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TERMS AND CONDITIONS OF BUSINESS

1. General

1.1 The certification services provided by the Zambia Bureau of Standards and/or its affiliated organisations (hereinafter "ZABS"), directly or through their agents and/or subcontractors, shall be governed by the present Terms and Conditions of Business (hereinafter "Terms and Conditions") unless overridden wholly or in part by (i) the provisions of applicable law and regulations and/or (ii) express agreement of ZABS and the organisation the services (hereinafter the "Client") in writing.

1.2 These terms and conditions, the proposal/quotation, the application, the General Scheme Rules (GRS), and the Specific Scheme Rules (SSR), where applicable, shall constitute the entire agreement (the "contract") between the Client and ZABS with respect to the subject matter hereof.

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;

"General Scheme Rules" means those rules and criteria issued by a certification body in accordance with the relevant type of certification scheme;

"Specific Scheme Rules" means those sector-specific rules and criteria issued by a certification body.

"Proposal" means the outline of services, and associated fees, to be provided 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.

3. Services

3.1 The services will be rendered in accordance with these Terms and Conditions and the relevant national, regional or international standards, technical specifications or technical regulations;

3.2 These General Conditions cover the following services ("the Services"):

- a) System certification services: quality, food, environmental, safety, health and other management system certification in accordance with international or national standards;
- b) Product conformity certification services in accordance with national legislation and product certification services in accordance with non-mandatory normative documents, specifications or technical regulations;
- c) Service certification services in accordance with mandatory and non-mandatory normative documents, specifications or technical regulations; and
- d) process certification services.

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 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.

3.5 Certification, suspension, withdrawal or cancellation of a certificate shall be in accordance with these terms and conditions.

3.6 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 premises, facilities, product samples, access, assistance, information, records, and documentation are made available to ZABS when required by ZABS.

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.

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 certified facility and the factory manufacturing the certified products which may affect the certified processes, systems and products.

5. Subject of the Assessment and Reference Standards

5.1 Only the international, national standards, normative documents, specifications or technical regulations, specified in the contract document is subject to assessment for the purpose of issuing the certificate.

4.3 Conformity assessment will be performed by ZABS in compliance with the reference document expressly indicated by the organization in its certification application. ZABS may operate in this sphere both as an Accredited Body and as a non-Accredited Body. If ZABS obtains accreditation following the issue of the certificate, the certificate can be re-issued referring to the fact that accreditation has been obtained.

4.4 Unless otherwise required by the reference document, ZABS will carry out audits/inspections, tests, evaluations to assess conformity of the management system by means of audits performed using the sampling method. Issuance of a certificate, therefore, does not necessarily imply that each single system element, or each single activity performed by personnel has been assessed.

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, if specified in the scheme, 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.

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 may be renewed 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 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.

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 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.

15. Disputes

15.1 These Terms and Conditions are governed and construed according to Zambian Law.

15.2 Parties may agree to submit any dispute, controversy or claim related to this General Terms and Conditions to mediation. A request to mediate shall be sent by the aggrieved party to the other party within 30 days from the date of notification of a dispute, controversy or claim.

15.3 Any of the parties shall proceed to arbitration within 30 days from the date the request to mediate is made, should the mediation process be unsuccessful, not expressly extended or should either of the parties decline mediation.

5.4 If such dispute, controversy or claim is referred to arbitration, it shall be finally settled in accordance with Zambian Laws of arbitration.