



**HONG KONG Q. C. CENTER**

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## **Hong Kong Q.C. Center LTD (“HKQCC”) General Terms & Conditions**

### **General**

(a) Unless otherwise agreed in writing, all services rendered and/or contract(s) made between HKQCC, its affiliated companies or its agents (“the Company”) and client (“the Client”) in respect of factory audit and product inspection services (“the Contract”) shall be governed by these general terms and conditions (hereinafter the “General Conditions”).

(b) The Company may perform services for persons or entities (private, public or governmental) on their instructions and take them as clients.

(c) Except the Client, no other party is entitled to give instructions including but not limited to the scope of the said services as hereinafter defined or the delivery of reports or certificates resulting therefrom (the “Reports of Findings”) to the Company. The Client hereby irrevocably authorizes the Company to deliver Reports of Findings to a third party where so instructed by the Client.

### **Provision of Services**

(a) The Company will provide factory audit, product inspection, reporting and quality control related services using reasonable care and skill and in accordance with the Client's specific instructions as confirmed by the Company or, in the absence of such instructions:

1. such methods as the Company shall consider appropriate on technical, operational and/or financial grounds.

(b) The Information stated in Inspection Report is derived from the results of inspection or testing procedures carried out in accordance with the instructions of the Client, and/or from such methods as the Company shall consider appropriate on technical, operational and/or financial grounds.

(c) Inspection Reports record the results of the inspection on samples and may contain the Company's opinion on those samples only. The Client shall not take such opinions validly applied to the lot from which the samples were drawn.

(d) Should the Client instruct the Company to carry out the said services on a third party, the Client agrees that the Company's sole responsibility is to be present at the time of conducting the said services and to forward the observations and to report the incident. The Client agrees that the Company is not responsible for checking the condition or calibration of the third's apparatus, instruments and measuring devices used, the analysis methods applied, the qualifications, actions or omissions of the third party personnel and not responsible for the analysis outcomes resulting from the faults of the third party.

(e) Inspection Report issued by the Company will reflect the facts as recorded by it at the time of its intervention only and within the scope of the instructions received or, in the absence of such instructions, within the scope as the Company shall consider appropriate. The Company is under no obligation to refer to, or report upon, any facts or circumstances which are outside the specific instructions received or scope as the Company shall consider appropriate.

(f) The Company may delegate the performance of all or part of the said services to an agent(s) or subcontractor(s) and the Client authorizes the Company to disclose all information necessary for such performance to the agent(s) or subcontractor(s).

(g) Should the Company receive documents including but not limited to engagement contract(s) between the Client and third parties, copies of sale contracts, letters of credit, bills of lading and other third party documents, they are considered to be for information only and does not form part of the contract. For the avoidance of doubts, the receipts of such documents do not extend or restrict the scope of the said services or the obligations accepted by the Company.

(h) The Client acknowledges that the Company, by providing the said services, neither takes the place of Client or any third party, nor releases them from any of their obligations, nor otherwise assumes, abridges, abrogates or undertakes to discharge any duty of the Client to any third party or that of any third party to the Client.

(i) All samples shall be retained for a maximum of 12 months or such other shorter time period as the nature of the sample permits and the Company, at the Company's discretion, may return the samples to the Client or otherwise dispose of the same after which time the Company shall cease to have any responsibility for such samples.

### **Obligations of Client**

The Client warrants and will:

(a) ensure that sufficient information, instructions and documents are given in due time (in any event no less than 48 hours prior to



the commencement of the said services) to enable the required services to be performed;

- (b) procure all necessary access for the Company's representatives to the premises where the said services are to be performed and take all necessary steps to eliminate or remedy any obstacles to, or interruptions in, the performance of the said services;
- (c) supply, if required, any special equipment and personnel necessary for the performance of the said services;
- (d) ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of the said services and will not rely, in this respect, on the Company's advice on whether such measures are required or not;
- (e) inform Company in advance of any known hazards or dangers, actual or potential, associated with any order or samples or testing including but not limited to, for example, presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution or poisons;
- (f) fully exercise all its rights and discharge all its liabilities under any relevant sales or other contract with a third party and at law.

## **Fees and Payment**

- (a) Unless agreed otherwise, the Client will promptly pay the contract sum and disbursements no later than 30 days from the date of relevant invoice date (the "Due Date") to the Company failing which interest will accrue at a rate of 1.5% per month from the Due Date up to and including the date of full payment.
- (b) The Client shall not be entitled to retain or defer payment of any sums due to the Company by reasons of any alleged dispute, counter claim or set off.
- (c) The Company may elect to bring action for the recovery of unpaid fees in any court having competent jurisdiction or refer those accounts to external collection agency. The Client hereby authorizes the Company to release the particulars of the Client to the external collection agency for the purpose of collecting the debts
- (d) The Client shall pay all of the Company's collection costs, including attorney's fees and related costs.
- (e) In the event any unforeseen problems or extra expenses incurred in the course of carrying out the said services, the Company shall endeavor inform the Client and shall be entitled to charge additional fees to cover extra time and cost necessarily incurred to complete the said services.
- (f) If the Company is unable to perform all or part of the said services for any cause whatsoever outside the Company's control including but not limited the failure by the Client to comply with any of its obligations provided for in clause 3 above the Company shall nevertheless be entitled to payment of:
  - 1. the amount of all non-refundable expenses incurred by the Company; and
  - 2. a proportion of the agreed fee equal to the proportion of the said services actually carried out.

## **Suspension or Termination of Services**

The Company shall be entitled to immediately either suspend or terminate provision of the said services without liability in the event of:

- (a) failure by the Client to comply with any of its obligations herein and such failure is not remedied within reasonable time but in any event not later than 10 days after notice of such failure shall have been sent to the Client; or
- (b) any unsettled invoices/ amounts, arrangement with creditors, bankruptcy, insolvency, receivership or cessation of business by Client.

## **Liability and Indemnification**

### **(a) Limitation of Liability and Disclaimer:**

- 1. The Company is neither an insurer nor a guarantor for the Client and disclaims all liability in such capacity. The Client seeking a guarantee against loss or damage should obtain appropriate insurance.
- 2. Reports of Findings are issued on the specified instructions provided by the Client and solely for the reference of the Client. Neither the Company nor any of its officers, employees, agents or subcontractors shall be liable to the Client nor any third party for any actions taken or not taken on the basis of such Reports of Findings nor for any incorrect results arising from unclear, erroneous, incomplete, misleading or false information provided to the Company.
- 3. The Company shall not be liable for any delayed, partial or total non-performance of the said services arising directly or indirectly from events outside the Company's control including but not limited to the failure by the Client to comply with



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any of its obligations herein, act of God, force majeure.

4. The liability of the Company in respect of any claim for loss, damage or expense of any nature and howsoever arising shall in no circumstances exceed a total aggregate sum equal to 10 times the amount of the fee paid in respect of the specific service which gives rise to such claim or US\$10,000 (or its equivalent in local currency), whichever is the lesser.
5. The Company shall have no liability for any indirect or consequential loss (including loss of profits).
6. The Company shall not be liable for any claims under the following circumstances:
  - o When an inspection is proceeded for a final random inspection on the finished goods at the time when goods are not 100% finished and with less than 80% finished goods are packed or when the said services was not performed due to the fault of the Client or relevant third parties or the happening of events beyond the control of the Company.
7. In the event of any claim, the Client must give written notice to the Company within 30 days of discovery of the facts alleged to justify such claim and, in any case, the Company shall be discharged from all liability for all claims for loss, damage or expense unless a law suit is brought within one year from:
  - o the date of performance by the Company of the said services which gives rise to the claim; or
  - o the contracted date of completion but the said services was not completed.

**(b) Indemnification:** The Client shall guarantee, hold harmless and indemnify the Company and its officers, employees, agents or subcontractors against all claims (actual or threatened) by any third party for loss, damage or expense of whatsoever nature including but not limited to all legal expenses and related costs and howsoever arising relating to the performance, purported performance or non-performance, of any services.

### **Miscellaneous**

**(a)** If any one or more provisions of these General Conditions are found to be illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**(b)** During the course of providing the said services and for a period of one year thereafter, the Client shall not directly or indirectly entice, encourage or make any offer to the Company's employees to leave their employment with the Company.

**(c)** The Client agrees not to use the Company's corporate name or registered marks for advertising purposes without the Company's prior written authorization.

### **Governing Law, Jurisdiction and Dispute Resolution**

Unless specifically agreed otherwise, all disputes arising out or in connection with the contract shall be governed by the substantive laws of Hong Kong SAR.