

INTERKTEK TESTING SERVICES THAILAND LTD TERMS & CONDITIONS OF BUSINESS

1. Intertek Testing Services Thailand Limited (hereinafter "the Company") agrees to provide its services in accordance with and subject to the terms and conditions herein contained (hereinafter "the Conditions"). The Conditions may only be modified by a variation expressed in writing and signed on behalf of the Company by a director and no other action on the part of the Company or its employees or agents shall be construed as an acceptance of any other terms and conditions.
2. The Company acts for the person or body from whom the request to provide its services has originated (hereinafter "the Principal"). No other party is entitled to give instructions to the Company unless agreed by the Company.
3. All rights (including but not limited to copyright) in any test reports, surveys, certificates of inspection or other material produced by the Company in the course of providing its services shall remain vested in the Company. The Principal shall not reproduce or make copies, publish or disclose the contents of any such material or extracts thereof to any third party without the Company's prior written consent, which may be refused at its discretion. The Principal further undertakes that its servants and agents shall keep confidential and shall not publish or otherwise use any information that may be acquired relating to the Company's activities.
4. 4.1 The Company undertakes to exercise due care and skill in the performance of its services and accepts responsibility only where such skill and care is not exercised.
4.2 The liability of the Company in respect of any claims for loss, damage or expense of whatsoever nature and howsoever arising in respect of any breach of contract and/or any failure to exercise due skill and care by the Company shall in no circumstances exceed a total aggregate sum equal to ten (10) times the amount of the fee or commission payable in respect of the specific service required under the particular contract with the Company which gives rise to such claims provided however that the Company shall have no liability in respect of any claims for indirect or consequential loss including loss of profit and/or loss of future business and/or loss of production and/or cancellation of contracts entered into by the Principal.
4.3 The Company shall not in any event be liable for any loss or damage caused by delay in performance or non-performance of any of its services where the same is occasioned by any cause whatsoever that is beyond the Company's control including but not limited to war, civil disturbance, requisitioning, governmental or parliamentary restriction, prohibitions or enactment of any kind, import or export regulations, strike or trade dispute (whether involving its own employees or those of any other person), difficulties in obtaining workmen or materials, breakdown of machinery, fire or accident. Should any such event occur the Company may cancel or suspend any contract for the provision of services without incurring any liability whatsoever.
4.4 The Company will not be liable to the Principal for any loss or damage whatsoever sustained by the Principal as a result of any failure by the Company to comply with any time estimate given by the Company relating to the provision of its services. [See clause 9.1] [See clause 9.2]
5. 5.1 Subject to the Principal's instructions as accepted by the Company, the test reports, surveys, certificates of inspection or other material produced by the Company shall contain statements of opinion made with due care within the limitation of the instructions received by the Company. The Company is under no obligation to refer to or report upon any facts or circumstances which are outside the specific instructions received.
5.2 For pre-shipment inspection or survey of goods, the Company's inspector shall perform the inspection or survey when goods are 100% completed, packed and marked (unless otherwise agreed between the Company and the Principal). Goods for inspection or survey shall be unpacked in the presence of the Company's inspector and inspection or survey shall, subject to Condition 5.3, take place at the place specified by the Principal.
5.3 If the Company's inspector finds that the location is not suitable for carrying out a proper inspection or survey of goods or where necessary equipment for inspection or survey is not available the inspector may, if practical in the circumstances, draw samples of goods from the location and carry out the inspection or survey at the premises of the Company. The Principal shall be responsible for all costs and expenses incurred in relation thereto.
5.4 Reports, surveys or certificates issued following testing or analysis of samples contain the Company's specific opinion on those samples only but do not express any opinion upon the bulk from which the samples were drawn. If an opinion on the bulk is requested special arrangements in writing must be made in advance with the Company for the inspection and sampling of the bulk. In no circumstances shall the Company's responsibility extend beyond inspection, testing and reporting upon the samples actually drawn from the bulk and inspected, tested and surveyed by the Company and any inference to be drawn from the results of such inspection or survey or testing shall be entirely in the discretion and at the sole and exclusive responsibility of the Principal.
6. The Company shall be entitled at its discretion to delegate the performance of the whole or any part of the services contracted for with the Principal to any agent or subcontractor.
7. Every officer, employee, agent or subcontractor of the Company shall have the benefit of the limitations of liability and the indemnities contained in the General Conditions. So far as relates to such limitations and indemnities, any contract entered into by the Company is entered into not only on its own behalf but also as agent and trustee for every such person as aforesaid.
8. If the requirements of the Principal necessitate the analysis of samples by the Principal or by any third party the Company will pass on the results of the analysis but without responsibility for its accuracy. Where the Company is only able to witness an analysis by the Principal or by any third party the Company will provide confirmation, if such be the case, that a correct sample has been analysed but will not otherwise be responsible for the accuracy of such analysis.
9. The Principal will :
 - 9.1 ensure that instructions to the Company are given in due time and are accompanied by sufficient information to enable the required services to be performed effectively;
 - 9.2 accept that documents reflecting arrangements or agreements made between the Principal and any third party, or third party documents such as copies of contracts of sale, letters of credit, bills of lading, etc. are -if received by the Company considered to be for information only, without extending or restricting the services to be provided or obligations accepted by the Company.
 - 9.3 procure all necessary access for the Company's representatives to enable the required services to be performed effectively;
 - 9.4 supply, if required, any special equipment and personnel necessary for the performance of the required services;
 - 9.5 ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of the required services;
 - 9.6 take all necessary steps to eliminate or remedy any obstruction to or interruptions in the performance of the required services and repack all inspected goods immediately after any inspection or survey of them;
 - 9.7 inform the Company in advance of any known hazards or dangers, actual or potential, associated with any request for the provision of services by the Company including but not limited to the presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution or poisons;

10. The Principal shall guarantee, hold harmless and indemnify the Company and its officers, employees, agents or subcontractors against :
10.1 all claims made by any third party for any loss, damage or expense of whatsoever nature and howsoever arising relating to the performance, purported performance or non-performance of any of services to the extent that the aggregate of any such claims relating to any one service exceeds the limit mentioned in Condition 4.2.

10.2 any loss or damage suffered by the Company as a result of the provision of services by the Company to the Principal otherwise than resulting from the Company's own error, negligence or willful default.

11. 11.1 The Principal will punctually pay the Company immediately upon presentation of the relevant invoice or within such other period as may have been agreed in writing by the Company all charges rendered by the Company failing which interest will become due at the rate of 1.5 per cent per month from the date of invoice until payment. The Principal further agrees and undertakes to reimburse the Company all disbursements reasonably incurred in connection with the provision of its services.

11.2 The Principal shall not be entitled to retain or defer payment of any sums due to the Company on account of any dispute, cross claim or set off which it may allege against the Company.

11.3 In the event of any suspension of payment arrangement with creditors, bankruptcy, insolvency, receivership or cessation of business or failure of the Principal to pay part or all of any sums owing to the Company, the Company shall be entitled to suspend all further performance of its services and withhold the issue of any test report, survey, certificate of inspection or other material requested forthwith and without liability until payment of all sums owing to the Company together with interest thereon is made.

12. Without prejudice to any rights the Company may have at law or under the Conditions, the Company has the following rights in the event of non-payment of sums owing to the Company as set out below :

12.1 The Company has a general and particular lien over all samples delivered to be tested for all claims and sums owing by the Principal to the Company under any contract whatsoever and in any other way whatsoever.

12.2 During the currency of any such lien the Company is entitled to be paid reasonable storage charges for samples retained in the Company's custody.

12.3 Without prejudice to the Company's lien and other rights under Conditions 12.1 to 12.2 above, if test, inspection or survey of the goods takes place on the premises of the Company, the Company may give notice to the Principal that the goods (or any part thereof) are ready for collection and the Principal shall collect the same within three (3) calendar days (Saturdays, Sundays and Public Holidays excepted). Upon the expiry of this period, if the goods are not collected by the Principal, at the sole discretion of the Company the goods may be deemed abandoned and/or destroyed.

12.4 Without prejudice to Conditions 12.3 above, the Company shall have the discretion to store the goods (or any of them) at their own premises or elsewhere at the Principal's expense if the Principal has deposited the goods at the Company's premises for the performance of these services and has subsequently failed to collect the said goods.

12.5 The expenses by way of disbursements that the Company may reclaim from the Principal include all reasonable costs incurred by the Company (whether by way of storage, insurance or otherwise) in respect of the goods and it is expressly declared that it shall be reasonable but not mandatory for the Company to effect comprehensive insurance in respect of the goods.

12.6 Without prejudice to the Company's lien and other rights under Conditions 12.1 to 12.5 above, the risk and property in the goods shall remain at all times in the Principal.

13. In the event of the Company being prevented by reason of any cause whatsoever outside the Company's control from performing or completing any service for which an order has been given or an agreement made, the Principal will pay to the Company :

13.1 the amount of all abortive expenditure actually made or incurred; and

13.2 a proportion of the agreed fee or commission equal to the proportion (if any) of the service actually carried out; and the Company shall be relieved of all responsibility whatsoever for the partial or total non-performance of the required service.

14. The Company shall be discharged from all liability to the Principal for all claims for loss, damage or expense unless suit is brought within twelve (12) months after the date of the performance by the Company of the service which gives rise to the claim or in the event of any alleged non-performance within twelve (12) months of the date when such service should have been completed.

15. In the event that any unforeseen additional time or costs are incurred in the course of carrying out any of its services the Company shall be entitled to render additional charges as shall reasonably reflect such additional time and costs incurred.

16. All proprietary and non-public information relating to the Principal that is held by the Company will not be disclosed by the Company to third parties except where the Company is required to disclose such information either (i) to National Accreditation System of Thailand ("NAC") or other accreditation bodies for the purposes of an accreditation assessment of the Company's activities or (ii) pursuant to any legal or regulatory requirement to which the Company shall be subject."

17. All contracts for provision of services by the Company and the Conditions shall be construed in accordance with and governed by the laws of Thailand and for the purpose of any arbitral or litigation proceedings such contracts shall be deemed to have been made and performed in Thailand. If any provision contained in the Conditions is and/or becomes invalid, illegal or unenforceable in any respect under the laws of Thailand, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

18. Any dispute or claim arising out of or relating to the provision of, or any agreement to provide, services by the Company shall be referred to and determined by arbitration subject to the Company's sole and overriding discretion to commence litigation proceedings in the courts of Thailand or the courts of any other country as the Company may choose. The parties may agree to the appointment of an arbitrator failing which either party may, after having made a written request to concur in the appointment of an arbitrator, request the Thailand court to appoint an arbitrator. The place of arbitration shall be in Thailand. There shall only be one arbitrator. The language to be used in the arbitral proceedings shall be Thai and/or English.