These terms and conditions, together with any proposal, estimate or fee quote, form the agreement between you (the Client) and the Intertek entity (Intertek) providing the services contemplated therein.

1. INTERPRETATION

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

(a) Agreement means this agreement entered into between Intertek and the Client;
(b) ‘any data’ means any information, facts, knowledge, ideas, information, samples or other related documents provided by the Client (including its agents, sub-contractors, employees and other representatives);
(c) Intertek includes all its agents, sub-contractors, suppliers, sub-contractors and employees;
(d) Client warranties and obligations means any terms and conditions which the Client has agreed to satisfy before the Services provided by Intertek will be performed;
(e) that any information, samples or other related documents (including without limitation certificates and reports) provided by the Client to Intertek will, in any circumstances, infringe any legal rights (including Intellectual Property Rights) of any third party.

4.2 In the event that the Services provided relate to any third party, the Client shall cause any such third party to agree in writing to these terms and conditions prior to Intertek incurring any cost or expense and to and a condition precedent to such third party receiving any Reports or the benefit of any Services.

4.3 The Client further agrees:

(a) that it will notify Intertek in all matters relating to the Services and appoint a manager in relation to the Services who shall be duly authorised to provide instructions to Intertek on behalf of the Client and to bind the Client contractually as required;
(b) that in the event of any inconsistency between the terms of this Agreement and the Proposal, the terms of this Agreement shall take precedence.

4.4 Intertek shall neither be in breach of this Agreement nor liable to the Client for any breach of this Agreement and if and to the extent that its breach is a direct result of a failure by the Client to comply with its obligations set out in this Agreement, Intertek shall not be liable to the Client for any actions taken or not taken on the basis of such report.

5. CHARGES, INVOICING AND PAYMENT

5.1 The parties agree that the Services are provided on the terms and subject to the conditions set out in this Agreement. Intertek warrants that this Agreement shall take precedence over any terms and conditions which the Client has provided or may in the future provide to Intertek, whether in a purchase order or any other document.

5.2 In the event of any breach of this Agreement by the Client occurring at an earlier time, submission of samples or other testing material from the Client to Intertek shall be deemed to be conclusive evidence of the Client’s acceptance of this Agreement.

5.3 Intertek shall invoice the Client for the Charges and expenses, if any. For Services provided over the course of a period of greater than thirty (30) days the Client agrees that at the end of each calendar month Intertek will invoice the Client for the cost of the Services provided in the month. A final invoice will be issued on the date of the completion of the Services.

5.4 The Charges represent the total fees to be paid by the Client for the Services pursuant to this Agreement. Any additional work performed by Intertek will be charged on a time and material basis.

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5.11 If Intertek believes that the Client’s financial position and/or payment performance justifies such action, Intertek has the right to demand that the Client immediately furnish security or additional security in a form to be determined by Intertek and/or make an advance payment if the Client fails to furnish the desired security, Intertek has the right, without prejudice to its other rights, to immediately suspend the further execution of any or all of the Services, and any Charges for any part of the Services that have already been performed shall be due and payable immediately.

5.12 If the Client fails to pay within the period referred to in 5.8 above, it is in default of its payment obligations under this Agreement and the Client acknowledges that Intertek shall be entitled to charge interest, from the date on which payment became due, at 8% per annum (or such other rate of interest as may be agreed between the Client and Intertek) on the amount unpaid, which interest shall be computable with interest on interest due within a reasonable period. In that case, the Client is liable to pay interest on the credit balance with effect from the date on which the payment became due until the date of payment. The interest rate may be decreased or increased by Intertek from time to time, and all collection costs after the Client’s default, both judicial and extrajudicial, are for the Client’s account. The extrajudicial costs are set at an amount equal to 10% of the principal plus interest, without prejudice to Intertek’s right to recover all costs and expenses connected with the collection of any amount due. These interest charges shall not be in addition to any interest charges, if any, that Intertek may be entitled to recover, but are in addition to any such interest charges.

5.13 If the Client objects to the contents of the invoice, details of the objection must be raised with Intertek within (7) days of receipt of electronic invoice, otherwise the invoice will be deemed to be accepted by the Client.
been accepted. Any such objections do not exempt the Client from its obligation to pay within the period referred to in 5.8 above.

5.4 Additionally, the Client may obtain certain information to be included in or appended to the invoice must be made at the time of setting out the Proposal. A later request by the Client for changes to the agreed format of the invoice or supplementary information will not discharge the Client from its obligation to pay within the period referred to in 5.8 above. Intertek reserves the right to charge a £25 administration fee per invoice for issuing additional copies of invoices or amending invoice detail, format or structure from that agreed in the Proposal. Intertek maintains the right to reject such an invoicing amendment request and the Client will not exempt the Client from its obligation to pay within the period referred to in 5.8 above.

5.5 If actions by the Client delay completion of the Services, Intertek has the right to invoice the Client for Services provisioned, in such a case the Client agrees to pay this invoice within thirty (30) days of the invoice date.

6. CONFIDENTIALITY AND DATA PROTECTION

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

6.2 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 for any reason must be prior approved in writing by Intertek. Any use of Intertek’s trademarks or brand names is strictly prohibited and any unauthorized use to this right term to terminate this Agreement immediately as a result of any 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 Reports, document, graphs, charts, photography or any other material (in whatever medium) produced by Intertek pursuant to this Agreement shall belong to Intertek and the Client will not use or disclose any such deliverables without Intertek’s consent.

6.5 The Client agrees and acknowledges that Intertek retains all and any proprietary rights in concepts, ideas, technical information or any other material for the purposes of this Agreement.

6.6 The Client acknowledges and agrees that Intertek will maintain any Confidential Information in confidence, protect such information from unauthorised use or disclosure, and keep that Confidential Information confidential, by applying the standard of care that it uses for its own confidential information.

6.7 The Client and the Receiving Party will promptly notify the other in writing of the Force Majeure Event and the cause and the likely duration of any such affected or non-performance of its obligations.

7. CONFIDENTIALITY

7.1 Confidentiality (a) where the (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 be subject to Clauses 7.2 to 7.4:

(a) keep that Confidential Information confidential, by applying the standard of care that it uses for its own confidential information;

(b) use that Confidential Information only for the purposes of performing obligations under this Agreement;

(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 advisors and 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 other employee of the Receiving Party (to whom that information is reasonably necessary to perform the Receiving Party’s obligations under the Disclosing Party’s obligations under this Agreement, to the extent that such disclosure is reasonably necessary to perform the Receiving Party’s obligations under this Agreement, to the extent that such disclosure is reasonably necessary to perform the Receiving Party’s obligations under this Agreement);

(d) if instructed in writing by the Disclosing Party in connection with this Agreement, to its professional advisors or agents acting for the Disclosing Party in connection with this Agreement;

(e) in connection with any regulatory or legal requirement to disclose and where possible given the Disclosing Party a reasonable opportunity to comment on such disclosure.

7.3 The Receiving Party shall at all times use all reasonable endeavours to avoid or mitigate the effect of the Force Majeure Event and continue, unless terminated earlier in accordance with this Clause 13, until the Services have been provided.

8. AMENDMENT

8.1 No amendment to this Agreement shall be effective unless it is in writing and expressly stated to amend this Agreement which is signed by an authorised signatory of each party.

9. FORCE MAJEURE

9.1 Neither party shall be liable to the other for any delay in performing or failure to perform any obligation under this Agreement to the extent that such delay or failure to perform is a result of:

(a) war (whether declared or not), civil war, riots, revolution, acts of terrorism, military action, sabotage and/or piracy;

(b) natural disasters such as violent storms, earthquakes, tidal waves, floods and/or lightning; explosions and/or fires;

(c) strikes and labour disputes, other than by any one or more employees of the affected party or of any supplier or agent of the affected party;

(d) failure of utilities such as power outages and/or any communication network, telecommunications, internet, gas or electricity services;

(e) force majeure, including adverse weather conditions or impossibility, delay or loss by a sub-contractor or otherwise.

9.2 If any force majeure event, or any other event referred to in this Clause 9.1, affects the performance of the Services, the affected party shall give notice to the other party as soon as reasonably practicable and in any event within forty-eight (48) hours of the occurrence of such event.

9.3 If any force majeure event affects the performance of the Force Majeure Event and continue, and the Client agrees to pay this invoice within thirty (30) days of the invoice date.

10. LIMITATIONS AND EXCLUSIONS OF LIABILITY

10.1 neither party excludes or limits liability to the other party:

(a) for death or personal injury caused by that party or its directors, officers, employees, agents or sub-contractors;

(b) in respect of any indirect, consequential loss, punitive or special loss even if advised of their

10.2 SUBJECT TO Clause 10.1, the maximum aggregate liability of Intertek in contract, tort (including negligence and breach of statutory duty) or otherwise for any breach of this Agreement or any representation or warranty given by Intertek in connection with this Agreement shall be the amount of charges due to the Receiving Party under this Agreement.

10.3 SUBJECT TO Clause 10.1, the maximum aggregate liability of the Client shall be the amount of charges due to the Receiving Party under this Agreement (including negligence and breach of statutory duty) or otherwise for any:

(a) loss of profits;

(b) loss of contracts or business;

(c) loss of opportunity (including opportunity in relation to making a product recall);

(d) loss or damage to any computer software, data or information;

(e) any indirect, consequential loss, punitive or special loss even if advised of their

10.4 Any claim by the Client against Intertek (ALWAYS SUBJECT TO THE PROVISIONS OF THIS CLAUSE 10) MUST BE MADE WITHIN NINETY (90) DAYS AFTER THE CLIENT BECOMES AWARE OF ANY CLAIM OR LOSS,否則在本合約7.6條懲罰性或特別損害賠償（包括違規徵稅及律師費）之訴訟，直接或間接，或不包括在內之

11. INDEMNITY

11.1 The Client shall indemnify and hold harmless Intertek, its officers, employees, agents, representatives, contractors, subcontractors and/or the suppliers or agents of the affected party; or

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

12. INSURANCE POLICIES

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

12.2 Intertek may, at its absolute discretion, purchase any insurance (or any part of any insurance) from any source and in any amount that Intertek sees fit.

12.3 Any claims arising out of or relating to any third party’s use of or reliance on any Reports or any reports, analyses, conclusions of the Client (or any third party to whom the Client has provided the Reports) based in whole or in part on the Reports, if applicable.

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

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 by:

(a) either party if the other continues in material breach of any obligation imposed upon it hereunder for more than thirty (30) days after written notice has been dispatched by that Party by recorded delivery or courier requesting the other to remedy such breach;

(b) Intertek and written notice to the Client in the event that the Client fails to pay any invoice by its due date and/or fails to make payment after a further request for payment; or

(c) either party on written notice to the other in the event that the other makes any voluntary arrangement with its creditors or becomes subject to an administrative order or (being an individual) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an encumbrancer takes possession, or is receiver, appointed, of any of its property or assets of the other or the other cease, or threatens to cease, to carry on business.

13.3 In the event of termination of the Agreement for any reason and without prejudice to any other rights or remedies the parties may have by law, Intertek shall be entitled to demand immediate payment of all accounts rendered 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, and shall not affect any provision of this Agreement which is by implication intended to continue in force or continue in force on or after such termination or expiration.

14. ASSIGNMENT AND SUB-CONTRACTING

14.1 Any assignment or delegation by the Client of the performance of its obligations hereunder and the provision of the Services to one or more of its affiliates and/or subcontractors 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 Brazilian law. The parties agree to submit to the exclusive jurisdiction of the Brazilian Courts in respect of any dispute or claim arising out of or in connection with this Agreement and any non-contractual or indemnity claims relating to the provision of the Services to one or more of its affiliates and/or subcontractors when necessary. Intertek may also assign this Agreement to any company within the Intertek group on notice to the Client.

16. MISCELLANEOUS

16.1 If any provision of this Agreement is or becomes invalid, illegal or unenforceable, such provision shall be severed and the remainder of the provisions shall continue in full force and effect as if this
Agreement had been executed without the invalid illegal or unenforceable provision. If the invalidity, illegality or unenforceability is so fundamental that it prevents the accomplishment of the purpose of this Agreement, Intertek and the Client shall immediately commence good faith negotiations to agree an alternative arrangement.

No partnership or agency

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.

Waivers

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 cause 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.

Whole Agreement

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

16.6 Each party acknowledges that in entering into this Agreement it has not relied on any representation, warranty, collateral contract or other assurance (except those set out or referred to in this Agreement) made by or on behalf of any other party before the acceptance or signature of this Agreement. Each party waives all rights and remedies that, but for this Clause, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

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

Third Party Rights

16.8 A person who is not party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms.

Further Assurance

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