These terms and conditions, together with any proposal, estimate or fax quote, form the agreement between you (the Client) and the Intertek entity (Intertek) providing the goods 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) **Affiliate** shall mean any company directly or indirectly controlled by, or is under common control with another entity;

(b) **Agreement** means this agreement entered into between Intertek and the Client;

(c) **App** means an App owned by Intertek and the Client can download onto a mobile device and use to assist the Inspector when performing Remote Inspections;

(d) **Celebrity** means this agreement entered into between Intertek and the Client;

(e) **Confidential Information** means all information in whatever form or manner presented which: (a) is disclosed pursuant to, or in the course of the provision of Services pursuant to, this Agreement; and (b) is disclosed in writing, electronically, orally or otherwise howsoever is marked, stamped or identified by any means as confidential by the disclosing party at the time of such disclosure; and/or (c) is information, howsoever disclosed, which would reasonably be considered to be Confidential by the receiving party.

(f) **Intellectual Property Right(s)** means copyrights, trademarks, patents, patent applications (including the right to apply for a patent), service marks, design rights trade secrets and other rights (whether registered or unregistered), howsoever existing;

(g) **Report(s)** shall mean any memorandum, laboratory data, calculations, measurements, estimates, notes, certificates and other material provided by the Supplier in the course of providing the Services to the Customer including, without limitation, such specific or other information in any form descriptive of results of any work or services performed;

(h) **Services** means the services, inspection and services as set out in clause 2 of this Agreement 2 or in any relevant Intertek Proposal, any relevant Client purchase order, as applicable, and may comprise or include the provision by Intertek of a Report in connection with the performance of the Services by the Client or the Supplier of goods by the Client.

(i) **Inspector** means Intertek inspector responsible for performance of the Services;

(j) **the** shall mean this agreement entered into between Intertek and the Client;

(k) **the** shall mean this agreement entered into between Intertek and the Client;

(l) **the** shall mean this agreement entered into between Intertek and the Client;

(m) **the** shall mean this agreement entered into between Intertek and the Client;

(n) **the** shall mean this agreement entered into between Intertek and the Client;

(o) **the** shall mean this agreement entered into between Intertek and the Client;

(p) **the** shall mean this agreement entered into between Intertek and the Client;

(q) **the** shall mean this agreement entered into between Intertek and the Client;

(r) **the** shall mean this agreement entered into between Intertek and the Client;

(s) **the** shall mean this agreement entered into between Intertek and the Client;

(t) **the** shall mean this agreement entered into between Intertek and the Client;

(u) **the** shall mean this agreement entered into between Intertek and the Client;

(v) **the** shall mean this agreement entered into between Intertek and the Client;

(w) **the** shall mean this agreement entered into between Intertek and the Client;

(x) **the** shall mean this agreement entered into between Intertek and the Client;

(y) **the** shall mean this agreement entered into between Intertek and the Client;

(z) **the** shall mean this agreement entered into between Intertek and the Client;

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 (i) the limits of instructions received by the Client; and (ii) the content of the audit program as set out by Intertek or any applicable audit program.

2.2 In the event of any inconsistency between the terms of this Agreement and the Proposal, the Client in writing agrees to the Proposal.

2.3 The Client acknowledges and agrees that if in providing the Services Intertek is obliged to deliver a Report to a third party, Intertek shall be deemed irrevocably authorised to deliver such Report to the recipient of such third party, and that any person to whom the Services are to be provided, or whom the Services are to be provided to, is hereby irrevocably authorised to receive and make use of such Report.

2.4 The Client, or where, in the reasonable opinion of Intertek, it is implicit from the circumstances, trade, custom, usage or practice.

2.5 The Client understands that reliance on any Reports issued by Intertek is material, services, systems or processes tested, inspected or certified. The Client understands that reliance on any Reports issued by Intertek is not necessarily an obligation shall arise on the instructions of the Client.

2.6 Where the Client instructs Intertek to perform a Remote Inspection, the Client and/or the Clients suppliers agree and warrants: (i) to provide Intertek, with complete, accurate, and the most current information and documentation to perform the Remote Inspection; (ii) to download the App, if applicable, onto the Clients or their suppliers smartphone and use the App solely for the purposes of the Remote Inspection; (iii) to allow the Inspector to direct the camera of the smartphone while using the App, to allow the Inspector to perform the Remote Inspection and the Client and/or the Clients suppliers shall be solely responsible for ensuring sufficient internet connectivity to perform the Remote Inspection. If internet connectivity fails during the Remote Inspection, the Client and/or the Clients suppliers shall make all attempts to reconnect, if reconnection is not possible a physical inspection will be scheduled.

2.7 Client is responsible for acting as it sees fit on the basis of such Report. Neither Intertek nor any of its officers, employees, contractors or suppliers shall be liable to Client nor any third party for any actions taken or not taken on the basis of such Report.

2.8 In agreeing to provide the Services pursuant to this Agreement, Intertek does not abridge, abrogate or undertake to refrain from any duty or obligation of the Client to any other person or any duty or obligation of any person to the Client.

3. INTERTEK’S WARRANTIES

3.1 Intertek warrants exclusive 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 of care and skill ordinarily exercised by other companies providing like services under similar circumstances;

(c) that the Services will be performed to ensure that whilst on the Clients premises its personnel comply with any health and safety rules and regulations and other reasonable safety requirements made known to Intertek by the Client in accordance with Clause 4.10;

(d) that the Services will not infringe any legal rights (including Intellectual Property 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 of its agents or representatives).
desired security, Intertek has the right, without prejudice to its other rights, to immediately suspend the further execution of all or any part of the Services, and any Charges for any part of the Services which have already been provided under this Agreement shall become payable.

5.9 If the Client fails to pay within the period referred to in 5.5 above, it is in default of its payment obligations and this Agreement after having been reminded by Intertek at least once that payment is due shall be terminated. The Client, in such a case, the Client may be subject to interest on the overdue amount with effect from the date on which the payment became due until the date of payment. The interest rate applied is deemed to be the Bank of England base rate plus 5%. In addition, all collection costs incurred by the Client in the course of the performance of this Agreement, both judicial and extrajudicial, are for the Client’s account.

5.10 Intertek’s acceptance of a reduced invoicing amount made by the Client, without prejudice to its other rights, includes procuring the same from any subcontractors, contractors or sub-contractors from and against any incorrect results or any incorrect results of the subcontractor is affected by one of the events described above. Intertek reserves the right to charge a 22.5% administration fee for invoice issuing additional copies of invoices or amending invoice detail, or structure from that agreed in the Proposal. Intertek maintains the right to reject such an invoicing amendment request and such a rejection by Intertek’s Client request will not exempt the Client from its obligation to pay within the period referred to in 5.5 above.

5.11 Any request by the Client for confidential 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 5.5 above. Invoices are subject to the right to charge an Administration Fee of £25.00 per invoice for issuing additional copies of invoices or amending invoice detail, or structure from that agreed in the Proposal. Intertek maintains the right to reject such an invoicing amendment request and such a rejection by Intertek’s Client request will not exempt the Client from its obligation to pay within the period referred to in 5.5 above.

5.12 If actions by the Client delay completion of the Services, Intertek has the right to invoice for the cost of all Services provided to date. In such a scenario the Client agrees to pay this invoice within thirty (30) days of the invoice date.

6. INTELLECTUAL PROPERTY RIGHTS AND DATA PROTECTION

6.1 Any use by the Client (or its Affiliates) of the name ‘Intertek’ or any of Intertek’s trade marks or brand names, logos, trade names, marketing, media or publication purposes must be prior approved in writing by Intertek. Intertek reserves the right to terminate this Agreement immediately as a result of any such unauthorized use.

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

6.3 Any data protection requirements that apply to or in connection with this Agreement (whether before or after the date of this Agreement) it shall, if necessary, be adjusted to ensure compliance with all applicable requirements of the GDPR. Each party shall be responsible for the arrangement and costs of its own company insurance which includes, without limitation, insurance for the Services provider hereunder, its officers, employees, agents, representatives and contractors.

6.4 Each party shall be responsible for the arrangement and costs of its own company insurance which includes, without limitation, insurance for the Services provider hereunder, its officers, employees, agents, representatives and contractors.

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 to Intertek by the Client) and the provision of the Services to the Client.

6.6 Both parties shall observe all statutory provisions with regard to data protection including but not limited to the General Data Protection Regulation 2016/679 ("GDPR") and shall comply with all applicable requirements of the GDPR. The Client warrants that the consent of their direct and/or subcontracted personnel has been obtained prior to any commencement of the Services. The Client shall indemnify and hold Intertek, its officers, employees, agents, representatives, contractors, and the 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 claims or suits by any regulatory body or 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 jurisdictional authority.
(b) any claim for personal injuries, loss of or damage to property, economic loss, and loss or damage 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, employees, agents, representatives, contractors; and
(c) the breach or alleged breach by the Client of any of its obligations set out in Clause 4 above;
(d) 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 such claims relating to any one Service exceeds the limit of liability set out in Clause 10 above; and
(e) any claims or suits arising as a result of any misuse, unauthorised or false use of any Reports issued by Intertek which may damage the goodwill or reputation of Intertek, including but not limited to any use by a third party of the name, trademark, logo or other indication of Intertek.

6.10 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 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 employment-related claims against 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 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 certified mail requiring the other to remedy such breach; or
(b) Intertek on written notice to the Client in the event that the Client fails to pay any invoice by its due date, and any sums due to be paid by the Client are not paid in full, in accordance with the payment terms in this Agreement.

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 and prior to 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 nothing in this Agreement shall be interpreted to preclude the disclosure through appropriate legal means.

14. ASSIGNMENT AND SUB-CONTRACTING

14.1 Assignment means the right to transfer the performance of its obligations hereunder and the provision of the Services to one or more of its Affiliates and/or sub-contractors whenever 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 English law. 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. If the Client fails to pay within the period referred to in 5.5 above, it is in default of its payment obligations and this Agreement after having been reminded by Intertek at least once that payment is due shall be terminated. The Client, in such a case, the Client may be subject to interest on the overdue amount with effect from the date on which the payment became due until the date of payment. The interest rate applied is deemed to be the Bank of England base rate plus 5%. In addition, all collection costs incurred by the Client in the course of the performance of this Agreement, both judicial and extrajudicial, are for the Client’s account.

9.4 If the Client fails to pay within the period referred to in 5.5 above, it is in default of its payment obligations and this Agreement after having been reminded by Intertek at least once that payment is due shall be terminated. The Client, in such a case, the Client may be subject to interest on the overdue amount with effect from the date on which the payment became due until the date of payment. The interest rate applied is deemed to be the Bank of England base rate plus 5%. In addition, all collection costs incurred by the Client in the course of the performance of this Agreement, both judicial and extrajudicial, are for the Client’s account.

9.5 If the Client objects to the contents of the invoice, details of the objection must be raised with Intertek within seven (7) days of receipt of electronic invoice, otherwise the invoice will be deemed to have been accepted by the Receiving Party. Any such rejected invoice may only be amended at the Client’s request and such a rejectio
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 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.