

# TERMS AND CONDITIONS FOR THE CERTIFICATION OF PRODUCTS

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## 1. General

1.1 Unless otherwise agreed in writing, all offers or services and all resulting contractual relationship(s) between the Zambia Bureau of Standards any of their agents (each "ZABS") to any person applying for certification services (the "client") shall be governed by these terms and conditions.

1.2 These terms and conditions, and, as applicable, the proposal/quotation, the application, the specific rules (where applicable), constitute the entire agreement (the "contract") between the client and ZABS 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 ZABS.

1.3 Where a certificate is issued to the client, ZABS will provide the services using reasonable care and skill and in accordance with the codes of practice then in force. A copy of such codes of practice, and any amendments to it as may be issued from time to time, will be supplied by ZABS to the client upon commencement of the services.

## 2. Definitions

"Accreditation body" means any organisation (whether public or private) is an organization that provides accreditation services to certification bodies, which is a formal, third party recognition of competence to perform specific tasks;

"Application" means the request for services by a client;

"Certificate" means the certificate issued by a competent certification body;

"Specific Rules" means those rules and criteria issued by a certification body in accordance with the relevant certification scheme or sector;

"Proposal" means the outline of services, and associated fees, to be rendered by ZABS to the client.

"Report" a report issued by ZABS to the client indicating whether or not a recommendation to issue a certificate is to be made.

"Terms and conditions" means the terms and condition of use of the licensed ZABS certification mark.

## 3. Services

3.1 These terms and conditions cover product certification services in accordance with national, regional or international standards, specifications or technical regulations;

3.2 On completion of an assessment, ZABS will prepare and submit to the client a report. Any recommendation given in a Report is not binding on ZABS and the decision to issue a certificate is at the sole discretion of ZABS.

3.3 Client acknowledges that ZABS, either by entering into the contract or 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 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 these terms and conditions.

3.5 ZABS may delegate the performance of all or part of the services to an agent or a subcontractor and the client authorises ZABS 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 ZABS when required by ZABS. The client shall take all necessary steps to eliminate or remedy any obstacles to or interruptions in the performance of the services.

4.2 Any rules or stipulations included in the client standard form or purchase order documents which are inconsistent with, or which purport to modify or add to, these terms and conditions shall have no effect unless expressly accepted in writing by ZABS.

4.3 The client shall provide ZABS with all available information regarding known or potential health and safety hazards likely to be encountered by ZABS personnel during their visits. ZABS 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 ZABS aware of the same.

4.5 The client shall comply with all the provisions of these terms and conditions. In particular, the client may only affix the ZABS mark of conformity when all the requirements of relevant national, regional or international standards, specifications or technical regulations are met.

4.6 The client shall immediately inform ZABS of any and all changes in the factory manufacturing the certified products which may affect certified products.

## **5. The Manufacturer's Factory Production Control (FPC)**

The client shall operate a Factory Production Control (FPC) system so as to ensure consistent control of the product characteristics and to ensure compliance of the product to the relevant specifications. The Factory Production Control (FPC) system of the manufacturer does not have to be certified.

Where the client does not operate a relevant certified management system, such as an ISO 9001 quality management system, an ISO/FSSC 22000 food safety management system or any sector-specific management system, and where ZABS has not issued specific rules and criteria in accordance with the relevant certification scheme or sector, the following general Factory Production Control (FPC) requirements shall apply:

### **5.1 Management Responsibility**

The Client shall appoint a management representative (MR) for quality who, notwithstanding any other responsibility the MR may carry, shall have the necessary authority and shall be responsible for ensuring that the requirements of these conditions are implemented and maintained.

The organization shall conduct internal audits at planned intervals to determine whether the quality management system

- a) Conforms to the quality management system requirements established by the organization.
- b) Is effectively implemented and maintained

### **5.2 Control of Documents and Records**

A procedure shall be documented for the control of all documents and records related to the certified product including:

- a) To approve all related documents
- b) To review, update and re- issue as necessary
- c) To ensure that changes and the current revision status of documents are identified
- d) To ensure that relevant versions of applicable documents are available at points of use, that they remain legible and are readily identifiable

All records as required by these terms and conditions shall be kept by the Client for a minimum period of 3 years or as required by law if longer than 3 years

### **5.3 Competence of Personnel**

The MR shall be a competent person, or the MR shall nominate a competent person or persons, capable of operating a Factory Production Control System in accordance with these terms and conditions.

The client shall ensure that all personnel performing work which may affect product conformity have appropriate competence in terms of education, experience, skills or training.

## **5.4 Production**

The client shall plan and carry out production under controlled conditions. Controlled conditions shall include, as applicable:

- a) The availability of information that describes the characteristics of the product.
- b) The availability of work instructions, as necessary.
- c) A production flow diagram or equivalent, acceptable to ZABS that indicates all the control and test points at each stage of production.
- d) The use of suitable equipment to ensure product consistency to the standard
- e) The availability and use of monitoring and measuring devices
- f) The factory shall at all times be maintained in a tidy and hygienic condition in conformity with the requirements of the specification.
- g) The client shall demonstrate by regular sampling and testing of products being produced or distributed that the products have met the requirements of consistency of manufacturing. The sampling frequency may be adjusted from time to time to ensure that the client ensures the required product consistency.
- h) The client shall be able to demonstrate that the product(s) conform to the relevant product standards or specifications.

## **5.5 Purchasing and control of incoming material**

The Client shall ensure that all product or components purchased, conforms to specified purchase requirements.

Where components, used in the manufacture of a mark-bearing product, are required to meet Regulated Requirements, then there shall be purchasing control of those components.

The Client shall evaluate and select suppliers based on their ability to supply product or components that will satisfy the requirements of the product

The Client shall ensure that no incoming material is used or processed unless and until inspected or otherwise verified as complying with specified requirements.

Material may be released for urgent production purposes prior to inspection or other verification, provided that it is identified in a positive manner that will, prior to despatch, permit immediate identification and replacement of any defective item.

Verification of the quality of purchased material by a ZABS representative shall not form part of the Client's quality system.

## **5.6 Inspection and testing**

The Client shall ensure that he is able to distinguish between inspected and uninspected product at all stages of production.

At all control or test points, working drawings or instruction sheets, or both, shall be available and accessible. They shall indicate the measurement accuracy required and the tolerance permitted.

A final inspection shall be conducted, this inspection shall include verification that at least the inspections and tests required during manufacture and on the finished product have been performed.

Where the Client uses an outside laboratory to conduct any tests or inspections, the Client shall be responsible for ensuring that all the relevant inspections and tests have been correctly carried out and that his records include the results of these inspections and tests.

The Client shall ensure the identification and traceability, where required.

Certified product shall be handled, packaged and preserved to ensure only acceptable product is offered to the market.

## 5.7 Test equipment and accuracy of measurement

Test and measuring equipment relevant to a certified product shall be:

- a) Calibrated or verified at specified intervals, or prior to use, against measurement standards traceable to National Standards. Where no standard exists, the basis used for calibration shall be recorded
- b) Identified to enable the calibration status to be determined
- c) Adjusted or re-adjusted as necessary
- d) Safeguarded from adjustments that would invalidate the measurement results of the required accuracy, commensurate to the product standard
- e) Protected from damage and deterioration during handling, maintenance and storage

## 5.8 Non-conforming product

The Client shall establish a procedure for the control of nonconforming product and for corrective action directly related to the certified product to ensure that any such product is identified and controlled to prevent its unintended use or delivery.

Where audits or testing indicate that the quality system or products do not comply with the relevant requirements, the Client shall be required to institute appropriate corrective action.

Only product that fully complies with the requirements of the terms and conditions may carry the relevant ZABS Mark. The client shall have a documented recall system for products identified to be non-conforming after delivery.

Should ZABS incur any costs due to verification activities to ensure that an effective recall has been achieved, these costs shall be for the account of the Client.

## 5.9 Handling, storage, packaging, preservation and delivery

Storage and holding areas (or both) shall be provided for conforming material at all stages of production.

Separate storage areas shall be provided for rejected material at all inspection points, and/or where necessary, elsewhere in the factory, in order to obviate any possibility of such material being used after it has been rejected or before it has been rectified.

## 6. Fees and payment

6.1 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 ZABS for the maintenance of the certificate. As fees are based on the charge rate applicable at the time of submitting a proposal, ZABS reserves the right to increase charges during the certification period. ZABS may also increase its fees if the client's instructions for services change or are found to be not in accordance with the initial details supplied to ZABS prior to it providing the relevant fee quotation. Clients will be notified of any increase in fees.

6.2 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 due to the certification requirements, rules and procedures 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 or process; or
- (d) Compliance with any summons for documents or testimony relating to work performed by ZABS.

6.3 without prejudice to clause 6.2, additional fees will be payable at ZABS' 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 which are required as set out in the codes of practice.

6.4 A copy of ZABS' prevailing charging rates is available on request from ZABS.

6.5 unless otherwise stated all fees quoted are inclusive of travelling and subsistence costs (which will be charged to the client in accordance with ZABS 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 unless otherwise stated.

6.6 Following submission of the report to the client, ZABS 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.

6.7 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, ZABS 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.

6.8 client shall not be entitled to retain or defer payment of any sums due to ZABS on account of any dispute, counter claim or set off which may allege against ZABS.

6.9 ZABS may elect to bring action for the collection of unpaid fees in any court having competent jurisdiction.

6.10 client shall pay all ZABS' collection costs including reasonable attorney's fees and related costs.

## **7. Archival storage**

7.1 ZABS 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.

7.2 at the end of the archive period, ZABS 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.

## **8. Report and certificate ownership and intellectual property**

Any document including, but not limited to any report or any certificate, provided by ZABS and the copyright contained therein shall be and remain the property of ZABS 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.

## **9. 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 ZABS corporate name or any other registered trademarks for advertising purposes is not permitted without ZABS' prior written consent.

## **10. Confidentiality**

10.1 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.

10.2 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.

## **11. Duration and termination**

11.1 Unless otherwise agreed, the contract shall continue (subject to the termination rights set out in these terms and 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.

11.2 ZABS 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 ZABS such breach within 30 days.

11.3 Either party shall be entitled to terminate immediately the provision of the services in the event of bankruptcy, insolvency, receivership or cessation of business by the other party.

11.4 Unless otherwise agreed in writing, the rights and obligations of the parties defined in these rules shall apply notwithstanding the completion of the services or termination of the contract.

11.5 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.

## **12. Force majeure**

If ZABS is prevented from performing or completing any service for which the contract has been made by reason of any cause whatsoever outside ZABS' 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 ZABS:

- (a) the amount of all abortive expenditures actually made or incurred;
- (b) a proportion of the agreed fees equal to the proportion (if any) of the service actually carried out;

And ZABS shall be relieved of all responsibility whatsoever for the partial or total non-performance of the required services.

## **13. Limitation of liability and indemnity**

13.1 ZABS undertakes to exercise due care and skill in the performance of the services and accepts responsibility only in cases of proven negligence.

13.2 nothing in these terms and conditions shall exclude or limit ZABS' liability to the client for death or personal injury or for fraud or any other matter resulting from ZABS' negligence for which it would be illegal to exclude or limit its liability.

13.3 subject to clause 13.2, the total liability of ZABS 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 ZABS under the contract (excluding value added tax thereon).

13.4 subject to clause 13.2, ZABS 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 ZABS 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.

13.5 subject to clause 13.2, ZABS 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 ZABS;

(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).

13.6 except for cases of proven negligence or fraud by ZABS, the client further agrees to hold harmless and indemnify ZABS 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).

13.7 each party shall take out adequate insurance to cover its liabilities under the contract.

#### 14. Miscellaneous

14.1 if any one or more provisions of these 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.

14.2 except as expressly provided for herein, the client may not assign or transfer any of its rights hereunder without ZABS' prior written consent.

14.3 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.

14.4 A party giving notice under these terms and 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 on the sending party's facsimile transmission confirmation message.

14.6 the parties acknowledge that ZABS 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 ZABS and the client.

14.7 any failure by ZABS to require the client to perform any of its obligations under these terms and conditions or the contract shall not constitute a waiver of its right to require performance of that or any other obligation.

#### 15. Disputes

If any dispute or claim arises out of or relating to this Agreement, or the breach, termination or invalidity thereof, either Party may give written notice to the other Party that a dispute has arisen. Within ten (10) days following such notification, the Party's respective designated senior management shall seek an amicable resolution by negotiation. If such persons are unable to meet and/or resolve the dispute within ten (10) days of the matter being referred to them (or such longer period as agreed between the Parties in the circumstances), then either Party may, by written notice to the other Party, refer the dispute to arbitration in accordance with the remaining provisions of this clause (the "**Notice of Arbitration**").

The Parties may agree on the arbitration procedure and on the arbitrator/s and, failing such agreement within ten (10) days of the Notice of Arbitration, the arbitration shall be conducted in accordance with the laws of the Republic of Zambia by an arbitrator or arbitrators appointed by .....

Unless otherwise agree in writing by the Parties, the seat of arbitration shall be Lusaka, Republic of Zambia. The governing procedural law of the arbitration shall be the law of the Republic of Zambia.

The language of the arbitration shall be the English language.

The Parties agree that judgment based on an arbitral award made under this clause 15 may be entered and enforced by any court of competent jurisdiction.

Notwithstanding the foregoing, nothing in this clause 15 shall preclude either Party from applying for interim relief on an urgent basis from a court of competent jurisdiction.

The arbitration process is intended to settle a private dispute. The Parties agree to maintain the confidentiality of any information, documents, or things regarding an arbitration or disclosed in the course of an arbitration including, without limitation, the award, except as required by law, regulation, or bona fide business purpose, such as disclosure to accountants, shareholders, or third-party purchasers. Unless agreed by the Parties, the arbitral tribunal and any administering arbitral institution shall maintain the confidentiality of all matters relating to the arbitration including, without limitation, the award.

The provisions of this clause 15:

constitute an irrevocable consent by the Parties to any proceedings on the terms set out herein and neither Party shall be entitled to withdraw therefrom or claim at any such

proceedings that it is not bound by the provisions of this clause 15; and

are severable from the rest of this Agreement and shall therefore remain in effect even if the Agreement is terminated, cancelled or nullified for any reason whatsoever.

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 laws of the Republic of Zambia, notwithstanding any conflicts of laws rules that could require the application of any other laws.

Subject to clause 15, the Parties irrevocably agree that the courts of the Republic of Zambia shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Agreement or its subject matter.