information until an analysis has been made as to whether the information requested is capable of benefiting from an exemption from disclosure.

**23.4** The obligations of the parties under this condition 23 shall continue to apply without limit of time.

## 24. Export Control Licence

For the purposes of this condition 24, “**Export Control Licence**” shall mean any public or governmental licence, approval, permit or similar (whether temporary or permanent), issued directly or indirectly, by any United Kingdom, United States or other foreign authority with jurisdiction over the parties or the goods subject to the contract which, from time to time, it is necessary to obtain in order to be entitled to market, import, export, re-export products and/or provision of services and/or transfer of technology and/or Intellectual Property Rights.

- 24.1** The Company’s performance of its obligations under this Contract may, wholly or partly, be subject to Export Control Licences. If any such Export Control Licence requires signed end user certificates or any other United Kingdom or foreign governmental or court approvals or consents the parties agree to assist each other in completing the relevant end user certificates or other such approvals or consents and the Customer undertakes to conform to and apply the terms of such, end user certificates, Export Control Licences or restrictions.
- 24.2** The Customer represents and warrants that it shall inform the Company in writing, prior to the Company receiving any goods or information from the Customer or carrying out any Service, of any applicable Export Control Licence requirement, import or export restrictions that may apply to the Services to be provided by the Company, including any instances where any products, information or technology may be exported/imported to or from a country, to or from a party, or involving an end use that is restricted from such transaction under the above state applicable laws.
- 24.3** The Company shall make reasonable efforts to obtain the necessary Export Control Licences, but the parties acknowledge that the issuance of Export Control Licences is at the sole discretion of the relevant authorities. If any necessary Export Control Licence are delayed, denied or revoked, the Company shall notify the Customer thereof in writing as soon as reasonably practicable, and the Company shall be entitled to a corresponding extension of the time for provision of the Services, and, in case any necessary Export Control Licence are denied or revoked, terminate the Contract, wholly or partly, without liability in relation to the Customer.
- 24.4** Should the Services or any product of the Company be subject to any Export Control Licences or any other United Kingdom or foreign governmental or court restrictions, the Customer undertakes to conform to and apply the from time to time valid terms of such Export Control Licences or restrictions.

## 25. Anti-Corruption

- 25.1** The Customer undertakes to comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and the Foreign Corrupt Practices Act of 1977 (“**Anti-Corruption Laws**”) and that it shall not do, nor omit to do, any act that will lead to the Company being in breach of any of the Anti-Corruption Laws. The Customer shall:
- 25.1.1** comply with the Company’s Anti-corruption policies as may be notified by the Company to the Customer and updated from time to time (“**Relevant Policies**”);
- 25.1.2** promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Customer in connection with the performance of the Contract;
- 25.1.3** promptly notify the Company (in writing) if a foreign public official becomes an officer or employee of the Customer or acquires a direct or indirect interest in the Customer (and the Customer warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Contract);

## 26. Notices

All notices to be served by one party on the other must be in writing and shall be deemed duly delivered or served at the time of service if delivered personally and forty eight hours after posting if posted by first class or airmail pre-paid post in each case to the registered address, if applicable, or if not applicable the last known address of the other party.

## 27. No Waiver

No failure or delay by the Company to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right, power or remedy.

## 28. Governing Law

- 28.1** The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed under the laws of England and Wales.
- 28.2** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).



Where the Company is providing certification Services the terms of this Annex shall apply. In the event of a conflict between the Terms and Conditions and this Annex, the terms of this Annex shall apply. Capitalised terms used in this Annex shall have the meaning ascribed to them in the Terms and Conditions, unless otherwise provided in this Annex.

The following terms shall have the following meanings in this Annex:

**“Standard”** means a document which contains details of specified requirements and methodologies for testing and/or inspection and/or certification against which the System, product, installation or person is assessed;

**“System”** means the organisational structure, responsibilities, activities, resources and events that together provide organised procedures and methods of implementation to ensure the capability of the Customer to meet a particular Standard.

## 1. EXECUTION OF SERVICES

- 1.1 The Company shall not be obliged to enter into or maintain any commercial or other relationship with any entity or issue or maintain a certificate previously issued to any entity whose activities conflict with the obligations of the Company as specified in its accreditation contract with any accreditation body, or which, in the sole opinion of the Company, reflect badly on the good name of the Company.
- 1.2 The Services shall be carried out in accordance with procedures designed to ensure that any initial assessment, surveillance or re-certification audit is in compliance with the requirements of the Standard. The Company reserves the right at its sole discretion to modify, amend or in any way alter the conduct and procedure of any activity, including any audit visit, if the Company deems this necessary in order to satisfy the requirements of the Standard, which may change from time to time.
- 1.3 Where applicable, the Customer will be subject to a third-party certification standard setting body's risk assessment as part of the Trademark Licensing Agreement (TLA). Following quote acceptance, the Company will arrange an audit. After technical review, the Customer details will be uploaded to the third-party certification standard setting body's database.
- 1.4 The Customer must sign the TLA for the relevant Standard following a successful risk assessment. The TLA includes a self-declaration form confirming alignment with the third-party certification standard setting body's values. This document must be available for verification during the initial audit and subsequent surveillance visits.
- 1.5 Where applicable, the Customer must complete and submit the fore labour requirements self-assessment form prior to the initial audit, as required by the third-party certification standard setting body. Failure to provide this form in advance may result in cancellation of the audit and a chargeable re-audit at the original rate. This requirement also extends to non-certified outsource contractors, who may be subject to additional desk-based or on-site audits based on risk, which will be chargeable. The completed form must be submitted to both the Company and the assigned auditor in advance of the audit.
- 1.6 The Company shall not be obliged to grant or maintain certification, if activities of the Customer conflict with the obligations of the Company as specified in its accreditation contract with the third-party certification standard setting body, or which, in the sole opinion of the Company, reflect badly on the good name of the Company.
- 1.7 The Company and the third-party certification standard setting body have the right to revise the requirements of certification within the period of validity of the certification, including the revision of costs and fees.
- 1.8 The Company has the right to use information which is brought to its attention, to follow up on misuses of the third-party certification standard setting body's trademarks and of the intellectual property rights held by the Standard setting body.

- 1.9 The Company shall be responsible, through legally enforceable commitments, for the management of all information obtained or created during the performance of certification activities. Information is considered proprietary and shall be regarded as confidential, except for information that the Customer makes or is required to make publicly available, that the third-party certification standard setting body is entitled to access, or when agreed between the Company and the Customer (e.g. for the purpose of responding to complaints).
- 1.10 The Company reserves the right to deny certification to the Customer where there are fundamental and substantiated reasons to do so. This may include, but is not limited to, involvement in illegal activities, falsification of information, failure to comply with the requirements of the relevant Standard, or evidence that the organisation's operations are fundamentally misaligned with the principles or values of the Standard. The decision to deny certification will be based on objective evidence and documented in accordance with the Company's procedures.

## 2. PRICE AND PAYMENT

- 2.1 The Consideration is quoted (and amended from time to time) for the Services agreed to be supplied pursuant to the Contract on the assumption that the information supplied by the Customer is accurate and complete.
- 2.2 The Consideration includes the cost of audit services and the use of the Company's logo (subject to clause 10.5 of the Terms and Conditions) and, where agreed, the accreditation body logo.
- 2.3 Expenses and disbursements may be charged separately in accordance with the quoted terms.
- 2.4 Any service required or supplied additional to the Services will be charged at the Company's rates current at the time of supply of such services.
- 2.5 The Consideration may be reviewed and amended from time to time, normally but not exclusively on an annual basis.
- 2.6 Payment is due as per the stated terms on the invoice. Payment shall be made in full, without set off or deduction.
- 2.7 In the event that any payment is not made when due, the Company reserves the right to charge interest (at the statutory rate on commercial debts then applicable) from the due date until payment in full, and/or suspend the provision of all Services and/or terminate the Contract (including suspension or withdrawal of the Certificate), without prejudice to the Company's other rights and remedies.
- 2.8 All fees and expenses quoted are exclusive of all taxes including but not limited to value added or sales tax, which will be charged at the current rate of the country in which the services are supplied.
- 2.9 If the Customer postpones all or part of the Services with less than thirty (30) working days' notice from the start date that was mutually agreed following acceptance by the Customer of the Quotation, the Company reserves the right to either:
  - 2.9.1 charge a fee amounting to the greater of:
    - (i) 25% of the Consideration; or
    - (ii) the applicable day rate for a relevant employee; or
  - 2.9.2 where the costs and resources cannot be defrayed, charge all or part of the Consideration as appropriate.
- 2.10 Should the Customer wish to cancel the Services, and without prejudice to the Company's other rights and remedies hereby reserved, the Company shall charge and be entitled to recover either:
  - 2.10.1 a fee amounting to 50% of the Consideration in question; or
  - 2.10.2 where the costs and resources cannot be defrayed, all or part of the Consideration as appropriate plus the cost of any work performed up to the receipt by the Company of the notice of the cancellation, calculated in accordance with the applicable day rate for a relevant employee.



- 2.11** Registration to the Standard is subject to an annual fee, which is collected by the Company on behalf of the relevant third-party certification standard setting body. The initial fee will be invoiced following the initial audit, with subsequent annual fees invoiced alongside the annual subscription fee. Fee structures are determined by each third-party certification standard setting body and are typically based on either the Customer's turnover or turnover of relevant products. Full details of the applicable fee structures are available from the applicable third-party certification standard setting body's website.

### **3. OBLIGATIONS OF CUSTOMER**

- 3.1** Where the Company is to provide certification Services to the Customer, the Customer shall:

- 3.1.1** always comply and conform with and fulfil the provisions and requirements of the applicable Standard, including implementing appropriate changes when they are communicated by the Company and within the minimum period specified by the Company;
- 3.1.2** ensure that if a certification applies to ongoing production, the certified product continues to fulfil the requirements of the Standard;
- 3.1.3** make claims regarding certification consistent with the scope of the certification;
- 3.1.4** comply with the requirements of the Company or as specified by the Standard in making reference to its certification in communication media such as documents, brochures or advertising, the internet or other documents;
- 3.1.5** comply with any requirements that may be prescribed by the Standard relating to the use of marks of conformity, and on information related to the certified product;
- 3.1.6** not use its certification in such a manner as to bring the Company into disrepute and not make any statement regarding its certification that the Company may consider misleading or unauthorized, nor use or permit to be used the certificate in a misleading manner;
- 3.1.7** keep a record of all complaints made known to it relating to compliance with certification and make these records available to the Company when requested, and take appropriate action with respect to such complaints and any deficiencies found in products that affect compliance with certification, and document the actions taken;
- 3.1.8** not imply that the certificate applies to activities and sites that are outside the scope of certification, nor allow reference to its certification to be used in such a way as to imply that the Company certifies a product (including service) or process which has not been certified;
- 3.1.9** not use its certification in such a manner that would bring the certification system into disrepute and lose public trust;;
- 3.1.10** only provide copies of certification documents to others if such documents have been reproduced in their entirety, or as specified in the applicable Standard;
- 3.1.11** comply with all agreements and arrangements between the Customer and the applicable Standard setting body (if applicable) and all applicable Standard setting body requirements;
- 3.1.12** inform the Company, without delay, of matters that may affect the Customer's capability to comply with the applicable Standard or the capability of the System to continue to fulfil the requirements of the applicable Standard. These include, for example but without limitation, changes relating to:
  - 3.1.12.1** the legal, commercial, organizational status or ownership of the Customer;
  - 3.1.12.2** organization and management (e.g. key managerial, decision- making or technical staff);
  - 3.1.12.3** contact address and sites;
  - 3.1.12.4** scope of operations under the System; or
  - 3.1.12.5** major changes to the System and processes and the Customer agrees to pay any applicable additional fees and expenses deemed necessary for the Company to assess the impact and maintain confidence in the System;

- 3.1.13** ensure that its System complies with the current versions of the Standard(s) against which it is certified. Current versions of the rules, regulations and Standards can be obtained from the respective websites of the standard setting bodies, or from the Company or from the Standards issuing authority;
  - 3.1.14** comply with any conditions set by the Company for the issue of a Report and recognise that the Company has clear and explicit rights to revise the requirements of certification within the period of validity of the certificate;
  - 3.1.15** acknowledge that initial certification will only be granted once all non- compliances have been actioned in accordance with the applicable Standard;
  - 3.1.16** acknowledge that on-going certification is reliant on continued compliance with the Standards, rules and regulations of the relevant Standard setting body, which may change from time to time, including the requirement to address any non-conformances to the satisfaction of the Company in the specified time periods;
  - 3.1.17** declare to the Company any activity which may create a conflict of interest in relation to its certified System; and
  - 3.1.18** inform the Company without delay, of the occurrence of a serious incident or breach of regulation necessitating the involvement of the competent regulatory authority.
- 3.2** The Customer represents and warrants to the Company that, in the event of the issuance of a certificate, to inform the Company in writing immediately of any changes during the term of the certificate which may have a material impact on the accuracy of the certification.
- 3.3** The Customer agrees to indemnify, keep indemnified and hold harmless the Company from and against all Losses which the Company may suffer or incur arising out of or as a result of:
- 3.3.1** any defects in the Customer's products, services or System; and
  - 3.3.2** the use or misuse by the Customer of any certificate, licence, logo, service mark or trade mark provided by the Company in accordance with these Conditions.

Notwithstanding any other provision of these Conditions, the Customer's liability under this indemnity shall be unlimited.

- 3.4** The Customer acknowledges the authority of the accreditation body and agrees to assist the Company and accede to any reasonable request made by the accreditation body in relation to the certification e.g. witness audits.
- 3.5** Where the Customer's product is the subject of its certification, the Customer shall inform the Company in writing of any product recall under the scope of the certificate within three (3) working days.
- 3.6** The Customer warrants to not make any claims regarding certification consistent with the Standard and not make any claims of conformity (or near conformity) with Standard requirements until and unless certification is formally granted.
- 3.7** The Customer acknowledges that, as part of the third-party certification standard setting body's onboarding process, they may receive an email invitation to create an account and complete a due diligence questionnaire. The responses provided will be subject to automated review by the third-party certification standard setting body's systems to assess potential risks, including any connection to disassociated or blocked entities or involvement in any of the following six unacceptable activities:
  - 3.7.1** Illegal logging or the trade in illegal wood or forest products;
  - 3.7.2** Violation of traditional and human rights in forestry operations;
  - 3.7.3** Destruction of high conservation values in forestry operations;
  - 3.7.4** Significant conversion of forests to plantations or non-forest use;
  - 3.7.5** Introduction of genetically modified organisms in forestry operations;
  - 3.7.6** Violation of any of the ILO Core Conventions as defined in the ILO Declaration on Fundamental Principles and Rights at Work.

- 3.8 If no risk is identified, the Customer will receive further instructions via email to proceed with the signing of the TLA. If a risk is detected, the application will be suspended pending manual evaluation. The Customer agrees to cooperate fully with any additional information requests during this evaluation process.

## 4. SUSPENSION OR WITHDRAWAL OF CERTIFICATION

- 4.1 The Company shall be entitled to suspend or withdraw part or all of a certification on seven (7) days' written notice (or within such timescales as the Company may reasonably specify, including with immediate effect in the case of urgent need) when, in the reasonable opinion of the Company:
- 4.1.1 the Customer's acts, omissions or conduct bring or may bring the Company, the accreditation body, the Standard setting body, or a Standard into disrepute;
  - 4.1.2 the Customer represents, promotes or advertises any products or Systems which are outside the scope of its certificate as certified by the Company;
  - 4.1.3 the Customer makes fraudulent misrepresentation or provides the Company with any inaccurate or misleading information, which is not corrected within three (3) working days or immediately on being notified by the Company;
  - 4.1.4 the Customer is in breach of or is not subject to the requisite ancillary licence agreements, including any attributable to the accreditation body;
  - 4.1.5 the Customer fails to maintain or demonstrate an effective System such that the confidence in the certificate is adversely affected; or
  - 4.1.6 the Customer has persistently or seriously failed to meet certification requirements for a particular part or parts of a relevant Standard.
- 4.2 Where permitted by the relevant Standard, the Company will afford the Customer a reasonable opportunity to take corrective action before the suspension or withdrawal takes effect. In the event of suspension or withdrawal of all or part of a certificate, the Company reserves the right to make public the fact that such action has been taken.
- 4.3 In the event the Company is unable to supply certification or is no longer able to continue to supply certification accredited by the relevant accreditation body or otherwise withdraws from supplying certification, the Company will notify the Customer within thirty (30) days and the certificates will be suspended ipso facto within six (6) months after the date of withdrawal.
- 4.4 In the event that the Company suspends or withdraws a certificate, the Customer (including the Customer's group companies) shall:
- 4.4.1 immediately refrain from any claims or representations (oral or written, express or implied) that products comply with the requirements of the certificate, the Company or the Standard setting body;
  - 4.4.2 immediately refrain from further promotion of the certificate or use of any references to the certificate, including discontinuing use of all advertising matter that contains a reference to certification;
  - 4.4.3 immediately at its own expense remove all service mark(s), trade mark(s), certification mark(s) and other names and logos belonging to the Company, the accreditation body and the Standard setting body from its products, information, website, documents, advertising or marketing or any other materials;
  - 4.4.4 immediately cease to sell any products bearing any service mark(s), trade mark(s), certification mark(s) and other names and logos belonging to the Company, the accreditation body and the Standard setting body;
  - 4.4.5 immediately cease and desist from using all service mark(s), trade mark(s), certification mark(s) and other names and logos belonging to the Company, the accreditation body and the Standard setting body;
  - 4.4.6 amend all advertising matter if part of a certificate has been suspended or withdrawn;

- 4.4.7 make the suspended status of the certification publicly accessible;
- 4.4.8 notify the Standard setting body; and
- 4.4.9 take any other measure required by the Company or prescribed by a Standard.

- 4.5 Where a Customer's certification has been suspended or withdrawn, and where a product has been supplied with a claim that it complies with a Standard(s) by the Customer to a customer/purchaser, the Customer shall:

- 4.5.1 immediately identify all relevant customers/purchasers who are in receipt of, or have ordered, such product, and notify each of such customers/purchasers of the suspension or withdrawal (as the case may be) in writing within three (3) working days (or within such timescales as a Standard may specify) of the suspension or withdrawal, and maintain records of such notification; and
- 4.5.2 provide such co-operation and information as may be required by the Company or the accreditation body to enable the Company or the accreditation body to verify and confirm that the Customer is in compliance with all its obligations to the Company and the accreditation body.

- 4.6 In the event that the Company withdraws a certificate, the Customer (including the Customer's group companies) shall promptly return the original and all copies of the certificate to the Company or destroy the original, and commit to destroy any electronic copies and hardcopies in its possession or control.

## 5. CONFIDENTIALITY

- 5.1 The obligations of the parties under this paragraph 5 of this Annex shall apply in addition to Condition 23.
- 5.2 The Customer agrees that information relating to its certification and scope of certification can be made publicly available by the Company and the Standard setting body.
- 5.3 The Company shall inform the Customer, in advance, of any other information it intends to place in the public domain. All other information, except for information that is made publicly accessible by the Customer, shall be considered confidential.
- 5.4 Where prescribed by a Standard setting body:
- 5.4.1 the Customer shall be required to promptly provide to the Company and the Standard setting body and their respective authorised agents all such information, documentation books and records deemed necessary by the Company or Standard setting body; and
  - 5.4.2 the Customer agrees that the Company and/or the Standard setting body shall have the right to use and process any information relating to the Customer or otherwise provided by or through the Customer including but not limited to any supply base report; the Company public summary reports; data required by the Standard setting body for calculations and regulatory reporting; any data required by the Standard setting body to be supplied to the Customer's purchaser/customer with each batch of biomass supplied or sold.

## 6. TERMINATION

- 6.1 Either party may terminate the Contract by giving three months' written notice to the other and the Contract shall terminate upon expiry of said three-month period.
- 6.2 In the event of the Contract being terminated (except in the case of material breach by the Company) the Certificate issued pursuant hereto shall immediately become invalid and the Customer shall cease to be entitled to use the same or any logo or mark of the Company and its accreditation bodies and shall destroy all electronic and hardcopy Certificates relating to the certification and at its own expense remove all claims, service mark(s) trademark(s), other names or logos and copyright works from products, documents, advertising and marketing materials with immediate effect. The Customer shall confirm in writing that these obligations have been met and shall provide full co-operation to enable the Company and its accreditation bodies to carry out any verification activities necessary.

## 7. AUDIT CONDUCT

- 7.1 The Company will appoint competent qualified auditors to conduct audits and assessments of the Customer's compliance with the relevant Standard(s).
- 7.2 The Customer will ensure that reasonable cooperation and assistance is provided to the Company to allow audit and assessment services to be delivered at a frequency determined by the Company in order for the Company to maintain confidence in the Customer's on-going compliance with the relevant Standard(s).
- 7.3 The Company will issue audit and non-conformance reports, if appropriate, after each audit activity. The Customer shall allow the accreditation body, or its representative, access to any part of the audit or surveillance process. This will include the right of access to confidential information. The Customer will not have the right within this Contract to refuse such a request either by the accreditation body, its representative, or the Company.
- 7.4 The Company reserves the right to conduct an unannounced audit at short notice if required by the applicable Standard setting body or as part of the certification scheme requirements to investigate complaints, or in response to changes, or as follow up on a suspended Customer. In such cases:
- 7.4.1 the Company shall describe and make known in advance to the Customer the conditions under which these short notice visits are to be conducted, and
- 7.4.2 the Company shall exercise additional care in the assignment of the audit team because of the lack of opportunity for the Customer to object to audit team members.
- 7.5 Where prescribed by a relevant Standard, the Customer shall make all necessary arrangements for:
- 7.5.1 the conduct of the evaluation and surveillance (if required, and as determined by the Company), including provision for examining documentation and records, and access to the relevant equipment, location(s), area(s), personnel, and the Customer's subcontractors;
- 7.5.2 investigation of complaints; and
- 7.5.3 the participation of observers, if applicable, including the accreditation body, or its representative, for the purposes of witnessing the Company's audit team performing the audit of the System to determine conformity with the requirements of the Standard;
- 7.6 Where prescribed by a Standard, the Customer agrees that:
- 7.6.1 a copy of the audit report and any subsequent certificate or audit result shall be supplied to the Standard setting body and the accreditation body in the agreed format for the particular Standard used;
- 7.6.2 all documents in relation to the audit shall be made available to the accreditation body/Standard setting body upon request. All documents submitted to the Standard setting body shall be copies of original documents. Documents provided to the Standard setting body will be treated as confidential;
- 7.6.3 the auditor may be accompanied by other personnel for training, assessment or calibration purposes and this activity may include:
- 7.6.3.1 training of new auditors by the Company;
- 7.6.3.2 witness audits by accreditation bodies; and
- 7.6.3.3 witness audits by the Standard setting body; and
- 7.6.4 the Standard setting body reserves the right to conduct its own audit or visit to a site once certificated in response to complaints or as part of the routine Standard setting body compliance activity to ensure the integrity of the Standard. Such visits may be announced or unannounced. The Standard setting body may contact the site directly in relation to its certification status or for feedback on the Company's performance, or investigation into reported issues.

- 7.7 Where prescribed by a Standard, the Customer shall grant the Company and the Standard setting body and their respective authorised agents the right at any reasonable time to have access to the Customer's premises (or to arrange for such authorised representatives to have access to other relevant premises owned or controlled by the Customer or its group companies) for the purpose of inspecting and taking copies of any information, documentation, goods, books and records deemed necessary by the Company or the Standard setting body.
- 7.8 The Company has the right to suspend and/or withdraw its certification with immediate effect if, in the sole opinion of the Company, the Customer is not in conformity with the conditions specified for the maintenance of Standard.

## 8. APPEALS AND COMPLAINTS

If the Customer wishes to complain or appeal about certification decisions of the Company it shall do so in accordance with the Company's complaints and appeals processes which may change from time to time and are publicly available and can be provided on request. For the avoidance of doubt, all complaints must first be handled by the Company's dispute resolution procedure, and if not resolved, can then be referred to third-party certification standard setting body.

## 9. MATERIALITY (BASIS OF OPINION)

Where the Company provides certification Services, the Company conducts certification through a sampling process to determine if the System meets the Standard(s). Any statement of conformity issued by the Company in the form of reports, certificates or other communications is based on these sampling processes. The Company does not warrant, represent or undertake that these statements mean that all activities are in conformance with the relevant Standard(s) at the time of audit or that subsequent to the audit activity those activities audited will continue to be in conformity with the relevant Standard. The Customer undertakes to make all of its customers and end users aware of the foregoing provisions of this Clause. The Company accepts no liability to the Customer in the event that any loss or claim is suffered by the Customer as a result of any finding that the System does not comply with the Standards.

