

INTERTEK CHINA
TERMS AND CONDITIONS FOR PURCHASE OF SERVICE

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 Services 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, 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 Services made by or on behalf of Intertek with the Supplier and which is subject to these Conditions;

"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 services of a similar nature to the Services;

"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 provision of the Services 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 supply of Services which has been placed in accordance with Condition 3 below and which is subject to these Conditions;

"Personnel" means the employees, agents and approved subcontractors of the Supplier who are assigned to perform the Services;

"Personnel Liability" means all claims (including but not limited to claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal, discrimination on the grounds of sex, sexual orientation, race, religion, belief or disability discrimination, equal pay, less favourable treatment of part-time workers and fixed term employees, and any claims whether in tort, contract or statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including without limitation any investigation by any law enforcement, regulatory or supervisory body and of implementing any requirements which may arise from any such investigation) and legal costs and expenses;

"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 Services;

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

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

"Services" means the services to be supplied in accordance with the requirements, Scope of work, standards, timing and deadlines and other details notified by Intertek (or as Intertek otherwise accept in writing), and any services which are reasonably ancillary to such services; and where any requirement, specification, or standard has not been fully specified then any unspecified element shall be that which would be then-current Good Industry Practice in the relevant market; and where any timing or deadline has not been specified it shall be taken to be as soon as is reasonably practicable;

"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 or contractor to whom an Order is addressed;

"Term" means for the term as specified in the Order when accepted by the Supplier or the period from the Effective Date until the date that all Services under this Contract have been provided if no term is specified;

"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 Services 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, specification 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 Services 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 Services 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 Any offer by the Supplier to provide Services to Intertek is deemed to be an offer to supply such Services subject to these Conditions and the relevant Scope of work. The Order is an acceptance by Intertek of the Supplier's offer to provide Services in accordance with these Conditions, and the relevant Scope of work.
- 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; or
 - 3.2.2 the first date following confirmation in writing from Intertek to the Supplier that all aspects of the Scope of work are agreed and accepted upon which the Supplier commences or completes an act that is consistent with fulfilling the Order or providing (in whole or in part) the Services.
- 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 work of the Services 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 a particular element of the Services has been agreed, that shall form part of the Contract.

4. SUPPLY OF SERVICES

- 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 Services to Intertek for the Term 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 performance dates for the Services.
- 4.3 The Supplier shall provide the Services in accordance with:
 - 4.3.1 the requirements set out in the Order, Scope of work and any other relevant documentation describing the Services. If any conflict arises between the Order, Scope of work and any other relevant documentation describing the Services, 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 Services.
- 4.3.2 any agreed timetable and shall meet all agreed deadlines, and in any event shall provide the Services 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 providing the Services, the Supplier will:
 - 4.4.1 perform the Services with the best care, skill and diligence in accordance with the 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 Services 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 labour, equipment, tools and vehicles and such other items as are required to provide the Services;
 - 4.4.5 use the best quality goods, materials, standards and techniques, and ensure that all goods and materials supplied and used in the Services or transferred to Intertek, 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 Services are performed;
 - 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 Services;
 - 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 or act on the Services.
- 4.5 The Supplier warrants, represents and undertakes on an ongoing basis that:
- 4.5.1 the provision of the Services to Intertek, and Intertek's use of the Services will not infringe any Intellectual Property Rights of any third party;
 - 4.5.2 at all times the Supplier will perform the Services in compliance with all applicable laws and shall ensure that the Services shall comply with any applicable law; and
 - 4.5.3 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.
- 4.6 Intertek may propose changes to the Services 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 Services to be supplied, then the Charges shall be reduced accordingly. Where the change increases the scope, volume, complexity or risk of the Services 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.
- 4.7 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 Services) to Intertek and all members of Intertek's Group. A copy of Intertek's Code of Ethics is available at www.intertek.com.

5. TESTING AND ACCEPTANCE

- 5.1 The Services must conform to these Conditions, the Order, the Scope of work and any other relevant document describing the Services, as agreed in the Contract.
- 5.2 The Supplier must ensure that the Services correspond with standards (PRC, International or industry) when indicated on the Scope of works 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 outputs from the Services or Services being provided at any reasonable time before the provision of Services is completed 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 Services are supplied. Any inspection by Intertek does not relieve the Supplier of any liability nor does it imply that Intertek has accepted the Services or any outputs or deliverables.

- 5.4 If, when the outputs from the Services or Services being provided are inspected or tested, Intertek (or any representative of Intertek), in its reasonable opinion, believes that the Services 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 Services 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 5.3, 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 Services by Intertek.
- 5.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services for a period of seven years after the expiry or termination of the Agreement, and shall allow Intertek to inspect such records at all reasonable times on request.
- 5.8 To the extent that any element of the Services is in the nature of an implementation, installation, deployment or other service which results in the delivery of deliverables or outputs intended for use by Intertek, Intertek shall have the right to carry out such tests as Intertek may reasonably determine upon such deliverables or outputs to determine whether they meet 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 any outputs and deliverables from the Services shall pass to Intertek when delivered (or, where the purchase of Services includes installation, title shall pass upon delivery but risk shall pass upon completion of installation when the outputs and deliverables are deemed fully installed and commissioned by Intertek), without prejudice to any rights which Intertek may have to reject the provision of Services under these Conditions or otherwise.
- 6.2 If the Supplier postpones the supply of Services for any reason, then title and risk to any outputs and deliverables from the Services will pass to Intertek on the date of actual delivery (or when the outputs and deliverables are deemed fully installed and commissioned by Intertek where the purchase of Services includes installation).

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 Services (or each element of the Services as applicable) shall be specified in the Order and if no price is quoted, the price which is set out in the Supplier's published price list at the time the Contract was made shall be applicable.
- 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 Supplier's performance of the Services (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 performance of the Services. If any unforeseen problems or expenditure arise in the course of carrying out any of the Services the Supplier shall not be entitled to make additional charges to cover additional time and cost necessarily incurred to complete the Services.
- 7.4 Each invoice submitted to Intertek for payment shall be in respect of the Services carried out 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 Services within 90 days of the end of the month within which those Services were performed. Where an invoice for Services is not received within such 90 day period, then the Supplier waives its right to invoice or otherwise charge for the relevant Services.
- 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 Services 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 service credits, delay credits or other price reductions related to Service failures which 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 the Services are supplied.
- 7.10 Any variation to the Charges must be agreed in writing between the parties before the provision of Services are carried out.

8. PAYMENT

- 8.1 Intertek will pay only for the Services specified in the Order.
- 8.2 Intertek will withhold payment amounting to 10% of the value of the Services for a period of 12 months from the end of the Term. Subject to any claim or right of set-off that Intertek may have under this Contract or any other contract, agreement or arrangement between the Supplier and Intertek or any member of the Intertek Group, Intertek will pay the Supplier the outstanding balance upon expiry of that 12 month period.
- 8.3 Where:
- 8.3.1 the Services have been performed properly and in accordance with the Contract (including quality requirements and specifications set out in these Conditions and the relevant Order, but not limited to this list); and
 - 8.3.2 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.
- 8.4 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.
- 8.5 Where Intertek disputes any payment in good faith Intertek will not incur penalty for delay in or failure to make payment.
- 8.6 Intertek may withhold payment (but without incurring interest or losing any prompt payment discount, where applicable):
- 8.6.1 if the parties disagree in respect of the price to be paid by Intertek for the Services;
 - 8.6.2 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

8.6.3 where an invoice does not meet the Invoice Requirements.

8.7 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 SERVICE DELIVERY

9.1 During the Warranty Period (as defined in Condition 11.1), where Intertek reasonably considers any Services which have been provided to fall short of the agreed or specified standard for such Services (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 promptly re-perform (or procure re-performance of) the Services to the agreed or specified standard for such Services (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 Services and be reimbursed any monies paid in relation to such Services.

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 rectify the Services within five 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 Services, and the Supplier shall not unreasonably challenge or withhold any such refund; or

9.2.2 purchase replacement services 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 the supply of defective Services 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 Services, or any element of the Services, is of a continuing nature, the Supplier and Intertek shall seek to agree appropriate service levels which those elements of the Services must meet or exceed, backed by an appropriate set of service credits (applied as a price adjustment mechanism based upon a genuine pre-estimate of the diminution in value of the Services to Intertek, and not as a penalty).

9.5 Where the Services involve the delivery of outputs or deliverables to meet particular deadlines, then the Supplier and Intertek shall seek to agree appropriate delay credits 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 Services and the use to which the Services 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.
- 10.6 Intertek reserves the right to refuse to admit, or remove from, any premises occupied by or on behalf of it, any Personnel whose admission or presence would, in Intertek opinion be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Intertek's own staff provided that Intertek notifies the Supplier of any such refusal (with reasons why). The exclusion of any such individual from such premises shall not relieve the Supplier from the performance of its obligations under this Contract.
- 10.7 If and when directed by Intertek, the Supplier shall provide a list of the names and business addresses of all persons who may require admission to the Intertek Sites or any other Intertek premises in connection with the performance of the Services under this Contract, specifying the capacities in which they are entering such premises and giving such other particulars as Intertek may reasonably require. Failure by the Supplier to comply with the provisions of this Condition within a reasonable time of written notice to do so will entitle Intertek to refuse admission to any site to any person who has not been notified to Intertek.
- 10.8 The Supplier will indemnify and hold Intertek and each of its Affiliates harmless on written demand in respect of all losses, damages, costs and expenses and other liabilities (including legal fees, disbursements and expenses) incurred by or awarded against Intertek in connection with any claim that any Personnel are or were employees or workers of Intertek save in circumstances where Intertek offers to employ the Personnel.
- 10.9 In the event that any current or future employee or worker of the Supplier or its Group members or any sub-contractor to the Supplier or the Supplier's Group member asserts for any reason that they are or became employees of Intertek, then in such circumstances each Party shall notify the other in writing as soon as reasonably practicable upon becoming aware of the same. The Supplier shall indemnify Intertek and keep it fully and effectively indemnified against any and all losses, costs, expenses, judgments, decisions, termination payments or other payments whatsoever

incurred by Intertek, whether in respect of remuneration and Personnel Liabilities or otherwise, payable to such Personnel (including, without limitation, notice pay, arrears of wages, accrued holiday pay and redundancy pay).

10.10 On termination (for whatever reason) or expiry of this Contract:

10.10.1 if any Personnel transfer or claim to transfer to the employment of Intertek, any Intertek Group member or any third party contractor (the "**New Contractor**") the Supplier shall indemnify Intertek, Intertek Group members and the New Contractor and keep Intertek, Intertek Group members and the New Contractor fully and effectively indemnified against any and all losses, costs, expenses, judgments, decisions or other payments whatsoever incurred by Intertek, Intertek Group members or the New Contractor whether in respect of remuneration or holiday pay accrued prior to such transfer, or in respect of any Personnel Liabilities or other claim brought by or on behalf of Personnel arising out of any act or omission of the Supplier prior to such transfer;

10.10.2 the Supplier shall forthwith upon request by Intertek, Intertek Group members or the New Contractor at any time provide to Intertek, Intertek Group members or the New Contractor any information pertaining to the Personnel or their employment as may be reasonably required. The Supplier hereby acknowledges and agrees that the information so provided may be released to others in connection with the tendering or re-tendering of the Services or any part thereof which are the subject of this Contract at any time prior to termination of this Contract.

10.11 The Supplier shall indemnify Intertek and keep Intertek fully indemnified from and against all claims by Personnel arising out of the failure of the Supplier to comply with any obligations.

10.12 The indemnities in this Condition shall continue notwithstanding the expiry or earlier termination of this Contract for whatever reason.

11. WARRANTY AND LIABILITY

11.1 The Supplier warrants that on completion of the Services and for a minimum period of twenty-four (24) months from the date of completion or, as the case may be, from the date of completion of the Services ("**Warranty Period**"):

11.1.1 the Services will conform to the specifications referred to in the Order as to their description and any other specifications, Scope of Work, requirements or instructions made known to the Supplier;

11.1.2 the outputs and deliverables from the Services 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 provision of the Services will comply with any relevant statutory rules or regulations in force at the time of performance including PRC safety standards and Chinese Standards;

- 11.1.4 it will provide the Services in accordance with the terms of the Order, with reasonable care, skill and diligence, using properly experienced and qualified people; and
- 11.1.5 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.
- 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 and/or any 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 Services; 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 or where the Supplier has performed the Services strictly in accordance with specifications supplied by Intertek.
- 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 AND DATA PROTECTION

- 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.
- 12.4 Each Party shall, at all times, comply with all and any data protection laws and regulations of the PRC and all subordinate and related legislation and guidelines that may apply from time to time as if that Party were based in the PRC and fully subject to such legislation (regardless of where that Party may be established or where the Services may be provided). The terms "personal data"; "data subject"; "data controller"; "data processor"; "processing"; and any related terms; when used in this Condition 12, shall each bear the meaning given to such terms in the DPA
- 12.5 The Supplier shall, at Intertek's request, provide such reasonable assistance as Intertek may request in order for Intertek to comply with its obligations under the DPA. Where the Supplier incurs material costs in complying with any request from Intertek under this Condition which is outside the scope of the Services it shall be entitled to be reimbursed those costs by Intertek.
- 12.6 When processing personal data in respect of which Intertek is the data controller, the Supplier shall comply with its obligations as a data processor under the DPA and shall:
 - 12.6.1 only process that personal data for the purpose of performing its obligations under this Contract and in accordance with any reasonable instructions received from Intertek from time to time;
 - 12.6.2 implement appropriate technical and organisational measures to protect such personal data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;
 - 12.6.3 where the Supplier is based within the European Economic Area, and the Services will be carried out entirely within the European Economic Area, not send any of the personal data outside of the European Economic Area without the Intertek's specific prior written consent;

- 12.6.4 pass any and all access requests received from data subjects relating to that personal data promptly to Intertek, and make no further response to any such access request without Intertek's specific prior written consent;
 - 12.6.5 promptly provide such reasonable assistance in accordance with Condition 12.3.3 as Intertek may reasonably require from time to time in connection with any data subject access request pertaining to any personal data to which this Condition 12.6 applies; and
 - 12.6.6 not knowingly or recklessly cause Intertek to breach any of its statutory obligations.
- 12.7 Where the Supplier is based outside the PRC or the Services are to be carried out outside the PRC, then the Supplier shall, promptly upon written notice from Intertek to do so, enter into a data transfer agreement with Intertek based upon any standard or model clauses, terms or contracts published from time to time by the competent PRC authorities (or any other body empowered under relevant laws to publish such clauses) as Intertek may determine (if any).
- 12.8 This Condition 12 shall survive termination or expiry of this Contract.

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 Services (including any outputs or deliverables) 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 Services (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 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 of the Services or use of the Intellectual Property rights licensed to or made available to the Intertek under this Contract infringes the Intellectual Property rights owned or licensed to that third party.
- 14.5 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 Services 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 Code of Ethics.
- 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 or 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.
- 17.5 The Supplier shall use all reasonable endeavours to facilitate the smooth transfer of responsibility for the Services to any new supplier or to Intertek, as the case may be, and the Supplier shall not at any time act in any way which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer. This shall include, without limitation, the transfer of all relevant data in any format reasonably required by Intertek to Intertek or any third party nominated by Intertek.

18. LICENCES AND CONSENTS

If a licence or consent of any government or other authority is required for the supply or performance of the Services or carriage of any goods relating to the 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 sub-contractor, 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 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 Services 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 Services 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 Service is provided or should be so provided 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.