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) “App” means an Application owned by InterTek, which the Client can download onto a mobile device and use to assist the Inspector when performing Remote Inspections;

(c) “charges” shall have the meaning ascribed to it in Clause 4.2;

(d) “confidential information” means all information in whatever form or manner presented which: (i) is disclosed to the receiving party by the disclosing party in connection with the provision of Services pursuant to, this Agreement; (ii) is disclosed in writing, electronically, visually, orally or otherwise howsoever and is marked or identified by any means as confidential by the disclosing party at the time of such disclosure; and/or (iii) the receiving party, howsoever disclosed, which would reasonably be considered to be confidential by the receiving party;

(e) “ICT” means information communication technology which shall include the App owned by InterTek;

(f) “inspection report” means a report generated or understood by Intertek, based on test results, 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; and

(g) “reports” shall further include the results of any activities performed by InterTek;

(h) “services” means the services provided by Intertek under this Agreement and any memoranda, laboratory data, contract(s) and documentation;

(i) “services” includes the services provided by Intertek to the Client.

2. THE SERVICES

2.1 InterTek shall provide the Services to the Client in accordance with the terms of this Agreement which are subject to any specific programme assessment programme carried out by InterTek on behalf of government, governments bodies or any other public entity;

(i) “site inspection” means a form of visual inspection of samples or products, conducted by the Inspector by directing the Client to move to certain areas to allow the Inspector to inspect the samples or products via a direct video link by using the Remote Inspections App;

(j) “software” means the software, estimate, or fee quote, if applicable, provided to the Client by InterTek relating to the Services; and

(k) “Inspector” means InterTek inspector responsible for performance of the Services.

3. CLIENT WARRANTIES AND OBLIGATIONS

3.1 The Client represents and warrants:

(a) that it has the power and authority to enter into this Agreement and the provision of the Services for itself;

(b) that the inspection of the Services hereunder for its own account and not as an agent or broker, or in any other representative capacity, for any other person or entity;

(c) that any information, products and related documents it or any of its agents or representatives will not be used or otherwise communicated or disclosed by any third party or will not be released in any form, manner or manner of communication to any third party or any other person or entity;

(d) that any analysis, reports or other related documents provided to InterTek by the Client within the required thirty (30) days, Intertek reserves the right to destroy the samples, at the Client’s cost;

(e) that InterTek shall provide the Services in a timely manner for InterTek to perform the Services without any delay;

(f) that any samples provided by the Client to InterTek will be shipped pre-paid and will be collected or disposed of by the Client (at the Client’s cost) within thirty (30) days after testing unless alternative arrangements are made by and to the mutual satisfaction of the Client and InterTek, and that such samples are not damaged or destroyed;

(g) that any information (including with regard to inspection location and goods), samples and related documents provided by the Client in relation to any Inspection (remote or otherwise) shall be true, accurate and not misleading in any respect;

(h) that any use, nor any trademark, trade name, trademark or brand name on labels, product, brochures, advertising or sales promotion material which indicates or implies that a product is listed or approved by InterTek until written authorization has been received by the Client for such use. The Rejected product is only for the intended use and verification purposes and must not be used in communication media and any marketing documents to indicate otherwise; and

(i) that all imported goods which are subject to specific programme requirements may be randomly selected for inspection and testing and therefore the Client is advised to ensure that the correct customs clearance documentation is in order and that they are aware of the customs legislative and regulatory requirements governing the import of their products and commit to comply with those requirements.

3.2 The Client acknowledges that any samples provided to the Client by the Client for the performance of the Services provided relate to any third party, the Client shall cause any such third party to acknowledge and agree to the provisions in this Agreement and the Proposal prior to and as a condition precedent to such third party receiving any Reports or the benefit of any Services.

3.3 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 be duly authorised to provide instructions to InterTek on behalf of the Client and any agent, contractor or subcontractor engaged by the Client;

(b) to provide InterTek (including its agents, sub-contractors and employees), at its own expense, any and all products, samples, information, material or other documentation 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 reasonably be required to perform the Services and to any other relevant premises at which the Services are to be provided;

(f) prior to InterTek attending any premises for the performance of the Services, to inform InterTek of all applicable health and safety arrangements and in particular any other responsible security requirements that may apply at any relevant premises at which the Services are to be provided;

(g) to notify InterTek promptly of any safety, fire hazards, incident, or if the minimum Wi-Fi connectivity requirements cannot be achieved.

(h) to provide InterTek, in advance of any applicable import/ export restrictions that may apply to the Services to be provided, the Client shall arrange for the services or equipment to be delivered to the Client, or any person on its behalf and any additional documentation or other reasonable security requirements that may be exported/ imported to or from a country that is restricted or banned from such transaction;

(i) in the event of the issuance of a certificate, to inform and advise InterTek immediately of any changes during the term of the certificate which may have a material impact on the accuracy of the certification;

(j) to obtain and maintain all necessary licenses and consents in order to comply with relevant legislation and regulations in relation to the Services;

(k) that it will not use any Reports issued by InterTek pursuant to this Agreement in a misleading manner and that it will only distribute such Reports in their entirety;

(l) in no event, will the contents of any Reports or any extracts, excerpts or parts of any Reports be distributed or published without the prior written consent of Intertek (such consent not to be unreasonably withheld) in each instance;

(m) that any and all advertising or 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;

(n) that InterTek may share any Report, data, and documentation gathered and generated during the performance of the Services to the extent requested by the relevant authorities.

3.4 The Client acknowledges that all provisions of this Agreement are not affected by any product recalls nor standard or counterfeits, to the best of their knowledge. The Client declares under their own responsibility that the products requested for Certification satisfy the requirements of the standards and other specifications applicable and authorized to be tested by InterTek. The purpose of the statement of the submission of the Request for Shipment Certification, the shipment is still in the country of supply and is accessible for inspection, if needed.

3.5 The Client shall not be responsible nor liable to the Client for any breach of this Agreement if and to the extent that its breach is a direct result of a failure by the Client to comply with its obligations as set out in this Clause 3. The Client also acknowledges that the impact of any failure by the Client to perform its obligations hereunder is permissible to the extent that it affects the Client’s obligations under this Agreement for payment of the Charges pursuant to Clause 4.5.

3.6 The Client further acknowledges that any information in whatever form or manner presented which: (i) is disclosed to the receiving party by the disclosing party in connection with the provision of Services pursuant to, this Agreement; (ii) is disclosed in writing, electronically, visually, orally or otherwise howsoever and is marked or identified by any means as confidential by the disclosing party at the time of such disclosure; and/or (iii) the receiving party, howsoever disclosed, which would reasonably be considered to be confidential by the receiving party;

4. CHARGES, INVOICING AND PAYMENT

4.1 The parties agree that the Services are provided on the terms and subject to the conditions set out or referred to in this Agreement, and 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.

4. The Client agrees that Intertek shall invoice the Client for Services or otherwise in connection with this Agreement, Intertek 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) in line with the GDPR and any other applicable data protection legislation.

6. CONFIDENTIALITY

6.1 Where a party (the "Receiving Party") receives Confidential Information from the other party (the "Disclosing Party") under this Agreement (whether before or after the date of this Agreement) 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, other than to a regulatory or government body or agency, if required.

6.2 The Receiving Party may disclose the Disclosing Party's Confidential Information on a "need to know" basis to:
(a) 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 supplier or agent of the Receiving Party; and
(d) where the Receiving Party is Intertek, to any of its subsidiaries, affiliates or subcontractors.

6.3 The provisions of Clauses 6.1 and 6.2 shall not 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 5.5;
(c) is received by the Receiving Party from a third party who lawfully acquired it and who is under no obligation to restrict its use or disclosure; or
(d) is independently developed by the Receiving Party without access to the relevant Confidential Information.

6.4 The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent required by any law, regulatory authority or the rules of any stock exchange on which the Receiving Party is listed, provided that the Receiving Party has given the Disclosing Party 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.

6.5 Each party shall ensure the compliance by its employees, agents and representatives (which, in the case of Intertek, includes its subsidiaries and affiliates) with the terms and conditions of this Agreement.

7. AMENDMENT

7.1 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.

8. FORCE MAJEURE

8.1 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 lighting; explosions and fires;
(c) strikes and labour disputes, other than by any one or more employees of the affected party or of any of its subcontractors;
(d) failure of utilities companies such as providers of telecommunications, internet, gas or electricity services;
(e) acts of bad faith or force majeure, 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 in 8.1 above) where the subcontractor is affected by one of the events described in 8.1 (a) to (c) above.

8.2 A party whose performance is affected by an event described in Clause 8.1 (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) use all reasonable endeavours to avoid or mitigate the effect of the Force Majeure Event and continue to perform its obligations in connection with the Services, to the extent reasonably possible and reasonable; and
(c) continue to provide Services that remain unaffected by the Force Majeure Event.

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

9. LIMITATIONS AND EXCLUSIONS OF LIABILITY

9.1 Neither party excludes or limits liability to the other party for death or personal injury resulting from negligence that of any one or its directors, officers, employees, agents or subcontractors; or
(b) any indirect, consequential loss, punitive or special loss (even when advised of their possibility);
(c) loss of use or corruption of software, data or information;
(d) any delayed partial or total failure to perform any of the Services arising directly or indirectly from any event outside of Intertek’s control including failure of the client to comply with its obligations as set out in this Agreement; and
(e) any claims relating to any errors, inaccuracies and non-performance of the Services and any noncompliance with any personal data legislation including but not limited to GDPR.

9.2 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 matter arising out of or in connection with the Services to be provided in accordance with this agreement shall be the total amount of fees paid under this Agreement.

9.3 InterTek shall not be liable in contract, tort (including negligence and breach of statutory duty) or otherwise for any of the following:
(a) loss of profits;
(b) loss of sale or business opportunity (including without limitation in relation to third party agreements or contracts);
(c) loss of damage to goodwill or reputation;
(d) loss of anticipated saving;
(e) cost or expense incurred in relation to making a product recall;
(f) loss of use or corruption of software, data or information;
(g) any delayed partial or total failure to perform any of the Services arising directly or indirectly from any event outside of Intertek’s control including failure of the client to comply with its obligations as set out in this Agreement; and
(h) any claims relating to any errors, inaccuracies and non-performance of the Services and any noncompliance with any personal data legislation including but not limited to GDPR.

10. INDEMNITY

10.1 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, losses, liabilities (including costs of litigation and attorney’s fees) arising, directly or indirectly, out of or in connection with:
(a) any claims or suits by any governmental authority or others for any actual or asserted failure of the Client to comply with any law, ordinance, regulation, rule or order of any governmental or judicial authority;
(b) claims or suits for personal injuries, loss of or damage to property, economic loss, and loss of or damage to reputation resulting from Intertek’s performance of the Services arising in connection with or related to the Services provided hereunder by Intertek, its officers, employees, agents, representatives, contractors and sub-contractors;
(c) any claim 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 all such claims made by any one Service exceeds the limit of liability set out in Clause 9.3 above;
(d) any claim 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 all such claims made by any one Service exceeds the limit of liability set out in Clause 9.3 above;
(e) any claim 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 all such claims made by any one Service exceeds the limit of liability set out in Clause 9.3 above;

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10.2 The obligations set out in this Clause 10 shall survive termination of this Agreement.

11. INSURANCE POLICIES

11.1 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.

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

11.3 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.

12. TERMINATION

12.1 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 12, until the Services have been provided.

12.2 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 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 administration order or (being an individual or firm) 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 a receiver is appointed, of any of the property or assets of the other or the other ceases, or threatens to cease, to carry on business.

12.3 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.

12.4 Any termination or expiration of the Agreement shall not affect the accrued rights and obligations of the parties nor shall it affect any provision which is expressly or by implication intended to come into force or continue in force on or after such termination or expiration.

13. ASSIGNMENT AND SUB-CONTRACTING

13.1 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.

14. GOVERNING LAW AND DISPUTE RESOLUTION

14.1 This Agreement and the Proposal shall be governed by the laws of England and Wales. The parties agree to submit to the exclusive jurisdiction of the English 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).

15. MISCELLANEOUS

15.1 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

15.2 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.

15.3 Subject to Clause 9.4 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.

15.4 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

15.5 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 those transactions or that subject matter. No purchase order, statement or other similar document will add to or vary the terms of this Agreement.

15.6 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.

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

15.8 Third Party Rights

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.

15.9 Further Assurance

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.