

## INTERTEK GENERAL TERMS & CONDITIONS OF SERVICE PERFORMED WITHIN THE UNITED STATES OF AMERICA

Unless otherwise specifically agreed to in writing by an authorized Intertek officer, all work, goods, services, Reports and/or obligations (collectively the "Services") provided by any group as part of Intertek's Caleb Brett Business Line, its officers, employees, and its subsidiaries, affiliated and related companies and other business entities, agents, representatives, contractors and subcontractors (all such persons and entities being collectively referred to as "Intertek") are undertaken upon the following terms and conditions.

### **1. Warranty**

(a) Intertek warrants exclusively to the person or entity ordering and/or paying for the Services (hereinafter referred to as "Customer") that the Services shall be performed in a manner consistent with that level of care and skill ordinarily exercised by a provider of similar services in circumstances similar to those in which the Services are provided. In the event of a breach of this warranty, Intertek agrees, at its own expense, to use reasonable endeavors to correct or re-perform the Services provided prompt notice is given of such breach of warranty.

(b) Intertek makes no other express warranties. Intertek excludes and disclaims all implied warranties, conditions and undertakings, whether statutory, common law or otherwise, including, but not limited to, any warranty of fitness for a particular purpose, warranty of merchantability, warranty of workmanlike performance, and warranty of results.

(c) Customer represents and warrants that any information, samples, and related documents it supplies to Intertek is, true, accurate representative, complete and is not misleading in any respect. Customer acknowledges that Intertek will rely on such information, samples, or other related documents provided by the Customer (without any duty to confirm or verify the accuracy or completeness thereof) in order to provide the Services. Customer further agrees 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.

### **2. Authority to Contract**

Customer represents and warrants that it has the power and authority to enter into agreements and procure the Services for itself. The Customer shall procure that any third party who may seek to rely upon the Services performed hereunder shall likewise be subject to these General Terms and Conditions. This Agreement may be terminated by either party if the other continues in material breach of any obligation imposed on it hereunder for more than thirty (30) days after written notice has been dispatched by that party requesting the other to remedy such breach. Intertek may also terminate this Agreement for convenience at any time upon providing thirty (30) days written notice to Customer.

### **3. Limitation of Liability and Indemnification**

(A) THE EXCLUSIVE REMEDY FOR INTERTEK'S BREACH OF ITS OBLIGATIONS, AND THE TOTAL AGGREGATE LIABILITY OF INTERTEK FOR ANY LOSS OR DAMAGE CLAIMED, EITHER DIRECTLY OR INDIRECTLY, IN CONTRACT, TORT, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, NEGLIGENT AND INTENTIONAL MISREPRESENTATION, ARISING OUT OF OR IN CONNECTION WITH THE PROVISION OF THE SERVICES SHALL BE EITHER TEN TIMES THE FEES PAID OR PAYABLE FOR THE SPECIFIC SERVICES GIVING RISE TO THE CLAIMED LOSS OR DAMAGES, OR FIFTEEN THOUSAND US DOLLARS (US\$ 15,000), WHICHEVER IS LESS.

(B) FURTHER, INTERTEK SHALL NOT HAVE ANY LIABILITY WHATSOEVER IN RESPECT OF ANY CLAIMS FOR LOSS OF PROFIT, LOSS OF PRODUCTION, LOSS OF FUTURE BUSINESS OR CANCELLATION OF CONTRACTS, WHETHER SUCH LOSS OR CANCELLATION MAY ARISE DIRECTLY OR INDIRECTLY, NOR ANY LIABILITY FOR INDIRECT, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES, OR ANY CONSEQUENTIAL LOSS.

(c) Customer shall guarantee, hold harmless and indemnify Intertek against all claims made by any third party, including without limitation any party other than the Customer who may have received or relied upon any Intertek Report whether or not with the express or implied authorization of Intertek, 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 exceed the limit of liability identified in Section 3(a) and against any related costs of litigation and attorneys' fees.

(d) Customer shall defend, indemnify and hold Intertek harmless from and against all claims, suits and liabilities (including but not limited to cost of litigation and attorneys' fees) arising from or related to, directly or indirectly, (1) actions by any governmental authority or others for any actual or asserted failure of the Customer or of any party other than the Customer who may have received or relied upon an Intertek Report to comply with any law, ordinance, regulation, rule or order of any governmental or judicial body; (2) information supplied by the Customer and relied upon by Intertek; and/or (3) personal injuries, loss of or damage to property, economic loss, and loss of or damage to intellectual property incurred by or occurring to any person or entity and arising in connection with or related to the Services performed or obligations assumed by Intertek, its officers, employees, agents, representatives, contractors and subcontractors.

(e) Customer shall defend, indemnify and hold Intertek harmless from and against all claims, suits and liabilities (including but not limited to cost of litigation and attorneys' fees) arising from or related to the unauthorized use or misuse of Intertek Reports.

(f) The indemnities in favor of Intertek in Sections 3(c), 3(d) and 3(e) shall apply even if the claims, suits and liabilities arise or are alleged to arise from the negligence, breach of contract or other legal fault of Intertek.

(g) Intertek expressly disclaims liability as a guarantor of the quality of any goods or as an insurer against loss or damage thereto, and disclaims all liability in any such capacity. Customers seeking a guarantee against loss or damage should obtain appropriate all risk insurance and, if such insurance is procured, Customer agrees to obtain a waiver of subrogation against Intertek.

### **4. Agreement to Increase Liability**

Customer may request Intertek's agreement to increase the limit of Intertek's liability in consideration for an increase in the cost of the Services, but absent any such agreement between Customer and Intertek made in writing and signed by an authorized Intertek officer, the limit of Intertek's liability shall remain as stipulated in Section 3(a).

### **5. Time Bar**

Intertek shall be discharged from all liability to the Customer for all claims for loss, damage or expense and such claims shall be extinguished unless a written claim is made within ninety (90) calendar days of the date at which the loss, damage, defect or alleged non-performance became apparent, or ought to have become apparent to the Customer, and suit is brought no later than two (2) years from the provision of the Services by Intertek.

### **6. Subcontracting**

If Customer requests Intertek to perform any Services under this Agreement which is not within the scope of work, or is not to be performed at the place of performance of Services, in each case as agreed as at the date of this Agreement in writing between Customer and Intertek ("Additional Work") Customer agrees and undertakes as follows:

(a) Intertek shall not be liable in any way for any performance of, defect or negligence in performance of, or failure to perform such Additional Work;

(b) Intertek may, in its sole discretion, and acting as agent for the Customer, instruct a suitably qualified third party to carry out such Additional Work on behalf of the Customer ("Third Party Contractor"); and

(c) Customer agrees to indemnify Intertek and hold it harmless against any costs, loss, damages, fees, expenses, claims or liabilities which Intertek may suffer or incur as a result of, arising from or in connection with any act or omission (including any negligent act or omission) done by the Third Party Contractor.

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### **7. Purpose of Services**

The Services performed by Intertek for the Customer and the measurements, laboratory data, calculations, estimates, notes and other documents provided by Intertek, together with status summaries, or any other communications describing the results of any Services, or element thereof, (herein collectively referred to as "Report(s)") are based upon samples drawn by, or submitted to, Intertek and limited to measurement procedures dictated by the Customer and are not necessarily designed or intended to address all matters of quality or condition of any goods or cargo.

Reports are based, and the Services conducted, under the Customer's specific instructions, and there may be other relevant information not requested nor reported. The Customer undertakes that if it provides any Intertek Report to any other party (whether or not with the express or implied authorization of Intertek), the Customer shall draw the attention of such other party to the foregoing. Further, the Customer acknowledges that Intertek does not, either by entering into a contract or by performing Services, assume, abridge, abrogate or undertake to discharge any duty of the Customer to any other person, including without limitation any obligation of the Customer to deliver goods of a certain quality or condition under any contract of sale.

### **8. No Third Party Beneficiary**

Except as provided for in Section 2 or as disclosed in writing by the Customer and agreed in advance by the parties, Customer is procuring the Services of Intertek solely for its own account and not for any other person or entity, and Customer is not acting as an agent or broker or in any other representative capacity. Customer and Intertek agree that, except as expressly provided in these General Terms and Conditions, there are no third party beneficiaries to the contract between Customer and Intertek. Further, no third party may rely on any Intertek Reports, except with the express prior written consent of an authorized Intertek officer.

### **9. Waiver of Confidentiality**

Should Customer use an Intertek Report, in whole or in part, in such a manner as to involve Intertek in legal controversy or to adversely affect Intertek's reputation, it shall be Intertek's right to utilize any and all Customer information, including, but not limited to, data, records, instructions, notations, samples or documents within Intertek's custody and control which relate to the Customer for the purpose of offering any necessary defense or rebuttal to such circumstances. While samples, obtained by Intertek or otherwise, are the property of the Customer, Customer assigns an irrevocable right to Intertek to use said samples for purposes including, but not limited to, quality assurance, internal research, data trending, dispute resolution and training.

### **10. Preliminary Reports**

Any preliminary or partial Report submitted to Customer shall be used at the Customer's sole risk, and Intertek shall bear no responsibility for any deviation between information in such preliminary or partial Report and the information in the final written Report signed by an authorized Intertek representative.

### **11. Prevailing Terms**

Intertek's acceptance of Customer's request for Services is limited to these General Terms and Conditions of Service and any attached provisions and payment terms. These General Terms and Conditions are the only terms upon which Intertek agrees to provide Services and shall prevail over any terms proposed or submitted by Customer at any time. Any provisions or terms in Customer's purchase order, instruction(s), nomination or other document are objected to and rejected, and shall be of no force or effect unless agreed to in writing by both parties.

### **12. Force Majeure**

Intertek shall not be liable to the Customer or be deemed to be in breach of contract by reason of any delay in performing or any failure to perform any of Intertek's obligations in relation to the Service if the delay or failure is due to any cause beyond Intertek's reasonable control.

### **13. Severability**

If any term, condition or provision in these General Terms and Conditions, or any part thereof, is deemed unenforceable, then that term, condition or provision, or part thereof, shall to the extent necessary stand void and all other terms, conditions or provisions shall have the same effect as if the voided term, condition or provision, or part thereof, had not existed.

### **14. Jurisdiction and Governing Law**

ALL CLAIMS MADE AGAINST INTERTEK, EITHER DIRECTLY OR INDIRECTLY, IN CONTRACT, TORT OR OTHERWISE, SHALL BE GOVERNED BY THE MARITIME LAW OF THE UNITED STATES, EXCLUSIVE OF RULES FOR CHOICE OF APPLICABLE LAW. ANY SUIT BROUGHT AGAINST INTERTEK SHALL BE FILED EXCLUSIVELY IN EITHER THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION, OR THE DISTRICT COURTS OF HARRIS COUNTY, TEXAS.

### **15. Additional Terms**

Any provisions & payment terms listed overleaf or attached hereto are to be considered part of these General Terms and Conditions.

### **16. Foreign Assignments**

Orders received by an officer or employee of Intertek for assignments outside of their country will be forwarded on behalf of the Customer to the appropriate foreign based associated Intertek company or correspondent which will be solely and fully responsible for all matters in connection with the order received, including directly acting for and reporting to the Customer. As a condition of Intertek forwarding such assignment on the Customer's behalf, it is understood that the forwarding Intertek Company will act as an agent only on behalf of the Customer and shall bear no responsibility with regard to the Services rendered by the Intertek company or correspondent to whom the assignment is forwarded. These General Terms and Conditions shall be applicable as between the Customer and the Intertek company or correspondent to whom the assignment is forwarded.

### **17. Affiliates**

The officers, employees, subsidiaries, affiliated and related companies and other business entities, agents, representatives, contractors and subcontractors of Intertek shall enjoy the full protection and benefit of these General Terms and Conditions. Where appropriate, Intertek may elect, and/or Customer may request, for all or part of the Services to be performed by one or more Intertek Affiliate(s). An "Affiliate" with respect to Intertek shall mean any entity, including without limitation, any individual, corporation, company, partnership, limited liability company or group, that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such party. In the event that Customer issues any purchase order, work order or nomination pursuant to these General Terms and Conditions, such purchase order, work order or nomination: (i) shall incorporate by reference these General Terms and Conditions; (ii) shall be deemed a separate contract between the parties who sign it; and (iii) is an independent contractual obligation from any other purchase order, work order or nomination. The term "Intertek" as used in this Section 17 shall, for the purposes of any purchase order, work order or nomination issued by Customer hereunder, be deemed to include only the Intertek Affiliate receiving such purchase order, work order or nomination. In such circumstance these General Terms and Conditions shall be deemed to be between each relevant Intertek Affiliate and the Customer.

## PROVISIONS

Basic Services, as outlined in this fee schedule, are performed under the operational guidelines of the TIC Council available at <http://www.tic-council.org/>. Additional services are provided under specific agreement with the Customer. All services are governed by the Intertek USA, Inc. (hereinafter "Intertek") Terms and conditions of Service.

If the Customer requests the analysis of samples by the Customer's or a third party's laboratory, Intertek will pass on the results but without any responsibility for their accuracy. Likewise, when requested to "Witness Analysis", our responsibility is solely to witness that the analysis is conducted on the correct sample. Customer agrees that Intertek is not responsible for the condition or operation of apparatus, instrumentation and measuring devices, and that Intertek accepts calibration data, reagents, etc. as presented, and will not be responsible for the accuracy of any results.

Stated product identification in any Intertek Quality or Quantity Report is, by necessity, based solely on information supplied by the Customer, and Intertek disclaims any responsibility for the accuracy of this information. Testing is performed against Customer supplied instructions and not to determine the identity or merchantability of the product.

If requested, we perform "Stop Gauge Calculations" for comparison purposes only. The terminal and/or vessel is responsible for the calculation and observation of "Stop Gauge" measurement, pumping, stopping, and valve setting.

Our staff is available to assist in blending operations. Volumetric or weighted composites can be prepared from components and tested in our laboratories. However, Customer should note that due to the inherent difficulty in achieving a homogeneous stable blend in shore and ship tanks, the laboratory composite sample may offer different test results to samples drawn from the final blend.

If Intertek personnel are required to testify in any legal proceeding regarding any services performed by Intertek, Customer agrees to pay to Intertek, while complying with such legal process, an hourly rate and expenses as provided by the prevailing rate schedule.

Intertek does not release or detain vessels or act as an intermediary for any party in this regard. The responsibility is that of the terminal, charterers and other interested parties.

For quality control and conformance to specifications, samples are tested by standard laboratory test methods. Multiple measurements of the same property of a specific sample by a given test method rarely give identical results. However, each result obtained has equal validity and cannot be arbitrarily discarded.

If more than one test result is obtained for the same property of a specific sample by a given test method, then Intertek will apply sound scientific principles, regulatory standards, international standards, or prevailing industry protocol in order to determine the reportable result.

International standards such as ISO 4259, ASTM D3244, IP 367, etc. can also be used in a case of dispute between buyer and seller should the process be agreed to by the parties.

All reports will be maintained on file for a period of five (5) years.

Samples are retained for forty-five (45) days, unless otherwise requested in writing by our principals.

Letters of Credit - Customers are advised that specific Letter of Credit documentation requirements should be addressed with Intertek and resolved during the nomination process under IFIA guidelines to ensure they can be made consistent with standard Intertek documentation and procedures. Requests for retroactive alterations to inspection reports to conform to unusual Letter of Credit requirements will result in delays and the possibility that Intertek will be unable to comply on ethical grounds.

Documents reflecting agreements between Customer and third parties, or third parties' documents, such as sale contracts, letters of credit, etc., are (if received by the Company) considered for information only, and do not change the scope of the services or the responsibilities of Intertek.

### Customer Obligations & Reimbursement

Intertek engages with Customers on the basis that the samples and work involved are usual and customary to the industry. It is implicit within any agreement that Customer will inform Intertek in advance of any inherent vices, hazards or dangers, actual or potential, associated with any work order, samples or testing, including, but not limited to, the presence or risk of radiation, toxic, noxious, corrosive or explosive conditions. Should any unforeseen problems or damages arise in the course of carrying out any of the contracted services, Intertek shall be entitled to reimbursement from the Customer for any extra time, repairs and costs incurred, at prevailing contractual rates, or at cost plus 15% for items not covered by contract.

## PAYMENT TERMS

Granting of payment terms is subject to credit review and approval. Your Intertek representative can provide the Credit Application form to be completed and returned for processing. If credit is approved, Intertek USA, Inc.'s payment terms are "Net 30". In the event credit is not approved, prepayment of the project will be required prior to starting work.

Any discount applied to book-rate charges is predicated upon the expectation of the prompt payment of our invoices. Intertek reserves the right to revert to charges for delinquent invoices at the full book-rate in effect at the time the service was performed, with no discounts, if not paid within 60 days from the date of original invoice.

Intertek provides services exclusively to Customer, who is solely responsible for payment. Customer agrees that payment of any invoice(s) shall not be predicated upon Customer receiving payment and/or funding from a third party not specifically associated with this agreement.

Intertek shall make good-faith efforts to resolve payment disputes without third-party intervention. Should these good-faith efforts fail to reach a resolution, Customer agrees that if any of its unpaid invoices are placed with a collection agency or attorney for collection, Intertek shall be entitled to collect its collection agency fees, reasonable attorney's fees, and/or court costs from Customer regardless of whether or not the matter is settled out-of-court or litigated.

Discounts shall not apply to "pass-through" expenses. Examples of such expenses are (but not limited to) out of pocket travel, tolls and subsistence costs; launch, helicopter, courier or shipping charges. Such expenses, when deemed necessary to perform services on behalf of the Customer and at the sole discretion of Intertek - on site and on a case-by-case basis - shall be deemed accepted and payable unless authority is specifically denied by the customer at the time Intertek is offered the contract/nomination or prior to the performance of the services therein.

Customer shall not be entitled to retain or defer payment of any sums due to Intertek on the basis of any dispute, cross claim or set off which it may allege against Intertek.