

TIC Council Model General Terms of Business (2019)

1. General

- 1.1 Unless otherwise specifically agreed in writing [...] ("Company") undertakes to provide Client services in accordance with these general terms (the "General Terms") and accordingly, all offers or tenders of service are subject to these General Terms. All resulting contracts, agreements or other arrangements ("Agreements") with the Client for any services specified in these General Terms are in all respects governed by these General Terms, except only to the extent that the law of the place where such Agreements are made or carried out expressly preclude any of the General Terms, in which case such local law shall prevail, but only to the extent that it deviates expressly from these General Terms.
- 1.2 Any reference in any document, request for quotation, order approval or other form to any other terms or conditions to govern any services specified in these General Terms shall not be binding between the parties (and are hereby expressly rejected).

2. Company

- 2.1 The Company is engaged in Testing, Inspection and Certification (TIC). As such, it:
- provides such standard services as are referred to in article 4.1;
 - provides advisory and special services as may be agreed between the parties as referred to in article 4.2; and
 - may issue reports or certificates as referred to in article 4.3, 4.4 and 4.5.
- 2.2 The Company provides its services to the companies, persons or bodies from which the instructions to act have originated ("Client"). No other party is entitled to give instructions, particularly on the scope of inspection or delivery of report or certificate, unless so authorised by the Client and agreed by the Company. The Company shall be deemed to be irrevocably authorised to issue at its discretion the report or the certificate to a third party in case of instructions or undertaking by the Client to such third party or if such instruction or promise implicitly follows from circumstances, trade custom, usage or practice.
- 2.3 The Company shall provide services in accordance with:
- the Client's specific instructions as confirmed by the Company;
 - the terms of the Company's Standard Order Form and Standard Specification Sheet if used;
 - applicable TIC Council Codes of conduct or any relevant trade custom, usage or practice; and
 - such methods as the Company may consider appropriate on technical, operational or financial grounds.

3. Information

- 3.1 All enquiries and orders for the provision of services must be accompanied by sufficient information specifications and instructions enabling the Company to evaluate and perform the services.
- 3.2 Documents reflecting engagements contracted between the Client and third parties, or third parties' documents, such as copies of contracts of sale, letters of credit, bills of lading, etc. (including if received in connection with the Client's instructions) are considered to be for information purposes only, without extending or restricting the scope of services as accepted by the Company.
- 3.3 Any pre-existing data, including technical information and specifications, on any media or through any means, may be deemed by the Company to belong to the party providing it or making it accessible, unless specifically mentioned otherwise. Data developed under a contract or in the performance of a Purchase Order, including certificates, expert opinions and calculations, on any media, in any computer code or with any application, as well as any intellectual property in it, is owned by the Company. The Client shall have a non-exclusive right of use of such data.
- 3.4 The Company shall treat all information received in connection with the provision of its services as confidential to the extent that such information is not published, available to third parties or otherwise in the public domain. The Company is entitled to provide all confidential information to its contractors and their employees, agents or subcontractors, only when and to the extent required for the provision of the services.
- 3.5 The Company and the Client shall comply with all applicable data protection laws and respect information and privacy rights of individuals when processing, transmitting, or storing of any personal, or otherwise sensitive, data.
- 3.6 In no event is the Client, or any third party acting on behalf of it, permitted to perform an audit on the Company's premises. The Company may agree otherwise in writing, provided such audit and its scope are defined and explicitly agreed to by the Company. In all cases, any audit must at all times be guided and supervised by personnel of the Company, performed only on information regarding the services as provided exclusively to the Client, and all costs in connection with the audit are borne by the Client.

4. TIC Deliverables/Scope

- 4.1 The Company's standard services may include:
- quantitative and qualitative inspection;
 - inspection of goods, plant, equipment, packing, tanks, containers and means of transport;
 - inspection of loading or discharging;
 - sampling;
 - laboratory analysis and other testing;
 - surveys and audits.
- 4.2 Special services exceeding the scope of the standard services of article 4.1 are only undertaken by the Company subject to a specific arrangement. Such special services may include, without limitation:
- qualitative and quantitative guarantees;
 - tank calibration, meter calibration and meter proving;
 - assignment of technicians and other personnel;
 - pre-shipment inspection, consignment-based conformity assessment and any government-mandated import or customs scheme;
 - supervision of complete industrial project schemes, including engineering review, expediting and progress reporting;
 - advisory services whether or not in relation to standard services.
- 4.3 Subject to the Client's instructions with all limitations as accepted by the parties, the Company shall issue reports and certificates of inspection that reflect its statements of opinion with due care. The Company is in no event obliged to refer to or report on any facts or circumstances that are outside the express instructions of the Client.
- 4.4 Reports or certificates issued in relation to testing or analysis of samples may contain the Company's specific opinion on those samples only, and do not express any opinion on the bulk from which the samples were taken. If an opinion on the bulk is required, a special service arrangement must be agreed prior to the Company inspecting or sampling the bulk.
- 4.5 The scope of certificates issued by the Company in connection with a governmental program is always subject to and limited by the contract between the Company and a governmental agency or the accreditation granted by the latter. Such certificates are subject only to the inspection criteria determined at the time of requesting the certificate and do not in any event constitute any guarantee of quality or quantity of the goods, or of fitness of the goods for any particular purpose or use.

5. Obligations of the Client

The Client shall:

- ensure that adequate instructions and sufficient information are given in due time to the Company enabling it to provide the requested services effectively and timely;
- procure all necessary access for the Company's representatives enabling the required services to be performed effectively;
- supply, when required, all special equipment and make available all personnel necessary for providing the required services;
- ensure full and unconditional access to the location where the services are expected to be performed. The Company's employees or subcontractors providing the services shall not be obliged to sign any indemnity or other site-specific undertakings or agreements;
- at all times, be responsible for the complete care and control of the locations where the services are to be performed and provide a safe and secure environment for the Company's employees, agents and subcontractors.
- immediately take all necessary steps to eliminate or remedy any obstruction to or interruptions in the required services;
- inform the Company in advance of all known hazards and dangers, actual and potential, related to any order, samples or testing, including the presence or risk of radiation, toxic, noxious or explosive materials or circumstances, and all environmental pollution or poisons;
- fully exercise all its rights and discharge all its liabilities under any related contract, regardless of whether a report or certificate has been issued by the Company and, failing such exercise, the Company shall be under no obligation to the Client.

6. Disclaimers

- 6.1 The Company is entitled, at its discretion, to delegate the performance of the whole or any part of the required services to any agent or subcontractor.
- 6.2 If the requirements of the Client necessitate the analysis of samples by the Client's or by any third party's laboratory, the Company is deemed to pass on the results of such analysis without any responsibility for its accuracy. If the Company is only able to witness an analysis by the Client's or by any third party's laboratory, the related Company's services are limited to confirmation that the correct sample has been analysed, and shall not extend to the accuracy of any analysis or results. The Client is not entitled to request a change of test results or of any other parts of the inspection report, except for any obvious mistakes.
- 6.3 Except as specifically and expressly agreed otherwise, the Company disclaims and does not guarantee, represent or warrant regarding:
- the accuracy or authenticity of documents, titles or pledges presented to it; and
 - quantity, quality, origin, IP rights or fitness for any purpose of the goods beyond the mutually agreed instructions. The Company excludes all responsibility and all liability for the consequences of any action taken or not taken on the basis of reports or certificates issued by it.
- 6.4 The Company is neither an insurer nor a guarantor and excludes all liability in such capacity. Clients seeking a guarantee against loss or damage should obtain appropriate insurance.

7. Liability

- 7.1 The Company undertakes to exercise due care and skill in the performance of the agreed services and accepts responsibility only where such skill and care is not exercised.
- 7.2 The aggregate liability of the Company for all losses, damages, costs and expenses of any nature and howsoever caused, under or in connection with the contract (including all extensions and amendments of such contract) and any failure to exercise due skill and care by the Company shall in no circumstances exceed a total aggregate sum equal totimes the amount of the fee or commission paid in respect of the required services, not exceedingin one calendar year. If the paid fee or commission relates to multiple services and a claim arises in respect of one of those services, for the purposes of this paragraph, the fee or commission is apportioned by reference to the time estimated for the performance of each service.
- 7.3 All liability is excluded to the extent it relates to indirect or consequential losses, including loss of profit, loss of future business, loss of production and cancellation of contracts entered into by the Client.
- 7.4 All liability for any claims for losses, damages, costs or expenses ceases unless court proceedings are served to the Company within [...] months after the date of the performance by the Company of the service that gives rise to the liability, or, in case of any alleged non-performance, within [...] months of the date that such service were agreed to have been completed.
- 7.5 The Client shall guarantee, defend and indemnify the Company, its subcontractors and their officers, employees, agents and other representatives against all claims made by any third party caused by or relating to the performance, purported performance or non-performance of any services, to the extent that the aggregate of any such claims exceeds the (monetary or time) limits in this article 7.
- 7.6 Every officer, employee, agent or subcontractor of the Company shall have the benefit of the limitation of liability, damages and the indemnity in these General Terms, whether the Company is acting for itself or as agent or subcontractor.

8. Payment

- 8.1 The Client shall punctually pay no later than [...] days after the invoice date or within such other period as the Company and the Client agree in writing. Failing a timely payment, a daily interest shall accrue at the rate of [...] per cent per annum (to be compounded annually) from the date of invoice until payment in full.
- 8.2 The Client is not entitled to retain, defer payment or set off of any sums payable to the Company on account of any dispute or claim as it may allege against the Company.
- 8.3 In the event the Client becomes subject of a suspension-of-payments, an arrangement with creditors, bankruptcy, insolvency, is declared under receivership or in case of a cessation of business by the Client, the Company is entitled to suspend all further performance of its services immediately, without liability.
- 8.4 If the Company is prevented by reason of any cause outside the Company's immediate control from performing or completing any service in respect of which an order has been given or an agreement made, the Client shall pay to the Company:
- the amount of all costs and expenses actually incurred;
 - a proportion of the agreed fee or commission equal to the proportion (if any) of the service actually performed; and
 - the Company shall be relieved of all responsibility and liability for the partial or total non-performance of the required service.
- 8.5 If any unforeseen facts or circumstances occur or expenditures arise in relation to the required services, the Company is entitled to charge the additional time and costs and expenses necessarily incurred to complete the services.

9. Applicable law and dispute resolution

- 9.1 Any amendment or waiver of any part of these General Terms is without effect, unless it is in writing and duly signed by an officer of the Company.
- 9.2 This Agreement is governed by the laws of [country or jurisdiction].
- 9.3 All disputes arising out of or in connection with these General Terms or any contract, agreements or arrangements based on it shall exclusively be referred to the competent court of [court of jurisdiction].
- or
- All disputes arising out of or in connection with the present contract shall be finally settled under the rules of arbitration of [...] by one or more arbitrators appointed in accordance with the said rules. The arbitration takes place in [...] and is conducted in the [...] language.