1. INTERPRETATION

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

(a) "Contract" means this Agreement entered into between Intertek and the Client.
(b) "Charges" shall have the meaning given in Clause 5.1.
(c) "Confidential Information" means such information in whatever form or manner presented which: (i) is disclosed pursuant to, or in the course of the provision of Services pursuant to, this Agreement; and (b) (i) is disclosed in writing, electronically, visually, orally or otherwise howsoever and is marked, stamped or written in such a manner as to indicate to each party to the contract in whose possession the information is held and (ii) is information, however disclosed, which would—reasonably be considered to be confidential by the receiving party.
(d) "Intertek’s Warranty Rights Policy ("Warranty Policy") means copyrights, trademarks (registered or unregistered), patents, patent applications (including the right to apply for a patent), service marks, design rights (registered or unregistered), trade secrets and other like rights howsoever existing.
(e) "Reports" shall have the meaning as set out in Clause 2.9 below.
(f) "Services" means the services set out in any relevant Intertek Proposal, any relevant Client purchase order, or any relevant Intertek invoice, as applicable, and may comprise or include the provision by materials in existence at the time of the performance of the Services only.

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

2. THE SERVICES

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

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

2.3 The Services provided by Intertek under this Agreement and any memorandum, laboratory data, calculations, measurements, estimates, notes, certificates and other material prepared by Intertek in the course of providing the Services to the Client, together with all summaries or any other communications in the form of such documents and reports, shall belong to Client. The Client acknowledges and agrees that if in providing the Services to the Client, Intertek shall provide the Services to the Client in accordance with the Proposal.

3. INTERTEK’S WARRANTIES

3.1 Intertek warrants exclusively to the Client:

(a) that it has the power and authority to enter into this Agreement and that it will comply with relevant agreements and regulations in force as at the date of this Agreement in relation to the provision of the Services;
(b) that the Services will be performed in a manner consistent with that of level of care and skill ordinarily exercised by other companies providing services under similar circumstances;
(c) that it has neither previously nor presently disclosed or intended to address all matters of quality, safety, performance, or condition of any product, material, services or systems tested, inspected or certified and the scope of work does not necessarily reflect all standards which may apply to product, material, services or systems if it consenting to and agrees to do so; the Client understands that reliance on any Reports issued by Intertek is limited to the facts and representations set out in the Reports which represent Intertek’s review and/or analysis of facts, information, documents, samples and/or other relevant materials from and to any other relevant trade custom, usage or practice. The Client further agrees and acknowledges that Intertek shall be neither in breach of this Agreement nor liable to the Client for any breach of this Agreement if and to the extent that its breach is a result of a failure of the Client to comply with its obligations as set out in this Clause 4. The Client also acknowledges that the impact of any failure by the Client to perform its obligations set out herein the provision of the Services by Intertek will not affect the Client’s obligations under this Agreement for payment of the Charges pursuant to Clause 5 below.

4. PAYMENT

4.1 The Client shall pay the Intertek invoices for the Services provided under this Agreement. Any additional work performed by Intertek will be charged on a time and material basis.

4.2 Intertek shall invoice the Client for the Charges and expenses, if any. The Client shall pay each invoice no later than thirty (30) days from the date of the invoice.

4.3 If any invoice is not paid on the due date for payment, Intertek shall have the right to charge, and the Client shall pay, interest on the unpaid amount, calculated from the due date of the invoice to the date of payment, at a rate of 3% per annum above the base rate (repo rate) from time to time fixed by the Central Bank of Sweden (Sveriges Riksbank) in the relevant currency.

5. INTELLECTUAL PROPERTY RIGHTS AND DATA PROTECTION

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

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

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

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

6. GENERAL PROVISIONS

6.1 Any use by the Client (or the Client’s affiliated companies or subsidiaries) of the name "Intertek" or any of Intertek’s trademarks or brand names is strictly prohibited and Intertek reserves the right to terminate this Agreement immediately as a result of such unauthorised use.

6.2 Any use of Intertek’s trademarks or brand names is strictly prohibited and Intertek reserves the right to terminate this Agreement immediately as a result of such unauthorised use.

6.3 In the event of provision of certification services, Client agrees and acknowledges that the use of certification marks may be subject to national and international laws and regulations.

6.4 All Intellectual Property Rights in any Records, documents, graphs, charts, photographs or any other materials whatsoever made or produced by Intertek pursuant to this Agreement shall belong to Intertek. The Client shall have the right to use such Records, documents, graphs, charts, photographs or other material for the purposes of this Agreement.

6.5 The Client agrees and acknowledges that it will respect all and any proprietary rights in concepts, ideas, and inventions that may arise during the preparation or provision of any Record including any deliverables provided by Intertek to the Client and the provision of the Services to the Client.

6.6 Intertek shall not be held liable or responsible for any unauthorised use or disclosure of personal information concerning personal data of any kind which needs to be protected. Intertek may notify the client and advise Intertek immediately of any changes to any of the procedures set out in this agreement.

7. CONFIDENTIALITY

7.1 Where a party (the Receiving Party) obtains Confidential Information of the other party (the Disclosing Party) in connection with this Agreement (whether before or after the date of this Agreement) it shall, within thirty (30) days after first learning of such information, and as soon as practicable, take such steps as the Disclosing Party shall require to destroy, or, as the Disclosing Party shall require, either to deliver to the Disclosing Party or to destroy, all notes, copies, records, or other materials or information containing or embodying Confidential Information, whether in electronic, written or other form, and to inform the Client of the destruction thereof, or to deliver to the Disclosing Party or destroy such Confidential Information.

7.2 The Disclosing Party may utilise any Confidential Information in the course of providing the Services to the Client, provided that it shall:

(a) keep that Confidential Information confidential, by applying the standard of care that it uses for its own Confidential Information;
(b) use that Confidential Information only for the purposes of performing obligations under this Agreement; and
(c) not disclose that Confidential Information to any third party without the prior written consent of the Disclosing Party.
7.2 The Receiving Party may disclose the Disclosing Party’s Confidential Information on a “need to know” basis:
(a) to any legal advisers or statutory auditors that it has engaged for itself;
(b) to any regulator having regulatory or supervisory authority over its business;
(c) to any director, officer or employee of the Receiving Party provided that, in each case, the Receiving Party has first advised the Disclosing Party that it intends to do so and ensured that the terms and conditions described in this Clause 7 shall be complied with;
(d) by reason of the Receiving Party satisfying the obligations set out in Clause 4 above; and
(e) any claims made by any third party for loss, damage or expense of whatsoever nature and howsoever arising relating to the performance, purported performance or non-performance of any Services to the extent that the aggregate of any such claims relating to any one Service exceeds the limit of liability set out in Clause 10 above;
(f) any claims or suits arising as a result of any misuse or unauthorized use of any Reports issued by Intertek or any Intellectual Property Rights belonging to Intertek (including trade marks) pursuant to this Agreement; and
(g) any claims arising out of or relating to any third party’s use of or reliance on any Reports or any reports, analyses, conclusions or other documents (or any part of them) prepared by the party to whom the Client has provided the Reports) based in whole or in part on the Reports, if applicable.

Subject to the above, to the extent that the Client is required to disclose any Confidential Information to its advisers or others for the purposes of the first paragraph above, the Receiving Party shall use all reasonable endeavours to ensure that such Confidential Information is disclosed only to those parties who require such disclosure and that such parties comply with the confidentiality obligations contained in this Clause.

9.4 Each party may terminate this Agreement by giving at least ten (10) days’ written notice to the other.

9.5 For the avoidance of doubt, where the affected party is Intertek any notice to terminate the Services will only be effective if Intertek is in default of any of its obligations under this Agreement and Intertek has been given the opportunity to rectify such breach or default within the same period required by its quality assurance policies, or by the testing and certification rules of the applicable third party.

9.6 The Receiving Party may disclose Confidential Information of the Disclosing Party to a third party if the disclosing party has given its written consent to such disclosure.

10. LIMITATIONS AND EXCLUSIONS OF LIABILITY

10.1 NEITHER PARTY EXCLUDES OR LIMITS LIABILITY TO THE OTHER PARTY:

(a) FOR DEATH OR PERSONAL INJURY RESULTING FROM THE NEGLIGENCE OF THAT PARTY OR ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUB-CONTRACTORS, OR FOR FRAUDULENT MISREPRESENTATION OR FRAUD;

(b) FOR ITS OWN FAULT (OR THAT OF ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUB-CONTRACTORS);

(c) UNDER CAUSE 10.1, THE MAXIMUM AGGREGATE LIABILITY OF INTEK IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND BREACH OF STATUTORY DUTY) OR OTHERWISE FOR ANY BREACH OF THIS AGREEMENT OR ANY MATERIAL ARISING OUT OF OR IN CONNECTION WITH THE SERVICES TO BE PROVIDED UNDER THIS AGREEMENT (EXCEPT THE MATTERS REFERRED TO IN CAUSE 10.3) SHALL BE THE AMOUNT OF CHARGES DUE FROM THE DISCLOSING PARTY TO THE CLIENT UNDER THIS AGREEMENT;

(d) SUBJECT TO CAUSE 10.1, NEITHER PARTY SHALL BE LIABLE TO THE OTHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND BREACH OF STATUTORY DUTY) OR OTHERWISE FOR ANY OF THE FOLLOWING:

(i) LOSS OF PROFITS;

(ii) LOSS OF SALES OR BUSINESS;

(iii) LOSS OF OPPORTUNITY (INCLUDING WITHOUT LIMITATION IN RELATION TO THIRD PARTY AGREEMENTS OR CONTRACTS);

(iv) LOSS OF OR DAMAGE TO GOODWILL OR REPUTATION;

(v) LOSS OF ANTICIPATED SAVINGS;

(vi) COST OR EXPENSES INCURRED IN RELATION TO MAKING A PRODUCT RECALL;

(vii) LOSS OF USE OR CORRUPTION OF SOFTWARE, DATA OR INFORMATION; OR

(viii) ANY INDIRECT, CONSEQUENTIAL LOSS, PUNITIVE OR SPECIAL LOSS (EVEN WHEN ADVISED OF THEIR POSSIBILITY).

10.2 ANY CLAIM BY THE CLIENT AGAINST INTEK (ALWAYS SUBJECT TO THE PROVISIONS OF THIS CAUSE 10) MUST BE MADE WITHIN NINETY (90) DAYS AFTER THE DATE WHEN THE CLAIM IS KNOWN OR CONCEIVABLE TO THE CLIENT, DIRECTLY OR INDIRECTLY, IN CONTRACT, TORT OR OTHERWISE IN CONNECTION WITH THE PROVISION OF SERVICES UNDER THIS AGREEMENT.

11. INDEMNITY

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

(a) any loss or damage caused or permitted by the Client to any person or property; or

(b) any claim, or suit arising as a result of any misuse or unauthorized use of any Confidential Information to another’s Confidential Information.

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

12. INSURANCE POLICIES

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

12.2 Intertek expressly disclaims any liability to the Client as an insurer or guarantor.

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

13. TERMINATION

13.1 This Agreement shall commence upon the first day on which the Services are commenced and shall continue, unless terminated earlier in accordance with this Clause 13, until the Services have been provided.

13.2 This Agreement may be terminated:

(a) either party if the other in material breach of any obligation imposed upon it hereunder for more than ninety (90) days (where that period is extended by operation of law) has not been complied with;

(b) either party if the other party is insolvent or otherwise unable to pay its debts including any costs that are paid from Intertek’s account by the party to whom Intertek has provided the Reports);

(c) either party if on the date of notice to the other in the event that the other party is insolvent or otherwise unable to pay its debts or if it otherwise becomes insolvent or unable to pay its debts or if it otherwise becomes insolvent or unable to pay its debts or if it otherwise becomes insolvent or otherwise unable to pay its debts;

(d) upon the appointment of receivers, administrators or liquidators of the other party; or

(e) upon the appointment of receivers, administrators or liquidators of the other party.

13.3 In the event of termination of the Agreement for any reason and without prejudice to any other rights or remedies, each party may update the other party of any information or documents received by such party under the Agreement which the Client shall pay Intertek for all Services performed up to the date of termination. This obligation shall survive termination or expiration of this Agreement.

13.4 Any termination or expiration of the Agreement shall not affect the accrued rights and obligations of the parties.

14. ASSIGNMENT AND SUB-CONTRACTING

14.1 Intertek reserves the right to delegate the performance of its obligations hereunder and the provision of the Services to one or more of its affiliates and/or sub-contractors when necessary. Intertek may also assign this Agreement to any company within the Intertek group on notice to the Client.

15. GOVERNING LAW AND DISPUTE RESOLUTION

15.1 This Agreement and the Proposal shall be governed by Swedish law. The parties agree to submit to the exclusive jurisdiction of the Swedish Courts in respect of any dispute or claim arising out of or in connection with this Agreement [including any non-contractual claim relating to the provision of the Services in accordance with this Agreement].

16. MISCELLANEOUS

16.1 Severability

16.1.1 If any provision of this Agreement is or becomes invalid, illegal or unenforceable, such provision shall cease to apply and the remainder of the provisions shall continue in full force and effect as if this Agreement had been executed without the invalid illegal or unenforceable provision. If the invalidity, illegality or unenforceability of any provision in this Agreement is held to exist in any jurisdiction, such invalidity, illegality or unenforceability shall be deemed not to extend to any other jurisdiction and such provision shall, if possible; be limited in scope to such invalidity, illegality or unenforceability and shall be replaced by a legal, valid and enforceable provision that most nearly achieves the original commercial intent of such provision as is reasonably possible.

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

16.3 Subject to Clause 10.4 above, the failure of any party to insist upon strict performance of any provision of this Agreement, or to exercise any right or remedy to which it is entitled, shall not constitute a waiver and shall not constitute a diminution of the obligations established by this Agreement. A waiver of any breach shall not constitute a waiver of any subsequent breach.

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

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

16.6 Each party acknowledges that in entering into this Agreement it has not relied on any representation, warranty, assurance, statement or arrangement between those parties relating to that subject matter.

16.7 Nothing in this Agreement limits or excludes any liability for fraudulent misrepresentation.

16.8 A person who is not party to this Agreement has no right to enforce any of its terms.

Further Assurance

16.9 If the Client, at the cost and request of any other party, execute and deliver such instruments and documents and take such other actions in each case as may be reasonably requested from time to time in order to give full effect to its obligations under this Agreement.