

TERMS AND CONDITIONS FOR CUSTOMISED AUDIT SERVICES

1. GENERAL

Unless otherwise agreed in writing, all proposals or all assessment audits (The "Services") provided by any of the affiliated companies of SGS Société Générale de Surveillance SA or any of their agents (each a "Company") to any person applying for the Services (the "Client") and all resulting contracts or other arrangements shall be governed by these Terms and Conditions and constitute the entire agreement (the "Contract") between the Client and the Company with respect to the subject matter.

Save as otherwise provided no variation to the Contract shall be valid unless it is in writing and signed by and on behalf of the Client and the Company.

2. DEFINITIONS

In these terms and conditions the following terms shall have the following meanings :

"Audit Program" means the document against which the Company will perform the Services and issue its findings.

"Application for Assessment Audits" means the form that set outs the scope and fees of the Services to be performed.

"Client" means any organisation to which the Company will provide the Services and shall include Client's successors and assigns.

"Client Information" means the Deliverable and any and all oral and written information provided to SGS by the Client which amounts to a trade secret or is confidential or is commercially sensitive and which may not be readily available to others engaged in a similar business to that of Client.

"Deliverable" means the Audit Report and if applicable, a certificate, that will be provided by the Company to the Client upon completion of the Services.

"Services" means audits of the Client performed by the Company using the Audit Program.

3. PROVISION OF SERVICES

- a) The Company will provide the Services using reasonable care and skill and in accordance with (i) the limits of the instructions received by the Client and (ii) the content of the Audit Program as defined in the Application for Assessment Audits.
- b) The content of the Deliverable represents the Company's review of facts and documents in existence at the time of performance of the Services only and within the limits of the instructions received and are solely for the benefit of the Client which is responsible for acting as they see fit on the basis of such Deliverables.
- c) The Company may delegate the performance of all or part of the Services to an agent or subcontractor and Client authorises Company to disclose all information necessary for such performance to the agent or subcontractor.
- d) Client acknowledges that the Company, by providing the Services, neither takes the place of Client or any third party, nor releases them from any of their obligations, nor otherwise assumes, abridges, abrogates or undertakes to discharge any duty of Client to any third party or that of any third party to Client.

4. OBLIGATIONS OF CLIENT

- a) Provide the Company with all necessary and requested access to Client's books, codes of practice, records, information systems and facilities such that the Company may render the Services;
- b) Ensure that sufficient information, instructions and documents are given in due time to enable the required Services to be performed;
- c) Procure all necessary access for the Company's representatives to the premises where the Services are to be performed and take all necessary steps to eliminate or remedy any obstacles to, or interruptions in, the performance of the Services;

- d) comply with the Company's requests to conduct interviews, meetings or discussions with the Client's Related Third Party employees and agents on any matters relating to the Services, within such deadlines as the Company shall establish;
- e) Supply, if required, any special equipment and personnel necessary for the performance of the Services;
- f) Ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of the Services and will not rely, in this respect, on the Company's advice whether required or not;
- g) Inform Company in advance of any known hazards or dangers, actual or potential, associated with any order or samples or testing including, for example, presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution or poisons.

5. FEES AND PAYMENT

- a) The Company shall invoice the Client as agreed or upon issuance of the Audit Report. Invoices for additional and further work will be issued on completion of the relevant task.
- b) Unless a shorter period is established in the invoice, Client will promptly pay not later than 30 days from the relevant invoice date or within such other period as may be established by the Company in the invoice (the "Due Date") all fees due to the Company failing which interest will become due at a rate of 1.5% per month (or such other rate as may be established in the invoice) from the Due Date up to and including the date payment is actually received.
- c) Client shall not be entitled to retain or defer payment of any sums due to the Company on account of any dispute, counter claim or set off which it may allege against the Company.
- d) Company may elect to bring action for the collection of unpaid fees in any court having competent jurisdiction.

- e) Client shall pay all of the Company's collection costs, including attorney's fees and related costs.
- f) As fees quoted to the Client are based on the information provided by the Client and are applicable to the time of submitting the fee quotation, the Company reserves the right to increase its charges if the Client's instructions are found to be not in accordance with the initial details supplied or used for the purpose of obtaining a fee quotation. Clients will be notified of any increase in fees.
- g) Additional fees shall be charged for (i) operations that are not included in the Contract and / or (ii) rush orders, cancellation or rescheduling of services or any partial or full repeats which will be payable at the Company's prevailing charging rates.
- h) Copy of the Company's prevailing charging rates are available upon request from the Company.
- i) If the Company is unable to perform all or part of the Services for any cause whatsoever outside the Company's control including failure by Clients to comply with any of its obligations provided for in Article 4 and 5 above the Company shall nevertheless be entitled to payment of:
- (1) the amount of all non-refundable expenses incurred by the Company; and
- (2) a proportion of the agreed fee equal to the proportion of the Services actually carried out.
- j) Unless otherwise stated all fees quoted are exclusive of travelling and subsistence costs (which will be charged to the Client at cost). All fees and additional charges are exclusive of any applicable Value Added Tax, Sales Tax or similar tax in the country concerned.

6. TERMINATION

- a) The Contracts are generally meant to last for fixed periods of time either directly related to the validity of the relevant certificates issued or to the type of Services to be rendered, they may be renewed thereafter.
- b) Unless otherwise agreed in writing the Client shall be entitled to terminate the Contract at any time by giving not less than thirty days' notice in writing to the Company. If the Client terminates the Contract (other than by reason of default by the Company in its obligations) the Company shall be entitled to charge the Client reasonable fees at its prevailing rates

and expenses in respect of work carried out by it for the Client prior to termination.

- c) Unless otherwise agreed in writing, either Party may terminate the Contract by reason of serious default by the other party (the "Breaching party") in its obligations at any time by giving not less than thirty (30) days' notice in writing to the Breaching Party after the Breaching Party failed to fix the notified default within thirty 30 days from notification.
- d) Either Party shall be entitled to terminate provision of the Services in the event of any arrangement with creditors, bankruptcy, insolvency, receivership or cessation of business by the other Party.
- e) Unless otherwise agreed in writing the obligations of the parties defined in article 8 below shall apply notwithstanding the completion of the Services or termination of the Contract.

7. LIABILITY AND INDEMNIFICATION

(a) Limitation of Liability:

- 1) The Company undertakes to exercise due care and skill in the performance of the Services and accepts responsibility only in cases of proven negligence.
- 2) Nothing in these Conditions shall exclude or limit the Company's liability to the Client for death or personal injury or for fraud or any other matter resulting from the Company's negligence for which it would be illegal to exclude or limit its liability.
- 3) Subject to clause 7. (a) the liability of the Company in respect of any claim for loss, damage or expense of any nature and howsoever arising shall in no circumstances exceed a total aggregate sum equal to the fee paid to the Company under the Contract.
- 4) The Deliverables are issued on the basis of information, documents and/or discussions provided by, or on behalf of, Clients and solely for the benefit of Clients who are responsible for acting as they see fit on the basis of such Deliverables. Neither the Company nor any of its officers, employees, agents or subcontractors shall be liable to Clients nor any third party for any actions taken or not taken on the basis of such Deliverables nor for any incorrect results arising from unclear, erroneous, incomplete, misleading or false information provided to the Company by, or on behalf of, the Clients.
- 5) The Company shall not be liable for any delayed, partial or total non-

performance of the Services arising directly or indirectly from any event outside the Company's control including failure by Clients to comply with any of its obligations hereunder.

6) The Company shall have no liability for:

- for any loss, damage or expense arising from (i) a failure by Client to comply with any of its obligations herein (ii) any actions taken or not taken on the basis of the Reports or the Certificates; and (iii) any incorrect results, Reports or Certificates arising from unclear, erroneous, incomplete, misleading or false information provided to SGS;
- for loss of profits, loss of production, loss of business or costs incurred from business interruption, loss of revenue, loss of opportunity, loss of contracts, loss of expectation, loss of use, loss of goodwill or damage to reputation, loss of anticipated savings, cost or expenses incurred in relation to making product recall, cost or expenses incurred in mitigating loss and loss or damage arising from the claims of any third party (including without limitation product liability claims) that may be suffered by the Client; and
- any indirect or consequential loss or damage of any kind (whether or not falling within the types of loss or damage identified in (b) above).

7) In the event of any claim, Clients must give written notice to the Company within 30 days of discovery of the facts alleged to justify such claim and, in any case, the Company shall be discharged from all liability for all claims for loss, damage or expense unless suit is brought within one year from:

- i) the date of performance by the Company of the Service which gives rise to the claim; or
- ii) the date when the Service should have been completed in the event of any alleged non-performance.

(b) Indemnification: Except for cases of proven negligence or fraud by SGS, the Client further agrees to hold harmless and indemnify SGS and its officers, employees, agents or subcontractors against all claims (actual or threatened) by any third party for loss, damage or expense of whatsoever nature including all legal expenses and related costs and howsoever arising (i) relating to the performance, purported performance or non-performance, of the Services or (ii) out of or in connection with the Client's product, process or service the subject of the certification (including, without limitation, product liability claims).

8. CONFIDENTIALITY

As used herein, "Confidential Information" shall include the Client Information and any information oral or written that a party may acquire from the other party pursuant to the Contract provided, however, that Confidential Information shall not include any information which (1) is or hereafter becomes generally known to the public; (2) was available to the receiving party on a non-confidential basis prior to the time of its disclosure by the disclosing party; (3) is disclosed by an independent third party with a right to make such disclosure. Unless required by law, neither party shall disclose the other's Confidential Information to any person or entity except as expressly provided for herein.

9. FORCE MAJEURE

If the Company is prevented by reason of any cause whatsoever outside the Company's control from performing or completing any service for which a Contract has been made, the Client will pay to the Company

- a) the amount of all abortive expenditures actually made or incurred;
- b) a proportion of the agreed fees equal to the proportion (if any) of the service actually carried out;

and the Company shall be relieved of all responsibility whatsoever for the partial or total non-performance of the required Services.

10. OWNERSHIP AND USE OF DELIVERABLE

The ownership of the Deliverable provided to the Client shall be vested in the Client. Company has the right to make and retain copies of said Deliverable for the purposes of Company's own records subject to the provisions of Article 8 above.

11. MISCELLANEOUS

- a) If any one or more provisions of these Terms and Conditions are found to be illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

- b) Except as expressly provided for herein, the Client may not assign any of their rights or obligations hereunder without the Company's prior written consent.
- c) Use of the Company's corporate name or registered marks for advertising purposes is not permitted without the Company's prior written authorisation.

12. GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION

Unless specifically agreed otherwise, all disputes arising out or in connection with Contractual Relationship(s) hereunder shall be governed by the substantive laws of England exclusive of any rules with respect to conflicts of laws and be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The arbitration shall take place in Paris (France) and be conducted in the English language.