

## **Intertek General Terms and Conditions of Services Performed in Countries Without Local Versions**

Unless otherwise specifically agreed in writing by an authorized Intertek Officer, all work, goods, services, Reports and obligations (collectively the "Services") provided by any company forming part of the Intertek Commodities Division, its officers, employees and its subsidiaries, affiliated and related companies and other business entities, agents, representatives, contractors and subcontractors (all such persons and entities being collectively referred to as "Intertek") are undertaken upon the following terms and conditions.

### **1. Sole Warranty**

Intertek warrants exclusively to the person or entity ordering and/or paying for the Services (hereinafter referred to as "Customer") that the Services shall be performed in a manner consistent with that level of care and skill ordinarily exercised by a provider of similar services in circumstances similar to those in which the Services are provided.

Intertek makes no other express warranties. To the extent permitted under law, Intertek excludes and disclaims all implied warranties, conditions or undertakings, whether statutory, common law or otherwise, including, but not limited to, any warranty of fitness for a particular purpose, warranty of merchantability, warranty of workmanlike performance, and warranty of results.

### **2. Authority to Contract**

Customer represents and warrants that it has the power and authority to enter into agreements and procure the Services for itself.

### **3. Limitation of Liability and Indemnification**

(a) The exclusive remedy for Intertek's breach of its obligations, and the total liability of Intertek for any loss or damage claimed, either directly or indirectly, in contract, tort, or otherwise, including, but not limited to, breach of contract, breach of warranty, negligence, gross negligence, strict liability, negligent and intentional misrepresentation, arising out of or in connection with the provision of the Services shall be either ten times the fee paid or payable for the specific item of Services giving rise to the claimed loss or damages, or Fifteen Thousand US Dollars (US\$ 15,000), whichever is less. Further, Intertek shall have no liability whatsoever in respect of any claims for loss of profit, loss of production, loss of future business or cancellation of contracts, whether such loss or cancellation may arise directly or indirectly, nor any liability for indirect, incidental, punitive or special damages, or any consequential loss.

(b) The Customer shall guarantee, hold harmless and indemnify Intertek against all claims made by any third party, including without limitation any party other than the Customer who may have received or relied upon any Intertek Report, whether or not with the express or implied authorization of Intertek, 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 any such claims relating to any one service exceed the limit of liability identified in clause 3(a) and against any related costs of litigation and attorneys' fees.

(c) Customer shall defend, indemnify and hold Intertek harmless from and against all claims, suits and liabilities (including but not limited to cost of litigation and attorneys fees) arising from or related to, directly or indirectly, (1) actions by any governmental authority or others for any actual or asserted failure of the Customer, or of any party other than the Customer who may have received or relied upon an Intertek Report, to comply with any law, ordinance, regulation, rule or order of any governmental or judicial body; (2) information supplied by the Customer and relied upon by Intertek; and/or (3) personal injuries, loss of or damage to property, economic loss, and loss of or damage to intellectual property incurred by or occurring to any person or entity and arising in connection with or related to the work or Services performed or obligations assumed by Intertek, its officers, employees, agents, representatives, contractors and subcontractors.

(d) Customer shall defend, indemnify and hold Intertek harmless from and against all claims, suits and liabilities (including but not limited to cost of litigation and attorneys fees) arising from or related to the unauthorized use or misuse of Intertek Reports.

(e) The indemnities in favour of Intertek in clauses 3 (b), 3(c) and 3(d) shall apply even if the claims, suits and liabilities arise or are alleged to arise from the negligence, breach of contract or other legal fault of Intertek.

(f) Intertek expressly disclaims liability as a guarantor of the quality of any goods or as an insurer against loss or damage thereto, and disclaims all liability in any such capacity. Customers seeking a guarantee against loss or damage should obtain appropriate all risk insurance and, if such insurance is procured, Customer agrees to obtain a waiver of subrogation against Intertek.

### **4. Agreement to Increase Liability**

Customer may request Intertek's agreement to increase the limit of Intertek's liability in consideration for an increase in the cost of the Services, but absent any such agreement between Customer and Intertek made in writing and signed by an authorized Intertek Officer the limit of Intertek's liability shall remain as stipulated in clause 3 (a).

### **5. Time Bar**

Intertek shall be discharged from all liability to the Customer for all claims for loss, damage or expense and such claims shall be extinguished unless a written claim is made within ninety (90) calendar days of the date at which the loss, damage, defect or alleged non-performance became apparent, or ought to have become apparent to the Customer, and suit is brought no later than two (2) years from the provision of the Services by Intertek.

### **6. Subcontracting**

Intertek reserves the right to engage affiliates, contractors or subcontractors for the provision of all or part of the Services and in doing so shall act as agent of the Customer and shall bear no responsibility with regard to the services thereby procured. The Customer hereby agrees that all such Services as may be engaged shall be governed by these General Terms and Conditions and the affiliate(s), contractor(s) or subcontractor(s) shall enjoy the full protection and benefit thereof.

## 7. Purpose of Services

The Services performed by Intertek for the Customer and the measurements, laboratory data, calculations, estimates, notes and other documents provided by Intertek, together with status summaries, or any other communications describing the results of any Services, or element thereof, (herein collectively referred to as "Report(s)") are based upon samples drawn by, or submitted to, Intertek and limited to measurement procedures dictated by the Customer and are not necessarily designed or intended to address all matters of quality or condition of any goods or cargo.

Reports are based, and the work conducted, under the Customer's specific instructions, and there may be other relevant information not requested nor reported. The Customer undertakes that if it provides any Intertek Report to any other party (whether or not with the express or implied authorization of Intertek) the Customer shall draw the attention of such other party to the foregoing. Further the Customer acknowledges that Intertek does not, either by entering into a contract or by performing work or Services, assume, abridge, abrogate or undertake to discharge any duty of the Customer to any other person, including without limitation any obligation of the Customer to deliver goods of a certain quality or condition under any contract of sale.

## 8. No Third Party Beneficiary

Except as disclosed in writing by the Customer and agreed in advance by the Parties, Customer is procuring the Services of Intertek solely for its own account and not for any other person or entity, and Customer is not acting as an agent or broker or in any other representative capacity. Customer and Intertek agree that, except as expressly provided in these General Terms and Conditions, there are no third party beneficiaries to the contract between Customer and Intertek. Except as set forth above, a person or entity that is not a party to the Agreement has no rights under the Contracts (Rights of Third Parties) Act of 1999 to enforce any term of the Agreement.

## 9. Waiver of Confidentiality

Should Customer use an Intertek Report, in whole or in part, in such a manner as to involve Intertek in legal controversy or to adversely affect Intertek's reputation, it shall be Intertek's right to utilize any and all Customer information, including, but not limited to, data, records, instructions, notations, samples or documents within Intertek's custody and control which relate to the customer for the purpose of offering any necessary defense or rebuttal to such circumstances. While samples, obtained by Intertek or otherwise, are the property of the Customer, Customer assigns an irrevocable right to Intertek to use said samples for purposes including, but not limited to, quality assurance, internal research, data trending, dispute resolution and training.

## 10 Preliminary Reports

Any preliminary or partial Report submitted to Customer shall be used at the Customer's sole risk, and Intertek shall bear no responsibility for any deviation between information in such preliminary or partial Report and the information in the final written Report signed by an authorized Intertek representative.

## 11. Prevailing Terms

Intertek's acceptance of Customer's request for Services is limited to these General Terms and Conditions of Service and any attached Provisions and Payment Terms. These General Terms and Conditions are the only terms upon which Intertek agrees to provide Services and shall prevail over any terms proposed or submitted by Customer at any time. Any provisions or terms in Customer's purchase order, instruction, nomination or other document are objected to and rejected, and shall be of no force or effect.

## 12 Force Majeure

Intertek shall not be liable to the Customer or be deemed to be in breach of contract by reason of any delay in performing or any failure to perform any of Intertek's obligations in relation to the Service if the delay or failure is due to any cause beyond Intertek's reasonable control.

## 13 Severability

If any term, condition or provision in these General Terms and Conditions, or any part thereof, is deemed unenforceable, then that term, condition or provision, or part thereof, shall to the extent necessary stand void and all other terms, conditions or provisions shall have the same effect as if the voided term, condition or provision, or part thereof, had not existed.

## 14 Jurisdiction and Governing Law

All disputes in relation to the Services hereunder and in relation to any matter covered by these General Terms and Conditions shall be subject to the exclusive jurisdiction of the High Court in London with English law to apply.

## 15 Additional Terms

Any Provisions & Payment Terms listed overleaf or attached hereto are to be considered part of these Terms and Conditions.

## 16 Foreign Assignments

Orders received by an officer or employee of Intertek for assignments outside of their country will be forwarded on behalf of the Customer to the appropriate foreign based associated Intertek company or correspondent which will be solely and fully responsible for all matters in connection with the order received, including directly acting for and reporting to the Customer. As a condition of Intertek forwarding such assignment on the Customer's behalf, it is understood that the forwarding Intertek Company will act as an agent only on behalf of the Customer and shall bear no responsibility with regard to the Services rendered by the Intertek company or correspondent to whom the assignment is forwarded. These General Terms and Conditions shall be applicable as between the Customer and the Intertek company or correspondent to whom the assignment is forwarded.

## 17. Servants and Affiliates

The officers, employees, subsidiaries, affiliated and related companies and other business entities, agents, representatives, contractors and subcontractors of Intertek shall enjoy the full protection and benefit of these General Terms and Conditions.