

COTECNA

GENERAL TERMS AND CONDITIONS OF BUSINESS 2022

1. GENERAL TERMS AND CONDITIONS

The services provided by Cotecna Inspection SA and/or its affiliated companies (hereinafter “the Company”), directly or through their agents and/or subcontractors, are subject to the present General Terms and Conditions of Business (hereinafter “GTC”) unless overridden wholly or in part by (i) the imperative provisions of applicable law and regulations and/or (ii) express agreement of the Company in writing.

2. THE COMPANY

The Company is active in the areas of testing, inspection, audits, certification and provision of customized technology services for government and/or trade operators.

3. THE PRINCIPAL

The Company acts for legal entities or individuals from whom it receives a request for services or mandate (hereinafter “the Principal”).

4. EXECUTION OF SERVICES

- 4.1 The Company undertakes to perform its services according to i) the scope and methods of performance agreed with the Principal in the mandate, ii) applicable TIC Council (formerly IFIA) codes of conduct and iii) the performance standards deemed appropriate by the Company in view of the specific services required.
- 4.2 The Principal acknowledges that the Company may, at its discretion, delegate all or part of the execution of the services to agents and/or subcontractors and provide all such necessary information to same.
- 4.3 The Company provides its services for the fees set within the framework of the Principal's explicit mandate or as determined under a government program (as applicable), as accepted by the Company. The Principal is expected to provide sufficient information, specifications and instructions to enable the Company to evaluate and/or carry out the services required. Documents reflecting undertakings entered into between the Principal and third parties or third party documents such as test reports, sales contracts, letters of credit, and bills of lading, when provided to the Company, shall only be part of the mandate if expressly specified and acknowledged by the Company.

5. SERVICES

The Company provides various services which will be specified in the mandate of the Principal or as per government program instructions, including but not limited to the following:

- 5.1 Laboratory analysis or other testing services;
- 5.2 Independent inspection of goods, packaging and marking, at various points in the supply-chain, including their sampling and the preparation and laboratory-testing of such samples, assecond or third party;
- 5.3 Product certification;
- 5.4 Tracking solutions including checking and traceability services related to the compliance to customs and security regulations, non-intrusive inspection (such as X-ray scanning) services; fuel marking solutions;
- 5.5 Development, integration and implementation of customized technology and software solutions aimed at allowing governments to facilitate and/or monitor trade and improve security, which may, upon notification by Company, be governed by additional terms and conditions;
- 5.6 Management systems certification, compliance verification, factory inspections, audits including supplier audits, sustainability audits/ certifications and customised audits;
- 5.7 Training, consultancy services and capacity building.

6. REPORTS, CERTIFICATES AND RESULTS

- 6.1 Subject to the mandate agreed with the Principal (if applicable) and the Principal's compliance with clause 7 or as per governmental program instructions, the Company will issue reports and certificates which reflect its findings, for the benefit of the Principal and/or the authorities for government programs. The Company does not have the obligation to refer to, give an opinion upon, or announce facts or circumstances which go beyond the scope of the mandate received.
- 6.2 The reports and certificates delivered by the Company only reflect its findings at the time and place of its intervention. The issuance of a certificate or report does not release the Principal of its obligations regarding any and all discrepancies between the products or services certified, analysed, audited or inspected and those actually delivered. Reports and certificates delivered by the Company are not intended for (a) settling commercial disputes between the importer and exporter, or (b) certifying the conformity of the goods presented for customs clearance.
- 6.3 The scope of the certificates issued by the Company in the framework of a governmental program is limited by the conditions of the contract in force between the Company and a specific governmental agency or by the accreditation granted by the later or by the applicable standards or technical regulations. Such certificates are established according to pre-determined certification criteria provided at a point in time and cannot be considered as a guarantee of quality or quantity of the goods or fitness of the goods for any particular use.
- 6.4 Results contained in reports or certificates issued after tests and/or analysis of samples relate to those samples only, and subject to the foregoing, do not express any opinion as to the overall quality of goods from which the samples have been taken. If an opinion on the overall quality of the sampled consignment is required, a particular agreement must be concluded in advance with the Company for such purpose, and such opinion shall be limited by the sampling and testing methods used.

7. OBLIGATIONS OF THE PRINCIPAL

The Principal undertakes:

- 7.1 To provide all necessary instructions and precise information in a timely manner to enable the Company to deliver the services requested;
- 7.2 To provide the necessary access to buildings, plants, warehouses, carriers of any kind, or any other place, as well as special equipment and assistance, if necessary, to deliver the requested services in the requested timeframe;
- 7.3 To ensure that all adequate measures will be taken for the safety of workers and representatives of the Company during the execution of the services;
- 7.4 To promptly take all necessary measures to ensure that no obstruction shall prevent the Company from carrying out the requested services;
- 7.5 To inform the Company in advance of all the known and/or suspected risks or dangers of whatever nature, present or future, linked to all orders, samples or tests requests, including but not limited to the presence or risk of radiation, toxic substances, harmful or explosive materials and pollution;
- 7.6 To fulfil all its obligations under the terms of any contract with third parties to whom the services delivered by the Company relate, whether a report or certificate has been issued by the Company or not, failing which the Company will not incur any liability towards the Principal.

8. THIRD PARTY LABORATORY ANALYSIS AND OTHER INTERVENTION

- 8.1 If the Principal requests an analysis of samples by its own laboratory or a third-party laboratory, the Company will inform the Principal of the result of the analysis but will not be responsible for the accuracy of the analysis or the results.
- 8.2 When the Principal asks the Company to only attest to the intervention of a third party, it acknowledges that the sole responsibility of the Company is limited to of being present at the time of the intervention of the third party or, as the case may be, reviewing documents attesting to such third party intervention, and communicating the results of the intervention, or confirming that it took place. In such cases the Principal acknowledges that the Company shall not be responsible for the sampling, the calibration of any equipment used, the methods of analysis followed, the professional qualifications, the acts or omissions of the personnel of the third party, or of the results of any other intervention.

9. LIABILITY AND COMPENSATION

- 9.1 Liability for serious fault is according to the relevant provisions of Swiss law.
- 9.2 For all other cases, the Company's liability for any claim for loss, damage or expenses of whatever kind or origin is limited to the lesser of the following amounts:

- a) The equivalent of ten (10) times the fees paid (or otherwise payable) for the specific service subject of the claim, pursuant to a particular contract or mandate with the Company, or
- b) USD 25,000 (twenty-five thousand US Dollars).

- 9.3 The liability of the Company's subcontractors and agents (auxiliaries) involved in the performance of the services for light or serious faults shall be limited to the amounts stated in clause 9.2.
- 9.4 The Company will not incur any liability (a) for consequential or derivative damages including loss of profits, loss of future businesses, loss of production and/or cancellation of contracts concluded by the Principal and (b) to the extent of any fraud or misconduct by or on behalf of the Principal, or by any third party which the Principal should have been reasonably aware of.
- 9.5 When fees are due to the Company in respect of two or more services and the Principal puts forward a claim for one of such services, the fees will remain due for the non-contested part of the services rendered.
- 9.6 The Principal releases and indemnifies the Company and its managers, employees, agents or subcontractors against any claim raised by a third party for loss, damage or expenses of whatever nature relating to (a) the execution or the alleged non-performance of services provided in accordance with the instructions of the Principal (b) the content of any report/ certificate issued by Company.
- 9.7 In the event that the Company is prevented for any extraordinary reason whatsoever outside its control from carrying out or from bringing to a successful conclusion the services for which an order was placed and accepted or an agreement concluded (in particular without limitation, natural disasters, armed conflicts, economic sanctions and pandemics), the Company will be released from any liability for the partial or total non-performance of the services requested and is entitled to invoice the Principal for i) all the expenses actually incurred and ii) a proportional share of the fees agreed upon for the service actually rendered.

10. PRICE AND INVOICING

- 10.1 The Principal will pay at the latest within thirty (30) days from the date of the invoice, all the fees due to and/or any expenses incurred by the Company as a result of the performance of its services, failing which interest on arrears will be due at 3% per annum as from the date when the payment was due until the actual date of payment.
- 10.2 The Principal will not have the right to retain, defer, set-off or withhold the payment due to the Company for any reason whatsoever, except where the withholding of a portion of the payment is required under the applicable tax legislation.
- 10.3 The Company shall issue its invoices taking account of all applicable taxes and other encumbrances pursuant to the applicable taxation legislation.
- 10.4 The Principal will also indemnify the Company for all the expenses incurred by it in recovering arrears due to the Principal's late payment, including lawyer's fees and other legal expenses.
- 10.5 If unforeseen problems arise or if the Company incurs extraordinary expenses for the execution of the services, the Company will have the right to invoice the amounts necessary to cover the time and the additional expenses of bringing the contract or mandate to a conclusion.
- 10.6 The Company reserves the right to suspend its services if the obligations specified in clause 10.1 are not fulfilled by the Principal and arrears accrue for a period exceeding 1 (one) month. Such suspension of services shall not be regarded as a breach of the Company's contractual obligations or relieve the Principal from its payment obligations to the Company.
- 10.7 Notwithstanding clause 12, the Company reserves the right to unilaterally modify the terms of payment provided for in clause 10.1 if it considers the financial standing of the Principal materially altered.

11. CLAIM

- 11.1 The Principal must notify any claim for loss, damage or costs (“Loss”) to the Company's registered office in Geneva, Switzerland, in writing, immediately after the discovery of the facts causing the Loss.
- 11.2 In addition, the Principal may initiate legal action as per clause 14 below, no later than 3 (three) months from such discovery and in no event later than 1 (one) year after (a) the date of execution of the service giving rise to the Principal's claim; or (b) the date on which the aforesaid service should have been carried out in the case of an alleged non-performance, failing which the Company will be released from any liability towards the Principal.

12. AMENDMENTS AND MODIFICATIONS

- 12.1 No modification or amendment of any of the clauses of these GTC will have effect unless made in writing and signed by a person(s) duly authorized by the Company.
- 12.2 If one or more provisions of these GTC should prove to be illegal or inapplicable for whatever reason, the validity and application of the other provisions will not be affected by it.

13. DISCLAIMERS

- 13.1 The Company neither guarantees nor makes any representation about i) the accuracy and authenticity of the documents, titles and pledges presented to it in the process of carrying out its mandate and ii) quantity, quality and fitness for purpose of the goods beyond the scope of the services requested or specified in the mandate. The Company shall not be responsible for and disclaims any and all liability relating to or arising from the consequences of any action taken or not taken on the basis of findings/ reports/certificates issued by the Company.
- 13.2 The Company does not perform the services of a guarantor or insurer and cannot be held liable for acting as such, in respect of, inter alia, the adequacy, quality, merchantability, fitness for a specific purpose, or the performance of the goods to which the service relates.
- 13.3 Services provided do not automatically include verification of origin or of third party IP rights attached to the goods, nor does it imply an obligation to examine title/ownership of goods subject to the request for services or mandate.

14. APPLICABLE LAW, JURISDICTION AND SETTLEMENT OF DISPUTES

- 14.1 These GTC are governed and construed according to Swiss law.
- 14.2 Parties may agree to submit any dispute, controversy or claim related to this GTC to mediation. A request to mediate shall be sent by the aggrieved party to the other party within 30 days from the date of notification of a dispute, controversy or claim. Any of the parties shall proceed to arbitration within 30 days from the date the request to mediate is made, should the mediation process be unsuccessful, not expressly extended or should either of the parties decline mediation.
- 14.3 If such dispute, controversy or claim is referred to arbitration, it shall be finally settled in accordance with the Swiss Rules of International Arbitration of the Swiss Arbitration Centre in force on the date when the notice of arbitration was submitted in accordance with said Rules. The number of arbitrators shall be three (3), unless the litigious value is below 1 million CHF, in which case there will be one (1) arbitrator only. The seat of the arbitration shall be Geneva, Switzerland. The arbitral proceedings shall be conducted in English language.

15. DATA PROTECTION AND PRIVACY

The Company is committed to meeting its obligations under applicable data protection legislation and respects information and privacy rights of individuals. Further information is accessible from the Company's website at <https://www.cotecna.com/en/privacy-policy>, as updated from time to time.

16. COMMUNICATION AND LANGUAGES

- 16.1 Communications between the Principal and the Company shall be deemed to be properly given only when sent by post, courier, hand delivery or email to the other party's previously notified email address, to the exclusion of all other communication means. Any communication sent via an instant messaging application shall have to be confirmed by email to be considered as effectively made.
- 16.2 These GTC have been drawn up in English and are available in different languages on the Company website <http://www.cotecna.com/en/About-Cotecna/Terms-Conditions> In the event of inconsistency, the English text shall prevail.