



CONSULTING TERMS AND CONDITIONS

1. Deliverables.

The Services provided by Intertek entity identified in the Proposal (“Intertek”) and any memoranda, notes and other material prepared by Intertek in the course of providing the Services to Client, together with status summaries or any other communication in any form describing the results of any work or services performed (“Deliverable(s)”) shall be only for Client’s use and benefit. Client acknowledges and understands Deliverables are issued based on the information provided by Client and the Services as requested by Client and that reliance on any Deliverable is limited to the facts and representations set out therein. The Client acknowledges and agrees that any Services provided and/or Deliverables produced by Intertek are done so within the limits of the scope of work agreed with the Client in relation to the Proposal and pursuant to the Client's specific instructions or, in the absence of such instructions, in accordance with any relevant trade custom, usage or practice. Client further 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. Client understands that reliance on any Deliverables issued by Intertek is limited to the facts and representations set out in the Deliverables which represent Intertek’s 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. Client is responsible for acting as it sees fit on the basis of such Deliverables. Client agrees that it will not use any Deliverables issued by Intertek pursuant to this Agreement in a misleading manner and that it will only distribute such Deliverables in their entirety and without modification. Neither Intertek nor any of its officers, employees, agents or subcontractors shall be liable to Client nor any third party for any actions taken or not taken on the basis of such Deliverables. In agreeing to provide the Services pursuant to these Consulting Terms and Conditions, Intertek does not abridge, abrogate or undertake to discharge any duty or obligation of the Client to any other person or any duty or obligation of any person to the Client.

2. Terms and Acceptance.

These terms and conditions are specific and applicable to the Services detailed in the attached Proposal and shall be valid until (a) the completion of the Services or (b) a twelve (12) month period, whichever is later. These Consulting Terms and Conditions take precedence over any terms and conditions set forth in any Client purchase order or otherwise, all of which Client terms are hereby rejected. Acceptance of Services constitutes acceptance of all terms and conditions set forth in these Consulting Terms and Conditions. Neither Intertek’s commencement of performance or delivery of the Services constitutes an acceptance of Client’s terms or conditions. Once Client has placed an order, the order may not be cancelled by Client except on written notice to Intertek and payment of reasonable cancellation charges, including, but not limited to, expenses incurred for labor, material, and reasonable profit.

3. Relationship of the Parties.

Notwithstanding any provision herein to the contrary or any course of conduct between the Parties, the Parties hereto are independent contractors, and nothing contained in these Consulting Terms and Conditions shall be construed to place them in the relationship of partners, principal and agent, employer and employee. Each Party agrees that it shall have no power or right to bind or obligate the other and neither Party shall hold itself out as having such authority. Intertek shall be solely responsible for providing and paying all compensation and any benefits (including, but not limited to, unemployment, disability, insurance, or medical, and any pension or profit sharing plans) for Intertek’s affiliates, employees, directors, officers, agents, representatives and advisors. The parties hereto agree that the Services to be rendered hereunder by Intertek are not exclusive to the Client. Intertek during the term of this Proposal or any extension thereof may accept from others, concurrent consulting work provided that such consulting work does not interfere, in the opinion of Intertek acting reasonably, with the consulting services Intertek is required to perform under this Proposal.



4. Performance.

Delivery dates specified are approximate and are based on prompt receipt of all necessary information from Client. Client shall comply with all reasonable requests of Intertek in connection with Intertek's performance of its Services. Client shall provide all assistance reasonably requested by Intertek. Client further agrees to provide all appropriate personnel who shall devote sufficient time, assistance, and information to Intertek to satisfy all reasonable requests of Intertek in connection with Intertek's performance of the Services. In the event the Services require testing, Client acknowledges that testing, including sample preparation and transportation, may damage or destroy Client's product. Client agrees to hold Intertek harmless from any and all responsibility for such alteration.

5. Warranty/Liability.

- a) Intertek warrants that if any of its completed Services fail to conform to professional standard, Intertek will, at its own expense, perform corrective services of the type originally performed as may be reasonably required to correct such defects, of which Intertek is notified in writing within six months of the completion of Services. No other representation, express or implied, and no warranty or guarantee is included or intended in these Consulting Terms and Conditions, or in any deliverable, opinion, document or otherwise.
- b) The maximum aggregate liability of Intertek in contract, tort (including negligence and breach of statutory duty) or otherwise for any breach of these Consulting Terms and Conditions or any matter arising out of or in connection with the Services to be provided in accordance with this Proposal shall be the amount of charges due by Client to Intertek for the services rendered on the project in question.
- c) Neither party shall be liable to the other in contract, tort (including negligence and breach of statutory duty) or otherwise for any:
 - 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).
- d) Any claim by Client against Intertek under these Terms and Conditions (always subject to the provisions of this clause) must be made within ninety (90) days after Client becomes aware of any circumstances giving rise to any such claim. Failure to give such notice of claim within ninety (90) days shall constitute a bar or irrevocable waiver to any claim, either directly or indirectly, in contract, tort or otherwise in connection with the provision of Services under this Proposal.

6. Compensation.

- a) Unless agreed to by the parties in writing, Client agrees to pay Intertek as compensation for the Consulting Services to be performed hereunder Intertek's hourly rates. Such rates will be subject to periodic modification. Intertek reserves the right to adjust the rates of the project in the event that the scope of the work broadens based upon Client's additional requests (e.g. multiple revision requests) or other unforeseen circumstances beyond Intertek's reasonable control. In addition, Client agrees to reimburse Intertek for all reasonable expenses (including travel expenses and related out-of-pocket expenses) incurred by Intertek, which have been agreed upon by both parties and are necessary or appropriate to perform the Consulting Services hereunder. At the request of Client Representative, proposals with estimates of consulting fees and related expenses for defined-scope projects falling within the broad-scope definition of Consulting Services will be provided to Client for advance approval.



- b) All payments to Intertek by Client specified in this Proposal shall be paid within net thirty (30) days of the invoice date. Intertek shall include in such invoices all payment taxes required to be paid including without limitation the Canadian Goods and Services Tax, if applicable. Payments shall be made in accordance with Intertek standard payment policy. All invoices and copies of receipts, If any, will be submitted electronically to [Client to insert email address].
- c) If Intertek is requested by Client or a third party to prepare for and/or respond to any discovery requests, including participation and preparation for any depositions or other testimony related to the services performed, these services would be subject to Intertek's hourly rates. Client will reimburse Intertek for the costs incurred, including reasonable legal fees and travel expenses, upon invoicing by Intertek. Intertek retains the right to participate in and observe testimony preparation given the nature of the services provided.

7. Audit.

During regular business hours and upon advance notice, Client shall have the right to audit Intertek's records related to the Services, excluding employee financial/payroll data, to ensure compliance with the terms and conditions of this Proposal provided that any request for access will not require Intertek to disclose records, reports, documents and other information that are confidential, and/or proprietary, in violation of any confidentiality agreements with third parties or of any applicable law. Intertek shall ensure that its records in connection with the applicable Proposal for Services shall be complete and accurate in all respects. Client shall bear its own costs and expenses in connection with audits.

8. Title to Work Product.

All work performed hereunder, Deliverables and any and all materials and products developed or prepared for Client by Intertek are the property of Client. All title and interest therein shall vest in Client, shall be deemed to be made in the course of the Work rendered hereunder and may be used by Client in its entirety and without modification in its business without accounting to Intertek. Intertek agrees to give Client and any person designated by Client reasonable assistance, at Client's expense, required to perfect the rights defined in this paragraph. Notwithstanding the foregoing, Intertek retains any and all rights of ownership of Intertek's ideas, concepts, know-how, techniques and processes of a general nature that are applied, discovered, invented, created, conceived, made or reduced to practice by Intertek (i) prior to performing Services; or (ii) upon or after performance of the Services, provided that (A) such property was independent of the scope of Services; and (B) such property is not based on or derived, in whole or in part, directly or indirectly, from Client's intellectual property rights.

9. Confidentiality.

Neither party shall disclose confidential or proprietary information of the other party to a third party without written authorization from the disclosing party. This obligation shall not apply to information, which is already or becomes available to the public, or acquired from other sources without confidentiality restrictions, or independently developed by the receiving party. Each Party may maintain a controlled copy of its records in order to document the services provided and retain electronic copies of Information pursuant to its regular data archiving and record retention policies and practices. Confidential Information that is automatically generated through data backup and/or archiving systems which are not readily accessible by Party's business personnel, shall not be deemed to violate this Agreement, so long as the Confidential Information contained therein is not disclosed or used in violation of the other terms of this Agreement. If the receiving party is served with a subpoena, court order, or similar document requesting the disclosure of confidential or proprietary information, the receiving party shall promptly notify the disclosing party. In the event that the disclosing party chooses to contest the request, the receiving party shall cooperate with the disclosing party. The responsibility for contesting the request shall rest solely with the disclosing party. Any costs incurred by the receiving party in responding to the request, including reasonable attorney's fees, shall be reimbursed by the disclosing party. This obligation to maintain confidentiality shall survive for three (3) years after the completion of the project.



10. No Solicitation.

During the duration of the Services and for a period of twelve (12) months after provision of the final Deliverable, neither party shall directly or indirectly solicit employees of the other for hire provided, however, that this provision shall not apply to a general solicitation or advertisement of employment opportunities that is not targeted at employees of the other party.

11. Publicity.

Neither Party may use the other Party's name, or any trademark, logo, or any other identifier of the other Party, in any form of advertising, promotion, or publicity including press releases, or for any other purpose, without the prior written consent of the other Party.

12. Export Controls.

Client agrees to inform Intertek in advance in writing of any export control laws, regulatory requirements or guidelines applicable to the Client's products, commodities, information, technical data or technology (collectively "Client's Controlled Information"). Applicable export control laws may include, without limitation, the U.S. International Traffic in Arms Regulations (ITAR), Export Administration Act (EAA), and Export Administration Regulations (EAR). This obligation for advance notice includes but is not limited to any instances in which the Client's Controlled Information may be exported/ imported to or from a country that is restricted or banned from such transactions.

13. Termination.

In the event that Client requests termination prior to completion of the Services, Client shall pay Intertek for all Services performed and expenses incurred prior to the date of termination. Intertek also reserves the right to complete such analyses, records and reports as are necessary to place its files in order and to safeguard Intertek's professional reputation (collectively, "Early Termination Services"). Client will be charged for all fees and costs incurred by Intertek in relation to the Early Termination Services, if any. Client's obligation to make payment to Intertek in accordance with these Consulting Terms and Conditions will survive termination.

14. Entire Agreement.

These Consulting Terms and Conditions shall supersede all previous contracts between the Parties concerning the subject matter hereof. No oral statements or written material not specifically incorporated herein shall be of any force or effect.

15. Governing Law.

Any work performed pursuant to a proposal, shall be governed by the laws of the jurisdiction within which the Intertek facility making the proposal is located. Any action brought hereon shall be venued in said jurisdiction.

16. Amendment, Modification, Waiver.

No provision of these Consulting Terms and Conditions may be amended or modified unless such amendment or modification is agreed to in writing and duly executed by Client and Intertek. No waiver shall be affected unless in writing and duly executed and delivered by each Party to the other. The waiver by any Party of the breach or violation of any provision of these Consulting Terms and Conditions shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.