

**INTERTEK CHINA  
TERMS AND CONDITIONS FOR PURCHASE OF GOODS**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In these Conditions (unless the context otherwise requires), the following words and phrases shall have the following meanings:

**"Charges"** means the Supplier's charges for providing the Goods as set out in the Order;

**"Conditions"** means these terms and conditions of purchase which may be amended from time to time and which are available online at [www.intertek.com.cn](http://www.intertek.com.cn), and any reference to a **"Condition"** means the relevant section, paragraph or sub-paragraph of these terms and conditions;

**"Confidential Information"** means all information which is disclosed before or after the date of this Contract by one Party to the other however conveyed and would appear to a reasonable person to be confidential and which relates to the business affairs of the Party disclosing it (or in the case where Intertek is the disclosing Party, the business affairs of any of Intertek's or any member of Intertek Group's customers), including, products, operations, processes, plans or intentions, developments, trade secrets, know-how, design rights, market opportunities, personnel, customers and suppliers of the Party disclosing it (or of any member of that Party's Group), and all information derived from the above together with the existence or provisions of this Contract and the negotiations relating to it;

**"Contract"** means a contract for the purchase of Goods made by or on behalf of Intertek with the Supplier and which is subject to these Conditions;

**"Delivery Requirements"** has the meaning given in Condition 4.1;

**"Effective Date"** has the meaning given in Condition 3.2;

**"Good Industry Practice"** means the exercise of reasonable skill, care, prudence, efficiency, foresight and timeliness which would be expected from a skilled person experienced and qualified in the provision of goods of a similar nature to the Goods;

**"Goods"** means the goods to be purchased by Intertek described in an Order (including but not limited to any part or parts of them), to be supplied in accordance with the specifications, application requirements, Scope of Work and other details notified by Intertek (or otherwise as accepted in writing) which additionally includes goods or parts of goods which are not manufactured by the Supplier;

**"Group"** in relation to a Party means that Party, and every company which is a holding company of that Party, and every subsidiary of any holding company of that Party from time to time (and "subsidiary" and "holding company" shall have the meanings given in section 1159 of the United Kingdom Companies Act 2006);

**"Intellectual Property"** means:

- a) patents, registered designs, copyright, database rights, design rights, trade marks; and
- b) all registrations or applications to register any of the items referred to in part (a) of this definition; and

c) all rights in the nature of any of the items referred to in parts (a) and (b) of this definition; and

d) all rights having equivalent or similar effect to, and the right to apply for any of, the rights referred to in this definition, in each case in any jurisdiction;

**"Intertek"** means either the person specified as the Intertek Party on the Order, or if no Intertek Party is so specified, Shanghai Intertek Testing Services Co., Ltd., a company registered in the PRC, whose registered office is at Room 1605, No. 201 Nan Quan North Road, Pu Dong New District, Shanghai or any party it designates;

**"Intertek Group"** means Intertek, and every company which is a member of its Group;

**"Intertek Sites"** means premises owned, controlled or occupied by Intertek or a member of the Intertek Group which are made available for use by the Supplier or its sub-contractors for the delivery or installation of the Goods on the terms set out in this Contract, the Order, the Scope of Work or any separate agreement or licence;

**"Invoice Requirements"** means the requirements listed in Condition 7.8;

**"Normal Business Hours"** means 9:00am to 6:00pm of any Working Day unless otherwise agreed;

**"Order"** means an order for the purchase of Goods which has been placed;

- a) orally and which Intertek subsequently confirms in writing either by post (on Intertek's official purchase order form for the Goods, issued by Intertek) or via email;
- b) via email;
- c) on-line;
- d) procurement cards; or
- e) by facsimile (on Intertek's official purchase order form for the Goods, issued by Intertek);

**"Personnel"** means the employees, agents and approved subcontractors of the Supplier who are involved in the supply of Goods;

**"Physical Property"** means all materials, equipment, tools, moulds, patterns, data, drawings and specifications and any other items supplied by Intertek to the Supplier or used by the Supplier specifically in the provision of the Goods;

**"PRC"** means the People's Republic of China;

**"Scope of Work"** means the description or specification of the Goods as agreed between the parties, or, to the extent that any element of the provision of Goods is not fully specified in such specification, any unspecified element shall be that which would be then-current Good Industry Practice in the relevant market;

**“Software”** means any and all computer programs and computer software (of whatever type and in whatever form or media) including firmware and other low level software installed on or supplied with the Goods at the time of its delivery;

**"Supplier"** means the person identified as such through acceptance of the Order of Intertek, or where no acceptance has been completed, any person, firm or company to whom an Order is addressed;

**"Unforeseen Event"** means an event beyond the control of a Party (or any person acting on its behalf), which by its nature could not have reasonably been foreseen by such Party (or such person), or, if it could have reasonably been foreseen, could not have been avoided or mitigated against by the use of reasonable measures (including without limitation, the use of reasonable disaster recovery and/or business continuity procedures and/or keeping sensible reserves of stock to smooth out any foreseeable manufacturing or supply issues);

**"VAT"** means Value Added Tax at the rate prevailing at the time of the relevant Order charged in accordance with the provisions of the Tentative Regulations of the PRC regarding Value Added Tax (2009) and other relevant and applicable PRC laws and regulations or any equivalent tax applicable in the relevant jurisdiction;

**"Working Day"** means any day other than a Saturday, Sunday or public holiday in the PRC.

## 2. GENERAL

- 2.1 Unless specifically agreed otherwise in writing, these Conditions, together with the terms and conditions of the Order will govern the supply of Goods by the Supplier to Intertek and excludes any conditions of sale (whether express or printed, oral, implied by customs, practice or course of dealing, or in any other form) of the Supplier which are inconsistent with these Conditions, provided that nothing in these Conditions shall operate to limit or exclude either Party's liability for fraud, including fraudulent misrepresentation.
- 2.2 No terms and/or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of orders, Scope of Work or similar document will form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and/or conditions.
- 2.3 In these Conditions, references to any gender shall include all genders; references to the singular shall include the plural and vice versa; references to any law or statute shall mean such law or statute as amended, replaced or re-enacted from time to time; references to a 'person' shall include any legal or natural person recognised in law; and the words "including" or "in particular" shall not limit the generality of any preceding words.
- 2.4 Orders may be issued either by Intertek or by other members of the Intertek Group. Where Orders are issued by Intertek, Intertek is acting on its own behalf and the contract will be concluded directly between Intertek and the Supplier. Where Orders are issued by other members of the Intertek Group then such members are acting as Intertek's agent, and the contract will be concluded between Intertek (as the principle) and the Supplier.
- 2.5 The Supplier agrees and acknowledges that any Goods provided are for the benefit of Intertek and the benefit of every other member of the Intertek Group, who shall each have identical rights to use and enjoy such Goods for their respective purposes as

Intertek does under these Conditions (and references to 'Intertek' in these Conditions which create rights, protections or benefits for Intertek shall be read as references to 'Intertek and each member of the Intertek Group'). The Supplier understands that each member of the Intertek Group may directly enforce these Conditions against the Supplier.

### 3. BASIS OF CONTRACT

3.1 The Order is an offer by Intertek to purchase the Goods in accordance with these Conditions.

3.2 The Contract shall become binding and legally effective (such date being the "**Effective Date**") upon the occurrence of the earliest of the following:

3.2.1 the date that the latter Party signs the Contract;

3.2.2 the date on which the Supplier returns the acknowledgement copy of the Order;

3.2.3 the first date following confirmation in writing that the Supplier accepts the Order or commences or completes an act that is consistent with fulfilling the Order or providing (in whole or in part) the Goods;

and shall constitute the Supplier's acceptance of the Order subject to these Conditions.

3.3 Intertek is not liable for any Order unless:

3.3.1 it has been placed on behalf of Intertek by a duly authorised representative of Intertek; and

3.3.2 the Supplier (or its agent or other representative) confirms its acceptance of such Order in accordance with Condition 3.2 whether in writing or by action.

3.4 The Supplier shall not vary any Scope of Works of the Goods without the prior written consent of Intertek.

3.5 For the avoidance of doubt, where a delivery schedule, timetable or other deadline for the supply of Goods has been agreed, that shall form part of the Contract.

### 4. SUPPLY OF GOODS

4.1 From the Effective Date, or such other date on which the parties have agreed to commence the Contract, the Supplier will provide the Goods to Intertek in accordance with these Conditions.

4.2 If specified in the Order or notified to the Supplier by Intertek, the Supplier shall be required to meet any delivery or performance dates for the Goods.

4.3 The Supplier shall supply the Goods in accordance with:

4.3.1 the requirements set out in the Order, Scope of Work and any other relevant documentation describing the Goods. If any conflict arises between the Order, Scope of Work and any other relevant documentation describing the

Goods, the documents shall prevail in the following order (with the higher items taking precedence over the lower);

4.3.1.1 these Conditions;

4.3.1.2 the Order;

4.3.1.3 the Scope of Work and any other relevant documentation describing the Goods,

4.3.2 any agreed timetable and shall meet all agreed deadlines, and in any event shall provide the Goods as promptly as is reasonably practicable;

4.3.3 all applicable laws; and

4.3.4 any reasonable instructions issued by Intertek from time to time.

4.4 In supplying the Goods, the Supplier will:

4.4.1 Supply the Goods at the Intertek Sites with the best care, skill and diligence in accordance with Good Industry Practice;

4.4.2 use Personnel who are:

4.4.2.1 appropriately trained, qualified, skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract; and

4.4.2.2 present themselves and undertake their duties in a professional manner.

4.4.3 ensure that the Goods will conform with all descriptions and specifications set out in the Scope of Work, or where no descriptions or specifications are provided in respect of any particular element, such descriptions and specifications as would be considered Good Industry Practice for the same;

4.4.4 provide all equipment, tools and vehicles and such other items as are required for the provision of the Goods;

4.4.5 use the best quality goods, materials, standards and techniques, and ensure that all goods and materials supplied and used in the production or delivery of the Goods or transferred to Intertek on installation of the Goods, will be free from defects, including defects in workmanship, installation and design;

4.4.6 obtain and at all times maintain all necessary licences and consents at its own expense, and comply with all applicable laws and regulations and produce evidence of it to Intertek on demand;

4.4.7 observe all health and safety rules and regulations and any other security requirements and environmental requirements that apply at any premises where the Goods are delivered or installed;

- 4.4.8 hold all materials, equipment and tools, drawings, specifications and data supplied by Intertek to the Supplier ("**Intertek Physical Property**") in safe custody at its own risk, maintain the Intertek Physical Property in good condition until returned to Intertek, and not dispose or use the Intertek Physical Property other than in accordance with Intertek's written instructions or authorisation;
  - 4.4.9 use all reasonable endeavours to avoid any disruption to Intertek's business or that of any member of the Intertek Group beyond that which is strictly necessary to provide the Goods;
  - 4.4.10 not do or omit to do anything which may cause Intertek to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that Intertek may rely on the Goods.
- 4.5 The Supplier will ensure that the Goods are delivered at the date, time and place (the "**Delivery Requirements**") specified on the relevant Order. If Goods are not delivered in accordance with the Delivery Requirements stated in the relevant Order:
- 4.5.1 Intertek is entitled to terminate the Order and the Supplier will be liable to pay for any additional documented expenses incurred by Intertek in making alternative arrangements with third parties to fulfil the requirement of a replacement order and /or purchase of replacement goods; or
  - 4.5.2 the Supplier will be liable to pay for any additional expenses incurred by either Party in handling and/or delivering the Goods to fulfil the Delivery Requirements (or where the originally specified date and time have passed, any new Delivery Requirements Intertek may specify).
- 4.6 Where the Delivery Requirements specify a given quantity of particular Goods is to be supplied, Intertek may, upon written notice to the Supplier at any time prior to shipment, vary that quantity by up to plus or minus ten per cent from the quantity originally stated in the Delivery Requirements, provided that the Charges relating to such Goods shall increase or decrease by the same proportion.
- 4.7 Intertek may choose (at its discretion) to elect to collect the Goods from the Supplier on giving reasonable notice. At such times Intertek shall collect the Goods on the date, time and place specified on the relevant order.
- 4.8 The Supplier will ensure that the goods are properly packed and secured to prevent any damage in transit and to enable them to reach their destination in a condition which is satisfactory to Intertek. In addition, the Goods should be protected from corrosion or other deterioration in condition during delivery or storage, prior to being delivered to Intertek. The Supplier will comply with all applicable standards, regulations and/or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods.
- 4.9 Intertek shall (if agreed in writing) return to the Supplier (at the Supplier's risk and expense) any packaging materials and cases supplied with the Goods.
- 4.10 Notwithstanding Condition 4.9, Intertek accepts no liability for packaging materials unless expressly agreed in advance.

- 4.11 Unless otherwise agreed in writing by Intertek, the Supplier shall unload the goods immediately on their arrival at Intertek's premises to a delivery point as specified or as directed by Intertek.
- 4.12 Unless otherwise agreed in writing, deliveries will only be made during Intertek's Normal Business Hours.
- 4.13 The Supplier shall indemnify Intertek against each loss, liability and cost arising as a result of Intertek or its sub-contractors assisting the Supplier in the unloading, loading or other removal of the Goods from the point of delivery.
- 4.14 The Supplier shall ensure that each delivery is accompanied by a delivery note which shows the order number, date of order, any Intertek delivery code, any relevant paperwork relating to dangerous goods (where applicable), any special storage instructions (if any), quantity and description of the Goods and the outstanding balance remaining to be delivered (in the case of part delivery in instalments if this has been agreed in writing between the parties).
- 4.15 Delivery of the Goods shall only be completed when all of the Goods specified on the relevant Order have been unloaded at the location specified by Intertek and Intertek is satisfied with the quality of the Goods delivered.
- 4.16 Intertek reserves the right (without prejudice to any other rights Intertek may have) to:
- 4.16.1 keep any Goods which have not been delivered in accordance with the Delivery Requirements and at its discretion, charge a reasonable fee for any late delivery, storage or transportation; or
  - 4.16.2 return any Goods (at the Supplier's risk and expense) which have not been delivered in accordance with the Delivery Requirements and at its discretion, charge a reasonable fee for any storage or otherwise as may be reasonable in all the circumstances, and in any event, payment will only be made for them as if they had been delivered on the due date;
  - 4.16.3 reject any Goods not delivered in accordance with the Delivery Requirements; and/or
  - 4.16.4 cancel any Contract of which such Goods are the subject without financial penalty; and/or
  - 4.16.5 return any Goods (at the Supplier's risk and expense) already delivered which by virtue of such rejection or cancellation are no longer of use,
- and in the event of any the circumstances described in Conditions 4.16.1 - 4.16.5 occurring, Intertek shall be entitled to request a refund for any payment already incurred or paid on such Goods, such refund not to be unreasonably conditioned, delayed, challenged or withheld.
- 4.17 Where the Delivery Requirements do not specify a date for delivery, then delivery shall be made as soon as is reasonably practicable, and where the Delivery Requirements do not specify a time for delivery, then deliveries will only be made during Intertek's Normal Business Hours.

- 4.18 If for any reason Intertek is unable to take delivery of the Goods on the specified delivery date, the Supplier will store or arrange for the storage of the Goods for a reasonable time (at Intertek's reasonable expense) and the Supplier will take all reasonable steps to prevent any deterioration of the Goods until actual delivery.
- 4.19 The Supplier warrants, represents and undertakes on an ongoing basis that:
- 4.19.1 the provision of the Goods to Intertek, and Intertek's use of the Goods for any reasonable purpose will not infringe any Intellectual Property Rights of any third party;
  - 4.19.2 at all times the Supplier will provide the Goods in compliance with all applicable laws and shall ensure that the Goods shall comply with any applicable law; and
  - 4.19.3 the Supplier has and will continue to hold all necessary approvals from any relevant regulators necessary to perform the Supplier's obligations under this Contract and at law in the jurisdiction in which the Supplier operates.
- 4.20 Intertek may propose changes to the Goods to be supplied to the Supplier in writing at any time, and the Supplier shall not unreasonably withhold, delay or condition its agreement to such changes. Where such change reduces the scope, volume, complexity or risk of the Goods to be supplied, then the Charges shall be reduced accordingly. Where the change increases the scope, volume, complexity or risk of the Goods to be supplied, then Intertek acknowledges that the Supplier may need to increase the Charges by an equitable amount. No change (and no increase or decrease in the Charges) shall be binding upon either Party until executed as a variation to this Contract in accordance with condition 25.
- 4.21 The Supplier acknowledges and agrees that it has been notified of Intertek's Code of Ethics, and agrees to comply with both at all times in connection with the provision of goods or services (including the Goods) to Intertek and all members of Intertek's Group. A copy of Intertek's Code of Ethics is available at [www.intertek.com](http://www.intertek.com).

## **5. TESTING AND ACCEPTANCE**

- 5.1 The Goods must conform to these Conditions, the Order, the Scope of Work and any other relevant document describing the Goods, as agreed in the Contract.
- 5.2 The Supplier must ensure that the Goods correspond with standards (PRC, International or industry) when indicated on the Scope of Work and it is the responsibility of the Supplier to obtain and ensure that the most up to date issue of that standard is being used.
- 5.3 Intertek (or any representative of Intertek) has the right to inspect and test the Goods at any reasonable time before the Goods are delivered and the Supplier will arrange for reasonable facilities at and access to the premises (or the premises of any sub-contractor, where applicable) where the Goods are located. Any inspection by Intertek does not relieve the Supplier of any liability nor does it imply that Intertek has accepted the Goods.
- 5.4 If, when the Goods are inspected or tested, Intertek (or any representative of Intertek), in its reasonable opinion, believes that the Goods do not conform to the Order, the Scope of Work, or any specifications supplied or advised by Intertek to the Supplier,

Intertek will inform the Supplier accordingly and the Supplier must immediately take any necessary action to ensure conformity.

- 5.5 If requested to do so by Intertek, the Supplier will give Intertek adequate notice of any Goods testing to be carried out by the Supplier itself (which Intertek is entitled to attend) and will provide Intertek with any test certificates as Intertek or its customers may reasonably require.
- 5.6 In accordance with Condition 5.1, any inspection, testing or attendance by Intertek (or any representative of Intertek) does not relieve the Supplier of any obligations or liability under the contract and does not imply any acceptance of the Goods by Intertek.
- 5.7 Where the Supplier is supplying any raw materials it shall be responsible for ensuring that such materials meet all relevant specifications. The Supplier will be responsible for maintaining detailed records of the composition of such materials, including the results of all tests carried out to establish the composition from time to time.
- 5.8 Intertek shall have the right to carry out such tests as Intertek may reasonably determine upon delivery or installation of Goods, or any element of the Goods, to determine whether they meet the Order, the Scope of Work and Intertek's reasonable requirements. Where any such element fails any such test then, acting reasonably (and taking into account the severity of the failure), Intertek may (in addition to any other right or remedy available to it under this Contract or at law) either:
  - 5.8.1 require the Supplier to promptly remedy the cause of the failure at the Supplier's sole cost and resubmit the element to Intertek for re-testing; or
  - 5.8.2 terminate the Contract by reason of such failure without further liability to the Supplier.

## 6. RISK AND TITLE

- 6.1 Risk for and title to the Goods pass to Intertek when the Goods are delivered (or, where the purchase of Goods includes installation, title shall pass upon delivery but risk shall pass upon completion of installation when the Goods are deemed fully installed and commissioned by Intertek), without prejudice to any rights which Intertek may have to reject the Goods under these Conditions or otherwise.
- 6.2 If the Supplier postpones delivery for any reason, title to the Goods will pass to Intertek on the date on which such Goods should have been delivered but risk will not pass until the date of actual delivery (or when the Goods are deemed fully installed and commissioned by Intertek where the purchase of Goods includes installation). For the avoidance of doubt, risk shall pass to Intertek upon DDP (Delivery Duty Paid) in accordance with Incoterms 2010 published by the International Chamber of Commerce ("**Incoterms**") as amended from time to time. Delivery shall be to the Intertek Site notified to the Supplier by Intertek in writing.
- 6.3 The international rules for the interpretation of trade terms prepared by Incoterms shall apply except to the extent that they conflict with this Contract, in which case this Contract shall prevail.

## 7. CHARGES AND INVOICING

- 7.1 In consideration of the Supplier performing its obligations under each Contract, Intertek shall pay the Supplier the Charges in accordance with this Condition 7 and as detailed in each Order.
- 7.2 The Charges for each of the Goods shall be specified in the Order in accordance with the prices schedule agreed between the parties, and if no price is agreed in advance by the parties, the price which is set out in the Supplier's published price list at the time the Contract was made shall be applicable. Unless otherwise agreed in writing by Intertek, all prices quoted and invoiced are Delivered Duty Paid (Incoterms 2010) and are deemed to include the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by Intertek.
- 7.3 Except where otherwise agreed in writing, the Charges set out in an Order shall be all the Charges due in respect of the supply of Goods (subject to condition 7.2 above) and in accordance with this Contract. Unless otherwise agreed in writing by Intertek, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the supply of Goods (including, without limitation, packaging, insurance and carriage). If any unforeseen problems or expenditure arise in the course of supplying the Goods the Supplier shall not be entitled to make additional charges to cover additional time and cost necessarily incurred to complete the supply of Goods in accordance with the Contract.
- 7.4 Each invoice submitted to Intertek for payment shall be in respect of the supply of Goods during the previous calendar month, and shall quote this Contract and contain such other information as Intertek may reasonably require from time to time.
- 7.5 The Supplier will ensure that Intertek receives the Supplier's invoice for Goods within 90 days of the end of the month within which those Goods were delivered. Where an invoice for Goods is not received within such 90 day period, then the Supplier waives its right to invoice or otherwise charge for the relevant Goods.
- 7.6 All prices and the Charges shall be inclusive of all taxes, duties, levies or similar compulsory charges imposed by any authority payable on such amount, including but not limited to VAT, where applicable, and it is the Supplier's responsibility to pay any such sums.
- 7.7 No extra charges will be payable by Intertek unless this has been agreed in writing and signed by Intertek.
- 7.8 The Supplier's invoice must meet the following requirements (the "**Invoice Requirements**"):
- 7.8.1 be properly and correctly calculated; and
  - 7.8.2 state the price for the Goods and other elements of the Charges specified in the Order which are being invoiced; and
  - 7.8.3 include, as a separate item, any taxes, duties, levies or similar charges imposed by any authority payable on such amount, including but not limited to VAT, where applicable; and
  - 7.8.4 specify any discounts applied to the invoiced amount; and

- 7.8.5 specify any credits or other price reductions have been applied; and
  - 7.8.6 state the total amount payable to the Supplier under that invoice; and
  - 7.8.7 include such supporting information required by Intertek to verify the accuracy of the invoice; and
  - 7.8.8 clearly state the relevant Intertek purchase order number on its face if applicable.
- 7.9 If Intertek places an Order on a "price to be agreed" basis, the Supplier will obtain Intertek's confirmation of the price to be paid before delivery of the Goods.
- 7.10 Any variation to the Charges must be agreed in writing between the parties before delivery of the Goods.

## 8. PAYMENT

- 8.1 Intertek will pay only for the Goods specified in the Order.
- 8.2 Where:
- 8.2.1 the Goods have been delivered to Intertek in accordance with the Contract (including the Delivery Requirements and all quality requirements and specifications set out in these Conditions and the relevant Order, but not limited to this list); and
  - 8.2.2 the invoice presented by the Supplier meets the Invoice Requirements,
- then Intertek shall make the relevant payment due to the Supplier under the Contract, by cheque or bank transfer, or such other method of payment as has been agreed between the parties from time to time.
- 8.3 Unless Intertek's procurement policy stipulates otherwise, Intertek shall pay the Supplier within 60 days from the date the Supplier's invoice was received. Where Intertek agrees to, or pays, the Supplier more promptly, the Supplier shall grant a prompt payment discount to Intertek at a level to be agreed.
- 8.4 Where Intertek disputes any payment in good faith Intertek will not incur penalty for delay in or failure to make payment.
- 8.5 Intertek may withhold payment (but without incurring interest or losing any prompt payment discount, where applicable):
- 8.5.1 if the Supplier fails to send a separate invoice on the date of despatch for each delivery of Goods;
  - 8.5.2 if the Supplier fails to mark the Order number clearly on each package, packing notes, invoices and any other relevant correspondence;
  - 8.5.3 if the parties disagree in respect of the price to be paid by Intertek for the Goods;

- 8.5.4 pending resolution of the dispute, in the event that there is a dispute with the Supplier over any Order and such disagreement is genuine; or
- 8.5.5 where an invoice does not meet the Invoice Requirements.
- 8.6 Intertek may offset any amount owing to it by the Supplier against any amount owed to the Supplier by Intertek without limiting its other rights or remedies.

## **9. DEFECTIVE GOODS DELIVERY**

- 9.1 During the Warranty Period (as defined in Condition 11.1), where Intertek reasonably considers that any Goods which have been provided fall short of the agreed or specified standard for such Goods (or, where no standard has been agreed or specified, a standard in line with market best practice) then, in addition to any other remedies Intertek may have in law, it may, at its option:
  - 9.1.1 require the Supplier to re-supply (or procure the re-supply) or repair of Goods which meet the agreed or specified standard for such Goods (or, where no standard has been agreed or specified, a standard in line with market best practice) in all respects; or
  - 9.1.2 reject the Goods and be reimbursed any monies paid in relation to such Goods.
- 9.2 If the circumstances described in condition 9.1 have arisen, and Intertek has elected the option described in condition 9.1.1, and the Supplier fails to supply (or repair) Goods which meet the agreed or specified standard for such Goods (or, where no standard has been agreed or specified, a standard in line with market best practice) within five (5) Working Days, Intertek may, at its option and without prejudice to any other remedies it may have:
  - 9.2.1 request a refund from the Supplier of any money already paid for the defective supply of Goods, and the Supplier shall not unreasonably challenge or withhold any such refund; or
  - 9.2.2 purchase replacement goods from an alternative supplier at the Supplier's risk and expense.
- 9.3 The Supplier will indemnify Intertek, its agents, employees, subsidiaries, associated companies and assigns in respect of all loss, liability and cost directly or indirectly arising, and against any legal liability in respect of injury to persons (including our employees) or damage to property, howsoever caused, including any such loss and/or damage incurred as a result of defective Goods delivery in any way, whether the defect arises from any default (including negligence) on the part of the Supplier or his employees, contractors or agents or otherwise.
- 9.4 Where the supply of Goods involves the delivery to meet particular deadlines, then the Supplier and Intertek shall seek to agree appropriate compensation to compensate Intertek for any delays that might occur in meeting such deadlines.

## **10. PERSONNEL**

- 10.1 The Supplier shall be responsible for all acts or omissions of the Personnel, its subcontractors, agents and other representatives (and their respective employees, subcontractors, agents and other representatives) at all times.
- 10.2 The Personnel shall be regarded at all times as employees agents or subcontractors of the Supplier and no relationship of employer and employee shall arise between Intertek and any Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by Intertek.
- 10.3 The Supplier shall procure that it carries out any necessary Criminal Records Bureau checks, security checks and other vetting or clearance procedures upon the Personnel which may be required by Intertek from time to time depending upon the circumstances of the supply of Goods and the use to which the Goods may be put.
- 10.4 The Supplier shall use reasonable endeavours to avoid changes in the Personnel assigned to Intertek projects (unless any specific change is required by Intertek or its customer). In particular, but without limitation to the generality of the foregoing, the Supplier shall seek to maintain key members of the Personnel (supervisors, managers, and similar Personnel) in the same post during the performance of this Contract.
- 10.5 The Supplier shall ensure that the Personnel abide by all of the provisions of this Contract which impose obligations on them.

## **11. WARRANTY AND LIABILITY**

- 11.1 The Supplier warrants that on delivery and for a minimum period of twenty-four (24) months from the date of delivery or, as the case may be, from the date of installation ("**Warranty Period**"):
  - 11.1.1 the Goods will correspond to their description and will conform to the specifications referred to in the Order as to quantity, quality and description and any other specifications, requirements, Scope of Work or instructions made known to the Supplier;
  - 11.1.2 the Goods will be of satisfactory quality, fit for purpose, of good materials and workmanship and substantially free from defects and in this respect, Intertek relies on the Supplier's skill and judgment;
  - 11.1.3 the design, construction and quality of the Goods will comply with any relevant statutory rules or regulations in force at the time of delivery including PRC safety standards and Chinese Standards;
  - 11.1.4 it will supply the Goods in accordance with the terms of the Order, with reasonable care, skill and diligence, using properly experienced and qualified people; and
  - 11.1.5 the Goods will comply with all relevant laws and regulations, orders, rules and codes of practice which may be in force relating to the Goods; and
  - 11.1.6 it has taken all reasonable steps to ensure that the information contained in the Intertek Supplier Evaluation Questionnaire or equivalent that has been submitted to Intertek, is true and accurate; and

- 11.1.7 it has the power to grant to Intertek a licence to use Intellectual Property and Software, as set out in Condition 14.4;
- 11.1.8 all Goods and Software that the Supplier provides to Intertek under any Order shall not (when used for purposes that may reasonably be anticipated given the nature of the Goods and Software and the nature of Intertek's business interests) infringe the Intellectual Property rights of any third party;
- 11.1.9 where the Software is licensed directly to Intertek by a licensor of the Supplier, the Supplier will procure for Intertek rights in all respects no less favourable than those it would have granted had it granted the rights directly under the express licence at Condition 14.4;
- 11.1.10 where appropriate, at the time of installation the Software will be free from viruses, worms, time locks or anything else that would impair performance of the Software as it might reasonably be expected to operate on the Goods;
- 11.1.11 the Supplier will allow Intertek, at any time within twenty-four (24) months from the date of delivery or installation (if appropriate) of the Goods, to enter into a maintenance agreement with the Supplier for the Goods (together with any relevant Software) in all respects on the Supplier's standard conditions (including without limitation as to price and duration) ("**Maintenance Agreement**");
- 11.1.12 in the event that, after the Warranty Period, Intertek decides to terminate the Maintenance Agreement, Intertek shall have the right to maintain the Goods and any Software itself, or by or through any third party, and in such circumstances the Supplier shall extend the licence set out in Condition 14.4 to the extent reasonably required to enable maintenance of the Software. Nothing herein shall, however, require Supplier to disclose any confidential source code information to Intertek or any third party; and
- 11.1.13 where necessary, the Supplier will provide Intertek with the standard user manuals and product documentation for the Goods (and any incorporated Software) without further charge.
- 11.2 The Supplier will pass on to Intertek the benefit of any additional warranties secured from the Supplier's suppliers.
- 11.3 The Supplier is liable for damage to or loss of Intertek's or third party's property arising from the performance or non-performance of the Supplier's obligations under any Contract.
- 11.4 The Supplier will indemnify Intertek, its agents, employees, subsidiaries, associated companies and assigns in respect of all loss, liability and cost directly or indirectly arising from:
  - 11.4.1 any alleged or actual infringement of any intellectual property right owned by a third party resulting from the purchase, use or resale by Intertek, its agents, employees, subsidiaries, associated companies, customers and assigns of the whole or any part of the Goods; and/or
  - 11.4.2 any act or omission in the performance or non-performance of or in connection with the obligations undertaken by the Supplier pursuant to a

Contract, whether due to the negligence of the Supplier, its agents, employees or sub-contractors or otherwise, including, without limitation, any loss, liability or cost arising from an injury to a person but excluding any loss, liability or cost arising directly from Intertek's negligence.

- 11.5 Nothing in this Contract (or any Order or Scope of Work) shall operate to exclude or restrict either party's liability for:
- 11.5.1 death or personal injury resulting from negligence; or
  - 11.5.2 fraud or deceit; or
  - 11.5.3 any claim for, relating to or arising out of any infringement of Intellectual Property Rights; or
  - 11.5.4 any other liabilities that cannot lawfully be limited or excluded.
- 11.6 The rights and remedies of Intertek provided in these Conditions are cumulative and are not exclusive of any rights or remedies provided at law or in equity.

## **12. CONFIDENTIALITY**

- 12.1 All Confidential Information given by one Party to the other, or otherwise obtained or developed by one Party relating to the other, shall be kept secret and confidential by the receiving Party throughout the term of this Contract and for the five (5) years following its termination or expiry and shall not be used or disclosed other than for the purposes of the proper performance of this Contract or with the prior written consent of the other Party.
- 12.2 The Supplier shall not without the prior written consent of Intertek publicise details of the business relationship between the parties. For the avoidance of doubt, the Supplier shall have no rights to use Intertek's name, trade names, product names, trade marks or logos.
- 12.3 Condition 12.1 does not apply to information which:
- 12.3.1 is at the date of disclosure or becomes at any time after that date publicly known other than by the Supplier's breach of this Condition;
  - 12.3.2 can be shown by the Supplier to Intertek's satisfaction to have been known by the Supplier before disclosure by Intertek to the Supplier;
  - 12.3.3 was independently disclosed to it by a third party entitled to disclose the same; or
  - 12.3.4 is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.

## **13. INTERTEK'S PROPERTY**

- 13.1 All Physical Property will at all times be and remain the exclusive property of Intertek and will be held by the Supplier in safe custody (at the Supplier's own risk and expense) and maintained and kept in good condition by the Supplier until returned to Intertek. Intertek may request the return of Intertek's Physical Property at any time

and in any event the Supplier will promptly return Intertek's Physical Property once the Order has been fulfilled or cancelled at the cost of the Supplier. Intertek's Physical Property will not be disposed of or used other than in accordance with Intertek's written instructions. Unless and until incorporated into any Goods the Supplier will keep Intertek's Physical Property separate and apart from all other property and clearly marked as the property of Intertek.

- 13.2 Intertek may take possession of its Physical Property at any time and (where necessary) without reasonable notice.
- 13.3 The Supplier agrees to waive any and all lien that it might otherwise have (at the date of the Order or following the Order) on any of Intertek's Physical Property although this will not mean that the Supplier has waived any other right of recovery of any charges which may be due under the Contract.

#### 14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 All drawings, designs, specifications and other information supplied by Intertek, or any member of the Intertek Group, for the purpose of quotation or in connection with an Order ("**Intertek IP**") remains the Intellectual Property of Intertek and must not be used, copied or disclosed to any third person (in each case whether in whole or part) without Intertek's written permission. The Supplier is granted a limited licence to use the Intertek IP for the purposes of fulfilling the Order only, such licence lasting no longer than the period during which the Supplier is working to fulfil the relevant Order. Upon completion of such work, this licence shall end and the Supplier shall (at Intertek's option) return or destroy all Intertek IP.
- 14.2 Each Party agrees and acknowledges that it is the intention of both parties that all Intellectual Property arising or created in anticipation of, under, in connection with or as a result of the supply of Goods (the "**New IP**") shall vest in Intertek. To the extent that any New IP vests in the Supplier, then the Supplier:
  - 14.2.1 hereby assigns all New IP already created to Intertek;
  - 14.2.2 hereby assigns all future copyright in any New IP to Intertek; and
  - 14.2.3 agrees, at the Supplier's own cost, to perform any act or execute any document which Intertek considers to be reasonably necessary to assign any New IP to Intertek or otherwise confirm that all New IP vests in Intertek or ensure that Intertek enjoys the rights in the New IP which are equivalent to exclusive ownership where assignment is not possible for any reason.
- 14.3 The Supplier hereby holds harmless and indemnifies Intertek and members of the Intertek Group (in each case including their respective offices, employees, contractors and agents other than the Supplier) (the "**Indemnified Persons**" for the purposes of this Condition) against any direct or indirect liability, costs and expenses incurred or sustained by Intertek and/or any member of the Intertek Group arising out of or due to:
  - 14.3.1 any breach by the Supplier of any of its obligations contained in this Condition; or
  - 14.3.2 the Supplier directly or indirectly using the Intertek name or the Intertek logo or in any way representing that it is associated with Intertek and/or any

member of the Intertek Group (whether or not such usage or representation has been approved by Intertek).

- 14.4 The Supplier shall grant (or shall procure that the relevant third party shall grant) Intertek a royalty-free, non-exclusive, worldwide licence to use Intellectual Property or Software to the extent that Intertek requires such Intellectual Property or Software provided alongside the Goods or in order to use or reasonably enjoy the Goods. Intertek shall be entitled to sub-licence to members of the Intertek Group or service providers to Intertek or members of the Intertek Group provided that such service providers shall only use the sub-licence to the extent reasonably required in the course of providing services to Intertek or members of the Intertek Group.
- 14.5 The Supplier hereby indemnifies and agrees to keep indemnified Intertek and any member of the Intertek Group against all costs, losses, damages, expenses and liabilities suffered or incurred by Intertek and/or any member of the Intertek Group arising from or in connection with any third party claim that Intertek receipt, use or resale of the Goods or use of the Intellectual Property rights licensed to or made available to Intertek under this Contract infringes the Intellectual Property rights owned or licensed to that third party.
- 14.6 This Condition 14 shall survive termination or expiry of this Contract.

## 15. INSURANCE

- 15.1 The Supplier will at all times and at its expense effect and maintain full cover with a reputable insurance company in respect of all insurable liabilities under any Contract and in respect of the Goods including, without limitation against all the Supplier's liabilities under Condition 14.1. For example, but not limited to, professional indemnity insurance, product liability insurance and public liability insurance. The Supplier shall also keep itself insured with a reputable insurer for use of Intertek's Physical Property.
- 15.2 The Supplier will maintain insurance of a type and level appropriate to the size and value of the Contract. The insurance requirements may vary from time to time and between Contracts but the following minimum requirements will apply except when Intertek notifies the Supplier otherwise in writing:
- Professional Indemnity not less than RMB[*insert amount based on estimate of scale and size of potential liabilities of Supplier*];
  - Product liability not less than RMB[*insert amount based on estimate of scale and size of potential liabilities of Supplier*];
  - Public liability not less than RMB[*insert amount based on estimate of scale and size of potential liabilities of Supplier*].
- 15.3 Intertek may request reasonable written evidence that the Supplier has such insurance in place at any time, and the Supplier will provide such evidence promptly. If the Supplier fails to maintain such insurance, Intertek may procure such insurance on its behalf and shall be reimbursed by the Supplier for all costs arising in connection with the arrangement of such insurance, including any premiums paid or payable.

- 15.4 The Supplier will provide all facilities, assistance and advice requested by Intertek or Intertek's insurers for the purpose of contesting or dealing with any action claim or matter arising out of the Supplier's performance or non-performance of a Contract.

## **16. ANTI-CORRUPTION PROVISIONS**

- 16.1 The Supplier represents and warrants that, in connection with any matter, action or thing in relation to this Contract, except for any lawful expenditures that are expressly permitted by law and the terms of this Contract, the Supplier and its officers, employees or representatives have not, whether directly or indirectly, offered, paid or given, promised to pay or give, or authorised the payment or conferment of, and will not, whether directly or indirectly, offer, pay or give, promise to pay or give or authorise the payment or conferment of, any benefit of any nature whatsoever;
- 16.1.1 to any person who is an official, agent, officer, employee or representative of any government, including any department, agency, or instrumentality thereof, and any person acting in an official capacity thereof or on behalf thereof;
- 16.1.2 to any member of the Intertek or the Intertek Group, any prospective member of the Intertek Group or their respective officers or employees;
- 16.1.3 to any political party or any official of any political party;
- 16.1.4 to any candidate for political office;
- 16.1.5 to any member of the international organisations, such as the World Trade Organisation, the World Bank, the International Monetary Fund etc;
- 16.1.6 to any member of any royal family; or
- 16.1.7 to any other person while knowing or suspecting or having reason to know or suspect that any portion of such benefit may be offered, given or promised, whether directly or indirectly, to any such persons.
- 16.2 The Supplier represents and warrants that no benefit of any nature whatsoever has been or will be requested or accepted or paid or given by the Supplier, its officers, employees or representatives, whether directly or indirectly, where the intention was, or is, unlawfully to influence any person in order to assist Intertek or any member of the Intertek Group in obtaining or retaining for or with, or directing business to, any person.
- 16.3 The Supplier represents and warrants that any benefit paid or given by the Supplier, its officers, employees or representatives which is permissible under applicable laws nevertheless will also be:
- 16.3.1 consistent with accepted business ethics and practices;
- 16.3.2 of such limited value as not to represent a risk that it will be construed as a bribe or pay off or kick back or any other form of improper inducement or corrupt payment;
- 16.3.3 consistent with applicable social and ethical standards; and

- 16.3.4 of such a nature and value that disclosure of it will not cause (or be likely to cause) embarrassment to any member of Intertek or any other company within the Intertek Group.
- 16.4 The Supplier warrants and represents that it is familiar with the requirements of the UK Bribery Act 2010, Foreign Corrupt Practices Act of the United States of America and the Anti-Terrorism Crime and Security Act of the United Kingdom and similar and relevant PRC laws and regulations, and will operate within the requirements thereof at all times during the life of this Contract.
- 16.5 In addition, the Supplier shall:
- 16.5.1 inform Intertek immediately upon any changes in political or personal circumstances which may affect its ability to comply with any of its capabilities or contractual obligations;
- 16.5.2 be prepared to seek as well as diligently and closely follow instructions from Intertek and adhere fully to the Intertek Group.
- 16.6 The Supplier represents and warrants that this Contract and the relationship created hereby between Intertek and the Supplier does not (and will not) violate any laws of any country, including laws relating to elections.

## **17. TERMINATION**

- 17.1 Intertek is entitled to cancel the whole or any part of a Contract or Order at any time (without further liability to the Supplier) by written notice to the Supplier if:
- 17.1.1 the Supplier breaches any of the terms or conditions of the Contract;
- 17.1.2 the Supplier is acquired by or merges with any third party;
- 17.1.3 a meeting is convened, a petition presented, an order made, an effective resolution passed, or notice is given for the Supplier's winding up or dissolution (other than for the sole purpose of amalgamation and reconstruction); or
- 17.1.4 an application is made for, or any meeting of the Supplier's directors or members resolves to make an application for an administration order in relation to it or any Party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed; or
- 17.1.5 an incumbrancer takes possession, or a receiver or manager or administrative receiver is appointed, of the whole or any part of the Supplier's assets; or
- 17.1.6 the Supplier ceases or suspends payment of any of its debts or is unable to pay its debts as they fall due; or
- 17.1.7 a proposal is made for a composition in satisfaction of the Supplier's debts or a scheme or arrangement of its affairs including a voluntary arrangement; or

- 17.1.8 any similar step or proceeding to those in Conditions 17.1.2 to 17.1.8 inclusive, is taken or made in any other jurisdiction.
- 17.2 Without prejudice to any rights which have accrued under a Contract or Order, or any of its rights or remedies, Intertek may terminate the Contract for any reason or no reason by not giving less than 30 days' notice in writing to the Supplier.
- 17.3 The Supplier shall (at Intertek's option) return or destroy all Intertek IP, New IP and Confidential Information, upon termination at the cost of the Supplier.
- 17.4 The Supplier shall co-operate with Intertek as Intertek may reasonably require in connection with the completion of Intertek's post-completion evaluation processes, and shall supply any information Intertek requests in order to complete its post-completion evaluation questionnaire.

## **18. LICENCES AND CONSENTS**

If a licence or consent of any government or other authority is required for the supply or carriage of the Goods or performance of any related services, the Supplier will obtain such licence or consent at its own expense and produce evidence of it to Intertek on demand.

## **19. ASSIGNMENT AND SUBCONTRACTING**

- 19.1 The Supplier may not assign, subcontract or deal in any way with all or any part of the benefit of, or its rights or benefits under, a Contract without the prior written consent of Intertek.
- 19.2 The Supplier will not be relieved of from any liabilities or obligations under a Contract, regardless of any consent given by Intertek in accordance with Condition 19.1, and will be responsible for all acts, omissions, breaches and neglect of any subcontractor, his employees or agents in all respects as if they were the acts, omissions, breaches or neglect of the Supplier.

## **20. NOTICES**

- 20.1 Any notice given by one Party to the other in connection with a Contract must be in writing and may be delivered personally or by a pre-paid recorded postal service to that Party at its registered office and in the case of post will be deemed to have been given two Working Days after the date of posting.
- 20.2 Notices shall be delivered or sent to the last known addresses of the parties or to any other address notified in writing by one Party to the other for the purpose of receiving notices in connection with a Contract.
- 20.3 Notices served on Intertek are to be addressed to the address specified in the Order, and any notice intended for Intertek shall not be validly given unless so addressed.

## **21. UNFORESEEN EVENTS**

- 21.1 For the avoidance of doubt, except as specified in this Condition, nothing shall excuse the Supplier from any performance obligations under these Conditions.
- 21.2 Where an Unforeseen Event occurs which prevents the Supplier from performing one or more of its obligations under this Contract, then the Supplier shall only be relieved

of its liability under these Conditions if the Supplier has taken all reasonable steps to mitigate any loss or any consequences of that Unforeseen Event, and still cannot perform its obligations under the Contract and in accordance with these Conditions.

- 21.3 The Supplier must seek to implement all reasonable mitigation strategies and workarounds during the period of the Unforeseen Event, making partial performance against its obligations where possible unless directed otherwise in writing by Intertek.
- 21.4 If the Supplier is unable to perform any of its obligations under this Contract for a continuous period of more than five (5) days by reason of an Unforeseen Event then Intertek may cancel the Contract without further liability to the Supplier. Cancellation shall be without prejudice to any rights Intertek may have to recover from the Supplier for any loss suffered by Intertek because the delivery date was, actually or prospectively, not met. If the supply of Goods involves more than one delivery, cancellation will at Intertek's discretion be of whole or part of the Order.
- 21.5 Intertek reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of Goods if it is prevented from or delayed in the carrying on of its business as a result of an Unforeseen Event.

## **22. SEVERANCE**

- 22.1 If any of these Conditions is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other Conditions which shall remain in full force and effect.
- 22.2 If any of these Conditions is so found to be invalid or unenforceable but would cease to be invalid or unenforceable if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid and enforceable.

## **23. THIRD PARTIES**

Except for members of the Intertek Group, a person who is not Party to a Contract shall have no rights under the Contract (Rights of Third Parties) to enforce any term of such Contract. This Condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that act.

## **24. WAIVER**

The rights and remedies provided by any Contract may be waived only in writing specifically, and any failure to exercise or any delay in exercising a right or remedy by Intertek shall not constitute a waiver of that right or remedy or of any other rights or remedies. A waiver of any breach of any of the terms of a Contract or of a default under a Contract shall not constitute a waiver of any other breach or default and shall not affect the other terms of such Contract.

## **25. VARIATION**

- 25.1 No variation or alteration of any of the provisions of a Contract or an Order shall be effective unless it is in writing and signed by or on behalf of each Party.
- 25.2 Any agreed variation or alteration of any of the provisions of a Contract or Order in accordance with Condition 25.1 above will be subject to the requirements of Condition 3.

**26. GOVERNING LAW AND JURISDICTION**

26.1 This Contract shall be governed by and construed in all respects in accordance with PRC laws and, except as specified in Condition 26.2, each Party hereby submits to the exclusive jurisdiction of the PRC courts in the location where the Intertek entity to which the Goods are physically delivered or should be so delivered resides.

26.2 Nothing in this Contract shall prevent either Party bringing an action in any jurisdiction:

26.2.1 for injunctive relief or specific performance (or any similar remedies available in the relevant jurisdiction) in connection with any Intellectual Property infringement or any breach of confidence (including a breach of Condition 12); or

26.2.2 to enforce any judgement previously awarded by the PRC courts.

**27. LANGUAGE**

27.1 These Conditions are written in both the English and the Chinese languages. In the case of inconsistency the English version shall control.