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 SGS SA, any affiliated companies of SGS SA or any of their agents (each “SGS”) 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 SGS Certification Marks License Terms and Conditions constitute the entire agreement (the “Contract”) between the Client and SGS 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 SGS.

1.3 Where a Certificate is issued to the Client, SGS 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 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 SGS 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;

“Proposal” means the outline of services to be rendered by SGS to the Client.

“Report” a report issued by SGS to the Client indicating whether or not a recommendation to issue a Certificate is to be made.

“SGS Certification Mark License Terms and Conditions” means the terms and conditions of use of the licensed SGS 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) Product conformity certification services in accordance with EC Directives or national legislation and product certification services in accordance with non-mandatory normative documents, specifications or technical regulations;

c) Service certification services in accordance with non-mandatory normative documents, specifications or technical regulations;

d) process certification services;

e) skills certification services.

3.2 On completion of an assessment programme, SGS 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 SGS, 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 Codes of Practice.

3.5 SGS may delegate the performance of all or part of the Services to an agent or subcontractor and Client authorises SGS 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 SGS when required by SGS, including the assistance of properly qualified, briefed and authorised personnel of the Client. The Client shall in addition provide SGS free of charge suitable space for conducting meetings.

4.2 So far as it is 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 waived 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 SGS.

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

4.4 In order to allow SGS to comply with the applicable health and safety legislation the Client shall provide SGS with all available information regarding known or potential hazards likely to be encountered by SGS personnel during their visits. SGS shall take all reasonable steps 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 SGS aware of the same.

4.5 For product conformity certification under an EC Directive the Client shall comply with all the provisions of that Directive. In particular, the Client may only affix the EC mark of conformity when all the requirements of that Directive are met.

4.6 The Client may only reproduce or publish extracts of any report of SGS if the name of SGS does not appear in any way or the Client has obtained the prior written authorisation of SGS. SGS reserves its rights to lodge a complaint in case of disclosure in breach of this clause or disclosure which SGS considers in its sole discretion is abusive. The Client shall not publicise details of the way in which SGS performs, conducts or executes its operations.
5.4 A copy of SGS' prevailing charging rates
5.3 Without prejudice to clause 5.2,
5.1 The fees quoted to the Client cover all
applicable Value Added Tax, Sales Tax or
additional charges are exclusive of any
 Travel Expense Policy). All fees and
subsistence costs (which will be charged
in respect of rush orders, cancellation
or rescheduling of services or any
inaccuracies being 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 SGS for the maintenance of the
Certificate. As fees are based on the
charge rate applicable at the time of
submitting a Proposal, SGS reserves the
right to increase charges during the
registration period. SGS 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 SGS 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 SGS.
5.3 Without prejudice to clause 5.2,
additional fees will be payable at SGS’
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 SGS’ prevailing charging rates
is available on request from SGS.
5.5 Unless otherwise stated all fees
quoted are exclusive of travelling and
subsistence costs (which will be charged
to the Client in accordance with SGS
Travel Expense Policy). 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, SGS 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 1.5% 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, SGS 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
defeer payment of any sums due to SGS
on account of any dispute, counter claim
or set off which may allege against SGS.
5.9 SGS may elect to bring action for the
collection of unpaid fees in any court
having competent jurisdiction.
5.10 Client shall pay all SGS’ collection costs
including reasonable attorney’s fees and
related costs.

6. ARCHIVAL STORAGE
6.1 SGS 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, SGS
shall transfer, retain or dispose of
the materials at its discretion, unless
instructed otherwise by the Client. Fees
for carrying out such instructions will be
invoiced to the Client.

7. REPORT AND CERTIFICATE OWNERSHIP
AND INTELLECTUAL PROPERTY
Any document including, but not limited to
any Report or any Certificate, provided by
SGS and the copyright contained therein
shall be and remain the property of SGS 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 SGS’ corporate
name or any other registered trademarks for
advertising purposes is not permitted without
SGS’ 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
Conditions) for the term set forth in the
Proposal (the "Initial Term"). On expiry
of the Initial Term, 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 of the
Initial Term or on three months’ notice
any time after the Initial Term.
10.2 SGS 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 SGS 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, receivership 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 SGS is prevented from performing or completing any service for which the Contract has been made by reason of any cause whatsoever outside SGS’ 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 SGS:

a) the amount of all abortive time actually made or incurred;
b) a proportion of the agreed fees equal to the proportion (if any) of the service actually carried out;
and SGS 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 SGS undertakes to exercise due care and skill in the performance of the Services and accepts responsibility only in cases of proven negligence.

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

12.3 Subject to clause 12.2, the total liability of SGS 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 SGS under the Contract (excluding Value Added Tax thereon).

12.4 Subject to clause 12.2, SGS 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 SGS 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, SGS 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 SGS;
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 (including without limitation product liability claims) 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 SGS, the Client further agrees to hold harmless and indemnify SGS 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).

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 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 SGS’ 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 Contracts (Rights of Third Parties) Act 1999 shall not apply to these General Conditions or the Contract.

13.5 A Party giving notice under these General Conditions must do so in writing with such notice being hand delivered or sent by prepaid, first class post or facsimile to the address for the other Party as set out in the Application. A notice will be deemed received by the other Party:

a) if hand delivered, on the date of delivery;
b) if sent by first class post, three days after the date of posting;
c) if sent by facsimile, the time indicated and the set out in the Application. A notice will be deemed received by the sending Party’s facsimile transmission confirmation message.

13.6 The Parties acknowledge that SGS 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 SGS and the Client.

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

14. 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 England 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 Paris (France) and be conducted in the English language.