

GENERAL TERMS AND CONDITIONS OF BUSINESS (2020)

1. **General terms and conditions**
In so far as they are not at variance with (i) the regulations or contractual conditions governing services rendered on behalf of or to governments, government agencies or public or private entities or (ii) the mandatory provisions of local law, the services provided by TCIS and/or its affiliated companies (hereinafter «the Company»), directly or through their agents and/or subcontractors, are subject to the present General Terms and Conditions of Business (hereinafter «General Terms and Conditions»).
2. **The Company**
The Company is involved in the areas of testing, inspection, and certification. Accordingly, the Company provides the inspection services listed in article 5 below and issues reports and/or certificates as indicated under article 6 below.
3. **The Client**
The Company acts for entities or individuals from whom it receives instructions and/or a mandate (hereinafter «the Client»).
4. **Provision of services**
 - 4.1 The Company undertakes to perform its services with the care and skill required by the nature of the task.
 - 4.2 The Company may delegate the performance of all or part of the services to an agent or subcontractor and the Client authorizes the Company to disclose all information necessary for such performance to the agent or subcontractor.
 - 4.3 The Company provides its services in accordance with the Client's explicit mandate, as accepted by the Company. The Client is expected to provide sufficient information, specifications, and instructions to enable the Company to evaluate and/or carry out the services required. If the Client communicates them to the Company, documents reflecting undertakings entered into between the Client and third parties or third party documents such as sales contracts, letters of credit, and bills of lading are not regarded as part of the mandate, unless expressly specified otherwise.
 - 4.4 Client acknowledges that the Company, by providing the services, neither takes the place of client or any third party, nor releases them of any of their obligations.
 - 4.5 Services provided do not encompass verification of origin nor of third-party IP rights attached to the inspected goods.
5. **Services**
The Company's services can include any of the following:
 - 5.1 Inspection during pre-loading and/or on arrival, including inspections in accordance with governmental programs imposed for imports.
 - 5.2 Pre-shipment and destination inspection of goods, equipment, packing, tanks, containers, means of transport etc....
 - 5.3 Stock, crop and transit monitoring activity, warehouse management and services.
 - 5.4 Verification of conformity in country of origin or destination including verification of the product's compliance with national or international standards or with commercial contracts or documentary credits or other commercial agreements. This may involve physical inspection, collection of samples, testing and other verification methods.
 - 5.5 Marine Surveys, including heavy lift/project cargo, draft survey, damage/claims survey, on/off hire condition, loading handling & stowage advice/ lashing/securing survey, bunker survey, cargo pre-loading condition and measurement survey.
 - 5.6 Consultancy and advisory services, including regulatory and compliance services and loss prevention in logistics.
 - 5.7 Quantitative guarantees;
 - 5.8 Supervision of complete industrial projects including monitoring, engineering, shipping and progress reports.
 - 5.9 Training and certification.
6. **Reports and Certificates**
 - 6.1 Subject to and within the limits of the Client's instructions, as accepted by the Company, the latter will issue reports and certificates which reflect the observations made. The Company does not have the obligation to refer to, give an opinion upon, or announce facts or circumstances which are outside the specific instructions received by the Clients.
 - 6.2 The reports delivered by the Company only reflect the facts such as have been identified by the Company at the time of its intervention.
 - 6.3 Reports or certificates issued after tests and/or analysis of samples contain the observations of the Company limited to those samples only, but, irrespective of the wording used, do not express any opinion as to the overall quality of goods from which the samples have been taken. If an opinion on the overall quality is required, a particular agreement must be concluded in advance with the Company for the test and/or analysis of the totality of the goods.
7. **Obligations of the Client**
The Client undertakes:
 - 7.1 To provide the necessary instructions, information, and documents in sufficient time to enable the Company to deliver the services requested.
 - 7.2 To provide the necessary access for the Company's representatives to the premises where the services are to be performed.
 - 7.3 To provide, on request, special equipment, and assistance, in particular personnel, necessary for the execution of the requested services.
 - 7.4 To ensure that all adequate measures will be taken for the safety of workers and representatives of the Company during the execution of the services.
 - 7.5 To promptly take all necessary steps to eliminate or remedy any obstacles to, or interruptions in, the performance of the services.
 - 7.6 To inform the Company in advance of all the known and/or suspected risks or dangers of whatever nature, present or future, linked to all orders, samples or tests requests, including the presence or risk of radiation, toxic substances, harmful or explosive materials, pollution.
 - 7.7 To exercise all its rights fully and to fulfill all its obligations under the terms of any contract with third parties to whom the services delivered by the Company relate, whether a report or certificate has been issued by the Company or not, failing which the Company will not incur any liability towards the Client.
8. **Laboratory analysis**
 - 8.1 If the Client requests an analysis of samples by its own laboratory or a third party laboratory, the Company will inform the Client of the result of the analysis, but will not be responsible for the accuracy of the analysis or the results.
 - 8.2 When the Client asks the Company to only attest to the intervention of a third party, it acknowledges that the sole responsibility of the Company consists in being present at the time of the intervention of the third party and communicating the results of the
- intervention, or confirming that it took place. In such cases, the Client acknowledges that the Company shall not be responsible for the sampling, the calibration of the test and measuring instruments and equipment used, the methods of analysis followed, the professional qualifications, the acts or omissions of the personnel of the third party, or of the results of the analysis carried out by the aforesaid third party.
9. **Liability and compensation**
 - 9.1 Liability for serious or intentional misconduct is according to the relevant applicable laws.
 - 9.2 For all the other cases, the Company's liability for any claim for loss, damage or expenses of whatever kind or origin is limited to the lesser of the following amounts:
 - (a) The equivalent of ten (10) times the fees paid or the commission due for the specific service requested under the terms of the contract at the origin of the aforesaid claim, or
 - (b) INR 10,00,000 (Indian Rupees Ten Lacs only), or
 - (c) Any lower amount specified in the contract, agreement or other convention concluded between the Company and the Client.
 - 9.3 The Company will not incur any liability for consequential or derivative damages including loss of profits, loss of business, loss of opportunity, loss of goodwill, losses of production and costs of product recall. Further, it shall have no liability or any loss, damage or expenses arising from the claims of any third party (including, without limitation, product liability claims) that may be incurred by the client.
 - 9.4 When fees or a commission due refer to two or more services and the Client puts forward a claim for one of such services, the fees or the commission will be due for the totality of the services rendered.
 - 9.5 The Client will release, guarantee and indemnify the Company and its managers, employees, agents or subcontractors against any claim raised by a third party for loss, damage or expenses of whatever nature relating to the execution of the alleged non-performance of services provided in accordance with the instructions of the Client.
 - 9.6 In the event that the Company is prevented for any reason whatsoever outside its control from carrying out or from bringing to a successful conclusion service for which an order was placed, or an agreement concluded, the Company will be released from any liability for the partial or total non-performance of the services requested. Moreover, the Client will pay the Company:
 - (a) All the expenses actually incurred.
 - (b) A proportional share of the fees or commission agreed upon for the service actually rendered.
10. **Price and Invoicing**
 - 10.1 The Client will pay at the latest within thirty (30) days from the date of the invoice, or within any other time limit which may have been agreed in writing with the Company, all the fees and expenses incurred by the Company, failing which interest on arrears will be due at the current LIBOR rates + 1.5% per month as from the date when the payment was due until the actual date of payment.
 - 10.2 The Client is responsible for the payment directly to the local authorities of any tax which may be due to them in relation to the provision by the Company of its services. The Client shall not claim those taxes, including any possible interest and/ or other penalty, back to the Company nor deduct them from the fees and expenses payable to the Company.
 - 10.3 The Client will not have the right to retain, defer or set-off the payment due to the Company on account of any dispute, a counterclaim or compensation which it may allege against the Company.
 - 10.4 The Client will also have to pay the Company all the expenses incurred in recovering arrears due to Client's late payment, including lawyer's fees and other legal expenses.
If unforeseen problems arise or if the Company incurs extraordinary expenses for the execution of the services, the Company will have the right to invoice the amounts necessary to cover the time and the additional expenses of bringing the contract to a conclusion.
11. **Suspension or Termination of Services**
The Company shall be entitled to immediately and without liability either suspend or terminate provision of the services in the event of (i) failure by the Client to comply with any of its obligations hereunder and if such failure is not remedied within 10 days that notice of such failure has been notified to the Client; or (ii) any suspension of payment, arrangement with creditors, bankruptcy, insolvency, receivership or cessation of business by the Client.
12. **Claim**
 - 12.1 The Client must notify any claim for loss, damage or costs ("Loss") to the Company at C-1504, Kailas Business Park, Vikhroli (W), Mumbai – 400079, India in writing, immediately after the discovery of the facts causing the Loss.
 - 12.2 In addition, the Client may initiate legal action as per Article 15 below, no later than 3 (three) months from the discovery of the Loss and no later than 1 (one) year after (a) the date of execution of the only service giving rise to the Client's claim; or (b) the date on which the aforesaid service should have been carried out in the case of an alleged non-performance, failing which the Company will be released from any liability towards the Client.
13. **Amendments and modifications**
 - 13.1 No modification or amendment of any clause of these General Terms and Conditions will have effect unless made in writing and signed by a person duly qualified for this purpose by the Company.
 - 13.2 If one or more provisions of these General Terms and Conditions should prove to be illegal or inapplicable for whatever reason, the validity and application of the other provisions will not in any case be affected by it.
14. **Extent of the services**
The Company acts neither as an insurer nor as a guarantor and declines any liability under this heading. The Client seeking to guarantee itself against losses or damage will have to obtain adequate insurance cover at its own expense.
15. **Applicable law, jurisdiction and settlement of disputes**
In the absence of any contrary provision to be found in the contracts, agreements or other conventions concluded between the Company and the Client, these General Terms and Conditions are governed and construed according to English law, exclusive of any rules with respect to conflicts of laws and be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The arbitration shall take place in Mumbai, Maharashtra, India and be conducted in the English language.