



General Conditions for REACH Compliance Solution Services

1. Definitions

For purposes of this Agreement, the following terms (except where the context requires otherwise) have the following meanings:

(1) The "Proposal" defines one or more documents accepted by both parties and referring to these Terms and Conditions. The Proposal includes the description of a specific service.

(2) "Confidential information" shall have the meaning set out in Clause 8 below.

(3) "Contact person" means the contact persons of SGS and Client nominated in accordance with Clause 9 below.

(4) "ECHA" means the European Chemical Agency set up under REACH.

(5) "Fees" means the items specified in the Proposal

(6) "Services" means the services to be supplied pursuant to this Agreement by SGS to Client specified in Annex 1, and/or such other or additional services as shall be agreed in writing between SGS and Client.

(7) For the purposes of Clause 12.1 below, "affiliates" means those corporations or business entities which directly or indirectly are controlled by, control, or are under common control of either of the Parties of this agreement; "control" being ownership of more than fifty percent (50%) of the voting shares of such corporation or business entity. Such corporation or business entity shall be deemed to be an Affiliate only as long as such control exists.

2. Appointment and Scope

2.1 Subject to and in accordance with the terms of this Agreement, SGS accepts the duties and obligations set forth herein and agrees to perform the Services as further described in the Proposal hereto.

2.2 SGS will provide the Services using reasonable care and skill with Client's specific instructions as confirmed by SGS.

2.3 Should SGS receive, during the course of provision of the Services, documents reflecting engagements contracted between Client and third parties or third party documents, (i.e.: copies of sales contracts, letters or credit, bills of lading – this list is not limitative) they are considered to be for information only, and do not extend or restrict the scope of the Services or the obligations accepted by SGS.

2.4 Client acknowledges that SGS, by providing the Services, neither takes the place of Client nor 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. This also applies to any and all obligations under the REACH Regulation.

2.5 SGS will provide the dedicated Services to Client by using a business unit or units within its organization which are deemed to be the most appropriate and suitable for the provision of the Services depending on the type of the Services and which have the prior written consent of the Client.

2.6 Nothing in this Agreement shall limit or exclude either party's liability in respect of personal injury or death caused by negligence, fraud, fraudulent misrepresentation or any other liability which cannot be excluded as a matter of law.

3. Responsibilities and obligations of the Client

3.1 The Client has the responsibility to provide SGS in a timely and comprehensive manner with such information, documentation and assistance as SGS shall reasonably request for the performance of the Services, and in particular those related to preparation of any submissions to the ECHA. All such information will be provided to SGS free of charge and in such form and language, and at such time as shall permit SGS to comply with the terms of this Agreement and with any relevant regulatory and legal deadlines to be met in the context of Services provided by SGS or within a timeframe specified in the Proposal. SGS shall not be responsible for any damages as a result of erroneous, incomplete, misleading or false information submitted to SGS by Client. The Client shall indemnify and hold harmless SGS for and against all and any liabilities, costs or expenses it may incur as a result of the provision of such information by Client.

3.2 The Client will in particular ensure that sufficient information, instructions and documents are given in due time as per the reasonable deadlines specified by SGS to enable the required Services to be performed by SGS.

3.3 The Client will not knowingly deliver information to SGS that infringes the Intellectual Property Rights of third parties.

3.4 If the Services are performed at the Client's premises, the Client will use reasonable endeavours to ensure all necessary access for SGS' representatives to the premises where the Services are to be performed and take reasonable endeavours to ensure necessary steps are taken to eliminate or remedy any obstacles to, or interruptions in, the performance of the Services.

3.5 The Client will supply, if required and where it has given its prior written consent, any special equipment and personnel necessary for the performance of the Services.

3.6 The Client will ensure that use of reasonable endeavours to ensure 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 SGS' advice whether required or not.

4. Deliverables

4.1 Provisions of this Clause will apply only where the Services are provided with any deliverables as described in the attached Proposal.

4.2 The ownership of the deliverables or portions thereof provided to the Client by SGS in connection with the Services shall remain vested in the Client. SGS has the right to make and retain copies of those deliverables for the purposes of SGS' own records subject to the provisions of Clauses 6.3 and 8 below.

4.3 Notwithstanding the above, all templates, models, systems, methods and documents supplied and/or used by SGS in the performance of the Services (other than documents supplied by Client) or deliverables that have not been developed as a result of or specifically for the Services and which contain no reference to Client's proprietary information, and the copyright and other intellectual property rights therein shall remain the property of SGS, and SGS shall not be restricted in any way from using or applying such standard methods and materials with other clients. For the avoidance of doubt, drawings, models, systems, methods and documents supplied by Client, or containing Client's proprietary or Confidential Information, shall belong to Client, and SGS is precluded from using the same for any reason other than for the provision of the Services.

5. Fees and Payment

5.1 Fees not established between SGS and Client specifically in this Agreement and set forth in the Proposal hereto shall be at the SGS standard rates (which are subject to change). All applicable taxes, sales taxes, duties or other expenses, including without limitation VAT, shall be payable by Client.

5.2 SGS may apply a retainer specified in the Proposal hereto.

5.3 Client shall pay each invoice within thirty (30) days of receipt thereof to the bank account indicated on the invoice. Bank charges shall be on Client.

- 5.4 SGS reserves the right to charge Client interest in respect of late payment of any sums due under this Agreement at the rate of 2 per cent above the applicable base rate.
- 5.5 Client shall reimburse reasonable expenses and cost occurred to SGS which have been approved in advance in writing by the Client in the course of carrying out the Services in accordance with the Proposal.
- 5.6 All fees and charges payable to SGS shall be net of any and all taxes, including VAT, charged or which may be imposed in the future in relation to SGS' Services, directly in relation to the rendering of the Services, and Client agrees that it will be responsible for the payment of all such taxes.
- 5.7 Where SGS is involved in extra work and/or expense caused by Client's variations to the Services, or where any unforeseeable adverse circumstances outside SGS' control arise in the course of carrying out the Services, SGS shall inform Client, without delay, and shall be entitled, with the written prior agreement of Client to charge reasonable additional fees to cover extra time and cost necessarily incurred to complete the Services.
- 5.8 SGS may elect to bring action for the collection of unpaid fees in any court having competent jurisdiction.
- 5.9 In the event any unforeseen problems or expenses arise in the course of carrying out the Services, SGS shall inform Client and shall be entitled to charge additional fees which have been agreed in advance in writing with the Client to cover extra time and cost necessarily incurred to complete the Services.
- 5.10 If SGS is unable to perform all or part of the Services for any cause whatsoever outside its reasonable control including failure by Client to comply with any of its obligations provided for in Clause 3 above, SGS shall nevertheless be entitled to payment of (a) the amount of all non-refundable expenses incurred by SGS; and (b) a proportion of the agreed fee equal to the proportion of the Services actually carried out.
- 6. Duration and Termination**
- 6.1 This Agreement will come into effect on the date defined in the Proposal. In the event of the absence of a starting date in the Proposal, the contract will come into effect on the date the Services start being delivered or on the date both parties sign the Contract.
- 6.2 Either party may terminate the Agreement by giving one (1) month's notice without being liable for any compensation due to this termination except that the Client will pay SGS the fees due for the work carried out before the date defined in the notice and will settle all outstanding expenses at this date.
- 6.3 In the event of a fundamental breach by one Party, the other Party is entitled to terminate this Agreement immediately following the service of a written notice by registered letter (date of sending being considered as the effective date) to the Party in fundamental breach of the Agreement. Any breach of the following obligations shall be deemed a fundamental breach which shall entitle the respective other Party to terminate the Agreement:
- (a) Failure on the part of Client to make punctual payment of all sums due to SGS within 14 days of receipt by Client of a written notice specifying any sums outstanding to SGS .
- (b) Either Party committing a material breach of any term of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same.
- (c) Either Party is going into receivership, administration or liquidation or any event analogous to any of the foregoing under the laws of any competent jurisdiction.
- 6.4 Upon Termination, all fees then due and payable shall be paid to SGS in accordance with Clause 5 and the Proposal. Notwithstanding Termination, SGS may choose to complete and deliver any Service ordered prior to notice of Termination on giving written notice to Client and in such case Client shall be obliged to pay the fees for the same, even if delivery of the same (and payment respectively) cannot reasonably be performed prior to the effective date of Termination, in which case this Agreement or relevant parts thereof will continue in force until the Parties have fully discharged their obligations thereof.
- 6.5 Upon Termination, SGS shall be under an obligation to return to Client all documents and materials or any copies thereof, stipulated in Clause 4, provided that SGS shall have the right to retain one copy of the deliverables stipulated in Clause 4.2 for its records but shall not use or disclose the same without the prior written consent of the Client.
- 7. Limitation of Liability and Indemnification**
- 7.1 Services provided by SGS are for the purpose of facilitating Client's compliance with the requirements under REACH. Such Services do not represent a guarantee by the Client of compliance with REACH obligations.
- 7.2 SGS undertakes to exercise due care and skill in the performance of its Services.
- 7.3 Neither party shall have liability to the other arising out of or in connection with this Agreement and its performance by reason of any representation or the breach of any express or implied condition, warranty or other term of any duty at common law or under any statute for any indirect, special or consequential loss of the Client (including loss of profits). In the event of a proven gross negligence by SGS, the total liability of SGS in respect of any act or omission referred to in this Agreement shall be limited to one time the amount of the fees paid to SGS under this Agreement (excluding VAT thereon).
- 7.4 SGS shall be discharged from all liability to the Client for all claims for loss, damage or expense unless suit is brought within one year after the date of termination of this Agreement, or within four (4) years after the date of the performance by SGS of the Services, whichever is the latest or in the event of any alleged non-performance six years by the date after such Services should have been completed.
- 7.5 SGS is neither an insurer nor a guarantor and disclaims all liability in such capacity. Should the Client desire a guarantee against loss or damage, it should obtain appropriate insurance.
- 7.6 The Client acknowledges that SGS does not, either by entering into this Agreement or by performing the Services, assume, abridge any duty of the Client to any other person or entity (both public and private) including the Client's potential obligations under REACH.
- 7.7 Each Party agrees to protect, defend, indemnify and hold the other and its officers, employees, agents or subcontractors harmless from and against any and all claims, liabilities, demands, penalties, forfeitures, suits, judgments and the associated costs and expenses (including attorney's fees), which the other may hereafter incur, become responsible for or pay out as a result of death or personal injury (including bodily injury) to any person, destruction or damage to any property caused by (a) its' breach of any term or provision of this Agreement, (b) its failure to comply with any regulatory provisions to which it is subject due to the nature of its business, (c) any negligent or wilful acts, errors or omissions by it, its employees, officers, agents, representatives or subcontractors in the performance of this Agreement; or (d) its products and/or services.
- 7.8 If either Party is prevented or delayed in the performance of any of its obligations under this agreement by 'force majeure' (any cause preventing either Party from performing all or any of its obligations, which arise from or is attributable to, events, beyond the reasonable control of the Party so prevented, including strikes, lock outs, other industrial disputes or other restraints or stoppages of labour, acts of god, war, riot, terrorism, civil commotion, malicious damage, compliance with any law or governmental order, rule or direction, , fire, flood, storm), that Party shall forthwith serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to force majeure, and shall, subject to service of such notice, have no liability in respect of the performance of such of its obligations as are prevented by the force majeure events during the continuation of such events, and for such time after they cease as is necessary for that Party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.
- 8. Confidentiality**
- 8.1 As used herein, "Confidential Information" shall include any and all oral and written information provided to SGS by the Client (the "Client Information") as well as the financial terms set forth herein (the "SGS Information"), provided, however, that Confidential Information shall not include any information

	which (i) is, or hereafter becomes (but not in violation of this Agreement), generally known to the public, (ii) was available to either party on a non-confidential basis prior to the time it was disclosed by the other party, or (iii) is disclosed by an independent third party with a right to make such disclosure. Unless required by law and without prejudice to clause 8.4, SGS shall not disclose the Confidential Information to any person or entity except for its directors, employees retained by it in connection with this Agreement.		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.
8.2	SGS agrees that the Client Information will not be used for any purpose other than in connection with the performance of the Services under this Agreement. SGS shall use reasonable efforts to prevent access by unauthorized persons to the Client Information, such efforts to reflect at least the same degree of security that SGS accords its own confidential information. SGS shall ensure that any outside consultant or sub-contractor retained by SGS is made aware of, and is bound by this Clause 8.	10.2	Special Condition Notwithstanding clause 10.1 above, and provided that SGS and Client both have their registered offices in the same country, all disputes arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of such country and all disputes shall be submitted to the jurisdiction of the competent courts of such country.
8.3	The Client agrees that the SGS Information will not be disclosed to any third party save if the Client is compelled to do so in accordance with the provisions of Clause 8.4 below. Nothing in this Clause shall prevent the Client from providing a copy of this Agreement (excluding the SGS Information) to any third party that may request it.	11. Communication	
8.4	In the event that SGS and/or the Client, or anyone to whom Confidential Information is disclosed pursuant to this Agreement, becomes legally compelled to disclose any of the Confidential Information (the "Compelled Party"), the Compelled Party shall provide the other Party with prompt notice so that such Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Clause. In the event that such protective order or other remedy is not obtained or in the event that the Party waives compliance with the provisions of this Clause, the Compelled Party will furnish only that portion of the Confidential Information which the Compelled Party is legally required to disclose and will seek to obtain reasonable assurance that confidential treatment will be accorded to the Confidential Information so disclosed.	11.1	SGS and Client shall each nominate in the Proposal a contact person who shall be authorized to take decisions relating to the provision of Services and who shall be responsible for providing all information and documentation reasonably required by SGS or Client for performance of their respective duties hereunder. Unless a particular method is required by any provision of this Agreement, email communications shall be accepted. The Parties will not be liable for any errors in transmission or falsifications, which are inherent to this type of communication.
8.5	The Parties acknowledge and agree that the undertakings set forth in this Clause 8 shall survive the termination of this Agreement for an unlimited period of time.	11.2	Each Party shall inform the other in writing without undue delay of any change in the identity of its contact person.
9. Intellectual Property Indemnification		12. Miscellaneous	
	SGS shall indemnify and hold harmless the Client against damages (including costs, such as lawyer fees) and the Client shall indemnify and hold harmless SGS against damages (including costs, such as lawyer fees) that may be awarded or agreed to be paid to any third party in respect of any claim or action, including those that the normal possession of or use of any of the information or Confidential Information provided by Client to SGS or SGS provided to Client or the Services and any deliverables infringe the patent copyright, registered design or trade mark rights of a third party (an 'Intellectual Property Infringement') provided that both SGS and Client gives notice to the other Party of any alleged Intellectual Property Infringement forthwith upon becoming aware of this. Parties will provide each other with the sole conduct of the defense to any claim or action in respect of any Intellectual Property Infringement and will not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the said claim or action except upon the express instructions of the other. Parties shall provide each other all reasonable assistance in respect of the conduct of the defense including, the filing of all pleadings and provision of all relevant documents.	12.1	Save as expressly provided for in this Agreement, no Party shall assign this Agreement in whole or in part without the prior written consent of the other Party, except that either Party may without such consent assign all or any of its rights and obligations hereunder to any company controlling it, controlled by it or under joint control with it. SGS shall be entitled to subcontract any element of its Services as it deems appropriate once it has obtained the prior written consent of the Client.
		12.2	The failure of any Party hereto to enforce at any time any of the provisions of this Agreement or to exercise any right or option which is herein provided shall in no way be construed to be a waiver of such provisions nor in any way affect the validity of this Agreement or any part thereof or the right of any Party to enforce thereafter each and every such right or option. No waiver of any breach of this Agreement shall be considered or held to be a waiver of any other or subsequent breach. Nothing shall constitute, or have the effect of, a waiver except an instrument in writing signed by a duly authorized officer or representative of the Party against whom such waiver is sought to be enforced which expressly, and not impliedly, waives a right or rights or an option or options under this Agreement.
		12.3	If any one or more provisions of this Agreement 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.
		12.4	During the course of providing the Services and for a period of one year thereafter, Client shall not directly or indirectly entice, encourage or make any offer to SGS' employees to leave their employment with SGS.
		12.5	Use of the either party's' corporate name or registered marks for advertising purposes is not permitted without the prior written authorization from the other party.
		12.6	This Agreement and the Proposal hereto, which form part hereof, constitutes the entire Agreement between the Parties. All prior contracts, proposals, representations, negotiations and understandings, either orally or in writing being hereby superseded. Any amendment or modification hereof shall only be binding if it is made in writing and signed on behalf of each Party by its duly authorized representative(s).
10. Governing Law and Jurisdiction and Dispute Resolution			
10.1	Unless specifically agreed otherwise, all disputes arising out or in connection with this Agreement shall be governed by the substantive laws of Switzerland exclusive of any rules with respect to conflicts of laws and be finally settled under the		
12.7			