

These terms and conditions, together with any proposal, estimate or fee quote, form the agreement between you (the Client) and the Intertek entity (Intertek) providing the services contemplated therein.

## 1. INTERPRETATION

1.1 In this Agreement the following words and phrases shall have the following meanings unless the context otherwise requires:

- (a) **Agreement** means this agreement entered into between Intertek and the Client;
- (b) **Charges** shall have the meaning given in Clause 5.1;
- (c) **Confidential Information** means all information in whatever form or manner presented which: (a) is disclosed pursuant to, or in the course of the provision of Services pursuant to, this Agreement; and (b) (i) is disclosed in writing, electronically, visually, orally or otherwise howsoever and is marked, stamped or identified by any means as confidential by the disclosing party at the time of such disclosure; and/or (ii) is information, howsoever disclosed, which would reasonably be considered to be confidential by the receiving party;
- (d) **Intellectual Property Right(s)** means copyrights, trademarks (registered or unregistered), patents, patent applications (including the right to apply for a patent), service marks, design rights (registered or unregistered), trade secrets and other like rights howsoever existing;
- (e) **Report(s)** shall have the meaning as set out in Clause 2.3 below;
- (f) **Services** means the services set out in any relevant Intertek Proposal, any relevant Client purchase order, or any relevant Intertek invoice, as applicable, and may comprise or include the provision by Intertek of a Report;
- (g) **Proposal** means the proposal, estimate or fee quote, if applicable, provided to the Client by Intertek relating to the Services;

1.2 The headings in this Agreement do not affect its interpretation.

## 2. THE SERVICES

2.1 Intertek shall provide the Services to the Client in accordance with the terms of this Agreement which is expressly incorporated into any Proposal Intertek has made and submitted to the Client.

2.2 In the event of any inconsistency between the terms of this Agreement and the Proposal, the terms of the Proposal shall take precedence.

2.3 The Services provided by Intertek under this Agreement and any memoranda, laboratory data, calculations, measurements, estimates, notes, certificates and other material prepared by Intertek in the course of providing the Services to the Client, together with status summaries or any other communication in any form describing the results of any work or services performed (the **Report(s)**) shall be only for the Client's use and benefit.

2.4 The Client acknowledges and agrees that in providing the Services Intertek is obliged to deliver a Report to a third party, Intertek shall be deemed irrevocably authorised to deliver such Report to the applicable third party. For the purposes of this clause an obligation shall arise on the instructions of the Client, or where, in the reasonable opinion of Intertek, it is implicit from the circumstances, trade, custom, usage or practice.

2.5 The Client acknowledges and agrees that any Services provided and/or Reports produced by Intertek are done so within the limits of the scope of work agreed with the Client in relation to the Proposal and pursuant to the Client's specific instructions or, in the absence of such instructions, in accordance with any relevant trade custom, usage or practice. The Client further agrees and acknowledges that the Services are not necessarily designed or intended to address all matters of quality, safety, performance or condition of any product, material, services, systems or processes tested, inspected or certified and the scope of work does not necessarily reflect all standards which may apply to product, material, services, systems or process tested, inspected or certified. The Client understands that reliance on any Reports issued by Intertek is limited to the facts and representations set out in the Reports which represent Intertek's review and/or analysis of facts, information, documents, samples and/or other materials in existence at the time of the performance of the Services only.

2.6 Client is responsible for acting as it sees fit on the basis of such Report. Neither Intertek nor any of its officers, employees, agents or subcontractors shall be liable to Client nor any third party for any actions taken or not taken on the basis of such Report.

2.7 In agreeing to provide the Services pursuant to this Agreement, Intertek does not abridge, abrogate or undertake to discharge any duty or obligation of the Client to any other person or any duty or obligation of any person to the Client.

2.8 Unless expressly agreed to, Intertek has no obligation to provide any comment, analysis, judgment or suggestion regarding any issue for which no specific requirements are set forth in the testing, inspection, certification, auditing or other standards that are applicable and applied to the Services.

## 3. INTERTEK'S WARRANTIES

3.1 Intertek warrants exclusively to the Client:

- (a) that it has the power and authority to enter into this Agreement and that it will comply with relevant legislations and regulations in force as at the date of this Agreement in relation to the provision of the Services;
- (b) that the Services will be performed in a manner consistent with that level of care and skill ordinarily exercised by other companies providing like services under similar circumstances;
- (c) that it will take reasonable steps to ensure that whilst on the Client's premises its personnel comply with any health and safety rules and regulations and other reasonable security requirements made known to Intertek by the Client in accordance with Clause 4.3(f);
- (d) that the Reports produced in relation to the Services will not infringe any legal rights (including Intellectual Property Rights) of any third party. This warranty shall not apply where the infringement is directly or indirectly caused by Intertek's reliance on any information, samples or other related documents provided to Intertek by the Client (or any of its agents or representatives).

3.2 In the event of a breach of the warranty set out in Clause 3.1 (b), Intertek shall, at its own expense, perform services of the type originally performed as may be reasonably required to correct any defect in Intertek's performance.

3.3 Intertek makes no other warranties, express or implied. All other warranties, conditions and other terms implied by law (including but not limited to any implied warranties of merchantability and fitness for purpose) are, to the fullest extent permitted by law, excluded from this Agreement. No performance, deliverable, oral or other information or advice provided by Intertek (including its agents, sub-contractors, employees or other representatives) will create a warranty or otherwise increase the scope of any warranty provided.

## 4. CLIENT WARRANTIES AND OBLIGATIONS

4.1 The Client represents and warrants:

- (a) that it has the power and authority to enter into this Agreement and procure the provision of the Services for itself;
- (b) that it is securing the provision of the Services hereunder for its own account and not as an agent or broker, or in any other representative capacity, for any other person or entity; where a matter concerning any aspect or part of the Service or any matters related thereto is communicated or transacted between Intertek and a third party and Client knows of same without objecting thereto in a timely manner such that the third party apparently is or appears to be transacting with Intertek in respect of the Services, such third party shall be deemed to be acting on behalf of Client, therefore to the extent the

said aspect, part or matters are concerned Intertek may charge Client for any service rendered at the request of such third party;

- (c) that any information, samples and related documents it (or any of its agents or representatives) supplies to Intertek (including its agents, sub-contractors and employees) is, true, accurate representative, complete and is not misleading in any respect. The Client further acknowledges that Intertek will rely on such information, samples or other related documents and materials provided by the Client (without any duty to confirm or verify the accuracy or completeness thereof) in order to provide the Services;
- (d) that any samples provided by the Client to Intertek will be shipped pre-paid and will be collected or disposed of by the Client (at the Client's cost) within thirty (30) days after testing unless alternative arrangements are made by the Client. In the event that such samples are not collected or disposed by the Client within the required thirty (30) days period, Intertek reserves the right to destroy the samples, at the Client's cost; and
- (e) that any information, samples or other related documents (including without limitation certificates and reports) provided by the Client to Intertek will not, in any circumstances, infringe any legal rights (including Intellectual Property Rights) of any third party.

4.2 In the event that the Services provided relate to any third party, the Client shall cause any such third party to acknowledge and agree to the provisions in this Agreement and the Proposal prior to and as a condition precedent to such third party receiving any Reports or the benefit of any Services.

4.3 The Client further agrees:

- (a) to co-operate with Intertek in all matters relating to the Services and appoint a manager in relation to the Services who shall be duly authorised to provide instructions to Intertek on behalf of the Client and to bind the Client contractually as required;
- (b) to provide Intertek (including its agents, sub-contractors and employees), at its own expense, any and all samples, information, material or other documentation necessary for the execution of the Services in a timely manner sufficient to enable Intertek to provide the Services in accordance with this Agreement. The Client acknowledges that any samples provided may become damaged or be destroyed in the course of testing as part of the necessary testing process and undertakes to hold Intertek harmless from any and all responsibility for such alteration, damage or destruction;
- (c) that it is responsible for providing the samples/equipment to be tested together, where appropriate, with any specified additional items, including but not limited to connecting pieces, fuse-links, etc.;
- (d) to provide instructions and feedback to Intertek in a timely manner;
- (e) to provide Intertek (including its agents, sub-contractors and employees) with access to its premises as may be reasonably required for the provision of the Services and to any other relevant premises at which the Services are to be provided;
- (f) prior to Intertek attending any premises for the performance of the Services, to inform Intertek of all applicable health and safety rules and regulations and other reasonable security requirements that may apply at any relevant premises at which the Services are to be provided;
- (g) to notify Intertek promptly of any risk, safety issues or incidents in respect of any item delivered by the Client, or any process or systems used at its premises or otherwise necessary for the provision of the Services;
- (h) to inform Intertek in advance of any applicable import/export restrictions that may apply to the Services to be provided, including any instances where any products, information or technology may be exported/imported to or from a country that is restricted or banned from such transaction;
- (i) in the event of the issuance of a certificate, to inform and advise Intertek immediately of any changes during the term of the certificate which may have a material impact on the accuracy of the certification;
- (j) to obtain and maintain all necessary licenses and consents in order to comply with relevant legislation and regulation in relation to the Services;
- (k) that it will not use any Reports issued by Intertek pursuant to this Agreement in a misleading manner and that it will only distribute such Reports in their entirety;
- (l) in no event will the contents of any Reports or any extracts, excerpts or parts of any Reports be distributed or published without the prior written consent of Intertek (such consent not to be unreasonably withheld) in each instance;
- (m) that any and all advertising and promotional materials or any statements made by the Client will not give a false or misleading impression to any third party concerning the services provided by Intertek; and
- (n) that Client will notify Intertek of the change to any agreed to contact person or means of contact of Client immediately upon the occurrence of such change.

4.4 Intertek shall be neither in breach of this Agreement nor liable to the Client for any breach of this Agreement if and to the extent that its breach is a direct result of a failure by the Client to comply with its obligations as set out in this Clause 4. The Client also acknowledges that the impact of any failure by the Client to perform its obligations set out herein on the provision of the Services by Intertek will not affect the Client's obligations under this Agreement for payment of the Charges pursuant to Clause 5 below.

## 5. CHARGES, INVOICING AND PAYMENT

5.1 The Client shall pay Intertek the charges set out in the Proposal, if applicable, or as otherwise contemplated for provision of the Services (the **Charges**).

5.2 The Charges are expressed exclusive of any applicable taxes. The Client shall pay any applicable taxes on the Charges at the rate and in the manner prescribed by law, on the issue by Intertek of a valid invoice.

5.3 The Client agrees that it will reimburse Intertek for any expenses incurred by Intertek relating to the provision of the Services and is wholly responsible for any freight or customs clearance fees relating to any testing samples.

5.4 The Charges represent the total fees to be paid by the Client for the Services pursuant to this Agreement. Any additional work performed by Intertek will be charged on a time and material basis.

5.5 Intertek shall invoice the Client for the Charges and expenses, if any. The Client shall pay each invoice within thirty (30) days of receiving it.

5.6 If any invoice is not paid on the due date for payment, Intertek shall have the right to charge, and the Client shall pay, interest on the unpaid amount, calculated from the due date of the invoice to the date of receipt of the amount in full at a rate equivalent to 3% per cent per annum above the base rate from time to time of HSBC Bank in the relevant currency.

## 6. INTELLECTUAL PROPERTY RIGHTS AND DATA PROTECTION

6.1 All Intellectual Property Rights belonging to a party prior to entry into this Agreement shall remain vested in that party. Nothing in this Agreement is intended to transfer any Intellectual Property Rights from either party to the other.

6.2 Any use by the Client (or the Client's affiliated companies or subsidiaries) of the name "Intertek" or any of Intertek's trademarks or brand names for any reason must be prior approved in writing by Intertek. Any other use of Intertek's trademarks or brand names is strictly prohibited and Intertek reserves the right to terminate this Agreement immediately as a result of any such unauthorised use.

6.3 In the event of provision of certification services, Client agrees and acknowledges that the use of certification marks may be subject to national and international laws and regulations.

6.4 All Intellectual Property Rights in any Reports, document, graphs, charts, photographs or any other material (in whatever medium) produced by Intertek pursuant to this Agreement shall belong to Intertek. The Client shall have the right to use any such Reports, document, graphs, charts, photographs or other material for the purposes of this Agreement.

- 6.5 The Client agrees and acknowledges that Intertek retains any and all proprietary rights in concepts, ideas and inventions that may arise during the preparation or provision of any Report (including any deliverables provided by Intertek to the Client) and the provision of the Services to the Client.
- 6.6 Intertek shall observe all statutory provisions with regard to data protection. To the extent that Intertek processes or gets access to personal data in connection with the Services or otherwise in connection with this Agreement, it shall take all necessary technical and organisational measures to ensure the security of such data (and to guard against unauthorised or unlawful processing, accidental loss, destruction or damage to such data).
- 7. CONFIDENTIALITY**
- 7.1 Where a party (the **Receiving Party**) obtains Confidential Information of the other party (the **Disclosing Party**) in connection with this Agreement (whether before or after the date of this Agreement) it shall, subject to Clauses 7.2 to 7.4:
- keep that Confidential Information confidential, by applying the standard of care that it uses for its own Confidential Information;
  - use that Confidential Information only for the purposes of performing obligations under this Agreement; and
  - not disclose that Confidential Information to any third party without the prior written consent of the Disclosing Party.
- 7.2 The Receiving Party may disclose the Disclosing Party's Confidential Information on a "need to know" basis:
- to any legal advisers and statutory auditors that it has engaged for itself;
  - to any regulator having regulatory or supervisory authority over its business;
  - to any director, officer or employee of the Receiving Party provided that, in each case, the Receiving Party has first advised that person of the obligations under Clause 7.1 and ensured that the person is bound by obligations of confidence in respect of the Confidential Information no less onerous than those set out in this Clause 7; and
  - where the Receiving Party is Intertek, to any of its subsidiaries, affiliates or subcontractors.
- 7.3 The provisions of Clauses 7.1 and 7.2 shall not apply to any Confidential Information which:
- was already in the possession of the Receiving Party prior to its receipt from the Disclosing Party without restriction on its use or disclosure;
  - is or becomes public knowledge other than by breach of this Clause 7;
  - is received by the Receiving Party from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
  - is independently developed by the Receiving Party without access to the relevant Confidential Information.
- 7.4 The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent required by law, any regulatory authority or the rules of any stock exchange on which the Receiving Party is listed, provided that the Receiving Party has given the Disclosing Party prompt written notice of the requirement to disclose and where possible given the Disclosing Party a reasonable opportunity to prevent the disclosure through appropriate legal means.
- 7.5 Each party shall ensure the compliance by its employees, agents and representatives (which, in the case of Intertek, includes procuring the same from any sub-contractors) with its obligations under this Clause 7.
- 7.6 No licence of any Intellectual Property Rights is given in respect of any Confidential Information solely by the disclosure of such Confidential Information by the Disclosing Party.
- 7.7 With respect to archival storage, the Client acknowledges that Intertek may retain in its archive for the period required by its quality and assurance processes, or by the testing and certification rules of the relevant accreditation body, all materials necessary to document the Services provided.
- 8. AMENDMENT**
- 8.1 No amendment to this Agreement shall be effective unless it is in writing, expressly stated to amend this Agreement and signed by an authorised signatory of each party.
- 9. FORCE MAJEURE**
- 9.1 Neither party shall be liable to the other for any delay in performing or failure to perform any obligation under this Agreement to the extent that such delay or failure to perform is a result of:
- war (whether declared or not), civil war, riots, revolution, acts of terrorism, military action, sabotage and/or piracy;
  - natural disasters such as violent storms, earthquakes, tidal waves, floods and/or lightning; explosions and fires;
  - strikes and labour disputes, other than by any one or more employees of the affected party or of any supplier or agent of the affected party; or
  - failures of utilities companies such as providers of telecommunication, internet, gas or electricity services.
- 9.2 For the avoidance of doubt, where the affected party is Intertek any failure or delay caused by failure or delay on the part of a subcontractor shall only be a Force Majeure Event (as defined below) where the subcontractor is affected by one of the events described above.
- 9.3 A party whose performance is affected by an event described in Clause 9.1 (a **Force Majeure Event**) shall:
- promptly notify the other party in writing of the Force Majeure Event and the cause and the likely duration of any consequential delay or non-performance of its obligations;
  - use all reasonable endeavours to avoid or mitigate the effect of the Force Majeure Event and continue to perform or resume performance of its affected obligations as soon as reasonably possible; and
  - continue to provide Services that remain unaffected by the Force Majeure Event.
- 9.4 If the Force Majeure Event continues for more than sixty (60) days after the day on which it started, each party may terminate this Agreement by giving at least ten (10) days' written notice to the other party.
- 10. LIMITATIONS AND EXCLUSIONS OF LIABILITY**
- 10.1 Neither party excludes or limits liability to the other party:
- for death or personal injury resulting from the negligence of that party or its directors, officers, employees, agents or sub-contractors; or
  - for its own fraud (or that of its directors, officers, employees, agents or sub-contractors).
- 10.2 **SUBJECT TO CLAUSE 10.1, THE MAXIMUM AGGREGATE LIABILITY OF INTERTEK IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND BREACH OF STATUTORY DUTY) OR OTHERWISE FOR ANY BREACH OF THIS AGREEMENT OR ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THE SERVICES TO BE PROVIDED IN ACCORDANCE WITH THIS AGREEMENT SHALL BE THE AMOUNT OF CHARGES DUE BY THE CLIENT TO INTERTEK UNDER THIS AGREEMENT.**
- 10.3 **SUBJECT TO CLAUSE 10.1, NEITHER PARTY SHALL BE LIABLE TO THE OTHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND BREACH OF STATUTORY DUTY) OR OTHERWISE FOR ANY:**
- LOSS OF PROFITS;
  - LOSS OF SALES OR BUSINESS;
- LOSS OF OPPORTUNITY (INCLUDING WITHOUT LIMITATION IN RELATION TO THIRD PARTY AGREEMENTS OR CONTRACTS);
  - LOSS OF OR DAMAGE TO GOODWILL OR REPUTATION;
  - LOSS OF ANTICIPATED SAVINGS;
  - COST OR EXPENSES INCURRED IN RELATION TO MAKING A PRODUCT RECALL;
  - LOSS OF USE OR CORRUPTION OF SOFTWARE, DATA OR INFORMATION; OR
  - ANY INDIRECT, CONSEQUENTIAL LOSS, PUNITIVE OR SPECIAL LOSS (EVEN WHEN ADVISED OF THEIR POSSIBILITY).
- 10.4 **ANY CLAIM BY THE CLIENT AGAINST INTERTEK (ALWAYS SUBJECT TO THE PROVISIONS OF THIS CLAUSE 10) MUST BE MADE WITHIN NINETY (90) DAYS AFTER THE CLIENT BECOMES AWARE OF ANY CIRCUMSTANCES GIVING RISE TO ANY SUCH CLAIM. FAILURE TO GIVE SUCH NOTICE OF CLAIM WITHIN NINETY (90) DAYS SHALL CONSTITUTE A BAR OR IRREVOCABLE WAIVER TO ANY CLAIM, EITHER DIRECTLY OR INDIRECTLY, IN CONTRACT, TORT OR OTHERWISE IN CONNECTION WITH THE PROVISION OF SERVICES UNDER THIS AGREEMENT.**
- 10.5 Client will not hold Intertek liable or attempt to pursue Intertek's liability for the difference between the conclusion drawn by the Report and the conclusion produced or provided by any third party or assist or support any third party to do so.
- 11. INDEMNITY**
- 11.1 The Client shall indemnify and hold harmless Intertek, its officers, employees, agents, representatives, contractors and sub-contractors from and against any and all claims, suits, liabilities (including costs of litigation and attorney's fees) arising, directly or indirectly, out of or in connection with:
- any claims or suits by any governmental authority or others for any actual or asserted failure of the Client to comply with any law, ordinance, regulation, rule or order of any governmental or judicial authority;
  - claims or suits for personal injuries, loss of or damage to property, economic loss, and loss of or damage to Intellectual Property Rights incurred by or occurring to any person or entity and arising in connection with or related to the Services provided hereunder by Intertek, its officers, employees, agents, representatives, contractors or sub-contractors;
  - the breach or alleged breach by the Client of any of its obligations set out in Clause 4 above;
- (D) **ANY CLAIMS MADE BY ANY THIRD PARTY FOR LOSS, DAMAGE OR EXPENSE OF WHATSOEVER NATURE AND HOWSOEVER ARISING RELATING TO THE PERFORMANCE, PURPORTED PERFORMANCE OR NON-PERFORMANCE OF ANY SERVICES TO THE EXTENT THAT THE AGGREGATE OF ANY SUCH CLAIMS RELATING TO ANY ONE SERVICE EXCEEDS THE LIMIT OF LIABILITY SET OUT IN CLAUSE 10 ABOVE;**
- (E) **ANY CLAIMS OR SUITS ARISING AS A RESULT OF ANY MISUSE OR UNAUTHORISED USE OF ANY REPORTS ISSUED BY INTERTEK OR ANY INTELLECTUAL PROPERTY RIGHTS BELONGING TO INTERTEK (INCLUDING TRADE MARKS) PURSUANT TO THIS AGREEMENT;** and
- any claims arising out of or relating to any third party's use of or reliance on any Reports or any reports, analyses, conclusions of the Client (or any third party to whom the Client has provided the Reports) based in whole or in part on the Reports, if applicable.
- 11.2 The obligations set out in this Clause 11 shall survive termination of this Agreement.
- 12. INSURANCE POLICIES**
- 12.1 Each party shall be responsible for the arrangement and costs of its own company insurance which includes, without limitation, professional indemnity, employer's liability, motor insurance and property insurance.
- 12.2 **INTERTEK EXPRESSLY DISCLAIMS ANY LIABILITY TO THE CLIENT AS AN INSURER OR GUARANTOR.**
- 12.3 The Client acknowledges that although Intertek maintains employer's liability insurance, such insurance does not cover any employees of the Client or any third parties who may be involved in the provision of the Services. If the Services are to be performed at premises belonging to the Client or third parties, Intertek's employer's liability insurance does not provide cover for non-Intertek employees.
- 13. TERMINATION**
- 13.1 This Agreement shall commence upon the first day on which the Services are commenced and shall continue, unless terminated earlier in accordance with this Clause 13, until the Services have been provided.
- 13.2 This Agreement may be terminated by:
- either party if the other continues in material breach of any obligation imposed upon it hereunder for more than thirty (30) days after written notice has been dispatched by that Party by recorded delivery or courier requesting the other to remedy such breach;
  - Intertek on written notice to the Client in the event that the Client fails to pay any invoice by its due date and/or fails to make payment after a further request for payment; or
  - either party on written notice to the other in the event that the other makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the other or the other ceases, or threatens to cease, to carry on business.
- 13.3 In the event of termination of the Agreement for any reason and without prejudice to any other rights or remedies the parties may have, the Client shall pay Intertek for all Services performed up to the date of termination. This obligation shall survive termination or expiration of this Agreement.
- 13.4 Any termination or expiration of the Agreement shall not affect the accrued rights and obligations of the parties nor shall it affect any provision which is expressly or by implication intended to come into force or continue in force on or after such termination or expiration.
- 14. ASSIGNMENT AND SUB-CONTRACTING**
- 14.1 Intertek reserves the right to delegate the performance of its obligations hereunder and the provision of the Services to one or more of its affiliates and/ or sub-contractors when necessary. Intertek may also assign this Agreement to any company within the Intertek group on notice to the Client.
- 15. GOVERNING LAW AND DISPUTE RESOLUTION**
- 15.1 This Agreement and the Proposal shall be governed by the law of the People's Republic of China (excluding laws of Hong Kong, Macau and Taiwan). Any dispute, controversy or claim arising from or in connection with this Agreement and/or the Proposal (including any non-contractual claim relating to the provision of the Services in accordance with this Agreement) shall firstly be resolved through friendly negotiations between Intertek and the Client. If no resolution can be reached within thirty (30) days after the commencement of any such negotiations either party may submit the dispute, controversy or claim to the Shanghai International Economy and Trade Arbitration Commission (namely Shanghai International Arbitration Centre, **SHIAC**) for arbitration which shall be conducted in Shanghai in accordance with arbitration rules of SHIAC in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.
- 16. MISCELLANEOUS**
- Severability**

16.1 If any provision of this Agreement is or becomes invalid, illegal or unenforceable, such provision shall be severed and the remainder of the provisions shall continue in full force and effect as if this Agreement had been executed without the invalid illegal or unenforceable provision. If the invalidity, illegality or unenforceability is so fundamental that it prevents the accomplishment of the purpose of this Agreement, Intertek and the Client shall immediately commence good faith negotiations to agree an alternative arrangement.

**No partnership or agency**

16.2 Nothing in this Agreement and no action taken by the parties under this Agreement shall constitute a partnership, association, joint venture or other co-operative entity between the parties or constitute any party the partner, agent or legal representative of the other.

**Waivers**

16.3 Subject to Clause 10.4 above, the failure of any party to insist upon strict performance of any provision of this Agreement, or to exercise any right or remedy to which it is entitled, shall not constitute a waiver and shall not cause a diminution of the obligations established by this Agreement. A waiver of any breach shall not constitute a waiver of any subsequent breach.

16.4 No waiver of any right or remedy under this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing.

**Whole Agreement**

16.5 This Agreement and the Proposal contain the whole agreement between the parties relating to the transactions contemplated by this agreement and supersedes all previous agreements, arrangements and understandings between the parties relating to those transactions or that subject matter. No purchase order, statement or other similar document will add to or vary the terms of this Agreement.

16.6 Each party acknowledges that in entering into this Agreement it has not relied on any representation, warranty, collateral contract or other assurance (except those set out or referred to in this Agreement) made by or on behalf of any other party before the acceptance or signature of this Agreement. Each party waives all rights and remedies that, but for this Clause, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

16.7 Nothing in this Agreement limits or excludes any liability for fraudulent misrepresentation.

**Third Party Rights**

16.8 A person who is not party to this Agreement has no right to enforce any of its terms.

**Further Assurance**

16.9 Each party shall, at the cost and request of any other party, execute and deliver such instruments and documents and take such other actions in each case as may be reasonably requested from time to time in order to give full effect to its obligations under this Agreement.

16.10 ***CLIENT HEREBY ACKNOWLEDGES THAT PRIOR TO ITS EXECUTION OF THIS AGREEMENT INTERTEK THOROUGHLY EXPLAINED EACH AND EVERY TERM AND CONDITION UNDER THIS AGREEMENT TO CLIENT AND EACH TERM AND CONDITION OF THIS AGREEMENT HAS BEEN THOROUGHLY AND MUTUALLY CONSULTED AND NEGOTIATED BETWEEN THE TWO PARTIES, AND THAT AS SUCH THE TERMS AND CONDITIONS UNDER THIS AGREEMENT DO NOT CONSTITUTE AN ADHESIVE CONTRACT IMPOSED BY EITHER PARTY BUT IS REFLECTION OF THE TRUE MUTUAL ASSENT OF BOTH PARTIES.***

本条款与条件与任何项目建议书、预算或报价一起，组成您（“客户”）和根据此等文件提供预期之服务的天祥公司（“天祥”）之间的协议。

## 1. 释义

1.1 在本协议中，以下词语及短语应具有如下含义，除非文意另有所指：

(a) **协议**是指由天祥与客户双方签署的本份协议；

(b) **费用**应具有下文第 5.1 条所赋予的含义；

(c) **保密信息**是指所有以任何形式或方式呈现的如下信息：（a）依据本协议被披露的或在依据本协议提供服务的过程中被披露的；（b）（i）以书面、电子、可视、口头或其它形式被披露且披露方在披露时以任何方式将之注明、印明、指定为保密信息的；及/或（ii）接收方理应将之视为保密信息（无论以何种形式被披露）的信息；

(d) **知识产权**是指版权、商标权（无论是否已予注册）、专利权、专利申请权（包括提出专利注册申请的权利）、服务商标权、设计权（无论是否已予注册）、商业秘密或其它类似的既有权利；

(e) **工作报告**应具有下文第 2.3 条所赋予的含义；

(f) **服务**是指任何有关天祥项目建议书、任何有关客户采购订单、或任何有关天祥发票（视其适用情况）中所列明的服务，且其可能包含由天祥提供一份工作报告；

(g) **项目建议书**是指由天祥向客户提供的与服务相关的项目建议书、预算或报价（如适用）。

1.2 本协议的标题不影响本协议的含义及解释。

## 2. 服务

2.1 天祥应按照已明确纳入任何天祥已经做出并向客户提交的项目建议书中的本

协议条款向客户提供服务。

2.2 若本协议条款与项目建议书条款出现任何不一致，则以项目建议书条款为准。

2.3 天祥依据本协议提供的服务、以及天祥在向客户提供服务过程中编制的任何备忘录、实验室数据、计算结果、测量数据、概算书、票据、证书及其他资料、连同工作进展概述及描述任何工作成果或已履行服务的任何形式的其它沟通（“工作报告”），应仅限于为客户所用并让客户受益。

2.4 客户确认并同意：如果天祥在提供服务的过程中有义务向第三方发送工作报告，应视为天祥已就向适当第三方发送此工作报告获得了不可撤销的授权。就本条款之目的，一旦客户发出指示即产生天祥的此项义务，或基于天祥对相关情形、交易、习惯、惯例或实践的合理判断，天祥应有该等默示的义务。

2.5 客户确认并同意：任何天祥提供的服务和/或工作报告均是在与客户达成同意的工作范围之内完成的，该同意是基于项目建议书并根据客户的具体指示，或在没有具体指示的情况下，按照任何相关的交易习惯、惯例或实践而作出的。客户进一步同意并确认：服务不需要说明被测试、检验或认证的任何产品、材料、服务、系统或流程的关于质量、安全、性能或条件的所有事宜，并且工作范围不需要反映可以适用于被测试、检验或认证的产品、材料、服务、系统或流程的所有标准。客户理解：其应该仅基于天祥出具的任何工作报告中所载的事实和表述来理解工作报告，工作报告仅是陈述天祥对事实、信息、文件、样品和/或在服务履行期间存在的其他材料的审查和/或分析。

2.6 客户对其在上述工作报告的基础上采取的其认为合适的行动承担责任。无论是天祥或其任何高级职员、雇员、代理人、分包人均不对客户或任何第三方根

据上述工作报告而采取或不采取的行动负责。

**2.7** 在同意依据本协议提供服务的同时，天祥不限制、取消或承诺免除客户对任何其他应履行的、或任何人对客户应履行的任何职责或义务。

**2.8** 除非有明示约定，天祥无义务在工作报告中就服务所适用的检测、验货、认证、审核或其他标准未作要求的问题作出任何评论、分析、判断或建议。

### **3. 天祥的保证**

**3.1** 天祥专门向客户保证：

(a) 天祥拥有签署本协议的权力及授权，并且天祥将遵守本协议签署之日现行有效的与提供服务有关的法律法规；

(b) 天祥提供服务过程中将采取其它公司在类似情况下提供类似服务所通常采取的审慎态度和技能水平；

(c) 天祥将采取合理措施保证其在客户工作场所的人员符合客户按照第 4.3(f)条已告知天祥的任何健康和安全规则和条例以及其他合理的安保要求；

(d) 与服务有关的工作报告将不违反任何第三方的合法权利（包括知识产权）。但如侵权行为是因天祥对客户（或客户的任何代理人或代表人）向其提供的任何信息、样品或其他有关材料文件的信赖而直接或间接造成的，此保证应不适用。

**3.2** 天祥若违反第 3.1(b)条所述的保证条款，则应自费以合理所需的方式履行服务，以纠正天祥的任何履约缺陷。

**3.3** 天祥未作出任何明示或默示的其它保证。成文法或普通法规定的所有其它默示的保证、条件及条款（包括但不限于任何默示的适销性和适用性保证）应按法律所允许的最大程度排除在本协议之外。天祥（包括其代理人、分包人、雇员或其它代表人）的任何履行行为、所交付的工作成果、口头的或其它信息或建议均不构成保证，亦不扩大任何已作保证的范围。

### **4. 客户的保证及义务**

**4.1** 客户声明并保证如下：

(a) 拥有签署本协议及作为服务接受方的权力及授权；

(b) 客户寻求本协议项下的服务是为其自身利益，并非作为任何其他人士或实体的代理人或经纪人或任何其他代表人。若天祥与第三方就服务的某方面、部分或相关事宜进行沟通或向其提供服务，客户知晓此事但未在合理时间内提出异议，以至于该等第三方之行为明显或表现为系在就服务与天祥进行交易，则应视该第三方系代理客户行事，因此就前述该等方面、部分或相关事宜而言天祥有权就根据该第三方要求而提供的服务向客户收取费用；

(c) 客户（或其任何代理人或代表人）向天祥（包括其代理人、分包人及雇员）提供的任何信息、样品及相关文件均为真实、准确、完整陈述，无任何方面的误导内容。客户进一步确认：天祥将依赖由客户提交的这些信息、样品及相关文件（天祥没有任何责任确认或核实其准确性或完整性）提供服务；

(d) 由客户向天祥提供的任何样品将以运费预付的装运方式发出，经测试后，将由客户在三十（30）天内自费收回或处理，除非客户另有安排。若客户未能在该三十（30）天期间收回或处理该等样品，天祥有权销毁该等样品，由此产生的费用由客户承担；且

(e) 无论在任何情况下，由客户向天祥提供的任何信息、样品或其他相关文件（包括但不限于证书和报告）均不得在任何情形下侵犯任何第三方的任何合法权利（包括知识产权）。

**4.2** 若所提供的服务涉及任何第三方，则客户应促使该第三方提前确认并同意本协议及项目建议书的规定，并以此作为该第三方接收任何工作报告或任何服务收益的前提条件。

**4.3** 客户进一步同意：

(a) 协助天祥处理所有与服务相关的问题，委派一名与服务相关的经理，并依法授权该经理代表客户向天祥作出工作指示并按合同要求约束客户；

(b) 自费向天祥（包括其代理人、分包人及雇员）及时提供足以让天祥依据本协议及时履行服务所需的全部样品、信息、物料或其它文件。客户确认：由客户提供的任何样品，在接受必要的测试过程中，有可能会被损坏或损毁，若出现此类情形，客户将保证使天祥免于承担任何此类样品的改变、损坏或损毁的责任；

(c) 有责任提供接受测试的样品/设备和在适当的情况下任何其他指定物品，包括但不限于连接件、熔断器等；

(d) 及时向天祥作出指示并提出反馈意见；

(e) 根据天祥提供服务的合理所需，向天祥（包括其代理人、分包人及雇员）提供进入客户工作场所和/或任何其他拟提供服务的相关场所的权限；

(f) 在天祥为履行服务进入任何工作场所之前，向天祥告知所有适用于任何相关的拟提供服务的场所的健康与安全规则和条例以及其它合理的安保要求；

(g) 若客户所提供的任何物品、或其工作场所使用的或履行服务所需的任何工序或系统存在风险或安全问题或出现任何事故，则应立即通知天祥；

(h) 提前告知天祥可能适用于拟提供之服务的任何现行进出口限制规定，包括可能向设有此类交易限制或禁止规定的国家进口或出口任何产品、信息或技术的情形；

(i) 就证书签发之情形，对在证书有效期内可能对认证准确性产生重大影响任何变化，立即通知及告知天祥；

(j) 遵照与服务相关的法律法规之要求，获取并持有所有必须的许可和批准文件；

(k) 不以误导的方式使用任何由天祥依据

本协议提交的工作报告，分发工作报告时仅限于分发完整的工作报告；

(l) 在任何情况下，未事先征得天祥的书面同意（此同意不应被不合理地拒绝），不得分发或公布任何工作报告的内容或其中的任何节选、摘录部分；

(m) 任何和所有广告和宣传材料、或客户作出的任何陈述，均不会让任何第三方就天祥所提供的服务产生虚假或误导性印象；及

(n) 如所约定的客户方联系人或联系方式有变更，客户将立即通知天祥。

4.4 若天祥的违约行为是由于客户未能履行其在第 4 条项下的义务所直接导致，则天祥不应被视为违约，亦不必因此对客户承担任何违约责任。客户同时确认：如就天祥提供之服务，客户未能履行此处所规定的义务，客户在本协议项下根据下文第 5 条支付费用的义务并不受到影响。

## 5. 费用、发票与付款

5.1 客户应向天祥支付项目建议书（如适用）或以其他方式约定的就天祥所提供的服务应付的费用（“费用”）。

5.2 特此明确指出：费用不含任何适用的税费。天祥一旦出具有效发票，客户应按照国家规定的费率和方式支付费用的所有适用税费。

5.3 客户同意，其将向天祥偿付天祥提供服务所产生的全部相关费用，并独自承担与受测样品相关的所有运费或海关清关费用。

5.4 费用是指客户依据本协议就服务应予支付的总费用。天祥额外完成的任何工作应以时间和耗材为基础来计算费用。

5.5 天祥应就费用和其它开支（如有）向客户开具发票。客户应在收到每张发票后的三十（30）天内支付。

5.6 若客户未按时对发票进行支付，则天祥有权收取（且客户必须支付）自发票付款到期日至全额收款日期期间的逾期未付款额的利息，年利率相当于在汇丰银

行不时公布的相关货币基准利率上浮三个百分点。

## 6. 知识产权和数据保护

6.1 所有于签署本协议之前归属于任何一方的知识产权仍应归该方所有。本协议无任何将任何一方的知识产权转让给另一方的目的。

6.2 客户（或其关联公司或附属公司）以任何理由使用天祥的名称或天祥任何商标或品牌名称的任何行为必须事先征得天祥的书面同意。禁止实施任何以其它方式使用天祥商标或品牌名称的行为，若发生任何未经授权的此类使用行为，天祥有权立即终止本协议。

6.3 在提供认证服务的情况下，客户同意并确认：认证标志的使用可能受国家和国际法律法规的限制。

6.4 天祥依据本协议所编制的任何工作报告、文件、图解、图表、照片或任何其它资料（无论载于何种媒介）中的所有知识产权均归天祥所有。客户有权将任何该等工作报告、文件、图解、图表、照片或其它资料用于本协议所载目的。

6.5 客户同意并确认：天祥在准备或提供任何工作报告（包括天祥向客户提供的任何交付物）和向客户提供服务的过程中可能产生的概念、观念和发明的任何和所有财产性权利都由天祥保留。

6.6 天祥应遵守所有有关数据保护的法律法规。在处理或获取与服务有关或与本协议有关的个人数据的范围内，天祥应采取所有必要的技术和组织手段以保证这些数据的安全（并保护这些数据免受未经授权的或非法的处理、意外损失、破坏或损害）。

## 7. 保密条款

7.1 受限于第 7.2 至 7.4 条规定，若任何一方（“接收方”）（不论是在本协议签署日期之前或之后）获得与本协议相关的另一方（“披露方”）的保密信息，则应：

(a) 以保护自身保密信息相同的审慎方式来对保密信息进行保密；

(b) 保密信息仅限用以履行本协议项下的义务；且

(c) 未事先征得披露方书面同意，不得向任何第三方披露保密信息。

7.2 在“需要知道”的基础上，接收方可将披露方的保密信息披露给以下人士或机构：

(a) 接收方聘请的任何律师顾问及法定审计师；

(b) 对接收方的业务拥有管制或监管权力的任何监管人；

(c) 接收方的任何董事、高级职员或雇员，但前提条件是接收方已向其告知第 7.1 条项下的义务并确保其所承担的保密义务不低于第 7 条所载保密义务的严格程度；且

(d) 在天祥是接收方的情况下，接收方的任何附属机构、关联机构或分包人。

7.3 第 7.1 及 7.2 条的规定不适用于任何下述保密信息：

(a) 在从披露方处接收到信息之前，接收方已经拥有该信息，且其使用或披露该信息不受限制；

(b) 非因违反第 7 条规定而为公众所知的信息；

(c) 合法获得信息且不必承担任何披露限制义务的第三方向接收方披露的信息；或

(d) 接收方未使用相关保密信息而独立开发的信息。

7.4 对于法律、监管机关或接收方挂牌交易所规则要求披露的保密信息，接收方可予以披露，但接收方必须已及时将该要求以书面形式通知披露方并（如有可能）让披露方有合理的机会通过运用适当法律手段以避免披露保密信息。

7.5 各方均须确保其雇员、代理人和代表人（包括天祥的所有分包人的上述人员）履行其在本第 7 条项下的义务。

7.6 披露方单纯披露任何保密信息的行为不构成与保密信息相关的任何知识产权的许可行为。

7.7 关于档案保管，客户确认：在天祥质量保证程序所需的期间中，或根据相关认证机构的测试和认证规则，天祥可以在其档案中保留提供服务所需的所有材料。

## 8. 修改

8.1 对本协议作出的任何修改必须以书面形式明确作出，并须经双方授权代表签署之后方才有效。

## 9. 不可抗力

9.1 若任何一方由于下述事件而延迟履行或未能履行本协议项下的任何义务，则该方不必对另一方承担任何责任：

(a) 战争（不论宣战与否）、内战、暴乱、革命、恐怖主义行为、军事行动、蓄意破坏行为和/或海盗行为；

(b) 自然灾害（例如：剧烈风暴、地震、海啸、洪水和/或照明问题、爆炸和火灾）；

(c) 罢工和劳资纠纷，因受影响方或其任何供应商或代理人的一名或数名雇员引发的纠纷除外；或者

(d) 公用事业单位（如：电信、互联网、煤气和电力服务供应商）出现问题。

9.2 为了避免产生疑问，特此声明：若天祥是由于其分包人延迟或未能履行本协议义务而受影响的一方，则只有在分包人受到上述事件影响的情况下，方可视为不可抗力事件（定义见下文）的发生。

9.3 履约行为受到第 9.1 条所述事件（“不可抗力事件”）影响的一方必须：

(a) 及时以书面形式将不可抗力事件及其原因和可能由此导致的延迟履约或未能履约的持续时间通知对方；

(b) 以合理方式尽一切努力避免或减少不可抗力事件的影响，并在合理的情况下尽快继续或恢复履行其受影响的义务；并

(c) 继续提供未受不可抗力事件影响的服务。

9.4 若不可抗力事件的影响自其发生日起

持续超过六十（60）天，任何一方均可以提前至少十（10）天以书面形式通知另一方终止本协议。

## 10. 责任限制与免除

10.1 任何一方不得就以下情况向另一方免除或限制自己的责任：

(a) 因己方或己方董事、高级职员、雇员、代理人或分包人的疏忽导致死亡或人身伤害；或

(b) 己方（或己方董事、高级职员、雇员、代理人或分包人）有欺诈行为。

10.2 受限制于 10.1 条，就天祥因任何违反本协议的行为、或因本协议项下的服务所引起或与之相关的任何问题所须承担的违约、侵权（包括过失及不履行法定义务）或其它责任，天祥的累积责任最高应为客户在本协议项下应向天祥支付的费用金额。

10.3 受限制于 10.1 条，任何一方均不必向另一方承担因违约、侵权（包括过失及不履行法定义务）或其它责任而造成的任何以下损失：

(A) 利润损失；

(B) 销售或商业损失；

(C) 机会损失（包括但不限于与第三方协议或合同有关的损失）；

(D) 商誉或声誉损失；

(E) 预期收益损失；

(F) 因产品召回而产生的有关成本或费用；

(G) 软件、数据或信息使用或损坏的损失；或

(H) 任何间接的、衍生的、惩罚性的或特殊性的损失（即使已被告知此类损失发生的可能性）。

10.4 客户针对天祥提出的任何索赔（须始终符合第 10 条规定）必须在其知悉任何引发该索赔之情形后的九十（90）天内提出，未能在该九十（90）天内发出索赔通知即直接地或间接地排除对以违约、侵权或其它与本协议项下之服务相关事项为由提出索赔的权利，或构成对



## **前述索赔权利的不可撤销的放弃。**

10.5 客户不会因工作报告的结论与任何其他方出具的工作报告的结论不同而追究或试图追究天祥的责任，或协助或支持他方追究该等责任。

## **11. 赔偿**

11.1 若天祥及其高级职员、雇员、代理人、代表人、承办人及分包人由于直接或间接因任何以下事项引起或与之相关的索赔、诉讼及责任（包括诉讼费用和律师费）而遭受损失，客户必须对其作出赔偿并使其免受损害：

(a) 任何政府机关或他人以客户实际上或被指称违反任何法律、法规、或政府或司法机构的条例、规则或命令为由提起任何索赔或诉讼；

(b) 针对由天祥及其高级职员、雇员、代理人、代表人、承办人及分包人依据本协议提供服务所引起或与之相关的任何个人或实体所导致或遭受的任何人身伤害、财产损失或损害、经济损失、以及知识产权损失或损害而提起的索赔或诉讼；

(c) 客户实际上或被指称违反其在上述第 4 条规定项下的任何义务；

**(d) 任何第三方就任何服务履行行为、被声称的履行或不履行服务的行为而引起的或与之相关的任何性质的损失、损害或费用提出索赔，其针对任一服务的索赔总额超过第 10 条所载的责任限制；**

**(e) 因任何滥用或未经授权使用天祥依据本协议所提交的任何工作报告或依据本协议归属于天祥的任何知识产权（包括商标）的行为而引起的任何索赔或诉讼；以及**

(f) 由于任何第三方使用或依赖任何工作报告或者客户（或客户向其提供工作报告的任何第三方）基于工作报告之全部或部分所编制的任何报告、分析和结论而引起的或与之相关的任何索赔，如适用。

11.2 即使本协议终止，第 11 条项下的规

定仍将持续有效。

## **12. 保险政策**

12.1 各方均须负责自费安排购买各自的企业保险（包括但不限于职业责任险、雇主责任险、汽车保险和财产保险）。

**12.2 天祥明确声明拒绝以保险人或担保人的身份向客户承担任何责任。**

12.3 客户确认：尽管天祥购买有雇主责任保险，但该等保险的被保险人不包括客户或可能介入服务提供过程中的任何第三方的任何雇员。尽管有可能在客户或任何第三方的工作场所提供服务，但非天祥雇员并不属于天祥购买的雇主责任保险的保险对象。

## **13. 终止**

13.1 本协议于提供服务的起始日开始生效，有效期至服务履行完毕时为止，但依据本协议第 13 条提前终止本协议的情形除外。

13.2 若出现任何下述情形，本协议可被提前终止：

(a) 若一方实质性违反本协议项下的任何义务的持续时间超过另一方以挂号邮件或快递方式发送书面通知要求其采取违约补救措施之后的三十（30）天，则另一方可终止本协议；

(b) 若客户逾期未按照任何发票付款且/或经催告后仍未付款，则天祥可书面通知客户终止本协议；或

(c) 若任何一方与其债权人进行债务重组、或受破产保护令所规限、或（个人或公司）破产、或（公司）进入清算程序（以恢复偿债能力为目的的合并或重组程序除外）、或该方的任何财产或资产被担保物权人接管或被指定一名接管人、或该方停业或可能停业，另一方可书面通知该方终止本协议。

13.3 若本协议无论出于任何原因被提前终止，在不影响双方可能享有的任何其他权利或救济权的情况下，客户必须向天祥支付直至终止之日为止已履行的所有服务的费用，该义务在本协议终止或

有效期届满之后仍持续有效。

**13.4** 本协议的终止或有效期届满不得影响各方业已产生的权利和义务，亦不得影响本协议中任何明示或暗示在协议终止或有效期届满之时或之后仍生效或继续有效的规定。

#### **14. 转让与分包**

**14.1** 天祥保留其权利，在必要的情况下可委托其一家或多家关联公司及/或分包人履行天祥在本协议项下的义务并提供服务。天祥亦可在通知客户后向天祥集团内部的成员公司转让其在本协议项下的权利和义务。

#### **15. 适用法律与争议解决**

**15.1** 本协议与项目建议书适用中华人民共和国法律（不包括香港、澳门和台湾地区的法律）。任何由本协议和/或项目建议书引起的或与之相关的争议、冲突或索赔（包括与本协议项下提供服务有关的任何非合同索赔）应首先通过天祥和客户的友好协商予以解决。若双方在协商开始之后的三十（30）天内未能就争议解决方案达成一致，任何一方均可将该争议、冲突或索赔提交上海国际经济贸易仲裁委员会(又称上海国际仲裁中心，“SHIAC”)仲裁，该仲裁应在上海进行，并按照 SHIAC 在仲裁申请提交时有效的仲裁规则进行。仲裁裁决为终局裁决且对双方均有约束力。

#### **16. 其它条款**

##### **可分割性**

**16.1** 若本协议的任何条款无效、不合法或不可执行，则该条款应与本协议分离，其余条款如同本协议从未载有该无效、不合法或不可执行条款一样仍具有充分效力。若删除该无效、不合法或不可执行条款会导致无法实现本协议目的，则天祥与客户应立即通过善意协商达成一项替代约定。

##### **不构成合伙或代理关系**

**16.2** 本协议的任何内容或双方依据本协议采取的任何行动均不构成双方建立合

伙企业、社团、合营企业、或任何其它合作实体的依据，亦不构成使一方成为另一方的合伙人、代理人或法律意义上的代表人的依据。

##### **弃权**

**16.3** 受限于第 10.4 条，任何一方未能坚持严格履行本协议任何规定或未能行使其享有的任何权利或救济，不应视为该方放弃该权利，亦不构成本协议项下之义务的减少。任何一方放弃追究另一方任何违约行为的责任，不应视为该方放弃追究另一方任何其后再次违约行为的责任。

**16.4** 对本协议项下的任何权利或救济的放弃必须由弃权方明确说明并以书面形式传达给另一方之后才有效。

##### **完整协议**

**16.5** 本协议与项目建议书涵括双方达成的与本协议所议交易相关的全部约定，并取代双方之前就该等交易或本协议标的达成的所有约定、安排和谅解。购买订单、陈述或其它类似文件均不得视为对本协议的补充或变更。

**16.6** 各方确认：在签署本协议之时，未曾依赖过任何第三方在接受或签署本协议之前亲自或委托他人作出的任何陈述、保证、附属性合同或其它担保（本协议载明或提及的除外）。各方放弃在没有本条款的情况下其可能拥有的信赖任何该等陈述、保证、附属性合同或其他担保的所有权利和救济。

**16.7** 本协议不限制亦不免除任何欺诈性虚假陈述的责任。

##### **第三方权利**

**16.8** 非本协议一方的任何人士无权执行本协议的任何条款。

##### **额外保证**

**16.9** 在由另一方承担费用并应另一方请求的情况下，每一方均应在每一个案不时的合理要求的范围内签署并提交有关文书和文件及采取其他合理行为，以使其在本协议项下的义务有充分的约束

力。

**16.10** 客户特此声明：签署本协议前，天祥已向其详尽解释本协议下每一条款或条件，本协议下每一条款或条件皆系经双方充分协商和谈判后达成，为此本协议下的条款和条件非任何一方单方提出的附和性条款或条件，而是反映双方真实合意的协议条款。