

### 1. General -

#### Scope of Application of the General Terms and Conditions

1.1 Our General Terms and Conditions (hereinafter referred to as "Terms and Conditions") shall apply for Intertek Caleb Brett Germany GmbH, Intertek Certification GmbH, Intertek Consumer Goods GmbH, Intertek Deutschland GmbH, Intertek Food Services GmbH, Intertek Holding Deutschland GmbH and for Intertek Industrial Services GmbH.

1.2 The Terms and Conditions shall apply exclusively. We do not accept customers' conditions which are contrary to or deviate from our Terms and Conditions, as well as customers' conditions, which are not regulated in these Terms and Conditions, unless we have explicitly consented in writing to their application. Our Terms and Conditions shall also apply if, despite being aware of customers' conditions, which are contrary to or deviate from our Terms and Conditions or are not regulated in our Terms and Conditions, we provide services to customers without reservation or if customers refer to the application of their General Terms and Conditions in their enquiries or their orders.

1.3 All agreements that are made between customers and us for the purpose of executing a contract are made in writing in the contract and in these jointly applicable Terms and Conditions.

1.4 Our Terms and Conditions shall only apply to an entrepreneur as defined in § 14 of the German Civil Code (BGB).

1.5 Within the scope of ongoing business relations, these Terms and Conditions shall also apply to additional and follow-up orders.

1.6 "Agreement" in the sense of these Terms and Conditions means this agreement entered into between us and the Customer.

### 2. Scope of Services -

#### Content and Type of the Service Provision - Subcontractors

2.1 We appraise, analyse and/or certify companies, products or other services provided by manufacturers, distributors and/or other service providers (hereinafter collectively referred to as "Customers") on the basis of national or international rules and standards with accreditation, according to national or international rules and standards without accreditation and provide additional, independent, proprietary appraisal, analysis, certification and other services e.g. inspections, good and loading controls, consulting services and audits (all services according to this Section 2.1 are hereinafter collectively referred to as "Services").

2.2 The agreed Services shall be provided in accordance with the Agreements, in accordance with the generally accepted rules of technology at the time the contract is concluded and in compliance with the relevant provisions applicable at the time the contract is concluded.

2.3 We shall be entitled to determine the method and/or the type of service provision at our proper discretion, (a) unless agreed otherwise in writing and (b) unless mandatory provisions prescribe a specific method and/or type of service provision.

2.4 Each order shall refer exclusively to the specimen(s) provided by the Customer or taken by us or other test specimen (hereinafter referred to as "Test Specimen") and shall be completed with despatch of the written inspection report on the test results we have identified to the Customer, unless agreed otherwise in writing.

The written inspection reports reflect our specific opinion regarding the Test Specimen: However, the written inspection reports do not apply to the complete production charge the Test Specimen is taken from.

2.5 The Customer 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 Customer understands that reliance on any reports issued by us is limited to the facts and representations set out in the reports which represent our review and/or analysis of facts, information, documents, samples and/ or other materials in existence at the time of the performance of the Services only.

2.6 Safety assessments according to Art. 14 EU-Directive 178/2002 are in principle not subject matter of an order; such safety assessments must be agreed upon separately.

2.7 We shall be entitled to have orders placed with us carried out in full or in part by companies associated with us or by suitable subcontractors that have been carefully selected by us. If applicable, guidelines by accreditation companies are to be observed in this respect.

2.8 If the certification body and the test laboratory are not identical companies the contracts regarding test services preparing a certification may be concluded (a) between the Customer and the certification body, or (b) between the Customer and the test laboratory unless there are deviating requirements of the accreditation company. Despite this there always exists a contractual relationship between the Customer and the certification body regarding the certification per se.

If the certification body and the test laboratory are not identical companies the Customer shall not be entitled to claim for any services resulting from the contract between the certification body and the test laboratory.

In any case the law agreed or applicable between the certification body and the test laboratory shall also apply with regard to the Customer.

2.9 The Customer acknowledges and agrees that if in providing the Services we are obliged to deliver a report to a third party, we shall be deemed irrevocably authorised to deliver such report to the applicable third party. For the purposes of this Section an obligation shall arise on the instructions of the Customer, or where, in our reasonable opinion, it is implicit from the circumstances, trade, custom or practice.

2.10 In agreeing to provide the Services, we do not abridge, abrogate or undertake to discharge any duty or obligation of the Customer to any other person or any duty or obligation of any person to the Customer.

### 3. Quotations - Conclusion of Contracts

3.1 Our quotations are always subject to change unless we have agreed otherwise.

3.2 Orders addressed to us are binding offers. Normally we accept these orders by despatching a written confirmation of order.

### 4. Duties and Obligations of the Customer to provide Assistance and to Cooperate

4.1 The Customer is obliged to provide all the assistance and cooperation needed to provide the agreed Services without delay, free of charge, in full and correctly. In particular the Customer is obliged - in each case in accordance with the guidelines paraphrased above:

- to provide us with the required information, records, documentation and data.

- to grant or procure for our employees, auditors and agents insight into the required information, records, documentation and data and access to the goods, commercial premises, buildings, installations, means of transport or other organisational units owned by the Customer.

- to provide specialist instruments needed for execution of the order.

- to ensure secure working conditions for our employees, auditors and agents, if these fall within the Customer's sphere of influence.

- prior to us attending any premises for the performance of the Services, to inform us 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.

- to notify us promptly of any risk, safety issues or incidents in respect of any item delivered by the Customer, or any process or systems used at its premises or otherwise necessary for the provision of the Services.

- to inform us in advance of any applicable import/export restrictions that may apply to the Services to be provided, including any instances where any products, information or technology may be exported/ imported to or from a country that is restricted or banned from such transaction.

- to obtain and maintain all necessary licenses and consents in order to comply with relevant legislation and regulation in relation to the Services.

- to ensure that any obstacles and interruptions to our Services are avoided or rectified.

- to provide instructions and feedback to us in a timely manner.

4.2 The Customer shall nominate one or more agents, who will support our employees, auditors and agents in providing the contractually agreed Services and shall act as a point of contact to the Customer. These agents shall be duly authorised to provide instructions to us on behalf of the Customer and to bind the Customer contractually as required.

4.3 The Customer is obliged to notify us of any defects in our Services in written form immediately when our Services have been provided. The Customer must notify us of any hidden defects in writing immediately when they have been detected.

4.4 Following the issue of a certificate, the Customer is obliged to advise us of any changes during the term of a certificate, which may have an impact on the certified Services.

4.5 The Customer is obliged to record all complaints addressed to it concerning the conformity of the certified company, product or other service with the requirements of the certification standard, to initiate appropriate measures, to document the measures carried out and to disclose them to the auditor on request as part of the audit.

4.6 The Customer is obliged to inform us without delay of any damage to persons or property, which was allegedly or actually caused by a product for which we have provided Services on behalf of the Customer.

4.7 We shall be neither in breach of the Agreement nor liable to the Customer for any breach of the Agreement if and to the extent that its breach is a direct result of a failure by the Customer to comply with its obligations as set out in this Section 4.

The Customer also acknowledges that the impact of any failure by the Customer to perform its obligations set out herein on the provision of the Services by us will not affect the Customer's obligations under the Agreement for payment of the charges.

#### 5. Customer's Representations and Warranties

5.1 The Customer represents and warrants:

- a. that any information, samples and related documents it (or any of its agents or representatives) supplies to us (including our agents, sub-contractors and employees) is, true, accurate representative, complete and is not misleading in any respect. The Customer further acknowledges that we will rely on such information, samples or other related documents and materials provided by the Customer (without any duty to confirm or verify the accuracy or completeness thereof) in order to provide the Services;
- b. that any samples provided by the Customer to us will be shipped pre-paid and will be collected or disposed of by the Customer (at the Customer's cost) within thirty (30) days after testing unless alternative arrangements are made by the Customer. In the event that such samples are not collected or disposed of by the Customer within the required thirty (30) days period, we reserve the right to destroy the samples, at the Customer's cost; we shall also be entitled - but not obligated - to retain and store a storage sample;
- c. that any information, samples or other related documents (including without limitation certificates and reports) provided by the Customer to us will not, in any circumstances, infringe any legal rights (including Intellectual Property Rights) of any third party.

5.2 In the event that the Services provided relate to any third party, the Customer shall cause any such third party to acknowledge and agree to the provisions in the Agreement and in these Terms and Conditions prior to and as a condition precedent to such third party receiving any reports or the benefit of any Services.

5.3 We shall be neither in breach of the Agreement nor liable to the Customer for any breach of the Agreement if and to the extent that its breach is a direct result of a failure by the Customer to comply with its representations and warranties as set out in this Section 5. The Customer also acknowledges that the impact of any failure by the Customer to perform its representations and warranties set out herein on the provision of the Services by us will not affect the Customer's obligations under this Agreement for payment of the charges.

#### 6. Audits - Auditors

- 6.1 Audits provide the basis for our appraisal and certification Services.
- 6.2 We determine at our discretion which auditors we shall deploy in providing our appraisal and certification Services. We are free to decide whether we deploy permanently employed auditors or freelance auditors. The Customer shall only be entitled to reject a specific auditor if there is good cause for this and the Customer justifies its rejection in writing.
- 6.3 Following the end of an audit, the Customer will be informed of the results of the audit in a debriefing or in a final report. The debriefing will also be documented in an audit report respectively the audit report will be reviewed during the debriefing. Deviations will be documented and may lead to a follow-up audit (i.e. another review on site) or to the submission of new documentation. The auditor or audit team leader will decide on the scope of the follow-up audit. However, in the division "Corporate Responsibility" the scope of the follow-up audit results from the audit report.
- 6.4 To maintain the validity of a certificate, monitoring audits on site may be necessary depending on the respective standard or the respective norm. The details relating to this will be clear from the applicable certification conditions and/or the respective contract.
- 6.5 Pre-, follow-up and observation audits must be remunerated separately unless we have exceptionally made a deviation agreement with the Customer.

#### 7. Certification - Certification Process

- 7.1 We carry out accredited certification processes in accordance with the contractually agreed norm or the rules and standards designated therein including the certification-specific accreditation standards applicable at the time, the certification standards and all execution guidelines as well as the accreditation specifications of the respective accreditation agency. Standard certifications will be carried out in accordance with the respective national or international standards. Certification processes for issuing proprietary certificates will be carried out in accordance with the regulations we have set.
- 7.2 In the event of a positive result to the certification process, the appropriate certificate will be issued in accordance with the provisions laid down in Section 7 of these Terms and Conditions. The certification may also be entered in the database (cf. Section 10). In the event of a negative result to the certification process, the Customer will receive a report, which will

highlight the points, which run counter to certification. In such a case we are not obligated to execute an additional certification process. Irrespective of this an additional certification process must be remunerated separately unless we have exceptionally made a deviation agreement with the Customer.

#### 8. Right of Use for Certification/Certification Symbols - Content and Scope - Expiry

- 8.1 If the agreed certification process was concluded with a positive result, the Customer will receive the appropriate certificate from us. The certificate will run for the term stipulated in the contract or in our testing and certification rules respectively in the testing and certification rules of the accreditation company.
- 8.2 On issue of the certificate in accordance with the above section 8.1, the Customer shall receive the non-exclusive, non-transferable right, which may not be sublicensed and whose content is restricted in accordance with the applicable testing and certification rules to use the applicable certification symbol in accordance with the conditions specified in the following Section 8.3 during the set term of the certificate.
- 8.3 In addition to that which is regulated in our respective or the respective testing and certification rules of the accreditation company, the following conditions of use shall always apply:
  - a. The right of use applies exclusively to the departments, products or services specified in the respective testing and certification rules.
  - b. The Customer is forbidden from making changes to the certificate and/or the certification symbol.
  - c. The Customer must make clear through the image in its advertising and suchlike that the certification is voluntary and carried out on the basis of an agreement governed by private law.
- 8.4 The Customer's right to use the certificate and/or the certification symbol will lapse with immediate effect without cancellation being required if:
  - there is no valid certificate, in particular, when the certificate term expires, when the relevant norm or the relevant rules and standards expire or if the necessary monitoring/follow-up audits are not carried out.
  - the Customer uses the certificate and/or the certificate symbol in a way that is contrary to the relevant certification provisions, contrary to the provisions of Section 8.3 or in a way that breaches the contract in any other way.
  - the Customer is forbidden by the regulatory authorities or the courts from using the certificate and/or the certification symbol.
- 8.5 The Customer is obliged to hand over the certificate when the right of use expires.

#### 9. Use of the name "Intertek" or any trademarks or brand names

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

#### 10. List of Certified Companies

We maintain a list of certified companies with details of their scope. We are entitled to make this list available to third parties on request. We are also entitled to inform third parties on request of certificates that have been withdrawn or expired.

#### 11. Terms, Deadlines - Force Majeure

- 11.1 The agreed terms and deadlines for our Services are based on estimates of the scope of work on the basis of information provided by the Customer. These will only be binding when we have agreed that they are binding in writing.
- 11.2 If terms and deadlines were agreed as binding, they will only begin to run when the Customer has duly fulfilled all its duties and obligations to provide assistance and cooperation on time. The defence of nonfulfillment of contract remains reserved.
- 11.3 If the Customer defaults or breaches other duties and obligations to provide assistance and cooperation culpably, we are entitled to demand reimbursement of any losses incurred in this respect including possible additional expenditure. Further claims remain unaffected hereby.
- 11.4 If non-compliance with a term or a deadline by us is attributable to a case of Force Majeure, i.e. to an unforeseen event, over which we can exercise no influence and for which we are not responsible, (e.g. official measures and decrees (regardless of whether these are valid or not), fire, floods, storms, explosions or other natural disasters, mobilisations, wars, insurgency, industrial disputes including strikes and lock-outs), the agreed terms and deadlines will be extended by the events causing the delay, if

these impediments to our provision our Services can be proved to be of not merely insignificant influence. This is also the case if these circumstances occur during a default.

**12. Billing - Remuneration - Due Date - Offset –  
Deterioration in the Financial Position**

12.1 If the type of remuneration (e.g. time involved, daily rates, flat rate etc.) is not set down in writing when the contract is concluded, billing will take place in accordance with the type of remuneration envisaged in our valid price list at the time the Service is provided.

If no fee is agreed in writing at the time the contract is concluded, billing will take place at the prices laid down in our valid price list at the time the Service is provided.

12.2 All invoice amounts are due for payment in full from the date the invoice is received. Deduction of any discount requires special written agreement.

12.3 The statutory value added tax is not included in our prices; it will be shown separately in the invoice at the statutory rate on the date the invoice is issued.

12.4 The Customer agrees that it will reimburse us for any expenses incurred by us relating to the provision of the Services and is wholly responsible for any freight or customs clearance fees relating to any testing samples.

12.5 The Customer only has rights of offset when its counterclaims are legally established, undisputed or acknowledged by us. The Customer is only entitled to exercise a right of retention in as much as its counterclaim is based on the same contractual relationship.

12.6 In the event of actual indications of a deterioration in the Customer's financial position following conclusion of the contract or if there are other facts following conclusion of the contract, which justify the assumption that our claim for consideration will be jeopardised by a lack of capacity on the part of the Customer, we are entitled to demand the provision of collateral and/or to revoke agreed payment terms. In the event that the Customer is not in a position to provide the requisite collateral within an appropriate period, we shall be entitled to withdraw from the contract. Existing claims arising from Services provided or on account of default remain unaffected hereby.

**13. Test Materials - Test Specimens**

13.1 All copyrights to the opinions, test results, calculations, presentations etc. prepared by us as part of the Services provided to the Customer (hereinafter collectively referred to as "the Test Materials") will remain with us. The Customer shall have no claim for restitution of the Test Materials unless agreed otherwise in writing. However, the Customer shall have the right to use any Test Materials for the purposes of the Agreement.

13.2 If the Customer has a claim for restitution of the Test Materials, the Customer may only use these Test Materials for the purpose for which they are destined according to the Agreement. The Customer may not change them in any way. Complete or partial publication of the Test Materials requires our prior, written consent.

13.3 If there is a corresponding obligation in the respective contract, in our respective testing and certification rules or in the requirements of the respective accreditation company, we shall store Test Materials to the extent specified there and for the periods specified there.

13.4 For the division of Intertek Consumer Goods GmbH Section 5.1 b shall also apply with the proviso that we store environmental samples and all other Test Specimens for a maximum of 3 months following conclusion of our Services, if they can be stored for so long. Water samples (chemical parameters) will be stored according to the capacity of the refrigerators for a period of 4 to 6 weeks and then will be disposed.

**14. Limitation of possible Claims based on Defects**

If the statutory preconditions for claims based on defects are met and these Terms and Conditions do not conflict with possible claims based on defects, claims based on defects will become time-barred one year from the start of the statutory limitation period. This is not the case if longer periods are prescribed in accordance with § 438 Para 1 No. 2 (Construction and Materials for Construction), § 479 Abs. 1 (Right of Recourse), § 634 a (Construction Defects) and § 438 Para 2 (Fraudulent Intent) of the German Civil Code (BGB).

**15. Liability**

15.1 We shall be liable to pay compensation for damages and to reimburse futile expenditure as defined in § 284 of the BGB (hereinafter referred to as "Compensation") on account of defects in our Services or on account of breaching other contractual or non-contractual duties, in particular, from unauthorised action, only in the case of intent or gross negligence. The above restriction on liability shall not apply to injuries to life, limb or health, to the assumption of a guarantee or a procurement risk, the breach of

material contractual duties and in the case of liability under the Product Liability Act.

15.2 Compensation on account of breach of material contractual duties is limited to reimbursement of those losses, which we would have had to foresee as possible when the contract was concluded on the basis of circumstances discernible to us (typical contractual losses), unless intent or gross negligence is involved or we are liable on account of injury to life, limb or health or the assumption of a guarantee or a procurement risk.

15.3 Typical contractual losses for the purposes of the above Section 15.2 amount to

a. per loss: the maximum total amount equates to ten times the net remuneration, which the Customer paid for those Services provided by us that led to the loss;

b. in the case of several losses with regard to the same Customer within one year: maximum EUR 250,000.00.

15.4 Irrespective of the above Section 15.3, when determining the amount of the claims for damages against us, appropriate account in our favour is to be taken of our economic circumstances, the type, extent and duration of the business relationship, possible contributory causes and/or fault on the part of the Customer in accordance with § 254 BGB. In particular, the payments of Compensation, costs and expenses that we are obliged to bear must be commensurate with the remuneration for our Services.

15.5 All restrictions on liability apply to the same extent for performing and vicarious agents.

15.6 An amendment to the burden of proof to the detriment of the Customer is not associated with the above regulations.

15.7 Material contractual duties for the purposes of Sections 15.1 and 15.2 are those obligations whose fulfilment makes proper execution of the contract at all possible and on compliance with which the Customer may rely.

**16. Indemnity**

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

a. any claims or suits by any governmental authority or others for any actual or asserted failure of the Customer to comply with any law, ordinance, regulation, rule or order of any governmental or judicial authority;

b. the breach or alleged breach by the Customer of any of its obligations set out in Section 4 and 5 above; and c. any claims or suits arising as a result of any misuse or unauthorized use of any reports issued by us or any Intellectual Property Rights belonging to us (including trade marks) pursuant to the Agreement.

16.2 The obligations set out in this Section 16 shall survive termination of this Agreement.

**17. Non-Disclosure**

17.1 „Confidential information“ for the purpose of this Section 17 is all information of an economic, commercial, technical or otherwise confidential nature, which the Customer makes accessible to us in connection with our Services.

17.2 We shall protect the Customer's Confidential Information from disclosure to third parties, use by third parties or publication with at least the same degree of care, which we apply to protecting our own confidential information of equal importance.

17.3 We shall not use the Customer's Confidential Information for any other purposes than the provision of the Services owed by us, unless the Customer has consented to our using it otherwise in writing.

17.4 We shall only make the Customer's Confidential Information accessible to associated companies or suitable sub-contractors, which we have carefully selected, if they are bound by a corresponding duty of non-disclosure.

17.5 We shall only pass the Customer's Confidential Information to those employees and agents for which disclosure of or access to the Confidential Information is necessary for the provision of our Services and who are also subject to a corresponding duty of non-disclosure.

17.6 Unless we have not made a deviation agreement with the Customer the duties of non-disclosure pursuant to this Section 17 shall apply for a period of 2 years from the date on which the Customer made the Confidential Information in question accessible to us.

17.7 Knowledge and information,

a. which were already evident to us or generally known or best available technology at the time of their notification; b. which were already known to us at the time of notification;

c. which subsequently become evident or generally known or best available technology without our being responsible for this;

- d. which are disclosed to us or made accessible by a third party authorised to do so;
- e. with regard to which the Customer has consented to their being passed on, disclosed or made accessible to third parties, are exempted from the duties of non-disclosure pursuant to this Section 17.

17.8 An obligation of non-disclosure pursuant to this Section 17 does not apply in the following cases either:

- a. If we are asked to disclose confidential information by the courts or are obliged to do so by law.
- b. If there is a suspicion that damage to persons or property could be caused by a product for which we have provided Services on behalf of the Customer.
- c. With regard to the relevant accreditation companies, to market surveillance and - if applicable - to other test centres.
- d. If the Customer breaches material duties of these Terms and Conditions.
- e. If it is ruled in these Terms and Conditions or agreed elsewhere that no duty of non-disclosure applies.

#### **18. Termination**

18.1 The Agreement shall commence at the latest upon the first day on which the Services are commenced and shall continue, unless terminated earlier in accordance with this Section 18, until the Services have been provided.

18.2 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. us on written notice to the Customer in the event that the Customer 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 of occurrence of a reason for insolvency (in particular but without limitation illiquidity or over-indebtedness) at the other party, or in the event a petition in insolvency proceedings in respect of the other party is dismissed due to the lack of mass or estate in respect of the other party.

18.3 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.

#### **19. Place of Performance - Place of Jurisdiction - Applicable Law**

19.1 The failure of any party to insist upon strict performance of any provision of the 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 the Agreement. A waiver of any breach shall not constitute a waiver of any subsequent breach. No waiver of any right or remedy under the Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing.

19.2 For all rights and duties arising from our Services, our company's registered office counts as the place of performance for both parts. 19.3 Stuttgart is the place of jurisdiction for companies, business people, legal entities incorporated under public law or special public funds. We are also authorised to take action at the Customer's registered office.

19.4 The contractual relationship is subject to the law of the Federal Republic of Germany without giving effect to the conflict of laws provisions.

19.5 The data provided by the Customer will be stored and processed by computer, if this is permissible under the German Federal Data Protection Act.