

Conditions of Contract for Testing

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INTRODUCTION

BSI means the British Standards Institution, trading as BSI, a company incorporated by Royal Charter, whose place of business is at Kitemark House, Maylands Avenue, Hemel Hempstead HP2 4SL United Kingdom.

This Contract sets out the terms under which BSI agrees to perform testing services.

DEFINITIONS

The following words and expressions in this Contract shall have the following meanings:

"Contract" means BSI's acceptance of the Client's application whether in part or full, the Quotation and these Conditions.

"the Client" means the natural or legal person(s) submitting the Test items.

"Test Items" means, as the Services and context require, EITHER, one or more physical items together with all necessary information, OR only the necessary information.

"Test Service" means the process of testing, calibrating, evaluating, and/or assessing a Test item, related documentation or design.

"Services" means the services to be provided to the Client under this Contract.

1. IT IS AGREED:

- 1.1. Upon the Client making an enquiry for the provision of service(s), BSI shall send the Conditions setting out the estimated fees and "the Services".
Following the Client making an "Application" on the basis of the Quotation and these Conditions, and subject to BSI accepting all or part of the application the Contract is created.
Upon the Client submitting the Test Items and paying within the period set out in the Conditions, BSI shall report on the Services.
This process may only be varied with the prior written consent of BSI, but in all cases payment must be made within 30 days of the date of the invoice.
- 1.2. Following the Contract, BSI reserves the right to charge up to the full test fee if the testing services are subsequently cancelled by the client
- 1.3. These Conditions shall govern the provision of Services to the exclusion of all other terms, conditions, warranties and representations including those implied by Statute or common law.
- 1.4. If at any time BSI becomes aware that estimates of fees shall be exceeded, BSI shall cease activity and notify the Client of the additional fees payable. The Client may terminate the Contract and shall be liable to pay for the Services provided up to the point of cessation.
- 1.5. Where the Test Service has a duration that is in excess of 30 days, BSI may 30 days after the commencement of the provision of the Services, and after each subsequent 30day period, invoice the client for the fees for Services already provided. The remainder of the fees shall be payable on completion of provision of the Services.

2. THE CLIENT SHALL:

- 2.1. set out its requirements including details of the Tests / calibrations, the specification(s) and any other criteria in full; give an adequate description of any precautions required under prevailing Health and Safety law and notify BSI in advance where the Services and/or the Test Items are dangerous
- 2.2. deliver the Test Items to the address prescribed by BSI, package the Test Items against all conditions capable of causing damage and mark the packaging and/or accompanying documents with instructions and notices regarding unpacking, fragility, identifying numbers/marks. The Client accepts that BSI shall not be responsible for any damage to or loss of Test Items when in transit.
- 2.3. pay for the packing, shipping and all other expenses incurred in delivering (and returning where requested) Test Items to BSI. BSI operates a 2.5 Tonne, standard counterbalanced fork lift truck for Test Sample handling. The client shall pay for any handling charges incurred as a result of deliveries exceeding the capacity of BSI's handling facilities. Overseas Clients shall follow BSI's instructions with regards to import procedures. All customs charges or other expenses resulting from a failure to follow BSI's instructions are the Client's responsibility.
- 2.4. pay the fees in accordance with these Conditions. Fees are quoted net of VAT and all other duties or taxes which shall be payable by the Client to BSI. BSI is entitled to charge interest from the date that the fees are due, at 2% above LIBOR from time to time, on any unpaid sums until payment in full is made.
- 2.5. The Client warrants that it has full authority to commission the Services and accordingly shall indemnify BSI against any loss, damages, costs or other expense, arising from breach of this warranty.
- 2.6. follow all rules, regulations and instructions governing the presence of a visitor on BSI premises to witness testing.

3. CLIENT USE OF REPORTS AND CERTIFICATES ON SERVICES

- 3.1. The Client agrees that in whatever format a record is made of the Services, those conclusions are limited in validity to the Test Items submitted. All rights in any record of Services are reserved to BSI.
- 3.2. No extract abridgement or abstract from a Test Report, Certificate of Test or Calibration or other record may be published without the prior written consent of the Divisional Director, Operations.
- 3.3. Use of the Services does not in itself entitle the Client to use any BSI mark and the Client shall not

refer to a Test Report so as to imply any measure of approval, certification, control or surveillance by BSI of the Test Item. BSI does not permit any use of its name and/ or corporate logo by clients nor may reference be made to BSI on products, packaging and promotional material.

- 3.4. Unless the Testing service is conducted as part of a formal BSI certification scheme the results reported only relate to the actual sample (s) which has/have been assessed, and do not imply that the performance, quality or conformance of continuing production will be maintained.
- 3.5. The Client shall not amend, change, add to, overwrite or otherwise alter in any way whatsoever any test or calibration certificate, report, or other record provided to the Client by BSI.
- 3.6. The Client shall not use a BSI Test Report or Certificate in any manner or for a purpose, which, in the opinion of BSI, may be misleading or bring BSI into disrepute. On breach of this clause by the Client, BSI may withdraw the report or certificate and shall not be liable to the Client for any direct, indirect or consequential loss or damage suffered by the Client arising from such withdrawal except to the extent that such liability may not be excluded at law.

4. BSI SHALL:

- 4.1. report on the Services in the appropriate BSI format.
- 4.2. reserve the right to report on any exclusions, limitations and/or implications of the Testing Service which it considers necessary to put the results of the service into context
- 4.3. reserve the right to refuse to accept Clients requests to take previous or related test results conducted by BSI into consideration when conducting Testing Services, not withstanding clause 3.2
- 4.4. adhere to the estimates of fees detailed in the quotation for a period of 30 days from the date of preparation. After 30 days have expired BSI reserves the right to re-quote.
- 4.5. unless required by law, use its best endeavours to keep confidential the Test Items and Services performed and shall obtain undertakings of like effect from relevant staff, agents and subcontractors. The Client shall not therefore require additional undertakings.
- 4.6. where Test Items do not accord with any of the requirements in the Quotation and at its absolute discretion, carry out the remainder of the Services, unless the Client instructs otherwise in the Contract.
- 4.7. not accept any reduction in fees arising from exchange rate differences, bank charges, arrangements for letter of credit, guarantees or other charges incurred in meeting clause 2.4, other than the normal transaction fees relating to the running of its own banking facilities

5. LOSS

- 5.1. BSI warrants that, in the provision of Services, it shall take reasonable care in conducting to ensure the accurate and proper working of its equipment and staff.
- 5.2. BSI's liability under this warranty is limited to, at its sole discretion, re-examining, re-testing or refunding the cost of the Services or part thereof in which a defect is found, provided that any claim is made within 21 days of the receipt by the Client of BSI's report ('the Warranty Period').
- 5.3. If the Client becomes aware of any defect in the Services it shall advise BSI in writing within the Warranty Period of full details of such defect and shall use best endeavours to provide BSI with all necessary access and facilities to verify the defect and perform its warranty obligations.
- 5.4. Where any Services are repeated under this clause 5 the un-expired balance of the Warranty Period or one half of the Warranty Period (whichever is the longer calculated from the date of repetition) shall apply to those Services.
- 5.5. The Client acknowledges that the above warranty replaces and extinguishes every condition, warranty or representation whatsoever whether express or implied in respect of the quality or fitness for purpose of the Services or otherwise.
- 5.6. The Client accepts that the Services commonly result in damage to the Test Items, and BSI shall not be responsible for such damage nor for consequential injury or additional loss or expense incurred by the later use of Test Items by the Client or third parties.

6. EXCLUSION OF LIABILITY

Nothing in these Conditions shall be interpreted as excluding or restricting either party's liability for i) death or personal injury resulting from the negligence of BSI, its employees, agents or subcontractors and ii) fraudulent misrepresentation.

7. LIMITATION OF DAMAGES

- 7.1. Save as provided in the warranty set out in clause 5, BSI shall not be liable to the Client for any loss resulting from any:
 - delay in carrying out the Services, or
 - refusal to issue a report, or
 - decision, report or statement made therein.Furthermore BSI shall not be liable to the Client or third parties for any damage howsoever caused by use of any record of the Services by the public.
- 7.2. Subject to clause 6 BSI's aggregate liability to the Client whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the fees paid for the Services which gave rise to such liability in respect of any occurrence or series of occurrences.

8. INSURANCE

The Client undertakes and agrees to take out appropriate insurance cover for a sum insured of not less than £3 million with an insurance office of good repute to cover the liability accepted by it under these Conditions

9. INDEMNITY

9.1. The Client shall indemnify BSI against

- any third party claims in respect of any damage, loss or expense caused directly or indirectly by any decision, report or abatement made by BSI;
- any loss, damage or expense incurred by BSI, whether in relation to BSI employees, BSI property or third parties acting on behalf of BSI, as a result of a dangerous defect or content in the Test Item, whether apparent on inspection or not, and which dangerous defect or content had not been disclosed in writing to BSI prior to or during submission;
- any loss, damage or expense incurred as a result of legal action arising from differences between the submitted Test Items and items previously or subsequently produced which are purported to be identical with those Test Items.

9.2. The Client shall indemnify BSI against any liability to damages which may reasonably be agreed to by or awarded against BSI in respect of the death of, or injury to, any party acting on behalf of BSI, arising in the course of the provision of the Services under these Conditions, except where the damages are agreed to or awarded in respect of any liability attributable, or attributed, to the negligence of BSI or a party acting on behalf of BSI.

10. DISPOSAL

10.1. Notwithstanding any indication by the Client, BSI reserves the right at all times to deal with or dispose of all Test Items or parts thereof as it deems fit. Where it is deemed necessary to return the samples to the Client, the costs involved, will be invoiced to the Client

10.2. Where the client has requested that BSI disposes of the sample, the client shall send details of the materials from which the product is made and any special precautions which are required under prevailing Health and Safety and/or environmental law. Where special disposal procedures are required BSI will invoice the client to cover the costs involved.

11. APPEAL PROCEDURE

- 11.1. In the event of the Client wishing to appeal against a decision of BSI it shall within 21 days of being served such a decision, give notice in writing to the Secretary of BSI at the address given above, of its desire to have that decision reviewed.
- 11.2. A meeting of an Appeal Panel shall be held within 30 days of receipt of such notice. The appellant will be given at least seven days notice of the time and place of such a meeting, together with the names of the panel members, to whom the appellant may object on reasonable grounds.
- 11.3. The decision of BSI shall remain in force pending any decision of the Appeal Panel.
- 11.4. In considering any appeal, the Appeal Panel may, as appropriate, consult or advise the relevant UK Competent Authority regarding the subject of the appeal and its outcome.
- 11.5. The decision of the Appeal Panel as declared by its Chairman shall be final and conclusive.

12. TERMINATION

- 12.1. BSI shall be entitled (without prejudice to any other right or remedy available to BSI) to terminate the Contract without liability to the Client by giving notice at any time if:
 - the Client fails to pay on the due date any sum payable to BSI under the Conditions; or
 - the Client makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of a bona fide amalgamation or reconstruction); or a receiver or similar officer is appointed; or the Client ceases to carry on business; or
 - the Client fails to comply with the Conditions; or
 - BSI reasonably apprehends that any of the above events is about to occur.
- 12.2. BSI shall be entitled to terminate the Contract without cause by giving the Client 90 days notice in writing.

13. GENERAL

- 13.1. Any Contract concluded under these Conditions is personal to the Client and the Client shall not assign or transfer any of its obligations under the Contract
- 13.2. BSI may assign the Contract or any (or all) of its rights and/or obligations thereunder within the BSI Group but not otherwise without the Clients prior written consent.
- 13.3. BSI reserves the right to amend the Contract to take account of changes in Regulations or a Directive or the conformity assessment service. In the case of changes to the legal context of the conformity assessment service BSI reserves the right to make changes to these Conditions without notice. BSI shall notify the Client in writing of changes to these Conditions and the date by which it must comply
- 13.4. Testing Services conducted as part of Kitemark certification or Notified Body services for CE marking are covered by the relevant conditions of contract of those schemes, copies of these can be obtained from BSI at the address given below.
- 13.5. Any notice under these Conditions (including fax transmission) shall be written in English and shall be deemed served by post 48 hours after posting, or by fax or other electronic media on the day when received. In proving service it shall suffice to prove that a letter was properly addressed and posted or transmission was confirmed.
- 13.6. Neither party shall be liable for failure to perform its obligations under this Contract due to circumstances beyond the party's reasonable control 'Force Majeure'. If any event of Force Majeure lasts beyond 30 days either party shall have the right to terminate the Contract on 7 days notice (without prejudice to accrued rights and obligations).
- 13.7. No waiver by BSI of any breach of a provision of the Contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.8. If any provision of the Contract concluded under these Conditions is held by any competent authority to be invalid, unenforceable or inapplicable in whole or in part, the Contract shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.
- 13.9. Each Contract concluded under these Conditions shall be governed by English law and the parties shall submit to the exclusive jurisdiction of the English Courts in all matters regarding the Contract.
- 13.10. No Party who is not party to this Contract shall have any rights under or in connection with it.