

TERMS AND CONDITIONS

1. Formation of Agreement

- 1.1 These terms and conditions ("Terms and Conditions") together with any quotation, proposal, estimate, fee quote, or agreement ("Quotation") provided by or on behalf of ESL (as defined below) shall apply to all agreements for the supply of testing, calibration, certification and/or other services ("Services") carried out by Emirates Safety Laboratory LLC ("ESL") (a Limited Liability Company registered in the Emirate of Dubai, the United Arab Emirates under Commercial Licence No. (795063) issued from the Department of Economic Development of Dubai), a member of the MHI Group and managed by the United Arab Emirates, Ministry of Interior Gen. Command of Civil Defence, Directorate Gen. of Dubai Civil Defence, providing the services contemplated therein to a Client ("Client").
- 1.2 These Terms and Conditions shall supersede and override any terms or conditions contained in or referred to in the Client's purchase order or acceptance of a quotation or specification and shall prevail over any inconsistent terms or conditions contained or referred to in ESL's confirmation of order, or implied by law (unless the law in question cannot be excluded), trade custom, practice or course of dealing. Unless otherwise stated, the Agreement shall commence on the date of the last signature to it, and shall automatically terminate upon completion of the Services, unless terminated earlier, subject to any provisions which shall survive termination, as described in the Agreement. These Terms and Conditions shall supersede and override any terms or conditions contained in or referred to by the Client in Purchase Order or Order Acknowledgement which are issued for Client's internal processes only. Any phrase introduced by the terms "including", "include", "in particular" or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.3 Written and oral Quotations shall be valid for sixty (60) days from the date thereof and ESL may withdraw any such Quotation at any time. No Quotation given by ESL shall be an offer to agreement with any person and no agreement shall come into existence except in accordance with sub-condition 1.4.
- 1.4 The Client's purchase order, acceptance of a Quotation, or payment of Quoted services constitutes an offer by the Client to purchase the Services specified in the Quotation upon these Terms and Conditions. No offer placed by the Client shall be accepted by ESL other than by a written acknowledgement issued and executed by ESL or (if earlier) by ESL starting to provide the Services, when an agreement for the supply and purchase of those Services on these Terms and Conditions will be established (the "Agreement").
- 1.5 No acceptance or acknowledgement, even if in writing and signed by ESL, of the Client's purchase order or any other document pertaining to the Services shall constitute acceptance of any provision of the Client's purchase order or any other document that conflicts with or adds to these Terms and Conditions unless ESL specifically agrees to such a variation of these Terms and Conditions pursuant to and in accordance with sub-condition 3.1. The revision status of these Terms and Conditions is stated at the bottom of each page. This revision supersedes all previous revisions, and upon issue to Client is deemed to be the prevailing Terms and Conditions for all new and existing Agreements.
- 1.6 The delivery to ESL by the Client of any item for testing or calibration by ESL (a "Sample") or the delivery of any request by the Client to ESL for the provision of any similar services shall, upon acceptance of that Sample or request by ESL, constitute an 'offer' (as referred to in sub-condition 1.4). If ESL begins such testing, calibration or similar services on that Sample, the offer shall be deemed to have been accepted by ESL and an Agreement shall be formed. These Terms and Conditions shall apply to that Agreement.

2. Delivery by the Client to ESL

- 2.1 The delivery by the Client to ESL of a Sample shall occur under the Delivery Duty Paid ("DDP") Incoterm 2020 © rules. Pursuant to the DDP rules, the Client shall assume all responsibilities, risks and costs for the delivery of the Sample to the named place of destination agreed upon between ESL and the Client in the Agreement. The Client shall be responsible for, but not limited to, (export and import) customs clearance and the payment of any duties and taxes until the Sample has reached its named place of destination.
- 2.2 ESL shall receive the Sample at the named place of destination and may offer assistance to the Client for the unloading of the Sample upon delivery.
- 2.3 In any event, ESL shall not bear any risks and costs nor assume any responsibilities in respect of the unloading process of the Sample at the named place of destination. ESL shall not be liable in respect of any costs or losses resulting from damage to or destruction of the Sample at the time of the unloading of the Sample.

3. Variation including Delays, Cancellation, Postponement and Amendment

- 3.1 These Terms and Conditions may not be varied or waived by either party unless the variation or waiver is in writing and is signed by an officer or duly authorised signatory of ESL. The variation or waiver must set out the condition(s) or sub-condition(s) to be varied or waived and the detail of each such variation or waiver.
- 3.2 The Client may delay, cancel, postpone or amend any order (in whole or in part) at any time, provided that the Client shall pay to ESL the full amount of the Consideration (as defined in sub-condition 3.3 and 4.1) relating to such order plus all Costs (as defined in sub-condition 3.3 and 4.1) relating to such order incurred by ESL prior to the date of the delay, cancellation, postponement or amendment plus any other losses, expenses, and costs incurred by ESL as a result of the delay, cancellation, postponement or amendment.
- 3.3 Where the Client has delayed an order, as per sub-condition 3.2, the Client agrees to pay ESL applicable "Delay Fees" as per the assumptions detailed and accepted by the Client in the Quotation and General assumptions and limitations ESL/AL/Rev02/23July2023.
- 3.4 ESL reserves the right to review and amend any Quotation prices where documentation, specification or other materials relating to the Agreement have materially changed since the original Quotation was given or where additional services not envisaged by the Quotation are requested, for example, producing written descriptions of detailed procedures undertaken as part of the Services. For the avoidance of doubt, approval of such additional requests shall remain at ESL's discretion.
- 3.5 In the event of a partial test being carried out, ESL shall deduct the fee for the partial test and the remaining fee shall be retained as credit for future tests for a period of 1 year after which it shall be forfeited.

4. Prices & Payment

- 4.1 Subject to the terms of condition 5.5, the Client shall pay ESL the charges set out in the Quotation, if applicable, or as otherwise contemplated for the provision of the Services ("Consideration") and shall pay ESL on demand for any expenses incurred in the provision of the Services ("Costs"), unless expressly agreed otherwise in writing.

4.2 ESL may issue invoices in respect of Services:

- 4.2.1 prior to commencement of the Services; or
- 4.2.2 prior to each phase, work stage, or service scope item of the Services, in which case, ESL will invoice for that proportion of the total Consideration for the Services to be performed under the Agreement; or
- 4.2.3 in a manner otherwise specified in the Quotation, including individual lines/phases on the Quotation, or order confirmation.
- 4.3 The Client shall pay the Consideration and Costs stated in any invoice for Services to be provided pursuant to these Terms and Conditions in full, without deduction or set-off, and as per the payment terms of the invoice. The Consideration shall be paid free and clear of, and without deduction for and on account of, tax unless the Client is required by law to make such payment subject to the deduction of withholding tax, in which case the sum paid by the Client shall be increased to the extent necessary to ensure that after such deduction or withholding ESL receives an amount equal to the Consideration and Costs it would have received had no such deduction or withholding been required.
- 4.4 ESL is entitled to be paid the fees irrespective of the results of evaluation activities obtained within the provided Service.
- 4.5 Client shall not be entitled to retain or defer payment of any sums due to ESL on account of any dispute, counterclaim or set off which may allege against ESL.
- 4.6 ESL may elect to bring an action for the collection of unpaid fees in any court having competent jurisdiction.
- 4.7 Client shall pay all ESL's collection costs including reasonable attorney's fees and related costs.
- 4.8 The obligations of the parties under this condition 4 shall continue to apply without limit of time.
- 4.9 The Client shall pay the Consideration and Costs to ESL by electronic bank transfer in cleared funds in the currency specified in ESL's Quotation, proposal or order confirmation. All payments due to ESL shall be payable within the specified time irrespective of whether or not the Client has recovered payment from a third party and, for the avoidance of doubt, but without prejudice to the generality of the foregoing, this includes payments of fees due to ESL acting as experts or as expert witnesses when instructed by solicitors acting for a party to a dispute.
- 4.10 In default of payment within the payment terms of the invoice, ESL may: suspend any further Services being carried out for the Client; withhold the provision of Reports (as defined in sub-condition 5.2); alter or withdraw credit terms; and amend terms, prices or service levels. The amount outstanding from time to time shall bear interest, calculated from the due date of the invoice to the date of receipt of the amount in full at a rate equivalent to 3% per annum above the Emirates Interbank Offered Rate (EIBOR) of the Central Bank of UAE (CBUAE) in the relevant currency.
- 4.11 ESL may retain or set off any sums owed to it by the Client which have fallen due and payable against any sums due to the Client under this Agreement or any other agreement between the parties or any of the Client Group Companies. "Group Company" means, in relation to a company, that company, any subsidiary or holding company of that company, and any subsidiary of a holding company of that company.
- 4.12 The Client undertakes that during the provision of the Services and for 6 months following completion thereof, the Client shall not:
- 4.12.1 solicit or entice away (or assist anyone else in soliciting or enticing away) any member of ESL's staff with whom the Client has had dealings in connection with the Agreement and/or the provision of the Services during the 12 months immediately prior to the earlier of the date of the Client's purchase order or the date of the Quotation; or
- 4.12.2 employ (directly or through a third party) any person as referred to in sub-condition 4.12.1 or engage them in any way to provide services to the Client.
- This undertaking shall not apply in respect of any member of ESL's staff who without having been previously approached directly or indirectly by the Client responds to an advertisement placed by the Client or on the Client's behalf.
- In the event of a breach of this undertaking, which leads to the departure of any person as referred to in sub-condition 4.12.1, the Client will pay to ESL, on demand, a sum equivalent to 50% of the total annual remuneration package paid by ESL to the individual prior to his or her departure. The Client acknowledges that this provision is a fair and reasonable term intended to be a genuine assessment of the likely loss to ESL.
5. Services
- 5.1 Subject to the remaining sub-conditions of this condition 5, ESL warrants that it will complete the Services in a satisfactory and workmanlike manner, consistent with industry standards. The Client expressly acknowledges and agrees that ESL gives no warranty that any result or objective can be achieved through the Services and that, where results are based on smaller scale tests and theoretical studies, results may require careful validation in order to be extrapolated to a production scale.
- 5.2 ESL will use its reasonable endeavours to complete Services and provide written information, results, technical reports, certificates, test or inspection records, drawings, recommendations, advice or the like in respect of the Services (the "Report") or certificate thereon to the Client by any date reasonably requested in writing by the Client, but ESL shall not be liable to the Client for: (i) any delay in the performance of any obligation under the Agreement; or (ii) damages suffered by the Client by reason of such delay or (iii) any delay for delivering needed
- 5.2.1 Following completion of the testing services ESL provides test or classification report. All reports are issued as soft copy in pdf format. If client requests hard copy (printed version) then it will be charged AED 500 (excluding VAT, other applicable taxes, and surcharges charges) per each printed copy of the report which can be collected from ESL offices when the reports are ready. In special cases other types of deliverables can be agreed upon between the parties and charged separately. For accredited activities the report will be marked with relevant combined ILAC-MRA mark when possible and allowable by Accreditation Body rules and regulations (not applicable for indicative non-accredited tests).
- 5.2.2 Where there is a request to revise and reissue report(s) after the final issue of the Test Report, Certificate or Technical Assessment report has been agreed to and issued, the reissued reports may only be possible for technical corrections, and issued in line with an ISO 17025 and 17065 accreditations and upon request



and payment of AED 500 (excluding VAT, other applicable taxes, and surcharge charges) per each report. (NOTE: the technical revision time and cost towards the revision will be agreed upon and charged separately prior to undertaking the revision.)

- 5.2.3 All Test Reports, Certificates or Technical Assessment reports are issued in English Language. Official translated documents in other languages are available upon request. Where there is a request for official translated Test Reports, Certificates or Technical Assessment reports, the reports will be issued in addition to the official English version. Where there is a conflict between the official translated documents and official English documents, the English version will prevail. Official translated Test Reports, Certificates or Technical Assessment reports may only be possible if issued in line with an ISO 17025 and 17065 accreditations and upon request and payment of an agreed sum (excluding VAT, other applicable taxes, and surcharge charges) per each document. The technical translation rate is AED 400 per hour and the total hours per translation will be agreed on and fully paid prior to translation being undertaken and delivered.
- 5.3 ESL's obligation to complete Services under the Agreement shall be subject to any obligation it may have to comply with any law or other regulation binding on it which may be in force from time to time.
- 5.4 No employee, agent or other person is authorised to give any warranty or make any representation on behalf of ESL in relation to the Agreement, or to assume for ESL any other liability in connection with the Services, unless such warranty, representation or assumption of liability is given to the Client in accordance with sub-condition 3.1.
- 5.5 In the event of certification services, the Client agrees that the terms of the annex to these Terms and Conditions entitled "Certification Services Annex" shall apply.
- 5.6 The Client undertakes, represents and warrants to ESL the completeness and accuracy of all documents and information supplied to ESL for the purposes of the Agreement and ESL fulfilling the Services, both at the time of supply and subsequently. In providing the Services, ESL is entitled to assume that all information that has been provided is true, accurate and complete in all respects and that the Client has complied fully with his duty to provide all relevant information. ESL will not investigate or confirm the truth, accuracy or completeness of any information provided by the Client and accordingly ESL accepts no liability for any losses, costs or damages suffered or incurred by the Client arising out of or in relation to the Services provided to the Client on the basis of provided information which is not true, accurate and complete in all respects or which is misleading. If ESL becomes aware that the Client has provided a test specimen which does not conform to information received by ESL, or the Client has concealed any details or material used to build the test specimen, ESL will notify relevant Certification Body for their immediate action and the test report may be withheld/withdrawn.
- 5.7 The Client undertakes, represents and warrants to ESL that the pre-installation drawings prior to ESL preparing the test frames, rigs or apparatus, and post-installation drawings, where applicable, prior to the test commencement, and other pertinent and relevant technical specifications and documents will be supplied and made available to ESL on-time. ESL reserve the right to delay or cancel the project execution if client does not deliver on-time requested drawings and technical specifications and documents necessary to execute the testing or calibration project. ESL shall not be liable for any consequences resulting from such delay or cancellation. Notwithstanding the above, failure to submit drawings, technical specifications and documents on-time will be consider a Delay or Cancellation in accordance with Condition 3 and ESL reserves the right to invoice the Client for Delay or Cancellation.
- 5.8 Reports are issued on the basis of information known to ESL at the time that the Services are carried out. Although ESL will use all reasonable endeavours to ensure accuracy, the Services depend, inter alia, on the effective co-operation of the Client, its staff and on the information submitted to ESL. All Reports are prepared on the basis that:
- 5.8.1 there is no responsibility to any person or body other than the Client;
- 5.8.2 they are not produced for any particular purpose and no statement is to be deemed, in any circumstances to be or give rise to a representation, undertaking, warranty or contractual condition unless specifically stated;
- 5.8.3 the Report is determined solely by the professional analysis undertaken by ESL's staff on each individual Agreement and any forecasts by ESL of the results is an estimate only;
- 5.8.4 ESL is entitled to be paid the Consideration irrespective of the results or conclusions reached in the Report;
- 5.8.5 the results of the Services shall address the items and information submitted only and are not to be regarded as representative of any larger population from which the Sample was taken; and
- 5.8.6 the results are final and approved by ESL. ESL shall be under no liability where the Client has acted on preliminary, unapproved results or advice.
- 5.8.7 where there is more than one "Test Sponsor" or "Report Sponsor", "Duplicate Reports" can be issued upon a request being submitted before issuance of the final test report and a payment of AED 500 (excluding VAT, other applicable taxes, and surcharge charges) per each Duplicate Report requested.
- 5.8.8 where there is a request to reissue a report after the "Final Issue" of the report has been agreed to and issued, the "Reissued Reports" can be issued upon request and payment of AED 500 (excluding VAT, other applicable taxes, and surcharge charges) per each Reissued Report. (NOTE: the technical revision time and cost towards the revision will be agreed upon and charged separately prior to undertaking the revision.)
- 5.9 For project(s) when both testing and certification is executed by ESL, the testing department will share the test report with the certification department within ESL, unless the client objects prior to the issuance of the report.
- 6. Client's Property**
- 6.1 The Client shall supply as much information as possible, including a unique purchase order number, reference or authorisation, about each Sample and/or Service requirement in order to assist in achieving an efficient service. If a Client provides ESL with detailed instructions in writing as to the treatment and handling of particular items of its property, ESL will use its reasonable endeavours to comply with such instructions.
- 6.2 The Client shall inform ESL in writing prior to ESL carrying out any Service on a Client site or Sample that is of a dangerous or unstable nature, as well as notify ESL of any actual or potential health & safety hazards relating to a Sample and arising from ESL's performance of the Services, and shall provide instruction on the safe visiting of the site or safe handling of the Sample. The Client shall accept full responsibility for appropriate safety labeling

pertaining to the Sample and any equipment provided to ESL by the Client.

- 6.3 The Client acknowledges and expressly agrees that, subject to sub- condition 6.4 where the Agreement specifies that the Services include non- destructive testing of the Sample, the performance of the Services may damage or destroy any and all Samples and any other materials or property delivered by the Client to ESL in relation to the Agreement. Under no circumstances will ESL be responsible for any additional costs or damages, including consequential damages and indirect costs or losses, resulting from destruction or loss of the Client's property.
- 6.4 When testing, analysis or other services are carried out, ESL shall not be liable in respect of any costs or losses resulting from damage to or destruction of any property belonging to the Client unless the Client notifies ESL in writing before delivery to ESL and the property itself delivered to ESL is clearly marked "Do Not Destroy or Damage". If such notice is given and the Client's property is so marked, ESL's liability for damage to or destruction of the Client's property (other than expressly set out in sub-condition 2.3) is limited to the lesser of:
- 6.4.1 the value of Client's property; or
- 6.4.2 the cost of the Services performed on the damaged property pursuant to the Agreement.
- 7. Re-Delivery**
- 7.1 ESL will at the Client's reasonable written request, deliver the Client's property (other than that which is destroyed as part of the Services) back to the Client after performing Services relating to that property. ESL may use any method of delivery that it reasonably decides and will do so as the agent of the Client and will not have any liability in respect of any such item so delivered. ESL may at its discretion instruct any person delivering such property to the Client to invoice that Client directly in respect of that delivery and the Client shall make any and all claims for property damaged in transit directly and solely against such delivery ESL or other person.
- 7.2 Unless specifically instructed to the contrary in writing by the Client, ESL reserves the right to properly dispose of Client's property after seven (7) days from completion of the Services (actual test date). ESL reserves the right to invoice the Client for any costs of disposal. Where property of the Client is, in the sole opinion of ESL, too bulky or too unstable to allow storage time of more than one week, it will be at the absolute discretion of ESL as to the length of time such property is kept before being destroyed.
- 8. Title & Security**
- 8.1 Title to the Client's property which is delivered to ESL and all risk of loss or damage to such property (except for loss or damage caused by ESL and for which and to the extent that ESL accepts liability under these Terms and Conditions) shall remain with the Client at all times, who shall be responsible for effecting and maintaining its own insurance cover in relation thereto, it being hereby acknowledged by the Client that the charges of ESL do not include insurance. ESL may retain all property delivered to it until all sums due and owing to ESL by the Client have been paid.
- 9. Liability and Indemnity**
- 9.1 This condition 9 sets out the entire financial liability of ESL, its employees, agents and sub-contractors to the Client in respect of any breach of the Agreement, any use made of Samples or any part of them on which Services are carried out and any representation, statement or tortious act or omission (including negligence or breach of statutory duty) arising under or in connection with the Agreement.
- 9.2 Other than as expressly set out herein and as specifically warranted in writing to the Client by an officer or duly authorised signatory of ESL in accordance with sub-condition 3.1, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.
- 9.3 SUBJECT TO THE REMAINING SUB-CONDITIONS OF THIS CONDITION 9, ESL SHALL NOT BE LIABLE, WHETHER IN TORT (INCLUDING FOR NEGLIGENCE OR BREACH OF STATUTORY DUTY), AGREEMENT, MISREPRESENTATION, OR OTHERWISE FOR:
- 9.3.1 LOSS OF PROFITS; LOSS OF BUSINESS, LOSS OF REVENUE; LOSS OF MARKETS; LOSS OR DAMAGE INCURRED AS A RESULT OF A THIRD PARTY CLAIM; DEPLETION OF GOODWILL AND/OR SIMILAR LOSSES; LOSS OF ANTICIPATED SAVINGS; LOSS OF GOODS; LOSS OF AGREEMENT; LOSS OF USE; ANY COST OF DECAMPING OR REHOUSING; LOSS OR CORRUPTION OF DATA OR INFORMATION; EX GRATIA PAYMENTS; OR
- 9.3.2 ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL LOSS, COSTS, DAMAGES, CHARGES, FINES, PENALTIES OR EXPENSES; OR PURE ECONOMIC LOSS.
- 9.3.3 ESL SHALL HAVE NO LIABILITY TO THE CLIENT FOR ANY LOSS, DAMAGE, COSTS, EXPENSES OR OTHER CLAIMS FOR COMPENSATION, ARISING FROM ANY MATERIAL OR INSTRUCTIONS SUPPLIED BY THE CLIENT (CLIENT) WHICH ARE INCOMPLETE, INCORRECT, INACCURATE, ILLEGIBLE, OUT OF SEQUENCE OR IN THE WRONG FORM, OR ARISING FROM THEIR LATE ARRIVAL OR NON-ARRIVAL, OR ANY OTHER FAULT OF THE CLIENT.
- 9.3.4 ESL SHALL USE REASONABLE ENDEAVORS TO MEET THE TIMESCALES SET OUT IN THE CONCLUDED AGREEMENT BUT, DUE TO A NATURE OF SERVICES, TIME SHALL NOT BE OF THE ESSENCE AND ESL SHALL NOT BE LIABLE FOR ANY LOSSES ARISING FROM ANY DELAY (SUCH AS FORCE MAJEURE (SECTION 15), SERVICE OUTAGES INCLUDING BUT NOT LIMITED OT UTILITY SERVICES (ELECTRICITY, WATER, GAS, INTERNET, CLOUD SERVER, ETC.), EQUIPMENT AND TECHNOLOGY TECHNICAL FAILURES, HUMAN ERROR, AND UNSCHEDULED MAINTENANCE).
- 9.4 SUBJECT TO CONDITIONS 9.3 AND 9.8, ESL'S TOTAL LIABILITY TO THE CLIENT IN AGREEMENT, TORT (INCLUDING CLAIMS FOR NEGLIGENCE OR BREACH OF STATUTORY DUTY) MISREPRESENTATION, RESTITUTION OR OTHERWISE ARISING IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THE AGREEMENT SHALL IN ALL CIRCUMSTANCES BE LIMITED TO (i) FOR TESTING SERVICES ONLY, A RETEST OF THE EXACT SAME PRODUCT OR SYSTEM SPECIMEN AND SCOPE WITHOUT ANY TECHNICAL DESIGN OR CONSTRUCTION CHANGES TO THE PRODUCT OR SYSTEM SPECIMEN AND THE CLIENT IS NOT ENTITLED TO ANY REFUND FOR TIME AND MATERIALS LOST AND (iii) FOR CERTIFICATION SERVICES ONLY, THE CONSIDERATION FOR THE SERVICES, OR PART SERVICES THEREOF, PAYABLE PER PROCESS, PROCESS ACTIVITY, OR EACH YEAR UNDER THE AGREEMENT THAT ARE SUBJECT TO THE CLAIM AND ESL SHALL NOT BE LIABLE FOR ANY CLAIMS FOR LOSS OF TIME AND REVENUE BY THE CLIENT AND THE THIRD PARTIES ASSOCIATED WITH THE CLIENT. Save in the case of fraud or fraudulent concealment by ESL, ESL shall be under no liability in respect of any claim under the Agreement and any such claim shall be wholly barred and unenforceable unless:



- 9.4.1 the Client notifies ESL in detail and in writing of the alleged basis for the claim within two (2) months of the Client becoming aware thereof and within one year after the completion of the Services to which the claim relates; and
- 9.4.2 ESL is permitted to inspect any and all property with respect to which the Services are claimed to have been defective or to which Client's claim otherwise relates.
- 9.4.3 Except where the Services are provided to a person who deals as a consumer (within the meaning of the Federal Law No. 15 of 2020 on Consumer Protection), all warranties, conditions or other terms express or implied, statutory, customary or otherwise are excluded to the fullest extent permitted by law.
- 9.5 The Client acknowledges that the above provisions of this condition 9 are reasonable and reflected in the price which would be higher without those provisions and the Client will accept such risk and/or insure accordingly.
- 9.6 The Client agrees to indemnify, keep indemnified and hold harmless ESL from and against all losses which ESL may suffer or incur arising out of or as a result of:
- 9.6.1 breach of any law by the Client in connection with the performance of the Services;
- 9.6.2 any claim threatened or made against ESL by any third party arising out of the Services or out of any delay in performing or failure to perform the Services (even if such claim is solely or partly attributable to the fault or negligence of ESL) to the extent such claim is in excess of the Consideration paid for the Services under the Agreement that are subject to the claim; or
- 9.6.3 any claims arising as a result of any misuse or unauthorised use of any Reports issued by ESL or any Intellectual Property Rights belonging to ESL (including trademarks) pursuant to this Agreement.
- 9.6.4 any fines, taxes, and levies imposed which may be asserted or imposed upon ESL by any country. The Client shall also indemnify and hold and save ESL against all expenses and out-of-pocket expenses incurred by ESL about or related to the assertion by any such country or authority of liability of ESL to pay any such fine, tax, and levy imposed.
- Notwithstanding any other provision of these Terms and Conditions, the Client's liability under this indemnity shall be unlimited.
- 9.7 ESL's liability for breach of Agreement, tort (including claims for negligence or breach of statutory duty) or otherwise in connection with the performance of the Agreement shall be limited to such amount as would be just and equitable for ESL to pay having regard to ESL's responsibility for the particular loss or damage.
- 9.8 Nothing in these Terms and Conditions limits or excludes the liability of ESL for:
- 9.8.1 death or personal injury resulting from negligence; or
- 9.8.2 liability incurred by the Client as a result of fraud or fraudulent misrepresentation by ESL; or
- 9.8.3 any other matter which may not be limited or excluded by law
- 9.9 This condition 9 shall survive termination of the Agreement.
- 10. Intellectual Property Rights**
- 10.1 In this condition 10, the following definitions apply:
Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights (now existing or hereafter created), in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- 10.2 All Intellectual Property Rights (including copyright in records, scientific documentary, primary data, or electronic means of handling data) produced during any Service shall belong to and remain the property of ESL unless otherwise expressly agreed as part of the Agreement. The Client shall not alter or misrepresent the contents of any of the documents created by ESL within the provision of the Service.
- 10.3 Ownership and copyright in the Report and Certificate shall remain with ESL. Upon the Client discharging all its obligations under the Agreement, including payment of the Consideration, the Client will obtain an irrevocable, royalty-free, non-exclusive licence to use the Report and Certificate (including the right to sub-license), subject to the terms of sub-condition 10.2 and this sub-condition 10.3.
- 10.4 All Intellectual Property Rights in all service mark(s), trademark(s), certification mark(s) and other names and logos owned by ESL shall remain the property of ESL and cannot be sold or licensed by the Client.
- 10.5 When certification is granted ESL shall award a licence to the Client to use ESL's certification mark(s) and logos for the certification validity period, subject to the applicable terms of use (as amended from time to time) which are issued with every certification and are available on request.
- 10.6 The Client shall indemnify ESL against all losses to which ESL may become liable as a result of a claim that the use of any data, equipment or other materials supplied by the Client for the performance of the Services involves the infringement of any Intellectual Property Rights of any third party. The Client must immediately notify ESL when it becomes aware of the unauthorised use of the whole or any part of any of the Services, of a Certificate, of a certification mark or label (if any), by any third party.
- 10.7 Except for the rights to use set forth in condition 11 this Agreement does not grant and shall not be construed as granting, any rights to either party to any name or mark of the other party. Neither party is granted any right to the other party's name in connection with any publication and may not give any press release or make any other public announcement regarding this Agreement, the Services or any transaction between the parties without the express prior written consent of the other party.
- 11. Use of Reports, ESL logo, and ESL Brand Mark**
- 11.1 The Reports constitute confidential information that is to be protected and shall be used solely to:
- 11.1.1 assist the Client in completing its internal requirements and ESL in performing Services for the Client;
- 11.1.2 comply with the Client's Customer and other third-party requirements for the delivery and use of the data recited in the Reports;
- 11.1.3 present or respond on a claim in a court of law (provided that, where this is the purpose for which the Report is instructed this has been agreed with ESL in advance of the Report being instructed); or
- 11.1.4 present or respond as required by law or any regulatory body.
- 11.2 The Client hereby undertakes that it shall not:
- 11.2.1 except as set out in sub-condition 11.1, disclose a Report (or information contained within a Report) to any third party without the prior written consent of ESL;
- 11.2.2 replicate or present a Report except in full as delivered by ESL without the prior written consent of ESL; or
- 11.2.3 use a Report, or any portion thereof, in any manner that might reflect unfavorably upon ESL or its group, or which might be, or might include statements, interpretations or comments that could be, misleading or false.
- 11.3 The Client has the right to publish the fact that an identified product has been granted a Report by ESL, as long as the Report stays valid. All statements regarding testing made by the Client shall be consistent with valid Report. The Client has the right to publish successful test results undertaken at ESL and any granted certification and must tag or reference ESL in online or offline publications.
- 11.4 When the Client wishes to publish the Report (whether in soft or in hard copy) it must be published in its full and unedited state.
- 11.5 In every case, the Client takes sufficient care of its publications and advertising so that no confusion arises between certified and non-certified products. The Client does not specify any function or make any claim or the like in user information that could lead purchasers to believe that performance of the product or its use is covered by any certification, when in fact it is not.
- 11.6 The Client, its witnesses and subcontractors shall not disclose details of the way ESL performs, conducts, or executes its operations.
- 11.7 The Client must immediately notify ESL when it becomes aware of the unauthorised use of the whole or any part of any of the Services, of a Test Report, of a Certification Mark, ESL Brand Mark or label (if any), by any third party.
- 11.8 Use of ESL logo, Brand Mark, its accreditation logo trademarks, tradenames (where registered or unregistered) audio, photo, or video recordings of testing facilities for advertising purposes is not permitted without ESL's prior express written consent.
- 12. Premises**
- 12.1 ESL's premises (the "Premises") are a designated security area and:
- 12.1.1 ESL reserves the right to refuse admission to the premises;
- 12.1.2 unless otherwise agreed in advance by ESL, one visitor per Client may be admitted on request to witness the Services carried out for that Client; and
- 12.1.3 visitors to the Premises shall conform to ESL's regulations and procedures.
- 12.2 Where any aspect of the Service is undertaken on premises not occupied by ESL or under its direct control, the Client must ensure that all necessary safety measures are in place to comply with all applicable health and safety regulations, and save as otherwise agreed in writing between the parties or where identification of asbestos is part of the scope of the Services to be provided by ESL to the Client, the Client must ensure all asbestos has been removed and/or is safely contained in every area to be visited by ESL's personnel during the visit to said premises
- 12.3 In addition to any specific Client obligations set out in the Quotation and the provisions of sub-condition 12.2, where Services are provided at the premises of the Client, the Client shall: (i) provide ESL with necessary access to any Client premises; (ii) ensure that any premises provided by the Client for the provision of any part of the Service is suitable for that purpose; (iii) provide all usual auxiliary and operating materials (including gas, water, electricity, lighting etc.) relevant to any Client-supplied premises; and (iv) provide ESL with any permits required for the performance of the Service.
- 13. Court and Other Proceedings**
- 13.1 In the event that the Client requires ESL to present the results or findings of Services carried out by ESL in witness statements, court hearings or other legal proceedings, the Client shall pay to ESL such costs and fees for such presentations and the preparation thereof as ESL may charge to Clients generally from time to time for such services and the Client shall be liable for such costs in addition to the Consideration
- 13.2 In the event that ESL is required by a party other than the Client to present the results or findings of Services carried out by ESL for the Client in any legal proceedings relating to the Client, the Client shall pay all costs and fees arising from any services which ESL is required to do as a result, including the preparation of any witness statement and the preparation for and appearance at any court hearing. The Client shall pay all such costs, whether or not the Client has paid all outstanding Consideration under the Agreement and whether or not ESL has closed the Client's file in respect of the matter.
- 13.3 If any aspect or element of the Services (including any Sample) is, or is likely to be, the subject of or relevant to legal proceedings, this fact must be notified to ESL in writing before the Services are carried out. If that fact is not disclosed to ESL at that stage, ESL may not, in its absolute discretion, be prepared to provide expert testimony.
- 13.4 This condition 13 shall survive termination of the Agreement.
- 14. Termination**
- For the purposes of this condition 14, "Sanctions Rules" shall mean any applicable trade or economic sanctions, export control, embargo or similar laws, regulations, rules, measures, restrictions, restricted or designated party lists, licences, orders, or requirements, in force from time to time, of the United Arab Emirates.
- 14.1 If the Client becomes subject to any of the events listed in sub-condition 14.2, ESL may terminate the Agreement with immediate effect by giving written notice to the Client.
- 14.2 For the purposes of sub-condition 14.1, the relevant events are:
- 14.2.1 if the Client commits a breach of any terms of the Agreement or any other agreement with ESL which is incapable of remedy or, if capable of remedy, has not been remedied by the Client in accordance with a written notice from ESL requiring remedy within the period specified in the said notice;
- 14.2.2 if the Client fails to make payment of the Consideration within the specified time;
- 14.2.3 the Client makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or ceases or suspends payment of any of its debts or is unable to pay its debts as they fall due within the meaning of Federal Law No. 9/2016 (the "Bankruptcy Law") and Insolvency Law DIFC Law No. 1 of 2019.
- 14.2.4 an encumbrancer takes possession, or a receiver or administrator is appointed,



- over any of the property or assets of the Client;
- 14.2.5 the Client ceases, or threatens to cease, to carry on business;
- 14.2.6 ESL reasonably apprehends that any of the events mentioned at sub-conditions 14.2.1 to 14.2.5 above is about to occur in relation to the Client and notifies the Client accordingly; and
- 14.2.7 if ESL reasonably apprehends that providing the Services or dealing with the Client would be in breach of Sanctions Rules, the Client fails to satisfy due diligence requests made by ESL in connection with compliance with Sanctions Rules or other relevant laws or regulations or the Client does anything which is in breach of, or would cause ESL to be in breach of, Sanctions Rules.
- 14.3 On termination of the Agreement for any reason the Client shall immediately pay to ESL all indebtedness to ESL with applicable interest.
- 14.4 Termination of the Agreement, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 14.5 Conditions which expressly or by implication survive termination of the Agreement shall continue in full force and effect.
- 14.6 Additional termination provisions set out in the Annex attached hereto apply where ESL provides certification Services.
- 15. Force Majeure**
- 15.1 The parties shall not be liable for delay in performing, or failure to perform, any obligation under the Agreement if such delay or failure to perform is caused directly or indirectly by any act of God, flood, drought, earthquake or other natural disaster, pandemic, epidemic, war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, riot, accident, terrorism, explosion, strike or labour dispute, any law, or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent, delay or default by a subcontractor or supplier of materials or services, the existence of any circumstance making performance commercially impracticable or any other cause beyond the party's reasonable control, provided that this condition 15 shall not apply to any obligation to make any payments due to ESL under the Agreement.
- 15.2 If ESL is prevented from performing or completing any service for which the agreement has been made by reason of Force Majeure, or failure by Client due to Force Majeure to comply with any of its obligations under the agreement, the Client will pay to ESL:
- 15.2.1 the amount of all abortive expenditures actually made or incurred;
- 15.2.2 a proportion of the agreed fees equal to the proportion (if any) of the service actually carried out, and ESL shall be relieved of all responsibility whatsoever for the partial or total nonperformance of the required certification services
- 15.2.3 a fee equal to the proportion of the service delivered to date and ESL shall complete the remaining of the scope when reasons mentioned above are no longer applicable
- 15.3 The Party shall notify each other within seven days of the actual event of Force Majeure.
- 16. Waiver of Compliance**
- 16.1 Waiver by either party hereto of a breach by the other party of any of the provisions of these Terms and Conditions shall not be deemed a waiver of future compliance therewith, and such provisions shall remain in full force and effect.
- 16.2 No failure or delay on the part of either party to exercise any right or remedy under the concluded agreement shall be construed as or operate as a waiver nor shall any single or partial exercise of any right or remedy, as the case may be. The right and remedies provided in these Terms and Conditions are cumulative and are not exclusive of any rights or remedies provided by law.
- 17. Entire Agreement**
- 17.1 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter.
- 17.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.
- 17.3 Unless otherwise stated, the Agreement shall commence on the date of the last signature to it, and shall automatically terminate upon completion of the Services, unless terminated earlier, subject to any provisions which shall survive termination, as described in the Agreement.
- 17.4 These Terms and Conditions shall supersede and override any terms or conditions contained in or referred to by the Client in Purchase Order or Order Acknowledgement which are issued for Client's internal processes only.
- 17.5 So far as it is permitted by law, the Client acknowledges that, it has not been induced to enter into the Agreement on reliance upon, nor has it been given, any warranty, representation, statement, assurance, covenant, agreement, undertaking, indemnity or commitment of any nature whatsoever other than as are expressly set out in these Terms and Conditions and, to the extent that it has been, it unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation thereto. Any conditions or stipulations included in the Client standard form 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 ESL.
- 18. Severability**
- 18.1 If any provision or remedy herein provided for be invalid or unenforceable or unlawful under any applicable law in whole or in part, it shall be deemed to be amended in so far as it is possible to do so in order to make it enforceable whilst retaining its purpose or severed from the Agreement if it is not possible to do so and the remaining provisions of these Terms and Conditions, including any remaining default remedies, shall be given effect in accordance with the intent hereof. In ESL's sole discretion it may terminate the Agreement by not less than seven (7) days' written notice to the Client in the event that it considers that such deletion will have a materially adverse effect on its rights under the Agreement.
- 18.2 If any one or more provisions of these Terms and Conditions are found to be invalid or unenforceable in any respect, such provision shall be deemed to be severed from these Terms and Conditions. The validity and enforceability of the remaining provisions shall remain in force.

19. No Partnership or Agency

- 19.1 Client acknowledges that ESL provides the Services to the Client as an independent (third party) entity. Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, contract of employment, fiduciary relationship, or authorise any party to make or enter into any commitments for or on behalf of any other party, unless otherwise agreed to by means of a separate agreement.
- 19.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 20. Third Parties**
- A person who is not a party to the Agreement shall not have any rights under the Federal Law No. (5) of 1985 On the Civil Transactions Law of the United Arab Emirates.
- 21. Data Protection**
- 21.1 The Personal Data Protection Law, Federal Decree Law No. 45 of 2021 regarding the Protection of Personal Data
- 21.2 Federal Law No. 3 of 1987 promulgating the Penal Code
- 21.2.1 Articles 378 (as amended) and 379 suggest that any person breaching the privacy of another person will be punished with imprisonment and a fine; the punishment is aggravated if the perpetrator is a public employee
- 21.3 Federal Decree by Law No. 3 of 2003 Regulating the Telecommunication Sector
- 21.3.1 Article 6 of this law establishes the Telecommunications Regulation Authority (TRA)
- 21.3.2 Article 14 of this law identifies the competencies of the TRA, among which is the issuing of regulations concerning the use of customer data
- 21.3.3 Article 72 of this law punishes any person who discloses the content of a call or message sent through the network.
- 21.4 Federal Decree by Law No. 5 of 2012 on combating cybercrimes
- 21.4.1 Articles 21 and 22 of this law punish with imprisonment any individual who uses cyber networks to violate the privacy of another individual or to disclose confidential information obtained in the course of his work.
- 21.5 Federal Law No. 15 of 1980 on Printing and Publishing
- 21.5.1 Article 79 of this law prohibits the publication of news, pictures, or comments related to an individual's personal life or the disclosure of secrets that defames other people.
- 21.6 Law on Data Dissemination and Exchange in the Emirate of Dubai Although it refers to data in general, the provisions of this law state that the "Concerned Authority" shall, when performing its tasks and competencies, adopt policies, mechanisms, rules, and standards related to the dissemination of data and, in particular "Confidential data protection policy, attributed to the Data Providers such as data related to the individuals, institutions and companies".
- 22. Data Protection – European Countries Clients**
- In addition to Section 21, Data Protection and for the purposes of this condition 22, "Data Protection Laws" shall mean up to and including 24 May 2018 the Directive 95/46/EC as transposed into domestic legislation of each Member State of the European Economic Area and in each case as amended, replaced or superseded from time to time, and on and from 25 May 2018 the EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council ("GDPR") and/or other applicable data protection legislation in force.
- 22.1 Within this condition 22. "Process/Processing/Processed", "Data Controller", "Data Processor", "Data Subject", "Personal Data" and "Personal Data Breach" shall have the same meaning as in the Data Protection Laws.
- 22.2 The Client agrees not to provide or otherwise make available Personal Data to ESL, other than business contact information (for example, business, telephone number, job title, and email address), unless otherwise required for the provision of the Services, in which case such additional Personal Data shall be specifically identified in advance by Client and agreed to in writing by ESL.
- 22.3 Where Personal Data is Processed by a party under or in connection with the Agreement that party, as Data Processor, shall:
- 22.3.1 not Process, transfer, modify, amend or alter the Personal Data or disclose or permit the disclosure of the Personal Data to any third party other than as required to meet the other party's (as Data Controller) lawful, documented and reasonable instructions (which shall unless otherwise agreed be to process Personal Data as necessary to provide the Services pursuant to the terms of this Agreement), unless required by a law to which the Data Processor is subject, provided that in such a case, the Data Processor shall inform the Data Controller of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest. In particular, the Data Controller instructs the Data Processor to transfer data outside the EEA subject to the Data Processor complying with the requirements of Articles 45 to 49 of the GDPR;
- 22.3.2 upon becoming aware of a Personal Data Breach:
- a) notify the Data Controller without undue delay; and
- b) provide reasonable co-operation (at the cost of the Data Controller) to the Data Controller in connection with the Personal Data Breach;
- 22.3.3 upon receiving any request, complaint or communication relating to the Data Controller's obligations under the Data Protection Laws:
- a) notify the Data Controller as soon as reasonably practicable;
- b) assist the Data Controller by implementing appropriate technical and organisational measures to enable the Data Controller to comply with any exercise of rights by a Data Subject under any Data Protection Laws in respect of Personal Data processed by the Data Processor under this Agreement or comply with any assessment, enquiry, notice or investigation under any Data Protection Laws, provided in each case that the Data Controller shall reimburse the Data Processor in full for all costs reasonably incurred by the Data Processor performing its obligations under this sub-condition 22.3.3;
- 22.3.4 ensure that at all times it has in place appropriate technical and organisational measures as required by Article 32;
- 22.3.5 ensure that its employees who may have access to the Personal Data are subject to appropriate confidentiality obligations;
- 22.3.6 implement appropriate organisation and technical measures to assist the Data Controller in meeting its obligations in relation to Articles 33 to 36 of the GDPR



- taking into account the nature of processing and the information available to the Data Processor;
- 22.3.7 not authorise any sub-contractor to process the Personal Data ("**sub-processor**") other than with the prior written consent of the Data Controller, it being acknowledged that the Data Controller consents to the appointment of sub-processors who may from time to time be engaged by the Data Processor who in each case are subject to terms between the Data Processor and the sub-processor which are no less protective than those set out in this condition 22, provided that the Data Processor notifies the Data Controller of the identity of such sub-processors and any change to them; and
- 22.3.8 cease Processing the Personal Data within ninety (90) days upon the termination or expiry of this Agreement or, if sooner, the Service to which it relates and as soon as possible thereafter (at the Data Controller's option), either return, or securely wipe from its systems, the Personal Data and any copies of it or of the information it contains, other than to the extent that the Data Processor is required to retain the Personal Data due to a legal or regulatory requirement, or by a requirement of an accreditation body.
- 22.4 The Data Processor shall make available to the Data Controller such further information and (as applicable) allow for and contribute to any audit or review exercise, conducted by the Data Controller or an auditor mandated by the Data Controller to provide assurance that the Data Processor is in compliance with the obligations set out in this condition 21, provided always that this requirement shall not oblige the Data Processor to provide or permit access to information concerning:
- (i) the Data Processor's internal pricing information; (ii) information relating to other clients of the Data Processor; (iii) any Data Processor non-public external reports; or (iv) any internal reports prepared by the Data Processor's internal audit or compliance functions. The Data Processor must immediately inform the Data Controller if, in its opinion, an instruction provided by the Data Controller pursuant to this Agreement infringes the GDPR or other EU or Member State data protection provisions.
- 23. Sub-contracting**
- 23.1 Unless otherwise restricted by the terms of the Agreement and/or obligations under any accreditation or governing approval, ESL shall be entitled, in its absolute discretion, to subcontract the whole of or any part of the Service. ESL warrants to inform the Client in advance of outsourcing activities, in order to provide the Client with an opportunity to object against the appointed subcontractor, giving reasons for the objection. ESL, at its own discretion, will assess the validity of the objection and decide upon maintaining or appointing a new subcontractor.
- 23.2 ESL may assign, delegate, license or hold on trust, all or any part of its rights or obligations under the Agreement.
- 23.3 The Agreement is personal to the Client which may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Agreement without ESL's prior written consent.
- 24. Confidentiality**
- For the purposes of this condition 24, "**Confidential Information**" shall mean all information which a party may have or acquire before or after the date of the Agreement which relates to a party's business, products, developments, trade secrets, know-how or other matters connected with the Services and information concerning a party's relationships with actual or potential clients, Clients or suppliers and all other information designated as confidential or which ought reasonably to be considered confidential.
- 24.1 Each party (the "**Recipient**") shall keep all Confidential Information of the other party (the "**Disclosing Party**") in the strictest confidence. Save for the purposes of fulfilling its obligations under the Agreement, the Recipient shall not, without the prior written consent of the Disclosing Party, disclose, divulge or grant access to the Confidential Information which it has received and shall not permit any of its employees, agents or officers to disclose, divulge or grant access to such Confidential Information.
- 24.2 In connection with the certification services, both Recipient and the Disclosing Party may have access to or otherwise receive or observe Confidential Information of the other party. The Recipient and the Disclosing Party mutually agree that they will not, in whole or in part, disclose, transfer, use, reverse, engineer or otherwise make available the disclosing party's Confidential Information, except as expressly stipulated in provisions of condition 23.3. Each party shall treat all Confidential Information of the disclosing party with the same degree of care it employs to protect its own Confidential Information and in no event less than a reasonable standard of care.
- 24.3 Notwithstanding conditions 24.1 and 24.2, a Recipient may disclose Confidential Information which it has received if:
- 24.3.1 it is required to do so by any governmental, local government or regulatory authority, any accreditation body, by law or a court (but then only to the extent it is strictly required to do so);
- 24.3.2 it is strictly necessary for the purpose only of obtaining professional advice in relation to the Agreement;
- 24.3.3 it was already known to the Recipient prior to the time of disclosure by the Disclosing Party (where the Recipient can prove the same with documentary evidence); or
- 24.3.4 it is information which subsequently becomes public knowledge other than by breach of the Agreement by the Recipient.
- 24.4 In the event of an information request being made to a Recipient pursuant to any Article (31) of UAE Constitution: « The freedom of communication by post, telegraph and other means of communication and its confidentiality thereof are guaranteed in accordance with the law». Federal Law No. 3 of 1987 promulgating the Penal Code in respect of any Confidential Information then the Recipient shall notify the Disclosing Party and shall not disclose any information until an analysis has been made as to whether the information requested is capable of benefiting from an exemption from disclosure.
- 24.5 Notwithstanding the provisions under this condition 24, ESL may use Client information in anonymised form. Whether by itself or in aggregate, ESL may analyse such anonymised data or otherwise commercially exploit such data for its business purposes.
- 24.6 The obligations of the parties under this condition 24 shall continue to apply without limit of time.
- 25. Export Control Licence**
- For the purposes of this condition 25, "**Export Control Licence**" shall mean any public or governmental licence, approval, permit or similar (whether temporary or permanent), issued directly or indirectly, by the United Arab Emirates (**UAE**) or other foreign authority with jurisdiction over the parties or the goods subject to the Agreement which, from time to time, it is necessary to obtain in order to be entitled to market, import, export, re-export products and/or provision of services and/or transfer of technology and/or Intellectual Property Rights.
- 25.1 ESL's performance of its obligations under this Agreement may, wholly or partly, be subject to Export Control Licences. If any such Export Control Licence requires signed end-user certificates or any other UAE or foreign governmental or court approvals or consents the parties agree to assist each other in completing the relevant end-user certificates or other such approvals or consents and the Client undertakes to conform to and apply the terms of such, end-user certificates, Export Control Licences or restrictions.
- 25.2 The Client represents and warrants that it shall inform ESL in writing, prior to ESL receiving any goods or information from the Client or carrying out any Service, of any applicable Export Control Licence requirement, import or export restrictions that may apply to the Services to be provided by ESL, including any instances where any products, information or technology may be exported/imported to or from a country, to or from a party, or involving an end-use that is restricted from such transaction under the above state applicable laws.
- 25.3 ESL shall make reasonable efforts to obtain the necessary Export Control Licences, but the parties acknowledge that the issuance of Export Control Licences is at the sole discretion of the relevant authorities. If any necessary Export Control Licence are delayed, denied or revoked, ESL shall notify the Client thereof in writing as soon as reasonably practicable, and ESL shall be entitled to a corresponding extension of the time for provision of the Services, and, in case any necessary Export Control Licence are denied or revoked, terminate the Agreement, wholly or partly, without liability in relation to the Client.
- 25.4 Should the Services or any product of ESL be subject to any Export Control Licences or any other UAE or foreign governmental or court restrictions, the Client undertakes to conform to, and apply the, from time to time, valid terms of such Export Control Licences or restrictions.
- 26. Anti-Corruption**
- 26.1 ESL personnel is prohibited from giving or receiving money or gifts which could be construed as bribes or entering into arrangements that are construed as corrupt practices
- 26.2 The Client undertakes to comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Federal Law No. (3) of 1987 Promulgating the Penal Code and that it shall not do, nor omit to do, any act that will lead to ESL being in breach of any of the Anti-Corruption Laws. The Client shall:
- 26.2.1 comply with ESL's Anti-corruption policies as may be notified by ESL to the Client and updated from time to time ("**Relevant Policies**");
- 26.2.2 promptly report to ESL any request or demand for any undue financial or other advantage of any kind received by the Client in connection with the performance of the Agreement;
- 26.2.3 promptly notify ESL (in writing) if a foreign public official becomes an officer or employee of the Client or acquires a direct or indirect interest in the Client (and the Client warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Agreement);
- 27. Notices**
- All notices to be served by one party on the other must be in writing and shall be deemed duly delivered or served at the time of service if delivered personally and seven two (72) hours after posting if posted by ESL portal, registered mail, registered courier or airmail pre-paid post in each case to the registered address, if applicable, or if not applicable the last known address of the other party.
- 28. No Waiver**
- No failure or delay by ESL to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right, power or remedy.
- 29. Governing Law**
- Each party irrevocably agrees that any dispute or claim arising out of or in connection with these Terms and Conditions, the Agreement, any documents related or ancillary thereto and their respective subject matters, including any question regarding its existence, validity or termination, or relating to any non-contractual or other obligation or the consequences of their nullity, shall be referred to and finally resolved by arbitration under the rules of the London Court of International Arbitration (LCIA), ("**Rules**"), which Rules are deemed to be incorporated by reference into this condition. The number of arbitrators shall be one, to be chosen in accordance with the Rules. The seat, or legal place, of arbitration shall be in Dubai. The language to be used in the arbitration shall be English.



CERTIFICATION SERVICES ANNEX (SERVICES PROVIDED BY ESL)

Where ESL is providing certification Services the terms of this Annex shall apply. In the event of a conflict between the Terms and Conditions and this Annex, the terms of this Annex shall apply. Capitalised terms used in this Annex shall have the meaning ascribed to them in the Terms and Conditions, unless otherwise provided in this Annex.

The following terms shall have the following meanings in this Annex:

"Scheme" means technical document describing essential rules, procedures and management for carrying out certification processes, including further supervision of issued certificates (when applicable), which are followed by ESL during provision of the Services, and which may be subject of update from time to time.

"Standard" means a document which contains details of specified requirements and methodologies for testing and/or inspection and/or certification against which the System, product, process, service or person is assessed. This includes requirements of the applicable regulations, applied Scheme(s), associated ESL requirements or rules communicated to the Client, which altogether form the certification requirements;

"System" means the organisational structure, responsibilities, activities, resources and events that together provide organised procedures and methods of implementation to ensure the capability of the Client to meet a particular Standard.

1. EXECUTION OF SERVICES

- 1.1 ESL shall not be obliged to enter into or maintain any commercial or other relationship with any entity or issue or maintain a certificate previously issued to any entity whose activities conflict with the obligations of ESL as specified in its accreditation Agreement with any accreditation body, or which, in the sole opinion of ESL, reflect badly on the good name of ESL.
- 1.2 The Services shall be carried out in accordance with procedures designed to ensure that any initial assessment, surveillance, re-certification audit or any other evaluation activity is in compliance with the requirements of the Standard. ESL reserves the right at its sole discretion to modify, amend or in any way alter the conduct and procedure of any activity, including any audit visit, if ESL deems this necessary in order to satisfy the requirements of the Standard, which may change from time to time.

2. PRICE AND PAYMENT

- 2.1 The Consideration is quoted (and amended from time to time) for the Services agreed to be supplied pursuant to the Agreement on the assumption that the information supplied by the Client is accurate and complete.
- 2.2 The Consideration includes the cost of audit services and the use of the ESL logo and, where agreed, the accreditation body logo.
- 2.3 Expenses and disbursements may be charged separately in accordance with the quoted terms.
- 2.4 Any service required or supplied additional to the Services will be charged at ESL's rates current at the time of supply of such services.
- 2.5 The Consideration may be reviewed and amended from time to time, normally but not exclusively on an annual basis.
- 2.6 Payment is due as per the stated terms on the invoice. Payment shall be made in full, without set off or deduction.
- 2.7 In the event that any payment is not made when due, ESL reserves the right to charge interest (at the statutory rate on commercial debts then applicable) from the due date until payment in full, and/or suspend the provision of all Services and/or terminate the Agreement (including suspension or withdrawal of the Certificate), without prejudice to ESL's other rights and remedies.
- 2.8 All fees and expenses quoted are exclusive of all taxes including but not limited to value added or sales tax, which will be charged at the current rate of the country in which the services are supplied.
- 2.9 If the Client postpones all or part of the Services with less than thirty (30) working days' notice from the start date that was mutually agreed following acceptance by the Client of the Quotation, ESL reserves the right to either:
 - 2.9.1 charge a fee amounting to the greater of: (i) 25% of the Consideration; or (ii) the applicable day rate for a relevant employee; or
 - 2.9.2 where the costs and resources cannot be defrayed, charge all or part of the Consideration as appropriate.
- 2.10 Should the Client wish to cancel the Services, and without prejudice to ESL's other rights and remedies hereby reserved, ESL shall charge and be entitled to recover either:
 - 2.10.1 a fee amounting to 50% of the Consideration in question; or
 - 2.10.2 where the costs and resources cannot be defrayed, all or part of the Consideration as appropriate plus the cost of any work performed up to the receipt by ESL of the notice of the cancellation, calculated in accordance with the applicable day rate for a relevant employee.

3. OBLIGATIONS OF CLIENT

- 3.1 Where ESL is to provide certification Services to the Client, the Client shall:
 - 3.1.1 always comply and conform with and fulfil the provisions and requirements of the applicable Standard, including implementing appropriate changes when they are communicated by ESL and within the minimum period specified by ESL;
 - 3.1.2 exert all effort to fulfil and maintain, on continuous basis, the conformity of the product with all applicable Standard(s), and implement appropriate changes made to these requirements when communicated by ESL. The Client shall regularly check ESL web page for announcements and instructions related to the applicable Standard, and shall ensure that only the latest versions of the relevant certification documents are used and implemented, without bearing any liability on ESL in regard to any changes.
 - 3.1.3 ensure that if a certification applies to ongoing production, the certified product continues to fulfil the requirements of the Standard;
 - 3.1.4 where prescribed by a relevant Standard, the Client shall make all necessary arrangements for:
 - 3.1.4.1 the conduct of the evaluation and surveillance (if required, and as determined by ESL), including provision for examining documentation and records, and access to the relevant equipment, location(s), area(s), personnel, and the Client's subcontractors;
 - 3.1.4.2 investigation of complaints; and
 - 3.1.4.3 the participation of observers, if applicable, including the accreditation body, or its representative, for the purposes of witnessing ESL's audit team performing the audit of the System to determine conformity with the requirements of the Standard;
 - 3.1.5 only make claims regarding certification consistent with the scope of the certification;
 - 3.1.6 comply with the requirements of ESL or as specified by the Standard in making reference to its certification in communication media such as documents, brochures, advertising, the various internet platforms, or other documents;
 - 3.1.7 comply with any requirements that may be prescribed by the Standard and the scope of the valid Certificate issued by ESL relating to the use of marks of conformity, and information related to the certified product;
 - 3.1.8 not use its certification in such a manner as to bring ESL into disrepute and not make any

statement regarding its certification that ESL may consider misleading or unauthorised, nor use or permit to be used the certificate in a misleading manner;

- 3.1.9 keep a record of all complaints made known to it relating to compliance with certification and make these records available to ESL when requested, and take appropriate action with respect to such complaints and any deficiencies found in products that affect compliance with certification, and document the actions taken;
- 3.1.10 not imply that the certificate applies to activities and sites that are outside the scope of certification, nor allow reference to its certification to be used in such a way as to imply that ESL certifies a product (including service) or process which has not been certified;
- 3.1.11 not use its certification in such a manner that would bring the certification system or Standard into disrepute and lose public trust;
- 3.1.12 only provide copies of certification documents to others if such documents have been reproduced in their entirety, or as specified in the applicable Standard;
- 3.1.13 comply with all agreements and arrangements between the Client and the applicable Standard setting body (if applicable) and all applicable Standard setting body requirements;
- 3.1.14 inform ESL, without delay, of matters that may affect the Client's capability to comply with the applicable Standard or the capability of the product, process, service or System (as applicable) to continue to fulfil the requirements of the applicable Standard. These include, for example but without limitation, changes relating to:
 - 3.1.14.1 the legal, commercial, organisational status or ownership of the Client;
 - 3.1.14.2 organisation and management (e.g. key managerial, decision-making or technical staff);
 - 3.1.14.3 contact address and sites;
 - 3.1.14.4 scope of operations under the System; or
 - 3.1.14.5 major changes to the product, process, service or System (as applicable) and the Client agrees to pay any applicable additional fees and expenses deemed necessary for ESL to assess the impact and maintain confidence in the product, process, service or System;
- 3.1.15 ensure that its product, process, service or System (as applicable) complies with the current versions of the Standard(s) against which it is certified. Current versions of the rules, regulations and Standards can be obtained from the respective websites of the standard setting bodies, or from ESL or from the Standards issuing authority (as applicable); The Client shall always use only the latest issue of the certificate. Accordingly, without the consent of ESL, the certificate cannot be represented unless it is shown in full and unedited state.
- 3.1.16 comply with any conditions set by ESL for the issue of a certificate and recognise that ESL has clear and explicit rights to revise the requirements of certification within the period of validity of the certificate;
- 3.1.17 acknowledge that initial certification will only be granted once all non-compliances have been actioned in accordance with the applicable Standard;
- 3.1.18 acknowledge that on-going certification is reliant on continued compliance with the Standards, rules and regulations of the relevant Standard setting body, which may change from time to time, including the requirement to address any non-conformances to the satisfaction of ESL in the specified time periods;
- 3.1.19 declare to ESL any activity which may create a conflict of interest in relation to its certified product, process, service or System; and
- 3.1.20 inform ESL without delay, of the occurrence of a serious incident or breach of regulation necessitating the involvement of the competent regulatory authority.
- 3.2 The Client represents and warrants to ESL that, in the event of the issuance of a certificate, the Client will inform ESL in writing immediately of any changes during the term of the certificate which may have a material impact on the accuracy of the certification.
- 3.3 The Client agrees to indemnify, keep indemnified and hold harmless ESL from and against all Losses which ESL may suffer or incur arising out of or as a result of:
 - 3.3.1 any defects in the Client's products, processes, services or System; and
 - 3.3.2 the use or misuse by the Client of any certificate, licence, logo, service mark or trade mark provided by ESL in accordance with these Conditions.Notwithstanding any other provision of these Conditions, the Client's liability under this indemnity shall be unlimited.
- 3.4 The Client acknowledges the authority of the accreditation body and agrees to assist ESL and accede to any reasonable request made by the accreditation body in relation to the certification e.g. witness audits.
- 3.5 Where the Client's product is the subject of its certification, the Client shall inform ESL in writing of any product recall under the scope of the certificate within five (5) working days.
4. **CERTIFICATION DECISION**
 - 4.1 Following completion and review of all documents, materials and information supplied by the Client and results of all applicable and essential evaluation activities resulting from the operated Scheme, ESL provides certification decision regarding the given product (product type). This Agreement does not give the Client an automatic right to a Certificate. ESL makes, in its absolute and sole judgement acting independently to the Client's interests, a decision:
 - 4.1.1 when there is sufficient objective evidence of a product conformity with the applicable Standard(s) - to grant Certificate or, in case of supervision over issued certificate, to maintain the Certificate;
 - 4.1.2 when there is not sufficient objective evidence of a product conformity with any of applicable Standard(s) - not to grant Certificate or, in case of supervision over issued certificate: to suspend or withdraw the certificate.
 - 4.2 Any other certification decisions regarding the Certificate, including, but not limited to: update, extension, restoration, reduction or termination of Certificate, are made, in ESL's absolute and sole judgement acting independently to the Client's interests, based on the conditions provided for in the applied Standard(s).
 - 4.3 As part of the certification decision, ESL will undertake various Fingerprinting Testing(s) for ensuring repeatability and traceability of materials and products certified. These tests include, but are not limited to, FTIR spectroscopy, metallurgy, calorific value, chemical, thermal analysis, density, tensile strength, etc.
 - 4.4 Where there is a request to revise and reissue a Certificate or Technical Assessment reports after the final issue of the Certificate or Technical Assessment reports has been agreed to and issued, the reissued reports can be issued upon request and payment of AED 500 (excluding VAT, other applicable taxes, and surcharge charges) per each Certificate or Technical Assessment reports. (NOTE: the technical revision time and cost towards the revision will be agreed upon and charged separately prior to undertaking the revision.)
5. **USE OF CERTIFICATE, CERTIFICATION MARK(S) AND ESL BRAND MARK**
 - 5.1 The Client has the right to publish the fact that an identified product has been granted a Certificate by ESL, as long as the Certificate stays valid. All statements regarding certification made by the Client shall be consistent with the scope of the Certificate. The Client has the right to publish successful test results undertaken at ESL and its granted certification and tag or reference ESL on online or offline publications.
 - 5.2 When the Client wishes to publish the Certificate (whether in soft or in hard copy) it must be



published in its full and unedited state.

- 5.3 In every case, the Client takes sufficient care of its publications and advertising so that no confusion arises between certified and non-certified products. The Client does not specify any function or make any claim or the like in user information that could lead purchasers to believe that performance of the product or its use is covered by the Certificate, when in fact it is not.
- 5.4 The Client, its witnesses and subcontractors shall not disclose details of the way ESL performs, conducts, or executes its operations.
- 5.5 The Client must immediately notify ESL when it becomes aware of the unauthorised use of the whole or any part of any of the Services, of a Certificate, of a Certification Mark, ESL Brand Mark or label (if any), by any third party.
- 5.6 Use of ESL logo, Brand Mark, its accreditation logo trademarks, tradenames (where registered or unregistered) audio, photo, or video recordings of testing facilities for advertising purposes is not permitted without ESL's prior express written consent.
6. **SUSPENSION OR WITHDRAWAL OF CERTIFICATION**
- 6.1 ESL shall be entitled to suspend or withdraw part or all of a certification on seven (7) days' written notice (or within such timescales as ESL may reasonably specify, including with immediate effect in the case of urgent need) when, in the reasonable opinion of ESL:
 - 6.1.1 the Client's acts, omissions or conduct bring or may bring ESL, the accreditation body, the Standard setting body, or a Standard into disrepute;
 - 6.1.2 the Client represents, promotes or advertises any products, processes, services or Systems which are outside the scope of its certificate as certified by ESL;
 - 6.1.3 the Client makes fraudulent misrepresentation or provides ESL with any inaccurate or misleading information, which is not corrected within three (3) working days or immediately on being notified by ESL;
 - 6.1.4 the Client is in breach of or is not subject to the requisite ancillary licence agreements, including any attributable to the accreditation body;
 - 6.1.5 the Client fails to maintain or demonstrate an effective System such that the confidence in the certificate is adversely affected; or
 - 6.1.6 the Client has persistently or seriously failed to meet certification requirements for a particular part or parts of a relevant Standard.
- 6.2 Where permitted by the relevant Standard, ESL will afford the Client a reasonable opportunity to take corrective action before the suspension or withdrawal takes effect. In the event of suspension or withdrawal of all or part of a certificate, ESL reserves the right to make public the fact that such action has been taken.
- 6.3 In the event ESL is unable to supply certification or is no longer able to continue to supply certification accredited by the relevant accreditation body or otherwise withdraws from supplying certification, ESL will notify the Client within thirty (30) days and the certificates will be suspended ipso facto within six (6) months after the date of withdrawal.
- 6.4 In the event that ESL suspends or withdraws a certificate, the Client (including the Client's group companies) shall:
 - 6.4.1 immediately refrain from any claims or representations (oral or written, express or implied) that products comply with the requirements of the certificate, ESL, the Standard setting body or authority having jurisdiction;
 - 6.4.2 immediately refrain from further promotion of the certificate or use of any references to the certificate, including discontinuing use of all advertising matter that contains a reference to certification;
 - 6.4.3 immediately at its own expense remove all service mark(s), trade mark(s), certification mark(s) and other names and logos belonging to ESL, the accreditation body, the Standard setting body and authority having jurisdiction from its products, information, website, documents, advertising or marketing or any other materials;
 - 6.4.4 immediately cease to sell any products bearing any service mark(s), trade mark(s), certification mark(s) and other names and logos belonging to ESL, the accreditation body, the Standard setting body and authority having jurisdiction;
 - 6.4.5 immediately cease and desist from using all service mark(s), trademark (s), certification mark(s), and other names and logos belonging to ESL, the accreditation body, the Standard setting body and authority having jurisdiction;
 - 6.4.6 amend all advertising matters if part of a certificate has been suspended or withdrawn;
 - 6.4.7 make the suspended status of the certification publicly accessible;
 - 6.4.8 notify the Standard setting body or authority having jurisdiction; and
 - 6.4.9 take any other measure required by ESL or prescribed by a Standard.
- 6.5 Where a Client's certification been suspended or withdrawn, and where a product has been supplied with a claim that it complies with a Standard(s) by the Client to a customer/purchaser, the Client shall:
 - 6.5.1 immediately identify all relevant customers/purchasers who are in receipt of, or have ordered, such product, and notify each of such customers/purchasers of the suspension or withdrawal (as the case may be) in writing within three (3) working days (or within such timescales as a Standard may specify) of the suspension or withdrawal, and maintain records of such notification; and
 - 6.5.2 provide such cooperation and information as may be required by ESL or the accreditation body to enable ESL or the accreditation body to verify and confirm that the Client is in compliance with all its obligations to ESL and the accreditation body.
- 6.6 In the event that ESL withdraws a certificate, the Client (including the Client's group companies) shall promptly return the original and all copies of the certificate to ESL or destroy the original, and commit to destroy any electronic copies and hardcopies in its possession or control.
7. **CONFIDENTIALITY**
- 7.1 The obligations of the parties under this condition 7 of this Annex shall apply in addition to condition 24.
- 7.2 The Client agrees that information relating to its certification and scope of certification can be made publicly available by ESL and the Standard setting body.
- 7.3 ESL shall inform the Client, in advance, of any other information it intends to place in the public domain. All other information, except for information that is made publicly accessible by the Client, shall be considered confidential.
- 7.4 Where prescribed by a Standard setting body:
 - 7.4.1 the Client shall be required to promptly provide to ESL and the Standard setting body and their respective authorised agents all such information, documentation books and records deemed necessary by ESL or Standard setting body; and
 - 7.4.2 the Client agrees that ESL and/or the Standard setting body shall have the right to use and process any information relating to the Client or otherwise provided by or through the Client including but not limited to any supply base report; ESL public summary reports; data required by the Standard setting body for calculations and regulatory reporting; any data required by the Standard setting body to be supplied to the Client's purchaser/Client with each batch of biomass supplied or sold.
8. **TERMINATION**
- 8.1 Either party may terminate the Agreement by giving three months' (90 Days) written notice to the other and the Agreement shall terminate upon expiry of said three-month period.
- 8.2 In the event of the Agreement being terminated (except in the case of material breach by ESL) the Certificate issued pursuant hereto shall immediately become invalid and the Client shall cease to be entitled to use the same or any logo or mark of ESL and its accreditation bodies and shall

destroy all electronic and hardcopy Certificates relating to the certification and at its own expense remove all claims, service mark(s) trademark(s), other names or logos and copyright works from products, documents, advertising and marketing materials with immediate effect. The Client shall confirm in writing that these obligations have been met and shall provide full cooperation to enable ESL and its accreditation bodies to carry out any verification activities necessary.

9. **AUDIT CONDUCT**
- 9.1 ESL will appoint competent qualified auditors to conduct audits and assessments of the Client's compliance with the relevant Standard(s).
- 9.2 The Client will ensure that reasonable cooperation and assistance is provided to ESL to allow audit and assessment services to be delivered at a frequency determined by ESL in order for ESL to maintain confidence in the Client's on-going compliance with the relevant Standard(s).
- 9.3 ESL will issue audit and non-conformance reports, if appropriate, after each audit activity. The Client shall allow the accreditation body, or its representative, access to any part of the audit or surveillance process. This will include the right of access to confidential information. The Client will not have the right within this Agreement to refuse such a request either by the accreditation body, its representative, or ESL.
- 9.4 ESL reserves the right to conduct an unannounced audit at short notice if required by the applicable Standard setting body or as part of the certification scheme requirements to investigate complaints, or in response to changes, or as follow up on a suspended Client. In such cases:
 - 9.4.1 ESL shall describe and make known in advance to the Client the conditions under which these short notice visits are to be conducted, and
 - 9.4.2 ESL shall exercise additional care in the assignment of the audit team because of the lack of opportunity for the Client to object to audit team members.
- 9.5 Where prescribed by a Standard, the Client agrees that:
 - 9.5.1 a copy of the audit report and any subsequent certificate or audit result shall be supplied to the Standard setting body and the accreditation body in the agreed format for the particular Standard used;
 - 9.5.2 all documents in relation to the audit shall be made available to the accreditation body/Standard setting body upon request. All documents submitted to the Standard setting body shall be copies of original documents. Documents provided to the Standard setting body will be treated as confidential;
 - 9.5.3 the auditor may be accompanied by other personnel for training, assessment or calibration purposes and this activity may include:
 - 9.5.3.1 training of new auditors by ESL;
 - 9.5.3.2 witness audits by accreditation bodies; and
 - 9.5.3.3 witness audits by the Standard setting body; and
 - 9.5.4 the Standard setting body reserves the right to conduct its own audit or visit to a site once certificated in response to complaints or as part of the routine Standard setting body compliance activity to ensure the integrity of the Standard. Such visits may be announced or unannounced. The Standard setting body may contact the site directly in relation to its certification status or for feedback on ESL's performance, or investigation into reported issues.
- 9.6 Where prescribed by a Standard, the Client shall grant ESL and the Standard setting body and their respective authorised agents the right at any reasonable time to have access to the Client's premises (or to arrange for such authorised representatives to have access to other relevant premises owned or controlled by the Client or its group companies) for the purpose of inspecting and taking copies of any information, documentation, goods, books and records deemed necessary by ESL or the Standard setting body.
 - 9.6.1 The client shall ensure the constant assistance of properly qualified, briefed and authorised personnel of the Client.
 - 9.6.2 To allow ESL to comply with the applicable health and safety legislation the Client shall provide ESL with all available information regarding known or potential hazards likely to be encountered by ESL personnel during their visits.
 - 9.6.3 ESL shall take all reasonable steps to 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 ESL aware of the same.
- 9.7 For international travel, flights shall be booked in Standard/Economy/Premium Economy class with complete in-flight services, including meals (non-budget/low-cost airline), following the travel timings instructed by or agreed upon with ESL. Preferably, direct flights should be booked.
 - 9.7.1 Where the flight travel duration (including transit times) is 9 hours or more, business class tickets shall be booked.
 - 9.7.2 When business travel involves a flight to the audit location, auditors must have at least 8 hours of uninterrupted rest in the hotel before the audit activity commences.
 - 9.7.3 Public transport is used only when – in ESL sole opinion- it is a cost and time-effective option, compared to taxi or discount taxi services, and it does not risk the ESL representative's safety (e.g., night travel).
 - 9.7.4 Hotel bookings must be made in a minimum of 4-star hotels within proximity to either the audit location or the airport. The client shall pay the Internet expenses incurred by the auditing team at the hotel and during the audit.
 - 9.7.5 In the event of travel arrangements extending in the sole opinion of ESL beyond the reasonably assumed time of stay in the audit location, thereby impeding auditors from fulfilling their duties during regular office hours upon return and following uninterrupted rest in their place of residence for a minimum of 8 hours, ESL reserves the right to apply additional charges corresponding to the time involved.
 - 9.7.6 The Client acknowledges that as part of a business trip, auditors are paid travel allowances in the amount determined by ESL based on the number of days of the trip. The Client bears this cost.
 - 9.7.7 Any deviation from the above requirements must be agreed to and confirmed by ESL in writing before travel arrangements are booked and concluded.
10. **APPEALS AND COMPLAINTS**
If the Client wishes to complain or appeal about certification decisions of ESL it shall do so in accordance with ESL's complaints and appeals processes which may change from time to time and are publicly available at ESLglobal.com and can be provided on request.
11. **MATERIALITY (BASIS OF OPINION)**
Where ESL provides certification Services, ESL conducts certification through a sampling process to determine if the product, process, service or System meets the Standard(s). Any statement of conformity issued by ESL in the form of reports, certificates or other communications is based on these sampling processes. ESL does not warrant, represent or undertake that these statements mean that all activities are in conformance with the relevant Standard(s) at the time of audit or that subsequent to the audit activity those activities audited will continue to be in conformity with the relevant Standard. The Client undertakes to make all of its Clients and end users aware of the foregoing provisions of this condition 11. ESL accepts no liability to the Client in the event that any loss or claim is suffered by the Client as a result of any finding that the product, process, service or System does not comply with the Standards.
Note: This document replaces the previous version ESL/TNC/Rev01/30Mar2023, ESL/TNC/Rev02/24Nov2023 and ESL/TNC/Rev03/21Feb2024. Also, for the avoidance of doubt, the previous version had already replaced ESL General Terms of ESL Certification Services (GT-CS)

