

**CERTIFICATION, INSPECTION AND TRAINING GHANA LIMITED  
TERMS AND CONDITIONS OF BUSINESS**

The Customer's attention is particularly drawn to the provisions of clause 7.

**1. INTERPRETATION**

**Definitions.** In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in Accra are open for business.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 5.

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 11.7.

**Confirmation of Order:** the Supplier's acceptance of an Order, in accordance with clause 2.2.

**Contract:** the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

**Customer:** the person or firm who purchases Services from the Supplier.

**Order:** the Customer's order for Services as set out in the Customer's purchase order form, the Customer's written acceptance of a quotation by the Supplier, or overleaf, as the case may be.

**Services:** the services supplied by the Supplier to the Customer as set out in the Specification.

**Specification:** the description or specification of the Services provided in writing by the Supplier to the Customer.

**Supplier:** Certification, Inspection and Training Ghana Limited registered in Ghana with its address at Guggisberg Avenue, Korle-Lagoon, PO Box GP 480, Accra-Ghana.

**Supplier Materials:** has the meaning set out in clause 4.1(g).

**1.2 Construction.** In these Conditions, the following rules apply:

(a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

(b) a reference to a party includes its personal representatives, successors or permitted assigns;

(c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

(d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

(e) a reference to **writing** or **written** includes faxes and e-mails.

**2. BASIS OF CONTRACT**

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

**3. SUPPLY OF SERVICES**

3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.

3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

3.5 The Services are provided on the basis that:

(a) any certificates of inspection relating to the machinery provided in connection with the Services confirm the condition of the machinery on the day of inspection only and no representations or guarantees are provided as to the condition of that machinery on any other day; and

(b) any certificates relating to individuals provided in connection with the Services are issued on the basis of that individuals ability, competency and performance on the day on which an assessment of that individual is carried out. No representation or guarantee is offered as to that individuals ability, competency or performance on any other day.

No liability shall attach to the Supplier for any issue which arises outside the scope of this clause 3.5.

**4. CUSTOMER'S OBLIGATIONS**

4.1 The Customer shall:

(a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;

(b) co-operate with the Supplier in all matters relating to the Services;

(c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, machinery and equipment, office accommodation and other facilities as reasonably required by the Supplier;

(d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;

(e) prepare the Customer's premises for the supply of the Services as required;

(f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and

(g) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

4.2 The Customer shall not, without the prior written consent of the Supplier, at any time from the Confirmation of Order to the expiry of 24 months after the completion date of the Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in relation to the Services.

4.3 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

(a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and

(c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

**5. CHARGES AND PAYMENT**

5.1 The Charges for the Services shall be the prices set out in the Confirmation of Order:

5.2 Any additional works required which are not set out in the Confirmation of Order shall be chargeable and calculated by the Supplier in accordance with the fee rates supplied by the Supplier to the Customer from time to time.

5.3 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

5.4 The Supplier reserves the right to increase its fee rates. The Supplier will give the Customer written notice of any such increase a month before the proposed date of the increase.

5.5 The Supplier may require a deposit of up to 100% of the total price for Services to be payable in advance. This must be received in full and cleared funds to a bank account nominated in writing by the Supplier at least seven days before the delivery of Services is due to commence.

5.6 The Supplier shall invoice the Customer on completion of the Services.

5.7 The Customer shall pay the balance of each invoice (after taking into account any deposit paid in accordance with clause 5.5) submitted by the Supplier:

(a) within 30 days of the date of the invoice; and

(b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

5.8 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax, any similar sales tax or any tax that replaces such sales taxes, chargeable for the time being. Any such tax payable in relation to any such amounts shall be paid in addition to those amounts.

5.9 If the Customer is required under any applicable law to withhold or deduct any amount from the payments due to the Supplier, the customer shall within three months from the date on which such payment is made to the Supplier either (i) provide the Supplier with proof of the amount deducted and paid to any tax authority in the form of an official certificate issued by that tax authority or (ii) pay to the Supplier such amount as is necessary to leave the Supplier with an amount equal to the sum it would have received if no such withholdings or deductions had been made.

5.10 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above the Bank of Ghana's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

5.11 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

**6. CONFIDENTIALITY**

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the

- receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 6 shall survive termination of the Contract.
- 7. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 7.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 7.2 Subject to clause 7.1:
- (a) the Supplier shall under no circumstances whatever be liable to the Customer (whether in contract, tort (including negligence), breach of statutory duty, or otherwise) for any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill economic loss or damage incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages) or any indirect, special or consequential loss or damage arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract (whether in contract, tort (including negligence), breach of statutory duty, or otherwise) shall in no circumstances exceed the amount received by the Supplier from the Customer for Services provided.
- 7.3 This clause 7 shall survive termination of the Contract.
- 8. TERMINATION**
- 8.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty days of that party being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of the Contract in a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
- (c) an order is made or a resolution is passed for the winding up of the other party, or an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or such an administrator is appointed, or a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court or a creditor to appoint a receiver or manager or which entitle a court to make a winding-up order, or the other party takes or suffers any similar or analogous action in consequence of debt, or an arrangement or composition is made by the other party with its creditors or an application to a court for protection from its creditors is made by the other party;
- (d) the other party, being an individual, is the subject of a bankruptcy petition or order, or dies, or, by reason of illness or incapacity (mental or physical), is incapable of managing his own affairs, or becomes a patient under any mental-health legislation;
- (e) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 8.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within fourteen days after being notified in writing to do so.
- 8.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 8.1(c) to clause 8.1(e) or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9. CONSEQUENCES OF TERMINATION**
- On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.
- 10. FORCE MAJEURE**
- 10.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 10.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 10.3 If the Force Majeure Event prevents the Supplier from providing any of the Services for more than twelve weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 11. GENERAL**
- 11.1 Assignment and other dealings.**
- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.
- 11.2 Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 11.3 Severance.**
- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 11.4 Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.5 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 11.6 Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 11.7 Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.
- 11.8 Dispute Resolution.**
- (a) All parties to the Contract shall endeavour to resolve all disagreements between them.
- (b) The Customer shall notify the Supplier of the officer responsible for settling disputes. The person appointed by the Supplier as the office responsible for settling disputes shall be Tommaso Mariani (or such other person as the Supplier may nominate, from time to time).
- (c) In the event that any dispute cannot be resolved between the parties, a mutually acceptable third party may be appointed in the UK to act as a UK arbitrator.
- 11.9 Governing law.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of Ghana.
- 11.10 Jurisdiction.** Each party irrevocably agrees for the sole benefit of the Supplier that the courts of Ghana shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of the Supplier to take proceedings against the Customer in any other court of competent jurisdiction, nor shall they take of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.