

BVAQ Terms and Conditions for the provision of services (“Terms”)

1. Definitions and Interpretation

In these Terms:

1.1 “Confidential Information” means:

1.1.1 all trade secrets and all financial, marketing and technical information, ideas, concepts, know-how, technology, processes and knowledge which is confidential or of a sensitive nature owned by a party;

1.1.2 any information that a party claims is confidential to itself; and

1.1.3 in the case of the Customer includes the information in the Test Results, but does not include information which:

1.1.4 is already in the public domain or becomes part of the public domain otherwise than as a result of an unauthorized disclosure by the other party; or

1.1.5 is independently developed or rightfully known by the other party.

1.2 “BVAQ” means Bureau Veritas AQ Vietnam Co., Ltd. located at 364 Cong Hoa Street, Ward 13, Tan Binh District, Ho Chi Minh City, Vietnam (Registration No. 0315434057) and all affiliated entities including that which may be nominated in the customer acknowledgement.

1.3 “Fees” means the estimated fees for the provision of Services including cancellation or additional fees or charges as detailed in the Quotation or in the absence of a Quotation by reference to BVAQ’s then current price list.

1.4 “Intellectual Property Rights” means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, designs, patents, circuit layouts, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields.

1.5 “Accreditation Agency” means the related agencies which are the authorities responsible for the accreditation of laboratories and testing providers throughout Vietnam.

1.6 “Order” means an order to BVAQ for the Services in the approved form, including any and all subsequent orders and variations of a previously received order consisting of a description of the testing or analyzing services (whether or not constituted by a completed Sample Submission Form).

1.7 “Personal Information” means “personal information” as defined in the relevant laws and regulations.

1.8 “Personal Data Protection Relevant Laws” means relevant laws and regulations as amended to date

1.9 “Quotation” means a quote in writing for Services provided by BVAQ upon receipt of an Order or variation of an Order from a Customer.

1.10 “Reports” means any information, advice, Test Results, recommendations or other content of any reports, presentations or other communications BVAQ provides to the Customer.

1.11 “Samples” means the samples the Customer supplies to BVAQ for testing from time to time.

1.12 “Sample Submission Form” means the submission form provided to the Customer by BVAQ.

1.13 “Services” means any services provided by BVAQ to the Customer including inspection services and laboratory testing services and/or related services such as sampling and transporting of samples.

1.14 “Special Terms and Conditions” means, if applicable, any special terms and conditions listed in the Contract Details of an Order accepted by BVAQ.

1.15 “Test Results” means the results of the Services being the tangible items provided and the information contained in them.

1.16 “Third Party Sourced Products” means all products supplied to the Customer that are sourced from third party suppliers and manufacturers.

2. Application

2.1 All Orders sent to BVAQ are sent subject to these Terms. The sending of a Sample to BVAQ shall constitute acceptance by the Customer of these Terms and confirmation of the Quotation.

2.2 These Terms, together with the Order and the Quotation contain the whole of the agreement between BVAQ and the Customer with respect to its subject matter and supersedes any and all other representations or statements by either party, whether oral or in writing and whether made prior or subsequent to the date of the Order or the Quotation.

2.3 These Terms shall apply to the entire exclusion of any other terms or conditions which may be proffered by the Customer which but for this provision BVAQ would or might otherwise be regarded as having accepted or agreed to be bound by such other terms and conditions.

2.4 In the event of any inconsistency between these Terms, an Order and a Quotation, the parties agree that the Terms, an Order and a Quotation shall have the following order of precedence to the extent of any inconsistency:

2.4.1 any Special Terms and Conditions;

2.4.2 the Quotation;

2.4.3 the Terms; and

2.4.4 the Order.

3. Orders

3.1 If the Customer requests BVAQ to provide it with Services, it must place an Order with BVAQ. Each Order must contain the following information:

3.1.1 an order number;

3.1.2 the name of a person authorized to place the Order;

3.1.3 an email or postal address to which reports of results, invoices and statements should be sent;

3.1.4 a clear description of the material to be analyzed or tested; and

3.1.5 a clear description of the nature of the test(s) to be performed or attribute(s) to be analyzed.

3.2 Upon receipt of an Order, BVAQ shall send the Customer a Quotation for the Services described in the Order. A Quotation may be subject to the provision of further and/or better information or Samples from the Customer. BVAQ may refuse to accept an Order placed by a Customer without providing the Customer with a reason.

4. Quotations

4.1 Subject to clause 4.3 and unless stated otherwise, all written Quotations are valid for 30 days from the date they are made.

4.2 Any verbal quotations made by BVAQ staff are subject to written confirmation and are not Quotations for the purposes of these Terms until they have been confirmed in writing.

4.3 BVAQ may withdraw a Quotation by giving the Customer notice at any time prior to BVAQ receiving the relevant Sample that Quotation relates to.

5. Samples

5.1 The Customer must ensure that all Samples provided to BVAQ have the following information on its packaging:

5.1.1 the name, address and telephone number of the Customer and a technical contact person employed by the Customer;

5.1.2 an order number;

- 5.1.3 a description of the nature of the Sample; and
- 5.1.4 any safety hazards or special procedures relevant to the handling, testing, storage, transport and disposal of the Sample or other material contained in the package.
- 5.2 Where the Customer fails to send Samples in accordance with clause 5.1 and to provide the appropriate type or quantity of Samples necessary to enable BVAQ to perform the Services, additional fees may be incurred as described in the Quotation.
- 5.3 BVAQ may refuse to conduct any test where BVAQ decides in its absolute discretion that the test may pose a safety or health hazard.
- 5.4 The Customer must supply Samples for testing that are representative of the product or material to be tested and/or analyzed.
- 5.5 Unless otherwise agreed in writing, BVAQ is not obliged to return any information or Samples to the Customer and is entitled, in its absolute discretion, to store, destroy or dispose of information and Samples provided to it by the Customer.
- 5.6 Where BVAQ has not been engaged to transport Samples to and/or from BVAQ the Customer:
- 5.6.1 must organize and pay the costs of transporting the Samples to and from BVAQ; and
- 5.6.2 shall bear all risk of loss or damage of the Samples while in transit.
- 5.7 Upon written agreement, BVAQ may allow the Customer to use its courier supplier to transport Samples to BVAQ. BVAQ does not bear the risk of loss or damage in this case and costs will be invoiced to the Client on a cost plus basis as specified in the pricing section of the Quotation.
- 6. Cancellations and Variations**
- 6.1 The Customer may cancel an Order at any time before the date BVAQ receives the Sample corresponding to the Order by notifying BVAQ in writing. Any cancellation of an Order not in writing or in writing but made on or after the date BVAQ receives the Sample corresponding to the Order may be subject to a cancellation fee as described in the Quotation.
- 6.2 The Customer may request in writing a variation of an Order after the Sample has been received by BVAQ. BVAQ is not obliged to accept any variation request. BVAQ will only accept a variation by a variation request in writing.
- 6.3 Where the variation of an Order is accepted by BVAQ in accordance with clause 6.2 it may be subject to additional fees. BVAQ shall provide the Customer with a Quotation for the varied Order stating any additional fees. The Customer must accept this Quotation within 5 days of receipt.
- 7. Use of reports**
- Third parties must not use or rely on the advice and Reports provided by BVAQ, except to the extent approved by BVAQ in writing.
- 8. Payment**
- 8.1 Unless otherwise expressly stated, all Fees quoted by BVAQ are exclusive of VAT.
- 8.2 The Fees including any additional fees arising pursuant to clauses 5.2 and 6.3 must be paid within 2 days of BVAQ' acceptance of the Order for the Services and before release of the Test Results to the Customer, unless the Customer is an "Account Customer". An "Account Customer" is a Customer who has had its application for credit, which has been approved by BVAQ.
- 8.3 BVAQ shall invoice the Account Customer weekly for all amounts payable to BVAQ.
- 8.4 The Account Customer must pay the full amount of each invoice within 30 days of the date of the invoice.
- 8.5 If the Account Customer defaults in paying any invoice under these Terms, BVAQ may (in addition to any other rights):
- 8.5.1 suspend provision of the Services including withholding the release of Test Results; and/or
- 8.5.2 retain any payments already made, sufficient to recover any and all costs incurred by BVAQ; and/or
- 8.5.3 charge interest calculated from the due date for payment to the actual date of payment of any amounts owing to BVAQ at the penalty interest rate of 5% or highest rate permitted by laws whichever is higher.
- 9. VAT**
- 9.1 The consideration payable for any taxable supply made by one party to the other party under these Terms is expressed as a VAT-exclusive amount, unless it is specifically referred to as VAT-inclusive.
- 9.2 In addition to any consideration payable by one party to the other party under these Terms, the party liable to pay the consideration must pay to the other party an amount equal to the VAT imposed on each taxable supply, if any, by the party liable to remit VAT in respect of that consideration on the earlier of the following:
- 9.2.1 the date the consideration is payable under these Terms; or
- 9.2.2 if the liability for VAT arises on the happening of some other event – within 7 days of a written request by the party liable to remit VAT, for payment of the VAT.
- 9.3 The written request made by the party liable to remit VAT under clause 9.2.2 may be in the form of a tax invoice or adjustment note.
- 9.4 If a party (the "payee") is required to reimburse or indemnify the other party (the "payer") for an amount on which the payer must pay VAT, the payee must reimburse or must indemnify hold harmless and keep indemnified the payer for the amount plus all VAT (except any VAT for which the payer can obtain an input tax credit).
- 9.5 A party is not required to pay an amount equal to the VAT imposed on any supply under these Terms until it receives a tax invoice or adjustment note for the supply to which the payment relates.
- 10. Passing of Title**
- 10.1 Ownership of all property rights (other than Intellectual Property Rights) in and to the Test Results shall only pass from BVAQ to the Customer upon receipt by BVAQ from the Customer of all Fees and charges payable pursuant to these Terms.
- 10.2 No Intellectual Property Rights are granted or assigned by one party to the other party pursuant to these Terms or as a result of BVAQ providing the Services to the Customer.
- 10.3 The Customer is not entitled to rely on any Test Results until it has paid all Fees that relate to the particular Test Result and then only to the extent permitted pursuant to these Terms.
- 10.4 BVAQ grants the Customer a perpetual, irrevocable, royalty-free and licence fee-free, world- wide, non-exclusive licence to use, copy and exploit materials provided to the Customer under these Terms.
- 11. Warranties**
- 11.1 The Customer warrants and represents as an essential term that:
- 11.1.1 it is the owner of the Samples provided by it to BVAQ;
- 11.1.2 it is the owner or licensee of all Intellectual Property Rights in and to all information (including any Intellectual Property Rights in the Samples) provided by it to BVAQ and that use by BVAQ of that information and performance of the Services by BVAQ shall not infringe the Intellectual Property Rights or moral rights of any third party;

- 11.1.3 the Samples and other material supplied to BVAQ are safe to be handled, tested, stored, transported and disposed and suitable for the Services; and
- 11.1.4 it shall maintain appropriate insurance to cover any liability it may incur in relation to these Terms, and must provide evidence of that insurance to BVAQ promptly on request.
- 11.2 BVAQ warrants it shall conduct the Services in accordance with Accreditation Agency requirements.
- 11.3 To the extent permitted by law, BVAQ makes no warranties regarding the fitness for purpose of the Test Results.

12. Customer Acknowledgements

The Customer acknowledges and agrees that:

- 12.1 it is responsible for adequately identifying all issues which the Customer seeks to address by engaging BVAQ to carry out the Services including the suitability, fitness for purpose and merchantability of the Services for the Customer's purposes and must inform BVAQ of its requirements in relation to the Services;
- 12.2 Samples and all other substances and material provided to BVAQ may deteriorate or perish whilst in BVAQ's possession, being transported, handled, processed or stored whether by BVAQ or any third party, and that BVAQ is not responsible for the state, change, loss or destruction of the Samples or other substances or material provided to BVAQ;
- 12.3 the Test Results are the results of scientific analysis and that accordingly they require skilled interpretation;
- 12.4 the Reports are given only in relation to the written instructions, documents, information and samples provided to BVAQ by the Customer prior to the performance of the Services. BVAQ cannot be held liable for any error, omission or inaccuracy in the Reports to the extent that BVAQ has been given erroneous or incomplete information by the Customer;
- 12.5 it will retain sufficient duplicate copies of information and control samples of material sent to BVAQ;
- 12.6 it will make its own assessment of the suitability of the Test Results for the Customer's purpose and will use the Test Results at its own risk; and
- 12.7 telephone and other communications with BVAQ may be recorded for training and quality purposes and to meet Accreditation Agency requirements to document client communications.

13. Limitation of Liability

- 13.1 To the extent permitted by law, BVAQ excludes all warranties, conditions, guarantees or terms, other than those expressly set out in these Terms including, but not limited to, all warranties, conditions, guarantees or terms implied in fact or by law.
- 13.2 Where BVAQ is not entitled to exclude a warranty, condition, guarantee or term, implied in fact or by law, and to the extent permitted by law, BVAQ's liability for breach of any such warranty, condition, guarantee or term is limited to at the option of BVAQ, either the resupply of the Services or payment of the reasonable cost of having the Services resupplied.

- 13.3 The total aggregate liability of BVAQ and its affiliates and subcontractors to the Customer for loss or damage (including indirect and consequential loss or damage), caused by, resulting from, or in relation to the Services, including whether arising from breach of contract, negligence, or any other tort, in equity or otherwise, and whether or not BVAQ was advised of the possibility of such loss or damage, is limited (to the extent permitted by law) to an amount equal to the Fees paid by the Customer to BVAQ in respect of the Services to which the claim relates.

- 13.4 Notwithstanding any other paragraphs of the Terms, BVAQ shall never be liable to the Customer for indirect, incidental or consequential losses or damages (including, without limitation, punitive and exemplary damages, loss of earnings, loss of production, loss of value or decrease in earnings from any goods or property, including, without limitation, loss of use, loss of financial advantage, business interruption or downtime).

14. Indemnity

The Customer must continually indemnify BVAQ against any claim or proceeding that is made, threatened or commenced (including those brought by third parties against BVAQ), and any liability for death, injury, illness, loss or damage (whether indirect or consequential) or expense (including legal costs on a full indemnity basis) that BVAQ incurs or suffers, as a direct or indirect result of providing the Services or in connection with a breach by BVAQ of these Terms (including any warranty).

15. Third Party Sourced Products

- 15.1 The Customer irrevocably and unconditionally releases BVAQ from all claims, actions, loss and liability howsoever arising in connection with BVAQ providing or supplying Third Party Sourced Products to the Customer or at the direction of the Customer.

The Customer indemnifies BVAQ and must keep BVAQ indemnified on demand against any loss, cost, liability or expense that arises as a consequence of a claim or action taken against BVAQ that arises from the provision or supply by BVAQ of any Third Party Sourced Products to the Customer or the provision or supply of any Third Party Sourced Products by BVAQ at the Customer's direction.

16. Disclaimer

The information contained in BVAQ publications is provided for general guidance only and should not be relied upon. This information does not form part of these Terms unless expressly agreed in writing.

17. Unavoidable Events

A failure to comply with any provision of these Terms (except an obligation to pay money) will not:

- 17.1 give rise to a claim by any party against another; or
- 17.2 result in a breach of these Terms,

If the failure or omission arises by reason of delay or an inability to perform caused by war (whether declared or not), civil rebellion, strike, fire, storm or other severe action of the elements or from other similar causes that are unavoidable or beyond the reasonable control of the defaulting party.

18. Confidentiality

- 18.1 Each party will not disclose and will ensure that its employees, agents and contractors do not disclose, any Confidential Information relating to the other party or its affairs which may come to its or their knowledge as a result of the provision or proposed provision of the Services by BVAQ.

- 18.2 Clause 18.1 does not apply to any information which is:

- 18.2.1 obtained by a party lawfully and without breaching an obligation of confidence from a source other than the Customer or BVAQ, as the case may be;

- 18.2.2 required to be disclosed for the purposes of, or is necessary for, a party to comply with its obligations under these Terms; or

- 18.2.3 required to be disclosed by law, a Court or a government or statutory authority.

- 18.3 Information about the customer obtained from sources other than the customer (e.g. complainant, regulators) shall be confidential to BVAQ. The provider (source) of this information shall also be confidential to BVAQ and shall not be shared with the customer, unless agreed by the source.

- 18.4** When BVAQ is required by law or authorized by contractual arrangements to release confidential information, the customer or individual concerned shall, unless prohibited by law, be notified of the information provided
- 19. Privacy**
- The Customer must, and must ensure that its employees, agents and contractors:
- 19.1** use Personal Information obtained, held or disclosed by them in connection with the provision of the Services, these Terms or any related matter only in accordance with the Personal Data Protection Relevant Laws; and
- 19.2** ensure that the Personal Information disclosed to BVAQ is disclosed in accordance with the Personal Data Protection Relevant Laws, including:
- 19.2.1** obtaining or making all relevant disclosures and consents required under the Personal Data Protection Relevant Laws (including consent to disclosure of Personal Information to third parties); and
- 19.2.2** not disclosing Personal Information if to do so would breach the Personal Data Protection Relevant Laws.
- 20. Sub-contracting**
- The Customer hereby consents to BVAQ, at its discretion and without further notification, sub-contracting any part of the Services.
- 21. Termination**
- 21.1** A party may terminate an Order immediately, by giving notice in writing to the other party, while preserving to itself any rights which may have accrued to it, where:
- 21.1.1** the other party commits a breach of these Terms which is not rectifiable;
- 21.1.2** the other party fails to rectify a breach of these Terms which is rectifiable for 28 days after receiving a written notice specifying the breach and requiring it to rectify it; or
- 21.1.3** an Adverse Event happens to the other party.
- 21.2** In this clause 21 Adverse Event means something that reasonably indicates that there is a significant risk that that party is or will become unable to pay debts as they fall due.
- 21.3** Otherwise than in accordance with clause 21.1 the parties may terminate an Order by mutual written consent.
- 21.4** Upon termination or expiry of an Order for any reason the Customer must pay to BVAQ the Fees and any cancellation fees, additional fees and charges accrued or due but unpaid in accordance with these Terms without set off.
- 21.5** The following clauses survive expiration or termination of an Order, Quotation or these Terms: Passing of Title (clause 10), Warranties (clause 11), Customer Acknowledgements (clause 12), Limitation of Liability (clause 13), Indemnity (clause 14), Disclaimer (clause 16), Confidentiality (clause 18), Communications (clause 22) and Dispute Resolution (clause 23).
- 22. Communications**
- 22.1** Unless otherwise agreed in writing, all reports of results, invoices, statements and other communication other than by telephone will be by email transmission to email addresses nominated by the Customer.
- 22.2** In the event that the Customer requires paper copies of reports, invoices or statements to be mailed, a clerical charge will apply to each mailing event.
- 22.3** Telephone and other communications may be recorded for training and quality purposes and to meet Accreditation Agency requirements to document client communications.
- 22.4** Any notice pursuant to clause 21.1 or 23.2 given by a party shall be in writing and served by ordinary prepaid mail to the other party's registered business address or principal place of business address and for the attention of the other party's chief executive officer and shall be deemed to have been given 7 days after it was posted.
- 23. Dispute Resolution**
- 23.1** If a dispute or disagreement arises between any of the parties relating to or arising out of these Terms (including a dispute as to breach or termination of these Terms where there are valid grounds) ("Dispute"), a party may not commence proceedings in any court or tribunal relating to the Dispute unless it has complied with this clause, except where the party seeks urgent interlocutory relief.
- 23.2** If a Dispute arises, a party may serve on the other party or parties a notice stating that a Dispute has arisen and identify the subject of the Dispute ("Notice of Dispute").
- 23.3** Within 14 days after the date of service of the Notice of Dispute, the parties must convene at least one meeting ("Conference") to seek to resolve the Dispute or agree on a method of doing so.
- 23.4** The parties must attempt in good faith to resolve the Dispute expeditiously and agree that:
- 23.4.1** at each Conference, each party will be represented by a person having authority to agree to any resolution of the Dispute;
- 23.4.2** the matters discussed at each Conference are confidential and:
- (a) statements made by the parties and their representatives; and
- (b) discussions between the participants to the Conference, before, after or during each Conference, cannot be used in any legal proceedings;
- 23.4.3** all communications and negotiations between the parties arising out of and in connection with this clause will, to the fullest extent possible, be treated as "without prejudice" negotiations for the purpose of applicable rules of evidence; and
- 23.4.4** if the Dispute is settled, all of the parties must sign the terms of agreement and those terms will be binding on the parties.
- 23.5** If the Dispute is not resolved within 30 days of the date of service of the Notice of Dispute, or any other period agreed to by the parties in writing, the parties will endeavor to resolve the Dispute by mediation, in accordance with clause 23.6.
- 23.6** If the Dispute is not resolved within 30 days of the date of service of the Notice of Dispute, or any other period agreed to by the parties in writing, the parties must refer the Dispute for mediation to the Vietnam International Arbitration Center ("VIAC"). If the Dispute has not been resolved within 60 days of referral to VIAC either party is free to initiate proceedings in a court.
- 23.7** Nothing in this clause 23 prevents a party from seeking interlocutory relief.
- 24. General**
- 24.1 Governing Law**
- These Terms are governed by the laws of Vietnam, and each party submits to the jurisdiction of the courts of HCMC and their courts of appeal.
- 24.2 Severability**
- Any illegal or invalid provision of these Terms will be severable and all other provisions will remain in full force and effect.
- 24.3 Waiver**
- The fact that a party fails to do, or delays in doing, something a party is entitled to do under these Terms, does not amount to a waiver of that party's right to do it. It is not to be taken as an implied waiver of the obligation or breach on that or any other occasion or of any other obligation or breach. A waiver is only effective in relation to the

particular obligation or breach in respect of which it is given and if it is given in writing.

24.4 Amendment

BVAQ may amend part or the whole of these Terms by giving 30 days' notice to the Customer, and unless the Customer advises BVAQ otherwise in writing, the Customer is deemed to have accepted the amended Terms.

24.5 Relationship of Parties

The parties agree that BVAQ providing the Services to the Customer does not

create a relationship between the parties of employer and employee, principal and agent, partnership or joint venture. No act or omission of either party is to bind the other party except as expressly set out in these Terms.

24.6 Assignment

24.6.1 The Customer must not assign its rights and obligations under these Terms without the prior written consent of BVAQ, which must not be unreasonably withheld.

24.6.2 BVAQ may assign its rights and

obligations under these Terms by providing the Customer with 14 days' notice.

24.7 No Restriction of Powers

This clause only applies where the Customer is a governmental body, including a Council or water authority, these Terms, the Order and the Quotation does not fetter or restrict the powers or discretions of the Customer in relation to any powers or obligations it has under any Act, regulation, local law or by-law that may apply to the subject matter of these Terms or to any party to these Terms.



A Bureau Veritas AsureQuality Joint Venture

The Customer acknowledges it has read the BVAQ Terms and Conditions of Provision of Services, and has agreed to be bound by those Terms.

Executed as an agreement

Signed for and on behalf of **BVAQ** by being signed by its duly authorized officer:

Signature: _____ Position: _____

Full Name: _____ Date: _____

Signed for and on behalf of the **Customer** by being signed by the Customer or its duly authorized officer:

Signature: _____ Position: _____

Full Name: _____ Date: _____