



# TERMS AND CONDITIONS FOR CERTIFICATION SERVICES

## 1. GENERAL

1.1 Unless otherwise agreed in writing, all offers or services and all resulting contractual relationship(s) between QUEST CAMBODIA, any affiliated companies of QUEST or any of their agents (each "QUEST") to any person applying for certification services (the "Client") shall be governed by these General Conditions.

1.2 These General Conditions, and, as applicable, the Proposal, the Application, the Codes of Practice, the QUEST Certification Marks License Terms and Conditions constitute the entire agreement (the "Contract") between the Client and QUEST with respect to the subject matter hereof. Save as otherwise provided no variation to the Contract shall be valid unless it is in writing and signed by or on behalf of the Client and QUEST.

1.3 Where a Certificate is issued to the Client, QUEST will provide the Services using reasonable care and skill and in accordance with the Codes of Practice then in force of the relevant Certification Body. A copy of such Codes of Practice, and any amendments to it as may be issued from time to time, will be supplied by the Certification Body to the Client upon commencement of the Services.

## 2. DEFINITIONS

**"Accreditation Body"** means any organization (whether public or private) having the authorization to appoint Certification Bodies; **"Application"** means the request for services by a client; **"Certificate"** means the Certificate issued by a competent Certification Body; **"Certification Body"** means any QUEST company having the authorization to issue Certificates.

**"Codes of Practice"** means those codes of practice issued by a Certification Body in accordance with the relevant certification scheme.

**"Proposal"** means the outline of services to be rendered by QUEST to the Client. **"Report"** a report issued by QUEST to the Client

indicating whether or not a recommendation to issue a Certificate is to be made. "QUEST Certification Mark License Terms and Conditions" means the terms and conditions of use of the licensed **QUEST Certification Mark**.

## 3. SERVICES

3.1 These General Conditions cover the following services ("the Services"):

- a) System certification services: quality, environmental, safety, health, and other management system certification in accordance with international or national standards.
- b) Service certification services in accordance with non-mandatory normative documents, specifications, or technical regulations.
- c) process certification services.
- d) skills certification services

3.2 On completion of an assessment program, QUEST will prepare and submit to the Client a Report. Any recommendation given in a Report is not binding on the Certification Body and the decision to issue a Certificate is at the sole discretion of the Certification Body.

3.3 Client acknowledges that QUEST, either by entering into the Contract or by providing the Services, neither takes the place of Client or any third party, nor releases them from any of their obligations, nor otherwise assumes, abridges, abrogates or undertakes to discharge any duty of Client to any third party or that of any third party to Client.

3.4 Certification, suspension, withdrawal, or cancellation of a Certificate shall be in accordance with the applicable Certification Rules.

3.5 QUEST may delegate the performance of all or part of the Services to an agent or a subcontractor and Client authorizes QUEST to disclose all information necessary for such performance to the agent or subcontractor.

## 4. OBLIGATIONS OF THE CLIENT

4.1 The Client shall ensure that all product samples, access, assistance, information, records, documentation, and facilities are made available to QUEST when required by QUEST, including the assistance of properly qualified, briefed, and authorized personnel of the Client. The Client shall in addition provide QUEST free of charge suitable space for conducting meetings.

4.2 Whatsoever permitted by law, the Client acknowledges that, it has not been induced to enter into the Contract in reliance upon, nor has it been given, any warranty, representation, statement, assurance, covenant, agreement, undertaking, indemnity or commitment of any nature whatsoever other than as are expressly set out in these General Conditions and, to the extent that it has been it unconditionally and irrevocably waives any claims, rights or remedies which it might

otherwise have had in relation thereto. Any conditions or stipulations included in the Client standard form documents which are inconsistent with, or which purport to modify or add to, these General Conditions shall have no effect unless expressly accepted in writing by QUEST.

4.3 The Client shall take all necessary steps to eliminate or remedy any obstacles to or interruptions in the performance of the Services.

4.5 The Client may not reproduce or publish extracts of any report of QUEST. If the Client has obtained the prior written authorization of QUEST, QUEST reserves its rights to lodge a complaint in case of disclosure in breach of this clause or disclosure which QUEST considers in its sole discretion is abusive. The Client shall not publicize details of the way in which QUEST performs, conducts, or executes its operations.

4.7 The Client shall immediately inform QUEST of any and all changes in their premises which may affect their management system, their service their products, their process, or their skills. Any breach of this obligation to inform may lead to the withdrawal of the Certificate.

Furthermore, the Client is bound to inform QUEST of any major nonconformity identified during internal audits undertaken by the Client, its partners, or public authorities.

## **5. FEES AND PAYMENT**

5.1 The fees quoted to the Client cover all stages leading to completion of the assessment program or operations and the submission of a Report and of the periodic surveillances to be carried out by QUEST for the maintenance of the Certificate. As fees are based on the charge rate applicable at the time of submitting a Proposal, QUEST reserves the right to increase the fee if the Client's instructions change or are found to be not in accordance with the initial details supplied to QUEST prior to it providing the relevant fee quotation. Clients will be notified of any increase in fees.

5.2 Additional Audit fees shall be charged for audits that are not included in the Proposal and for work required due to

non- conformances being identified. These will include, without limitation, costs resulting from:

- a) repeats of any part, or all, of the assessment programme or operations due to the registration procedures and rules not being met.
- b) additional work due to suspension, withdrawal and/or reinstatement of a Certificate.
- c) reassessment due to changes in the management system or products, process, or services; or
- d) compliance with any subpoena for documents or testimony relating to work performed by QUEST.
- e) witness audit called by the accreditation body

5.3 Client shall not be entitled to retain or defer payment of any sums due to QUEST on account of any dispute, counter claim or set off which may allege against QUEST.

5.4 All the invoices shall be paid in full before QUEST issue the Certificate on successful Audit Outcome.

5.5 Client shall not refuse or hold any payment due to QUEST due to unsuccessful outcome of the audit.

## **6. REPORT AND CERTIFICATE OWNERSHIP AND INTELLECTUAL PROPERTY**

Any document including, but not limited to any Report or any Certificate, provided by QUEST and the copyright contained therein shall be and remain the property of QUEST and the Client shall not alter or misrepresent the contents of such documents in any way.

The Client shall be entitled to make copies for its internal purposes only. Duplicates of Certificates are available upon request for external communication purposes.

## **7. COMMUNICATION**

The Client may promote its certification in accordance with the terms set out in the Regulations governing the use of the certification marks. Use of QUEST' corporate name or any other registered trademarks for advertising purposes is not permitted without QUEST' prior written consent.

## **8. CONFIDENTIALITY**

8.1 As used herein, "**Confidential Information**" shall mean any oral or written proprietary information that a party may acquire from the other party pursuant to the Contract or information as to the business of the other party provided, however, that Confidential Information shall not include any information which:

- (1) is or hereafter becomes generally known to the public.
- (2) was available to the receiving party on a non-confidential basis prior to the time of its disclosure by the disclosing Party.
- (3) is disclosed to a party by an independent third party with a right to make such disclosure.

8.2 Unless required by law or by a judicial, governmental, or other regulatory body, neither party nor their agents or subcontractors shall use the Confidential Information other than for the purpose of the Contract nor disclose the other's Confidential Information to any person or entity without the prior written approval of the other party except as expressly provided for herein.

8.2 Unless required by law or by a judicial, governmental, or other regulatory body, neither party nor their agents or subcontractors shall use the Confidential Information other than for the purpose of the Contract nor disclose the other's Confidential Information to any person or entity without the prior written approval of the other party except as expressly provided for herein.

## **9. DURATION AND TERMINATION**

9.1 Unless otherwise agreed, the Contract shall continue (subject to the termination rights set out in these General Conditions) for the term set forth in the Proposal. On expiry of the Initial Terms of three years, the Contract shall renew automatically.

In case Client wishes to terminate the contract after initial term, must notify QUEST at least 3 months before the certificate expiry date.

9.2 Either Party shall be entitled to terminate immediately the provision of the Services in the event of any arrangement with creditors, bankruptcy, insolvency, receivership, or cessation of business by the other Party.



9.3 In case the Client transfers its activities to another organization, the transfer of the Certificate is subject to the Certification Body's prior written consent. Where such consent is given, the use of the Certificate by such new organization shall be governed by the Contract.

#### **10. FORCE MAJEURE**

If QUEST is prevented from performing or completing any service for which the Contract has been made by reason of any cause whatsoever outside QUEST' control, including, but not limited to, acts of God, war, terrorist activity or industrial action; failure to obtain permits licenses or registrations; illness, death or resignation of personnel or failure by Client to comply with any of its obligations under the Contract, the Client will pay to QUEST:

- a) the amount of all abortive expenditures actually made or incurred.
- b) a proportion of the agreed fees equal to the proportion (if any) of the service actually carried out; and QUEST shall be relieved of all responsibility whatsoever for the partial or total nonperformance of the required Services

#### **11. LIMITATION OF LIABILITY AND INDEMNITY**

11.1 QUEST undertakes to exercise due care and skill in the performance of the Services and accepts responsibility only in cases of proven negligence.

11.2 Nothing in these General Conditions shall exclude or limit QUEST' liability to the Client for death or personal injury or for fraud or any other matter resulting from QUEST' negligence for which it would be illegal to exclude or limit its liability.

11.3 Subject to clause 11.2, the total liability of QUEST to the Client in respect of any claim for loss, damage or expense of any nature and howsoever arising shall be limited, in respect of any one event or series of connected events, to an amount equal to the fees paid to QUEST under the Contract (excluding Value Added Tax thereon).

11.4 Subject to clause 11.2, QUEST shall have no liability to the Client for claim for loss, damage or expense unless arbitral proceedings are commenced within three months after the date of the performance by QUEST of the service which gives rise to the claim or in the event of any alleged non-performance within three months of the date when such service should have been completed.

11.5 Subject to clause 11.2, QUEST shall not be liable to the Client nor to any third party:

- a) for loss of profits, loss of production, loss of business or costs incurred from business interruption, loss of revenue, loss of opportunity, loss of contracts, loss of expectation, loss of use, loss of goodwill or damage to reputation, loss

of anticipated savings, cost or expenses incurred in relation to making product recall, cost or expenses incurred in mitigating loss and loss or damage arising from the claims of any third party (including without limitation product liability claims) that may be suffered by the Client; and

- b) any indirect or consequential loss or damage of any kind (whether or not falling within the types of loss or damage identified in (a) above).

11.6 Except for cases of proven negligence or fraud by QUEST, the Client further agrees to hold harmless and indemnify QUEST and its officers, employees, agents or subcontractors against all claims (actual or threatened) by any third party for loss, damage or expense of whatsoever nature including all legal expenses and related costs and howsoever arising (i) relating to the performance, purported performance or non-performance, of the Services or (ii) out of or in connection with the Client's product, process or service the subject of the certification (including, without limitation, product liability claims).

11.7 Each party shall take out adequate insurance to cover its liabilities under the Contract.

#### **12. MISCELLANEOUS**

12.1 If any one or more provisions of these General Conditions are found to be illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

12.2 Except as expressly provided for herein, the Client may not assign or transfer any of its rights hereunder without QUEST' prior written consent.

12.3 The Parties acknowledge that QUEST provides the Services to the Client as an independent contractor and that the Contract does not create any partnership, agency, employment, or fiduciary relationship between QUEST and the Client.

#### **13. DISPUTES**

Unless specifically agreed otherwise, all disputes arising out or in connection with these General Conditions or the Contract shall be governed by the laws of Kingdom of Cambodia 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 Phnom Penh (Cambodia) and be conducted in the English language.