

**Procedure Manual Control Union Inspections (Pvt) Ltd.**  
**Annex A3. Terms of Contract**

**Terms of Contract applicable to the Audit and certification activities by Control Union Inspections (Pvt) Ltd, hereinafter called "the Company"**

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**1. General**

- 1.1 For those items not covered in these Terms of Contract (the "ToC") the TERMS AND CONDITIONS OF BUSINESS (1999) (in the form and substance as attached hereto) (hereinafter: the "General Terms") apply, with the exception of articles 7.6 and 10 thereof.
- 1.2 The Company's standard services may include all or any of the following: Audits and Certifications of products, processes, activities, scopes or management systems. Inspections are defined to include assessments, audits, inventories and surveillance.

**2. Offer letter**

- 2.1 By signing and returning an offer made by the Company, the Principal enters into a formal agreement with the Company (hereinafter: the "Agreement") on the terms and conditions as specified in such offer letter as well as in all other documents (including these terms of contract) which are and have been explicitly declared applicable to the Agreement (together hereinafter: the "Documents").

**3. Obligations and restrictions of the Principal**

- 3.1 The Principal must report any changes or discontinuation of activities within the scope of the contract, which interfere or could potentially interfere with the Principal's compliance with the requirements as mentioned in the "Documents". Or which could potentially change the scope of the contract immediately to the Company.
- 3.2 The Principal may not transfer any of its rights or obligations under the Agreement and the Documents to any third party.
- 3.3 Unless the Principal acts in accordance with the terms of the Agreement and the terms of the Documents, it may not refer to any Document, document or indication such that in the public's perception, the impression could be created that the products of the Principal were obtained or the units of the Principal are kept according to the terms of the Documents.
- 3.4 The Principal must, upon request by the Company, withdraw and/or rectify any misleading or incorrect publications, indications or information with regard to its inspected and/or certified activities to the satisfaction of the Company.
- 3.5 The Principal may never (i) use a certification granted by the Company for activities for which such certification was not given and (ii) use a Company indication on products which have not been approved by the Company in accordance with the certification procedures, and (iii) if the Principal provides copies of the certification documents to other (third) parties, the documents shall be reproduced in their entirety or as specified in the certification scheme.
- 3.6 The Principal shall refrain from using a (quality) system certification granted by the Company in such a manner to imply that a product or a service is approved by the Company.
- 3.7 The Principal shall refrain from acting in such a way that could potentially affect a Company indication and/or a Company certificate in a negative way.
- 3.8 The Principal must inform the Company immediately upon becoming aware of every incorrect and/or unauthorised use of a Company indication and/or any misleading or incorrect publications referring to the Company.

**4. Audit**

- 4.1 The Company will perform the audits or will have the Audits performed by a third party on her behalf according to the terms of the Documents in order to determine whether the agreed conditions as mentioned in the Documents are being adhered to by the Principal.

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- 4.2 If the Company, in its sole discretion, finds it necessary and reasonable to perform additional Audits, the costs for these extra Audits shall be for the account of the Principal. These costs shall be based on the yearly fee as agreed upon by and between the Company and the Principal and shall be charged on the basis of real made costs.
- 4.3 The Principal must make all required arrangements for the performance of the Audit activities, including but not limited to the provisions necessary for the examination of documentation by the Company. Additionally, the Principal must provide the Company and any authorities involved with the certification process (including, but not limited to accreditation body, scheme owners) access to all areas, premises and units which fall within the scope of the Agreement and records (including but not limited to internal audit reports) for the purpose of Audit and it must make personnel available for the purpose of resolution of complaints.
- 4.4 If the Company indicates that the same is required for the purpose of Audit, samples for analysis must be made available by the Principal and must be placed free of charge at the Company's disposal.

**5. Certificate**

- 5.1 If the Principal is granted a scope certificate this shall be valid until the expiration date which is mentioned on the certificate, provided that:
- (i) no deviations, alterations and/or other changes have occurred with regard to the production method and units on the date they were inspected, such production method and production units having been granted a certification based on that Audit; and
  - (ii) the Agreement has not been terminated due to any reason whatsoever.
- 5.2 Verbal commitments or agreements regarding the certification by or with the Company's personnel or the party performing the Audits on the Company's behalf, do not bind the Company in any way. Only upon the taking of a formal written certification decision by the Company, a certification shall be granted by the Company to the Principal.
- 5.3 The Company scope certificate is granted to the Principal on a non-exclusive basis.

**6. Confidentiality**

- 6.1 The Company shall take all necessary measures to ensure that all information which has come to its knowledge in connection with the performed Audits (the "Information") shall be treated as confidential and it shall not disclose the Information to a third party without the prior written consent of the Principal, except to the extent required by law and/or the Documents.
- 6.2 To gain or maintain confidence in certification, the company will provide appropriate access to, or disclosure of, non-confidential information about the conclusions of specific audits (e.g. audits in response to complaints) to specific interested parties.
- 6.3 The Principal shall take all necessary measures to ensure that all information which has come to its knowledge regarding the method of Audit used by the Company shall be treated as confidential and it shall not disclose any such information to a third party without the prior written consent of the Company, except to the extent required by law and/or the Documents.

**7. Indications**

- 7.1 If the Principal acts in accordance with the provisions of- and meets the requirements as mentioned in the relevant Documents (including but not limited to the relevant Document regarding the use of the Company indication), it may use the relevant Company indication(s), on products which have been certified by the Company and for which the Principal possesses a valid product scope certificate.
- 7.2 The Principal shall upon receiving notice of suspension or withdrawal of its management system certification, discontinue all use of all advertising matter / declarations that contains a reference to certification, as instructed by the Company, and revise all advertising matter accordingly when the scope of certification has been reduced.

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- 7.3 The right to use the Company indication is granted to the Principal on a non-exclusive basis.
- 7.4 The Principal is allowed to use the Company indication on certified products for which a product scope certificate has been issued by the Company.
- 7.5 When making reference to the product certification granted by the Company in media such as documents, brochures or advertising, the Principal shall at all times comply with the requirements imposed by the certification body or as specified in the certification scheme.
- 7.6 The Principal shall comply with any requirements that may be prescribed in the product certification scheme relating to the use of marks of conformity, and on information related to the product.

**8. Amendment of the documents**

- 8.1 The Company is entitled to unilaterally amend (the terms of) the Documents.
- 8.2 The Company shall inform duly the Principal in writing about any amendment of the Documents which are relevant to the Agreement and it shall notify the Principal of the day these amendments to the Documents come into effect.
- 8.3 In case of an amendment to (the terms of) the Documents as contemplated by Article 8.1 hereof, the Principal agrees to be unconditionally bound to the (revised) terms of these newly revised Documents. The Company and the Principal acknowledge and agree that any such revised terms shall replace the relevant terms of the former Documents as of the day the amendments come into effect.

**9. Responsibility, liability and indemnification**

- 9.1 The following clauses of the General Terms shall be deemed as integral parts of these ToC: clause 1, 3, 5, 8, 9, 11, 12.1, 12.3, 13, 14, 15, 16, 17, 18, 19 and 20.
- 9.2 The liability of the Company in respect of any claims for loss, damage or expense of whatsoever nature and howsoever arising in respect of any breach of contract and/or any failure to exercise due skill and care by the Company shall in no circumstances exceed a total aggregate sum equal to 10 (ten) times the amount of the fee or commission payable in respect of the specific services required under the particular contract with the Company which gives rise to such claims provided however that the Company shall have no liability in respect of any claims for indirect or consequential loss including loss of profit and/or loss of future business and/or loss of production and/or cancellation of contracts entered into by the Principal. Where the fee or commission payable relates to a number of services and a claim arises in respect of one of those services the fee or commission shall be apportioned for the purposes of this paragraph by reference to the estimated time involved in the performance of each service.
- 9.3 The Principal shall hold the Company harmless and shall indemnify the Company as a result of damages suffered by the Company due to the Principal not observing the national and international governmental export and import restrictions.

**10. Fees**

- 10.1 Unless expressly indicated or agreed otherwise in writing, the prices quoted by or agreed with the Company shall be net prices, therefore exclusive of VAT and other Taxes.
- 10.2 The Principal must pay a fee based on the number of Audit days needed (including travel days) and the certification costs (e.g. administration, certificates, etc.). Additional Audit visits which the Company finds reasonable and necessary will be invoiced according to the terms of the relevant Documents.
- 10.3 Other costs (e.g. travel and boarding costs, subsistence costs, costs for analyses and costs for sending certificates by registered mail) will be invoiced directly based on real made costs.
- 10.4 The Company reserves the right to alter the agreed fee based on (inter)national index figures or the Company policy. The Company will send a notification of a change in the fee structure to the Principal at least three (3) months before the day it comes into effect.

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- 10.5 In case of cancellation of the Audit visit by the Principal or by the Company (due to non payment of the invoice), all costs already made for the Audit visit such as but not limited to costs for flight tickets, visa, vaccinations, etc will in any event be charged to the Principal.
- 10.6 If the Principal desires amendments or additions to the Agreement with regard to the units and/or products which must be inspected after the Agreement has been executed, the Company shall agree to these amendments or additions to the extent that it may be reasonably expected to do so. To the extent that the amendments and additions desired by the Principal involve extra costs, the Company shall charge these extra costs to the Principal in their entirety.

**11. Payment**

- 11.1 In case the Company has not received payment of an invoice sent for an Audit visit two weeks prior to such visit, the Audit visit will be cancelled.
- 11.2 The Principal relinquishes any right to setoff amounts charged by and between parties. Settlement of credit amounts and/or claims with outstanding payments to the Company is explicitly not allowed.

**12. Terms and termination**

- 12.1 The Agreement shall enter into effect on the date the offer letter was signed and returned by the Principal until the end of that calendar year and shall be extended automatically each year by an additional term of one (1) year.
- 12.2 Unless expressly provided otherwise in these ToC or, alternatively, in writing between the Company and the Principal, during the Initial Term, the Agreement may not be terminated prematurely. After expiry of the Initial Term, the Agreement may be terminated by either party by way of a written termination notification to the other party, provided that the terminating party shall take into account a notice period of three (3) months..
- 12.3 The Agreement can be terminated by the Company with immediate effect, by written notice to the Principal, without having to take a notification period into account in any case if:
- (i) the Principal has acted contrary to terms of the Agreement and/or the terms of the Documents;
  - (ii) the Principal misuses the certifications obtained from the Company in any way;
  - (iii) the Principal has entered into bankruptcy or if a filing for its bankruptcy has been requested or if it has been granted a suspension of payments;
  - (iv) the Principal fails to pay any amount it owes to the Company within one month after the expiration of the payment deadline; or
  - (v) the Principal damages the Company's name, reputation or business in any way.
- 12.4 In case of termination of the Agreement for whatever reason:
- (i) the Principal shall return the scope certificates by registered mail to the Company within one week after the termination of the Agreement;
  - (ii) all rights of the Principal resulting from the Agreement shall terminate with immediate effect, including any rights to have units and/or products inspected and/or certified;
  - (iii) the Company shall not be obliged to refund the fee which has already been paid by the Principal;
  - (iv) the Company shall be obliged to maintain secrecy regarding the Information to the extent possible, except to the extent it must disclose such Information as required by law or by the terms of the Documents;
  - (v) the Principal may no longer use the Company indications and/or certificates, shall withdraw these indications and/or certificates, and shall inform the Company about this.

**13. Appeals**

- 13.1 The Principal may appeal against a certification decision of the Company only.
- 13.2 Appeals must be received by the Company within 6 (six) weeks after the certification

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decision.

13.3 Only written appeal in the English, addressed to the Company's office in the Sri Lanka is handled.

13.4 The Company shall handle the appeal and inform the Principal in writing in the English (or when appropriate in the local language) language of the decision concerning the appeal together with a motivation within 3 (three) months after receipt of the appeal.

**14. Disputes, applicable law and (extra) judicial costs**

14.1 All disputes existing between parties shall be heard exclusively by a competent Court in the country in which the principal is resident. Control Union office of the particular country will be responsible for such legal affairs, unless the Company prefers another international competent court.

14.2 All agreements between the Company and the Principal are subject to the domestic law of such country where principal and the responsible control union office are situated.

14.3 All judicial and extra judicial costs incurred by the Company because payment of an invoice was not made (in good time), shall be paid by the Principal. The extra judicial costs are deemed to amount to at least 15% of the amount, which is claimed.