

# GENERAL CONDITIONS FOR FUMIGATION AND PEST CONTROL SERVICES

## 1. GENERAL

- a) Unless otherwise agreed in writing and except where they are at variance with (i) the regulations governing services performed on behalf of governments, government bodies or any other public entity or (ii) the mandatory provisions of local law, these General Conditions for Fumigation and Pest Control Services ("these General Conditions") apply to all offers or services and all resulting contractual relationships between any of the affiliated companies of SGS SA or any of their agents (each a "the Company") and any persons or entities (private, public or governmental) issuing instructions (the "Client") (the "Contractual Relationship(s)") in connection with the following services: a) fumigation of agricultural products loaded on any transportation means or stored in open-air warehouses or industrial plants, b) services in relation with disinfection and pest control, c) sale and delivery of fumigants and pest control related products (the "Services").
- b) Unless the Company receives prior written instructions to the contrary from the Client, no other party is entitled to give instructions, particularly on the scope of the services or the delivery of fumigation and/or pest control reports or certificates resulting therefrom (each a "Report of Intervention"). The Client hereby irrevocably authorises the Company to deliver Reports to a third party where so instructed by the Client or, at its discretion, where it implicitly follows from circumstances, trade custom, usage or practice.

## 2. DELIVERY OF FUMIGANTS AND PRODUCTS

- a) The Company will sell and arrange for delivery of fumigant(s) and pest control related products (together the "Products") in the quantity required at the location indicated by the Client.

- b) The Company shall not be liable for any delay or failure to deliver the fumigants in accordance with the Client's instructions, if such delay or failure to deliver is the result of events outside the control of the Company
- c) The Company shall ensure that the Products to be delivered to the Client are packaged and transported in accordance with the manufacturers' recommendations. It is agreed that the Company does not make any representation or warranty regarding the quality of the Products delivered and the Company obligation to the Client in this respect shall be limited to assigning to the Client any rights the Company may have against the manufacturers.

## 3. PROVISION OF FUMIGATION AND PEST CONTROL SERVICES

- a) The Company will exercise reasonable care and skill in the performance of the services on the basis of the information provided by the client or, in the absence of such instructions:
- 1) the terms of any standard order form or standard specification sheet of the Company; and/or
  - 2) any relevant trade custom, usage or practice; and/or
  - 3) such methods as the Company shall consider appropriate on technical, operational and/or financial grounds.
- b) On the basis of information supplied by the Client, the Company will advise on the appropriate quantity and type of Products and on an appropriate method and adequate period of exposition to be used to treat a particular cargo or premises.
- c) When requested by the Client, the Company will apply the Products to the cargo or premises to be treated.
- d) Should the Client request that the Company witnesses any third party intervention, the Client agrees that the Company' sole responsibility is to be present at the time of the third

party's intervention and to forward the results, or confirm the occurrence, of the intervention. The Client agrees that the Company is not responsible for the condition or calibration of apparatus, instruments and measuring devices used, the methods applied, the qualifications, actions or omissions of third party personnel or the fumigation and/or pest control results.

- e) The Company may delegate the performance of all or part of the services to an agent or subcontractor and the Client authorises the Company to disclose all information necessary for such performance to the agent or subcontractor.
- f) When requested to issue a report, the Company will issue, to the sole benefit of the Client, a Report of Intervention describing the procedures performed by or witnessed by the Company.
- g) Reports of Intervention issued by the Company will reflect the intervention performed and the facts as recorded by it at the time of its intervention only and within the limits of the instructions received or, in the absence of such instructions, within the limits of the alternative parameters applied as provided for in clause 3(a). The Company is under no obligation to refer to, or report upon, any facts or circumstances which are outside the specific instructions received or alternative parameters applied.

- h) Should the Company receive documents reflecting engagements contracted between the Client and third parties or third party documents, such as copies of sale contracts, letters of credit, bills of lading, etc., they are considered to be for information only, and do not extend or restrict the scope of the Services or the obligations accepted by the Company.
- i) The Client acknowledges that the Company, by providing the Services, neither takes the place of the 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 the Client to any third party or that of any third party to the Client.
- j) All samples shall be retained for a maximum of 3 months or such other shorter time period as the nature of the sample permits and then returned to the Client or otherwise disposed of at the Company's discretion after which time the Company shall cease to have any responsibility for such samples. Storage of samples for more than 3 months shall incur a storage charge payable by the Client. The Client will be billed a handling and freight fee if samples are returned. Special disposal charges will be billed to the Client if incurred.
- k) In the event the Company is required to perform other services, including inspection, sampling and testing of the cargo, such other services shall be performed for an additional remuneration and in accordance with the SGS General Conditions of Service available upon request (as well as on the webpage: [http://www.sgs.com/terms\\_and\\_conditions.htm](http://www.sgs.com/terms_and_conditions.htm)).

#### 4. OBLIGATIONS OF THE CLIENT

The Client will:

- a) fully and accurately inform the Company in advance and ensure that sufficient information, instructions and documents are given to the Company in due time (and, in any event not later than 48 hours prior to the desired intervention) to enable the required services to be performed, notably about (1) the cargo or premises to be treated, (including but not limited to quantity, origin, conditions, nature of known infestation, history of previous treatments) and (2) the technical specifications of the vessel or premises where the services are intended to be performed. The Client represents and warrants to the Company that all information given to the Company is correct, complete and accurate;
- b) procure all necessary access for the Company's representatives to the premises where the services are to be performed and take all necessary steps to eliminate or remedy any obstacles to, or interruptions in, the performance of the services;
- c) supply, if required, any special equipment and personnel necessary for the performance of the services;
- d) ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of services, and will not rely, in this respect, on the Company's advice whether required or not, except for ensuring that the Company's guidelines in relation to health and safety, period of exposition to fumigants, ventilation and re-circulation of the cargo are complied with;

- e) inform the Company in advance of any known hazards or dangers, actual or potential, associated with any order or samples or testing including, for example, presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution or poisons;
- f) fully exercise all its rights and discharge all its liabilities under any relevant sales or other contract with a third party and at law.

The Company shall not accept any responsibility for the consequences that may result from the failure of the Client to comply with its obligations as per this section 4.

#### 5. FEES AND PAYMENT

- a) Fees not established between the Company and the Client at the time the order is placed or a contract is negotiated shall be at the Company's standard rates (which are subject to change) and all applicable taxes shall be payable by the Client.
- b) Client will promptly pay not later than 30 days from the relevant invoice date (the "Due Date") all fees due to the Company failing which interest will become due at the rate of 3 (three) times the rate of legal interest from the due date until payment is made and a fixed penalty for collection costs of 40 euros.
- c) The Client shall not be entitled to retain or defer payment of any sums due to the Company on account of any dispute, counter claim or set off which it may allege against the Company.
- d) The Company may elect to bring action for the collection of unpaid fees in any court having competent jurisdiction.

- e) The Client shall pay all of the Company's collection costs, including attorney's fees and related costs.
- f) In the event any unforeseen problems or expenses arise in the course of carrying out the services the Company shall endeavour to inform the Client and shall be entitled to charge additional fees to cover extra time and cost necessarily incurred to complete the services.
- g) If the Company is unable to perform all or part of the services for any cause whatsoever outside the Company's control including failure by the Client to comply with any of its obligations provided for in clause 4 above the Company shall nevertheless be entitled to payment of:
  - 1) the amount of all non-refundable expenses incurred by the Company; and
  - 2) a proportion of the agreed fee equal to the proportion of the services actually carried out.

## 6. CHANGES OR CANCELLATION OF AN ORDER

- a) The Client shall pay additional costs and shall bear the risks of delay in the event that the Client requires that the Services be supplied at a different location than originally agreed or otherwise changes the instructions originally given to the Company.
- b) If for whatever reason the Client cancels the order, the Client shall pay to the Company a portion of the agreed fee corresponding to the Services actually carried out by the Company prior to the cancellation of the order. Should such termination occur after the Company has placed an order with a contractor or third party, then the Client shall fully indemnify the Company for the related expenses.

## 7. SUSPENSION OR TERMINATION OF SERVICES

The Company shall be entitled to immediately and without liability either suspend or terminate provision of the services in the event of:

- (a) failure by the Client to comply with any of its obligations hereunder and such failure is not remedied within 10 days that notice of such failure has been notified to the Client; or
- b) any suspension of payment, arrangement with creditors, bankruptcy, insolvency, receivership or cessation of business by the Client.

## 8. LIABILITY

- a) Limitation of Liability:

- 1) Unless specifically agreed in writing by the Company, the Company does not make any representation or warranty that the cargo or premises treated will be free from live insects or infestation after the provision of the Services. The Client understands and agrees that insects sometimes become resistant and are not affected by the fumigation.
- 2) The Company is neither an insurer nor a guarantor and disclaims all liability in such capacity. The Clients seeking a guarantee against loss or damage should obtain appropriate insurance.
- 3) Reports of Intervention are issued on the basis of information, documents and/or samples provided by, or on behalf of, the Client and/or developed based on the intervention of the Company and solely for the benefit of the Client who is responsible for acting as it sees fit on the basis of such Reports of Intervention.

Neither the Company nor any of its officers, employees, agents or subcontractors shall be liable to the Client nor any third party for any actions taken or not taken on the basis of such Reports of Intervention nor for any incorrect results arising from unclear, erroneous, incomplete, misleading or false information provided to the Company.

- 4) The Company shall not be liable for any delayed, partial or total non-performance of the Services arising directly or indirectly from any event outside the Company's control including failure by the Client to comply with any of its obligations hereunder.
- 5) The liability of the Company in respect of any claim for loss, damage or expense of any nature and howsoever arising shall in no circumstances exceed a total aggregate sum equal to 10 times the amount of the fee paid in respect of the specific service which gives rise to such claim or US\$20,000 (or its equivalent in local currency), whichever is the lesser.
- 6) The Company shall have no liability for any indirect or consequential loss including without limitation loss of profits, loss of business, loss of opportunity, loss of goodwill and cost of product recall. It shall further have no liability for any loss, damage or expenses arising from the claims of any third party that may be incurred by the Client.
- 7) The Client understands and agrees that gas free/gas residues issues that may arise in the port of arrival are not related to the fumigation or other services provided by the

Company but to nature's laws and some authorities' measuring approaches. The Client shall not hold the Company responsible for these gas free/gas residues issues, nor for the related delays/demurrages.

- 8) In the event of any claim, the Client must give written notice to the Company no later than 20 days after the Services have been rendered or within 5 days after the vessel has reached its destination and, in any case, the Company shall be discharged from all liability for all claims for loss, damage or expense unless suit is brought within one year from:
- (i) the date of performance by the Company of the service which gives rise to the claim; or
  - (ii) the date when the service should have been completed in the event of any alleged non-performance.

- b) **Indemnification:** the Client shall guarantee, hold harmless and indemnify the Company 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 relating to the performance, purported performance or non-performance, of any services.

#### 9. MISCELLANEOUS

- a) 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.
- b) During the course of providing the services and for a period of one year thereafter the Client shall not directly or indirectly entice, encourage or make any offer to the Company's employees to leave their employment with the Company.

- c) Use of the Company's corporate name or registered marks for advertising purposes is not permitted without the Company's prior written authorisation.

#### 10. APPLICABLE LAW AND JURISDICTION

All disputes arising out of or in connection with the Contractual Relationship(s) hereunder shall be governed by and construed in accordance with the laws of France exclusive of any rules with respect to conflicts of laws. All those disputes shall be submitted to the exclusive jurisdiction of the competent courts.