

# GENERAL TERMS AND CONDITIONS FOR CERTIFICATION SERVICES

(Last revision date : 1<sup>st</sup> December 2023)

## 1. GENERAL

- 1.1 Unless otherwise agreed in writing, all offers or services and all resulting contractual relationship(s) between Exquisite Certification and Audit Limited to any person applying for certification services (the "Client") shall be governed by these General Conditions.
- 1.2 These General Terms and Conditions, and, as applicable, the Quotation, Proposal, the Application, the Codes of Practice, the EXQUISITE Certification Marks License Terms and Conditions constitute the entire agreement (the "Contract") between the Client and EXQUISITE with respect to the subject matter hereof. No variation shall be valid unless it is in writing and signed by or on behalf of the Client and EXQUISITE.
- 1.3 Where a Certificate is issued to the Client, EXQUISITE will provide the Services in professional care and competency in accordance with the policy of EXQUISITE. A copy of such Codes of Practice, and any amendments to it as may be issued from time to time, will be provided to the Client upon commencement of the Services.

## 2. DEFINITIONS

"Accreditation Body" means any organisation (whether public or private) having the authorisation 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 EXQUISITE company having the authorisation to issue Certificates;

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

"EXQUISITE Certification Mark License Terms and Conditions" means the terms and conditions of use of the licensed EXQUISITE Certification Mark.

## 3. SERVICES

- 3.1 These General Terms and Conditions cover the following services ("the Services"):
  - (a) Management System certification services: quality, information security, Service and other management system certification in accordance with international or national standards;
  - (b) On completion of an assessment programme, EXQUISITE 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.
- 3.2 Client acknowledges that EXQUISITE, 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.
- 3.3 Certification, suspension, withdrawal or cancellation of a Certificate shall be in accordance with the applicable Codes of Practice.
- 3.4 EXQUISITE may delegate the performance of all or part of the Services to a subcontractor and Client authorises EXQUISITE to disclose all information necessary for such performance to the subcontractor.

## 4. OBLIGATIONS OF THE CLIENT

- 4.1 The Client shall ensure that all access, assistance, information, records, documentation and facilities are made available to EXQUISITE when required by EXQUISITE. The Client shall provide EXQUISITE suitable space for conducting meetings.
- 4.2 The Client shall take all necessary steps to eliminate or remedy any obstacles to or interruptions in the performance of the Services.

4.3 In order to allow EXQUISITE to comply with the applicable health and safety legislation the Client shall provide EXQUISITE with all available information regarding known or potential hazards likely to be encountered by EXQUISITE personnel during their visits. EXQUISITE shall take all reasonable steps to ensure that whilst on the Client's premises, its personnel comply with all health and safety regulations of the Client, provided that the Client makes EXQUISITE aware of the same.

4.4 The Client may only reproduce or publish extracts of any report of EXQUISITE if the name of EXQUISITE does not appear in any way or the Client has obtained the prior written authorisation of EXQUISITE. EXQUISITE reserves its rights to lodge a complaint in case of disclosure in breach of this clause or disclosure which EXQUISITE considers in its sole discretion is abusive. The Client shall not publicise details of the way in which EXQUISITE performs, conducts or executes its operations.

4.5 The Client shall immediately inform EXQUISITE 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 EXQUISITE of any major non conformity 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 programme or operations and the submission of a Report and of the periodic surveillances to be carried out by EXQUISITE for the maintenance of the Certificate. As fees are based on the charge rate applicable at the time of submitting a Proposal, EXQUISITE reserves the right to increase charges during the

registration period. EXQUISITE may also increase its fees if the Client's instructions change or are found to be not in accordance with the initial details supplied to EXQUISITE prior to it providing the relevant fee quotation. Clients will be notified of any increase in fees.

- 5.2 Additional fees shall be charged for operations 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 EXQUISITE.
- 5.3 Without prejudice to clause 5.2, additional fees will be payable at EXQUISITE' charging rates in force from time to time in respect of rush orders, cancellation or rescheduling of services or any partial or full repeats of the assessment programme or operations which are required as set out in the Codes of Practice.
- 5.4 A copy of EXQUISITE' prevailing charging rates is available on request from EXQUISITE.
- 5.5 Unless otherwise stated all fees quoted are exclusive of travelling and subsistence costs. All fees and additional charges are exclusive of any applicable Value Added Tax, Sales Tax or similar tax in the country concerned.
- 5.6 Following submission of the Report to the Client, EXQUISITE shall issue an invoice to the Client. Invoices for additional and further work will be issued on completion of the relevant task. Unless advance payment has been agreed upon, all invoices are payable within thirty (30) days of the date of each invoice (the "Due Date") regardless of whether the Client's system or products qualify for certification failing which interest will become due at a rate of 1% per

month (or such other rate as may be established in the invoice) from the Due Date up to including the date payment is actually received.

- 5.7 Any use by the Client of any Report or Certificate or the information contained therein is conditional upon the timely payment of all fees and charges. In addition to the remedies set out in the Codes of Practice, EXQUISITE reserves the right to cease or suspend all work and/ or cause the suspension or withdrawal of any Certificate for a Client who fails duly to pay an invoice.
- 5.8 Client shall not be entitled to retain or defer payment of any sums due to EXQUISITE on account of any dispute, counter claim or set off which may allege against EXQUISITE.
- 5.9 EXQUISITE may elect to bring action for the collection of unpaid fees in any court having competent jurisdiction.
- 5.10 Client shall pay all EXQUISITE' collection costs including reasonable attorney's fees and related costs.

#### **6. ARCHIVAL STORAGE**

- 6.1 EXQUISITE shall retain in its archive for the period required by the relevant Accreditation Body or by law in the country of the Certification Body all materials relating to the assessment programme and surveillance programme relating to that Certificate.
- 6.2 At the end of the archive period, EXQUISITE shall transfer, retain or dispose of the materials at its discretion.

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

Any document including, but not limited to any Report or any Certificate, provided by EXQUISITE and the copyright contained therein shall be and remain the property of EXQUISITE 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.

#### **8. 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 EXQUISITE' corporate name or any other registered trademarks for advertising purposes is not

permitted without EXQUISITE' prior written consent.

#### **9. CONFIDENTIALITY**

- 9.1 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.
- 9.2 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.

#### **10. DURATION AND TERMINATION**

- 10.1 Unless otherwise agreed, the Contract shall continue (subject to the termination rights set out in these General Terms and Conditions) for the term set forth in the Proposal. Upon expiry, the Contract shall renew automatically unless and until either party notifies the other in writing that the Contract will terminate at least three months prior to the expiry.
- 10.2 EXQUISITE is entitled, at any time prior to the issue of a Certificate, to terminate the Contract if the Client is in material breach of its obligations and, following receipt of notice of such breach, the Client fails to remedy to the satisfaction of EXQUISITE such breach within 30 days.
- 10.3 Either Party shall be entitled to terminate immediately the provision of the Services in the event of any arrangement with creditors, bankruptcy, insolvency, or cessation of business by the other Party.
- 10.4 Unless otherwise agreed in writing, the rights and obligations of the

parties defined in clauses 8, 9, 12, 13 and 14 shall apply notwithstanding the completion of the Services or termination of the Contract.

10.5 In case the Client transfers its activities to another organisation, 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 organisation shall be governed by the Contract.

#### **11. FORCE MAJEURE**

If EXQUISITE is prevented from performing or completing any service for which the Contract has been made by reason of any cause whatsoever outside EXQUISITE' control, including, force majestic, the Client will pay to EXQUISITE:

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

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

12.1 EXQUISITE undertakes to exercise professional care and competency in the performance of the Services and accepts responsibility only in cases of proven negligence.

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

12.3 Subject to clause 12.2, the total liability of EXQUISITE to the Client in respect of any claim for loss, damage or expense of any nature shall be limited, in respect of any one event or series of connected events, to an amount equal to the fees paid to EXQUISITE under the Contract (excluding Value Added Tax thereon).

12.4 Subject to clause 12.2, EXQUISITE shall have no liability to the Client for claim for loss, damage or expense unless arbitral proceedings are commenced

within one year after the date of the performance by EXQUISITE of the service which gives rise to the claim or in the event of any alleged non-performance within one year of the date when such service should have been completed.

12.5 Subject to clause 12.2, EXQUISITE shall not be liable to the Client nor to any third party:

(a) for any loss, damage or expense arising from

(i) a failure by Client to comply with any of its obligations herein

(ii) any actions taken or not taken on the basis of the Reports or the Certificates; and

(iii) any incorrect results, Reports or Certificates arising from unclear, erroneous, incomplete, misleading or false information provided to EXQUISITE;

(b) 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 that may be suffered by the Client; and

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

12.6 Except for cases of proven negligence or fraud by EXQUISITE, the Client further agrees to hold harmless and indemnify EXQUISITE and its officers, employees, 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.

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

#### **13. MISCELLANEOUS**

13.1 If any one or more provisions of these General Terms and 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.

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

13.3 Neither party shall assign the Contract without the prior written consent of the other Party such consent shall not be unreasonably withheld. Any assignment shall not relieve the assignor from any liability or obligation under the Contract.

13.4 The Parties acknowledge that EXQUISITE 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 EXQUISITE and the Client.

13.5 Any failure by EXQUISITE to require the Client to perform any of its obligations under these General Terms and Conditions or the Contract shall not constitute a waiver of its right to require performance of that or any other obligation.

#### **14. DISPUTES**

Should the Client wish to appeal against or dispute any decision of EXQUISITE, it should do so in accordance with the EXQUISITE appeals procedure, available on EXQUISITE website or upon request.

#### **15. GOVERNING LAW AND JURISDICTION**

The Agreement and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of the Hong Kong Special Administrative Region of the People's Republic of China, notwithstanding any conflicts of laws rules

that could require the application of any other law.

The Parties irrevocably agree that the courts of the Hong Kong Special Administrative Region of the People's Republic of China shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Agreement or its subject matter.