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) Assignment means an assignment by Intertek of all or any part of its rights and obligations under this Agreement;
(c) Confidential Information means all information in whatever form or manner presented which is (i) marked (or has otherwise been given to Intertek in writing) as the course of the provision of Services pursuant to, this Agreement; and (ii) is disclosed in writing, electronically, orally or otherwise however and is marked, stamped or identified by any means as confidential by the disclosing party at the time of such disclosure and/or (iii) is information, however, disclosed, which would reasonably be considered to be confidential by the receiving party;
(d) Intellectual Property Right(s) means copyrights, trademarks (registered or unregistered), patents, registered designs, designs, know-how, service marks, trade secrets and other like properties or information;
(e) 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 of a Report;
(f) Proposal means the proposal, estimate or fee quote, if applicable, provided to the Client by Intertek to the Services;
(g) 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 Proposal Intertek 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 this Agreement shall prevail, except for any price increases or time increases taken on the basis of such Report.

2.3 The Services provided by Intertek under this Agreement and any memoranda, laboratory data, calculations, measurements, estimates, notes, certificates and other material provided by Intertek in connection with providing the Services to the Client, together with any status summaries or any other communication in any form describing the results of any work or services performed (the Report(s)) shall be for the Client’s use and benefit.

2.4 The Client acknowledges and agrees that Intertek and any Intertek entities or other organisations of the Services Intertek has done so within the limits of the scope of work agreed with the Client to deliver a Report to a third party, Intertek shall be deemed irrevocably authorised to deliver such Report to the applicable third party. For the purposes of this clause an obligation shall arise in the Client’s behalf to the Client, or where relevant, any other party to which such an obligation may be directly or indirectly a party.

2.5 The Client further acknowledges that any Services provided or/Report produced by Intertek are done so with the limits of 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 a manner that is reasonable in all the circumstances, usage or other like properties or information, under any relevant laws, regulations or other reasonable security requirements made known to Intertek by the Client in accordance with Clause 4.3(f).

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 legislations 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 level of care and skill ordinarily exercised by other companies providing similar services under similar circumstances;
(c) that it will take reasonable steps to ensure that whilst on the Client’s premises its personnel comply with any health and safety regulations and other reasonable security requirements made known to Intertek by the Client in accordance with Clause 4.3(f);
(d) that the Reports produced in relation to the Services will not infringe any legal rights (including but not limited to any proprietary rights) of any third party. This warranty shall not apply where the infringement is directly or indirectly caused by Intertek’s reliance on any information, samples or other related documents provided to Intertek by the Client (or any other representative) or suppliers to Intertek (including its agents, sub-contractors and employees) and the Client acknowledges that any samples provided may become damaged or be destroyed in the course of testing as part of the necessary testing process and undertakes to hold Intertek harmless from any and all responsibility for such alteration, damage or destruction;
(e) that any information, samples or other related documents (including without limitation certificates and reports) provided in good faith by Intertek to the Client will not infringe any legal rights (including Intellectual Property Rights) of any third party.

4. THE SERVICES

4.1 In the event that the Services provided relate to any third party, the Client shall cause any such third party to acknowledge in writing the provisions in this Agreement and Intertek’s Proposal prior to and as a condition precedent to such third party receiving any Reports or the benefit of any Services.

4.2 The Client further agrees:

(a) to co-operate with Intertek in all matters relating to the Services and appoint a manager in relation to the Services who shall provide Intertek with instructions to Intertek on behalf of the Client and to bind the Client contractually as required;
(b) to provide Intertek (including its agents, sub-contractors and employees), at its own expense and risk, material, equipment and facilities necessary for the execution of the Services in a timely manner sufficient to enable Intertek to provide the Services in accordance with this Agreement. The Client acknowledges that any samples provided may become damaged or be destroyed in the course of testing as part of the necessary testing process and undertakes to hold Intertek harmless from any and all responsibility for such alteration, damage or destruction;
(c) that it is responsible for providing the samples/equipment to be tested together, where appropriate, with any specified additional items, including but not limited to connecting pieces, fuse-links, etc.;
(d) to provide instructions and feedback to Intertek in a timely manner;
(e) to provide Intertek (including its agents, sub-contractors and employees) with access to its premises as may be reasonably required for the provision of the Services and to any other premises at which any premises at which the Services are to be performed;
(f) prior to Intertek undertaking any premises for the performance of the Services, to inform Intertek of all applicable health and safety rules and regulations and other reasonable security requirements that may apply to any premises where the Services are to be performed;
(g) not to allow Intertek prompt of any risk, safety issues or incidents in respect of any item delivered by the Client, or any process or systems used at its premises or otherwise necessary for the provision of the Services;
(h) to cause Intertek in advance to provide written confirmation that any import/export restrictions or requirements made known to the Client will not give a false or misleading impression to any third party concerning the Client; and
(i) that any and all advertising and promotional materials or any statements made by the Client will not give a false or misleading impression to any third party concerning the services provided by Intertek; and
(j) that Client will notify Intertek of the change to any agreement to contact person or means of contact immediately upon the occurrence of such change.

4.3 Intertek shall not be in breach of either clause that is not cured within thirty (30) days of receiving written notice from the Client.

4.4 Intertek may terminate this Agreement immediately upon the occurrence of the following events:

(a) Intertek receives written notice that any of the Client’s agents, sub-contractors or employees has ceased to be employed by the Client or are otherwise no longer acting on behalf of the Client;
(b) that any sample, sample or any other related documents were not collected or disposed of by the Client within the required thirty (30) days’ period, Intertek reserves the right to destroy the samples, at the Client’s cost; and
(c) that any information, samples or other related documents (including without limitation certificates and reports) provided in good faith by Intertek to the Client will not infringe any legal rights (including Intellectual Property Rights) of any third party.

5. CHARGES, INVOICING AND PAYMENT

5.1 The Client shall pay Intertek the charges set out in the Proposal, if applicable, or as agreed between the Client and Intertek for the Services provided for the Client.

5.2 The Charges are expressed 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 amounts indicated on the invoice to the date of receipt of the amount in full at a rate equivalent to 3% per cent per annum above the base rate from time to time of the Bank of England with relevant currency.

6. INTELLECTUAL PROPERTY RIGHTS AND DATA PROTECTION

6.1 All Intellectual Property Rights belonging to a third party to enter into this Agreement shall remain vested in that third party. The Client shall not, in any manner, attempt to transfer any Intellectual Property Rights from either party to the other.

6.2 Any use by the Client (or the Client’s affiliated companies or subsidiaries) of the name “Intertek”, “Intertek” or any Intertek logo or Intertek name, trademark or service mark is approved in writing by Intertek. Any other 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 any such unauthorised use.

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

6.4 All Intellectual Property Rights in any Reports, documents, graphs, charts, photographs, images or other like rights howsoever existing; other information, samples or other related documents provided to Intertek by the Client (or any other representative or suppliers to Intertek (including its agents, sub-contractors and employees) and the Client acknowledges that any samples provided may become damaged or be destroyed in the course of testing as part of the necessary testing process and undertakes to hold Intertek harmless from any and all responsibility for such alteration, damage or destruction;

6.5 The Client agrees and acknowledges that Intertek retains any and all proprietary rights in concepts, ideas and inventions that may arise during the provision or provision of any Report (including any deliverables provided by Intertek to the Client) and the provision of the Services to the Client.
6.6 Intertek shall observe all statutory provisions with regard to data protection. To the extent that Intertek processes or gets access to personal data in connection with the Services or otherwise in connection with this Agreement, it shall take all necessary technical and organisational measures to ensure the security of such data (and to guard against unauthorised or unlawful processing, accidental loss, destruction or damage to such data).

7. CONFI-D BLI-TY

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), that party shall:

(a) keep that Confidential Information confidential, by applying the standard of care that it uses for its own Confidential Information;
(b) disclose Confidential Information only for the purposes of performing obligations under this Agreement; and
(c) not disclose 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 and statutory auditors that it has engaged for itself;
(b) to any regulator having regulatory or supervisory authority over its business;
(c) to any auditor, legal adviser or other third party to whom the Receiving Party has provided that, in each case, the Receiving Party has first advised that person of the obligations under Clause 7.1 and ensured that the person is bound by obligation of confidentiality (regardless of whether any aspect of the Confidential Information no less onerous than those set out in this Clause 7; and
(d) where the Receiving Party is InterTek, to any of its subsidiaries, affiliates or subcontractors.

7.3 In providing Confidential Information, 7.1 and 7.2 shall only apply to any Confidential Information which:

(a) was already in the possession of the Receiving Party prior to its receipt from the Disclosing Party without restriction on its use or disclosure;
(b) is or becomes public knowledge other than by breach of this Clause 7;
(c) is received by the Receiving Party from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
(d) is independently developed by the Receiving Party without access to the relevant Confidential Information.

7.4 The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent required by law, any regulatory authority or the rules of any stock exchange on which the Disclosing Party is listed. The Receiving Party has disclosed to the Disclosing Party this required disclosure in the Disclosing Party's prompt written notice of the requirement to disclose and where possible given the Disclosing Party a reasonable opportunity to prevent the disclosure through appropriate legal means.

7.5 Each party shall ensure the compliance by its employees, agents and representatives (whether in the case of InterTek or of the Client, includes procuring the same from any sub-contractors) with its obligations under this Clause 7.

7.6 No licence of any Intellectual Property Rights is given in respect of any Confidential Information solely by the disclosure of such Confidential Information by the Disclosing Party.

7.7 With respect to archival storage, the Client acknowledges that Intertek may retain its archives for the period required by its quality and assurance processes, or by the terms and certification rules of the relevant accreditation body, all materials necessary to document the Services provided.

8. AMENDMENT

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

9. FORCE MAJEURE

9.1 Each 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) the default of the other party, or delay by Intertek in delivering or performing its obligations hereunder, by a third party or third parties, or by any third party whom Intertek 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, it is the Client’s responsibility to ensure that the Services are available to take possession, or a receiver is appointed, of any of the property or assets of the other party.

9.2 For the avoidance of doubt, where the affected party is Intertek any failure or delay caused by failure or delay on the part of a subcontractor shall only be a Force Majeure Event (as defined below) if the subcontractor does not perform its obligations, or if the performance of the events described above is not reasonably possible; and

9.3 A party’s performance which is affected by an event described in Clause 9.1 (a Force Majeure Event) shall:

(a) promptly notify the other party in writing of the Force Majeure Event and the cause and the likely duration of any consequential delay or non-performance of its obligations;

(b) continue to provide Services that remain unaffected by the Force Majeure Event.

9.4 If the Force Majeure Event continues for more than sixty (60) days after the day on which it started, each party may terminate this Agreement by giving at least ten (10) days’ written notice to the other party.

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;
(b) for its own fraud (or that of its directors, officers, employees, agents or sub-contractors).

10.2 SUBJECT TO CLAUSE 10.1, THE MAXIMUM AGGREGATE LIABILITY OF INTERTEK TO THE CLIENT FOR ANY AND ALL CLAIMS, DAMAGES OR OTHER LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE SERVICES TO BE PROVIDED IN ACCORDANCE WITH THIS AGREEMENT SHALL BE THE AMOUNT OF CHARGES FOR THE SERVICE IN DISPUTE DUE TO THE CLIENT TO INTERTEK UNLESS THAT THE SERVICE IS THE CAUSE OF ANY LOSS OF PROFITS;

(a) IN THE EVENT OF A CLAIM FOR DIRECT DAMAGES TO THE CLIENT ARISING DIRECTLY OR INDIRECTLY IN CONTRACT, TORT OR OTHERWISE IN CONNECTION WITH THE SERVICE PROVIDED UNDER THIS AGREEMENT.

10.3 SUBJECT TO CLAUSE 10.1, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY TO ANY AMOUNT IN EXCESS OF THE FOLLOWING:

(A) LOSS OF PROFITS;
(B) LOSS OF BUSINESS;
(C) LOSS OF OPPORTUNITY (INCLUDING WITHOUT LIMITATION IN RELATION TO THIRD PARTY AGREEMENTS OR CONTRACTS);
(D) LOSS OF CUSTOMS OR REPUTATION;
(E) LOSS OF ANTICIPATED SAVINGS;
(F) COST OR EXPENSES INCURRED IN RELATION TO MAKING A PRODUCT RECALL;
(G) COST OR EXPENSES INCURRED IN RELATION TO AMENDMENTS TO SOFTWARE OR DATA OR INFORMATION PROVIDED;
(H) ANY INDIRECT, CONSEQUENTIAL LOSS, PURGUE OR SPECIAL LOSS (EVEN WHEN ADVISED OF POSSIBILTY).

10.4 ANY CLAIM BY THE CLIENT AGAINST INTERTEK (ALWAYS SUBJECT TO THE PROVISIONS OF THIS CLAUSE 10) MUST BE MADE WITHIN NINETEEN (19) DAYS AFTER THE DATE OF THE EVENT GIVING RISE TO ANY SUCH CLAIM. FAILURE TO GIVE SUCH NOTICE OF CLAIM WITHIN NINETY (90) DAYS SHALL CONSTITUTE A WAIVER OF THE RIGHT TO ANY DAMAGES WHICH MAY RESULT DIRECTLY OR INDIRECTLY FROM SUCH CLAIM.

11. INDENDERY

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, costs, liabilities (including costs of litigation and attorney's fees) arising, directly or indirectly, or in connection with, of or in connection with:

(a) any claims or suits by any governmental authority or others for any actual or asserted violation of law by the Client to comply with any law, ordinance, regulation, rule or order of any governmental or judicial authority;
(b) claims for personal injury or death or of loss of property or of damage to property, economic loss, and loss of or to Intellectual Property Rights incurred by or occurring to any person or entity and arising in connection with or related to the Services provided hereunder by Intertek, its officers, agents, employees, agents or sub-contractors;
(c) the breach or alleged breach by the Client of any of its obligations set out in Clause 4.

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 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 until 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 on written notice to the Client in the event that the Client fails to pay any invoice for its due date and/or 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 administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the sole purposes of a reconstruction or amalgamation) or (for the avoidance of doubt) takes possession, or a receiver is appointed, of any of the property or assets of the other party or any one or more of its offices, branches, or subsidiaries, or an order is made for the appointment of a receiver, administrator, liquidator or other person to carry on the business of the other party, or any part of the business 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 the parties may have, 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 to perform any obligation which existed at the date of termination, or any right which expires or is otherwise terminated by the operation of this Agreement.

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 the law of the People’s Republic of China (excluding the law of Hong Kong, Macau and Taiwan) and any controversy or claim arising from or in connection with this Agreement and/or the Proposal (including any non-contractual claim relating to the provision of the Services in accordance with this Agreement) shall firstly be resolved through friendly negotiations between Intertek and the Client. If no resolution can be reached within thirty (30) days after the commencement of any such negotiations, either party may submit the dispute, controversy or claim to the People’s Court in the jurisdiction where Intertek maintains domicile.

16. MISCELLANEOUS

16.1 Severability

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 with such provision being declared void 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 engage in good faith negotiations to agree an alternative arrangement.

16.2 Partnership or agency

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 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 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.

16.10 CLIENT HEREBY ACKNOWLEDGES THAT PRIOR TO ITS EXECUTION OF THIS AGREEMENT INTERTEK THOROUGHLY EXPLAINED EACH AND EVERY TERM AND CONDITION UNDER THIS AGREEMENT TO CLIENT AND EACH TERM AND CONDITION OF THIS AGREEMENT HAS BEEN THOROUGHLY AND MUTUALLY CONSULTED AND NEGOTIATED BETWEEN THE TWO PARTIES, AND THAT AS SUCH THE TERMS AND CONDITIONS UNDER THIS AGREEMENT DO NOT CONSTITUTE AN ADHESIVE CONTRACT IMPOSED BY EITHER PARTY BUT IS REFLECTION OF THE TRUE MUTUAL ASSENT OF BOTH PARTIES.