

## 1. General - Scope of application of Terms and Conditions

1.1 These Terms and Conditions (hereinafter referred to as "T&Cs") apply to Intertek Caleb Brett Germany GmbH (District Court Hamburg, HRB 2297), Intertek Certification GmbH (District Court Mönchengladbach, HRB 12350), Intertek Consumer Goods GmbH (District Court Fürth, HRB 5756), Intertek Deutschland GmbH (District Court Stuttgart, HRB 225262), Intertek Food Services GmbH (District Court Bremen, HRB 28046), Intertek Holding Deutschland GmbH (District Court Stuttgart, HRB 226064), Intertek Industrial Services GmbH (District Court Mönchengladbach, HRB 4135) and KJ Tech Services GmbH (District Court Darmstadt, HRB 7902) - hereinafter also referred to jointly or individually as "Intertek Companies".

1.2 Our T&Cs apply exclusively. We do not acknowledge contradictory terms and conditions or terms and conditions that differ from these T&Cs, or such terms and conditions of the customer, that are not governed in these T&Cs, unless we have explicitly agreed to application of such in writing. Our T&Cs apply even if we render services for the customer without reservation, in the knowledge of contradictory or deviating terms and conditions or terms and conditions of the customer that are not governed in our T&Cs, in such case as the customer refers to the validity of his terms and conditions in his request, in his order, or otherwise in connection with performance of the contract.

1.3 All agreements made between us and the customer for the purposes of executing a contract are set out in writing in the contract (cf. Sec. 1.6 of these T&Cs) and in these T&Cs which apply concurrently.

1.4 Our T&Cs apply only to entrepreneurs within the meaning of Section 14 BGB (German Civil Code) and to legal persons under public law and special funds under public law.

1.5 These T&Cs also apply to subsequent orders and follow-up orders within the context of continuing business relationships. They therefore apply even if we do not explicitly invoke them in later contracts or services.

1.6 A "contract" within the meaning of these T&Cs is that contract that is concluded between us and the customer.

## 2. Scope of performance - Nature and content of services - Sub-contractors

2.1 We appraise, analyse and/or certify companies, products or other services of manufacturers, distributors and/or other service providers based on national or international regulations with accreditation, according to national or international standards without accreditation, or according to other testing specifications as agreed, and provide additional independent appraisal, analysis, certification and other services, such as inspections, goods and loading checks, advisory services, audits, tests, and deliveries; hereinafter all of these deliveries and services pursuant to Sec. 2.1 of these T&Cs are referred to jointly as "Services". Our contract partners who procure these Services are referred to in these T&Cs as "Customers".

2.2 Services are rendered according to the regulations of the contract, according to the rules of the technology as are generally accepted at time of conclusion of contract, and under observance of the relevant regulations applicable at time of conclusion of contract.

2.3 We are entitled to determine independently the method and/or manner, in which the Services are to be rendered, according to our proper discretion, provided (a) no agreement to the contrary has been made, and (b) mandatory regulations do not prescribe a specific method and/or manner for rendering the Services.

2.4 Insofar as samples or test objects (hereinafter referred to jointly as a "Test Object" or "Test Objects") are to be analysed, the following applies: each order shall relate exclusively to the Test Object(s) provided to us by the Customer or accepted by us from the Customer and ends when we send the Customer our written audit report concerning the results of our investigation of this Test Object, unless an agreement to the contrary has been made by way of exception.

The written audit reports reflect our particular opinion on the Test Objects provided or accepted but do not relate to the production batch, from which these samples were taken.

2.5 The Customer acknowledges and accepts that the Services are not necessarily designed to or are not intended to capture all aspects of quality, safety, effectiveness or condition of the products, materials, services, systems or processes being tested, investigated and certified. The Customer furthermore acknowledges and accepts that the scope of Services does not necessarily include all standards that are applicable to the products, materials, services, systems or processes being tested, investigated and certified. The Customer acknowledges that in this respect he can rely on the reports we compile only with regards to facts and descriptions in the reports which reflect our audit and our analysis of facts, information, documents, samples and/or materials that were available at time of rendering the Service.

2.6 We are entitled to have orders that are placed with us performed, in part or in whole, by our affiliated companies or by suitable and carefully selected

sub-contractors. In such case, any applicable stipulations of these accreditation bodies shall be observed.

2.7 If the certification body and test laboratory are not one and the same company, contracts concerning the testing services conducted in preparation for certification are concluded (a) between the Customer and the certification body or (b) between the Customer and the test laboratory, unless alternative regulations of the accreditation body are applicable. Notwithstanding, there shall always exist a contractual relationship between the Customer and the certification body with respect to the certification as such.

If the certification body and test laboratory are not one and the same company, the Customer shall not acquire any rights to demand Services arising from the contract between the certification body and the test laboratory. In any case, the law agreed upon or applicable between the certification body and the test laboratory shall also apply with respect to the Customer in connection with the contract between the certification body and the test laboratory.

2.8 The Customer acknowledges and accepts that we have the irrevocable authority to deliver the corresponding report to a third party insofar as we are to provide a report to this third party in connection with the Service. We are thus obliged to supply a report to a third party insofar as the Customer has instructed us to do so, or if such an obligation logically arises from the circumstances or practice.

2.9 In the agreement to render the Services, we do not limit the obligations and covenants of the Customer with respect to any other person or the obligations of any other person with respect to the Customer, nor do we annul such obligations and covenants or indemnify the Customer or other third person of such.

## 3. Offer - Formation of contract

3.1 Offers we make to the Customer are non-binding and subject to change, unless they are explicitly indicated as binding or include a specific deadline for acceptance. Our offers constitute only an invitation to the Customer to issue us a binding offer ("invitatio ad offerendum").

3.2 Customer orders sent to us constitute binding orders from that Customer. We accept Customer orders at our discretion and within a reasonable period of time (at least two weeks) by sending an order confirmation, rendering the Service(s) ordered without reservation, or sending an invoice.

## 4. Customer obligations to cooperate/provide assistance

4.1 The Customer is obliged to fulfil all such obligations to cooperate/provide assistance which are necessary for performance of the agreed Services immediately, correctly, in full and free of charge. In particular, the Customer is obliged to:

- provide us with the necessary information, drawings, documentation, and data;
- grant our employees, auditors and agents, or procure for these same, access to the necessary information, drawings, documentation, and data, and access to the relevant goods, business properties/buildings, installations, means of transport, or other organizational entities of the Customer;
- provide such specialised instruments as are required to execute the order;
- ensure safe working conditions for our employees, auditors and agents, unless such are beyond the control of the Customer;
- inform us of all health and safety rules and regulations and all reasonable safety and security requirements that may be relevant before we enter the premises in connection with rendering the Service;
- notify us immediately of all risks, safety and security aspects, or incidents relating to each object which the Customer has provided, and in relation to all processes and systems on the premises or which are otherwise necessary in any form whatsoever for the performance of the Service;
- inform us in advance of all applicable import and export restrictions which may apply to the Services, and of all operations, in which products, information, or technologies could be exported from or imported into countries which are restricted in or excluded from such import/export;
- obtain and provide all such permits and approvals as are necessary in order to comply with the rules and regulations relevant for the Services;
- take care that any and all impediments to and interruptions of our Services are avoided or remedied;
- provide us with instructions and feedback in a timely manner.

4.2 The Customer shall nominate one or more officers who shall assist our employees, auditors and agents in the performance of the contractually agreed Services and act as a point of contact between them and the Customer. These officers should be properly authorised to issue us with instructions on behalf of the Customer and to enter into binding contracts for the Customer where necessary.

4.3 After a certificate has been issued, the Customer is obliged to inform us of all such changes which might have an impact on the certified Services for the duration of such certificate.

4.4 The Customer is obliged to log objections submitted to him with respect to the conformity of the certified company, product or other Service with the requirements of the certification standard, to take appropriate action, to document the actions taken, and to present such to the auditor upon request within the context of the audit.

4.5 The Customer is obliged to inform us of all personal injuries and property damages that have been supposedly or actually caused by a product, for which we have rendered Services on the orders of the Customer.

4.6 We cannot be accused of a breach of contract nor can we be held liable with respect to the Customer for a breach of contract if such breach is a direct result of the Customer breaching his obligations pursuant to Sec. 4 of these T&Cs. The Customer furthermore acknowledges that the effects of his failure to fulfil the obligations pursuant to Sec. 4 of these T&Cs shall have no effect on the obligation of the Customer to pay remuneration.

#### **5. Acknowledgements and commitments of the Customer**

5.1 The Customer acknowledges and commits that:

- a. all Test Objects, information, samples, and documents which he (or a representative or authorised officer) provides to us (or our representatives, sub-contractors, or employees) are true, exact, representative, complete, and not misleading in any such way. The Customer furthermore acknowledges that we are permitted to rely on the Test Objects, information, samples, and documents which the Customer provides to us in order to render the Services (whereby this does not establish any obligation to confirm or verify correctness and completeness);
- b. all samples which the Customer provides to us (hereinafter referred to as "Test Samples") shall be delivered at the expense of the Customer and collected or disposed of by the Customer within 30 days of conclusion of the tests, unless agreements to the contrary have been made by way of exception. If the Customer does not collect or dispose of the Test Samples within this 30-day period, we shall be entitled to destroy the Test Samples at the expense of the Customer; we are furthermore entitled - but not obliged - to retain and store a reference sample;
- c. all Test Objects, information, Test Samples, samples, and documents (including certificates and reports) which the Customer provides to us are not in violation of the rights of third parties (including third-party intellectual property rights) under any circumstances.

5.2 Insofar as the Services are connected to a third party, the Customer shall ensure that this third party acknowledges and agrees to all conditions of the contract and the T&Cs before the third party receives a report or is permitted to derive benefit from the Services. Such acknowledgement and such an agreement furthermore constitute a condition precedent for our obligation to deliver a report to the third party and for the right of the third party to derive benefit from the Services.

5.3 We cannot be accused of a breach of contract nor can we be held liable with respect to the Customer for a breach of contract if such breach is a direct result of the Customer breaching his acknowledgements and commitments pursuant to Sec. 5 of these T&Cs. The Customer furthermore acknowledges that the effects of his failure to fulfil the acknowledgements and commitments pursuant to Sec. 5 of these T&Cs shall have no effect on the obligation of the Customer to pay remuneration.

#### **6. Audits - Auditors**

6.1 Our appraisal and certification services are based on audits.

6.2 We decide, at our own discretion, which auditors to engage when rendering our appraisal and certification services. We are at liberty to decide whether we engage auditors who are our permanent employees or freelance/self-employed auditors. The Customer is entitled to reject an auditor, whom we have chosen, only if there exists good cause and the Customer substantiates his objection in writing.

6.3 At the end of an audit, the Customer will be informed of the outcome of this audit at a final meeting or in a concluding report. The final meeting will also be documented in an audit report or alternatively the audit report will be discussed as part of the final meeting. Non-compliances will be documented and may, where necessary due to the outcome of the audit, lead to a review audit (i.e. a new, onsite inspection) or result in a requirement to submit new documentation. The auditor or lead auditor will determine the scope of this review audit. By way of exception, the scope of the Corporate Responsibility review audit will be indicated in the audit report.

6.4 Depending on the relevant standard or norm, supervisory, onsite audits may be required in order for a certificate to retain its validity. Details of such are indicated in the applicable terms and conditions of audit/certification and/or the relevant contract.

6.5 Preaudits, review audits, supervisory audits, and follow-up audits shall be remunerated separately, unless an agreement to the contrary has been made by way of exception.

#### **7. Certifications - Certification procedure**

7.1 We conduct accredited certification procedures according to the contractually agreed norm or the regulations indicated therein, including any applicable accreditation standards specific to that certification, certification standards and all guidelines on performance, and the accreditation regulations of the respective accreditor. Standard certifications are conducted according to the relevant national or international standards. Certification procedures conducted in order to issue our own certificates are conducted according to the rules we ourselves set out.

7.2 If the certification procedure produces a positive outcome, the corresponding certificate will be issued in accordance with the provisions set out in Sec. 7.1 of these T&Cs. The certification shall also be registered in a database, as applicable (cf. Sec. 10 of these T&Cs). If the certification procedure produces a negative outcome, the Customer shall receive a report indicating the points which are preventing certification. In such case, we shall not be obliged to conduct a new certification procedure. Notwithstanding, any new certification procedure shall be remunerated separately, unless an agreement to the contrary has been made by way of exception.

#### **8. Right of use to certificates/certification marks - Scope and content - Expiry**

8.1 Insofar as the certification procedure agreed in each case concludes with a positive outcome, the Customer shall receive the corresponding certificate from us. This certificate shall bear the certification period set out in each case in the contract or in our T&Cs or the accreditation body's terms and conditions of testing and certification.

8.2 Upon a certificate being issued pursuant to Sec 8.1 of these T&Cs, the Customer shall acquire the non-exclusive, non-transferable and non-sub-licensable right to use the relevant certification mark for the duration of the certificate indicated pursuant to the conditions described below in Sec. 8.3 of these T&Cs, whereby such right shall be limited with respect to content according to the relevant terms and conditions of testing and certification.

8.3 In addition to the terms and conditions governed in our T&Cs or the terms and conditions of testing and certification of the respective accreditation body, the following conditions of use shall always also apply:

- a. The right of use applies exclusively to the areas of business, products or Services named on the certificate or in the relevant terms and conditions of testing and certification;
- b. The Customer is prohibited from undertaking amendments to the certificate and/or the certification mark;
- c. The Customer shall clarify, through the presentation of his advertising and the like, that the certification is a voluntary certification carried out on the basis of an agreement under private law.

8.4 The right of the Customer to use the certificate and/or certification mark shall expire with immediate effect, without the need for termination, if:

- he does not possess a valid certificate, in particular upon the certification period ending, upon the relevant norm or regulatory framework expiring, and/or in the event of a failure to conduct the necessary readits, supervisory audits and follow-up audits;
- the Customer uses the certificate and/or the certification mark (a) in any manner that breaches the relevant terms and conditions of testing and certification, (b) in any manner that breaches the provisions of Sec. 8.3 of these T&Cs, or (c) in any other manner that is in breach of contract;
- the Customer is prohibited from using the certificate and/or the certification mark by a public decree or court.

8.5 Upon his right of use expiring, the Customer is obliged to return the certificate to us immediately.

#### **9. Use of the name "Intertek" or other marks of the Intertek companies**

Any use of the name "Intertek" or another mark of the Intertek Companies by the Customer (or affiliated companies or subsidiaries) requires our prior written consent. Any use of such name or marks without such prior written consent is strictly prohibited; we reserve the right to terminate the contract with immediate effect in such case.

#### **10. Register of certified companies**

We maintain a register of certified companies, including information on the scope of application. We are entitled to provide this register to third parties upon request, and to inform third parties upon request of withdrawn or expired certificates, unless an agreement to the contrary was made as an exception and/or such is prohibited by mandatory regulations.

### **11. Deadlines, periods of performance - Force majeure**

11.1 The contractually agreed deadlines and periods of performance for our Services are based on estimates of the scope of work which are in turn based on information provided by the Customer. These deadlines and time periods are binding only if we have explicitly agreed to such in writing.

11.2 If deadlines and periods of performance have been agreed as binding, they shall begin to apply only once the Customer has fulfilled all obligations to cooperate/provide assistance properly and in good time. The right to claim non-performance of contract is reserved.

11.3 If the Customer falls behind schedule or culpably breaches other obligations to cooperate/provide assistance, we shall be entitled to demand compensation of such damages as we have incurred in this respect, including any additional expenditure. Further claims are reserved.

11.4 If our failure to comply with a deadline or period of performance is due to an event of force majeure, i.e. an unforeseen event which we have no control over and which we are not responsible for, the agreed deadlines and performance periods shall be extended for the duration of the events causing the delay, insofar as these impediments have a not just insignificant impact on the rendering of our Services. The same applies if such a force majeure event occurs during a delay or affects one of our downstream suppliers. Force majeure events are, in particular, measures and decrees enforced by public agencies (regardless of whether such are valid or invalid), fire, earthquake, flooding, storms, explosions or other natural disasters, mobilisation, war, revolution, embargoes, pandemics and epidemics.

11.5 We shall be released from our performance obligation if we (a) fail to receive proper, timely delivery of the correct goods ordered for performance of the contract through no fault of our own, and (b) have concluded a matching hedging transaction with the supplier. In such case, we shall also be obliged to inform the Customer immediately and to reimburse any consideration already received from the Customer immediately.

### **12. Invoicing - Remuneration - Costs and expenses - Transport costs for Test Samples - Due dates - Offsetting - Asset deterioration**

12.1 Where the type of remuneration (e.g. time spent, day rates, flat rates etc.) has not been set out in writing upon conclusion of contract, remuneration shall be billed according to the type of remuneration due for the respective Service as stipulated in the Intertek price list applicable at time of rendering the Service. Where no fee has been agreed upon in writing upon conclusion of contract, the prices set out in the Intertek price list applicable at time of rendering the Service shall be billed.

12.2 All invoice sums are due upon receipt of invoice without discount. Cash discounts require a separate written agreement.

12.3 Our prices do not include statutory VAT. VAT is listed separately on the invoice to the statutory amount due on the invoice date and is payable by the Customer.

12.4 The Customer confirms that he shall reimburse us for all costs and expenses which we incur in connection with rendering the Services, and that he shall bear responsibility for all freight and transport costs and customs fees which arise in connection with Test Objects, Test Samples and other items which the Customer provides to us (including any costs for delivery and return).

12.5 The Customer has a right of offset only if his counterclaims have been asserted with legal effect, are uncontested, have been acknowledged by us, or are closely related to our receivable.

12.6 The Customer is authorised to exercise a right of retention only insofar as his counterclaim is based on the same contractual relationship.

12.7 Should there be factual indications that the Customer's assets have suffered deterioration after conclusion of contract or if other facts exist or come to light after conclusion of contract that make it justifiable to assume that our claim to consideration is at risk due to a lack of solvency on the part of the Customer, then we shall be entitled to demand appropriate securities for our Services, and/or to revoke any terms of payment we may have granted, including for other receivables. In the event that the Customer is not able to provide the appropriate securities demanded within a reasonable time, we shall be entitled to withdraw from the contract in question. Pre-existing claims arising from Services rendered or on the grounds of default are not affected, nor are our rights as arise from Section 321 BGB.

### **13. Test materials - Test Objects**

13.1 We retain all copyright to the appraisals, test results, calculations, visualisations etc. that are produced within the context of the Services rendered for the Customer (hereinafter referred to jointly as "Test Materials"). The Customer has no claim to the release of Test Materials, unless an agreement to the contrary has been made by way of exception. The Customer is, however, entitled to use the Test Materials in accordance

with and within the scope of the purpose of contract. This entitlement does not include any right to publish the Test Materials, unless an agreement to the contrary has been made by way of exception.

13.2 Insofar as the Customer does have a claim to release of Test Materials, the Customer may only use these Test Materials for the purpose for which they were intended according to the contract. The Customer may not under any circumstances modify the Test Materials. Full or partial publication of the Test Materials requires our prior written consent.

13.3 Insofar as the relevant contract or our relevant terms and conditions of testing and certification or the requirements of the relevant accreditation body contain a corresponding obligation, we shall store Test Materials to the extent governed therein and for the period of time governed therein.

13.4 Sec. 5.1(b) of these T&Cs applies to Intertek Consumer Goods GmbH, under the proviso that we will retain environmental samples and all other Test Objects for three (3) months after conclusion of our Services insofar as such can be stored for this amount of time. Water samples (chemical parameters) are stored for between four (4) and six (6) weeks after conclusion of our Services, depending on refrigerator capacities, after which time they are disposed of.

### **14. Claims for defects, limitation period for claims for defects**

14.1 The Customer is obliged to give written notice of any defects in our Services immediately after the Service has been rendered. The Customer shall give us written notice of concealed defects immediately upon discovering such.

14.2 Insofar as the statutory prerequisites for claims for defects have been satisfied, these T&Cs do not prohibit any claims for defects, and supplementary performance is due, we shall be at liberty to choose how to render this supplementary performance.

14.3 Insofar as the statutory prerequisites for claims for defects have been satisfied and these T&Cs do not prohibit any claims for defects, claims for defects lapse one year from the statutory start of the limitation period. This does not apply insofar as Section 438(1)(2) (in relation to a building and a thing that has been used for a building), Section 479(1) (right of recourse), Section 634a (building defects), and Section 438(2) (deceit) stipulate longer limitation periods.

### **15. Liability**

15.1 We are liable for damages and for reimbursement of futile expenses within the meaning of Section 284 BGB (hereinafter referred to as "Damages") incurred due to defects in our Services or due to a breach of other contractual or non-contractual obligations, in particular for tortious acts, in the event of wilful intent or gross negligence only. The above limitation of liability does not apply in the event of physical injury, harm to health or loss of life, in the event that a warranty or procurement risk has been assumed, in the event of a breach of material contractual obligations, or in the event of liability according to the German Product Liability Act (Produkthaftungsgesetz).

15.2 Damages for breach of material contractual obligations are limited to reimbursement of damages typical of the contract which we ought to have foreseen upon conclusion of contract based on the circumstances which we could identify by applying ordinary diligence, except in the case of wilful intent or gross negligence or damages for loss of life, harm to health or physical injury, or in the event that a warranty has been assumed or liability accepted for a procurement risk.

15.3 The foreseeable damages typical of the contract within the meaning of Sec. 15.2 of these T&Cs are:

a. per damage event: maximum liability is ten times the net remuneration which the Customer has paid us for the Services which have led to the damage;

b. in the event of multiple damage events relating to the same Customer within a period of one year: max. €250,000.00.

It is the opinion of the Parties that higher damages are not typical of the contract.

15.4 In any case, foreseeable damages typical of the contract within the meaning of Sec. 15.2 of these T&Cs do not include indirect damages (e.g. lost profits or damages resulting from interruptions in production).

15.5 Notwithstanding Sec. 15.2, Sec. 15.3, and Sec. 15.4 of these T&Cs, our economic circumstances, the extent and duration of the business relationship, and any causal and/or culpable contributions of the Customer according to Section 254 BGB shall be reasonably taken into account in our favour when setting the amount of Damages to be enforced against us. In particular, any compensation, costs and expenses which we are obliged to bear must be proportionate to the remuneration paid for our Services.

15.6 The limitations and disclaimers of liability contained in these T&Cs apply to the same extent in favour of our organs, legal representatives, employees, and other assistants and agents.

15.7 The above regulations do not entail any change in the burden of proof to the detriment of the Customer.

15.8 Material contractual obligations within the meaning of Sec. 15.1 and Sec. 15.2 of these T&Cs are those obligations, the fulfilment of which is a prerequisite to proper execution of the contract and the fulfilment of which the Customer regularly relies and may reasonably rely on.

15.9 Contract penalties and flat rate Damages which the Customer owes to third parties in connection with our Services may be enforced against us by the Customer - subject to all other prerequisites and limitations - only in the event that this has been explicitly agreed with us, and/or the Customer has explicitly made us aware of this risk in writing before conclusion of contract.

#### **16. Indemnification**

16.1 The Customer is obliged to indemnify us and our employees, representatives, authorised officers, and sub-contractors of and to hold such harmless with respect to all claims, court proceedings, and any and all liability (including court fees and legal expenses) arising directly or indirectly from or in connection with the following:

- a. Claims or court proceedings brought by government authorities or others due to actual or alleged breaches on the part of the Customer of laws, conditions, regulations, directives, and injunctions issued by government or justice authorities;
- b. Actual or alleged breaches on the part of the Customer of obligations according to Sec. 4 and Sec. 5 of these T&Cs; and
- c. Claims or court proceedings brought due to a misuse or unauthorised use of reports which we have compiled, or of intellectual property rights which are due to us (including trade marks).

16.2 These obligations pursuant to Sec. 16 of these T&Cs shall persist beyond the ending of the respective contract.

#### **17. Confidentiality**

17.1 "Confidential Information" within the meaning of Sec. 17 of these T&Cs is all information of a financial, business, technical or other confidential nature which the Customer makes available to us in connection with our Services.

17.2 We will protect the Confidential Information of the Customer against disclosure to third parties, use by third parties, or publication, applying at least the same diligence that we apply in order to protect our own equally important confidential information.

17.3 We will not use the Confidential Information of the Customer for any purposes other than for rendering the Services we are obliged to render, unless the Customer has given written consent for his Confidential Information to be used for other purposes.

17.4 We will make Confidential Information of the Customer available to affiliated companies or suitable and carefully selected sub-contractors only insofar as such are required to observe confidentiality accordingly.

17.5 We will pass on Confidential Information of the Customer only to such employees and authorised officers who require knowledge of or access to the Confidential Information for the rendering of our Services and who are required to observe confidentiality accordingly.

17.6 Unless otherwise explicitly agreed, the confidentiality obligations pursuant to Sec. 17 of these T&Cs apply in each case for a period of two (2) years from such time as the Customer has made the Confidential Information in question available to us.

17.7 The confidentiality obligations of Sec. 17 of these T&Cs do not apply to knowledge and information which:

- a. was already public or general knowledge or was the state of the art at such time as it is disclosed;
- b. we were already aware of at such time as it is disclosed.
- c. subsequently becomes public or general knowledge or the state of the art through no fault of our own;
- d. is disclosed or made available to us by a third party with the authority to do so;
- e. the Customer has agreed may be passed on, disclosed or made available to third parties.

17.8 Furthermore, there is no obligation to observe confidentiality according to Sec. 17 of these T&Cs in the following cases:

- a. We are ordered to disclose Confidential Information by a court or are legally required to do so;
- b. There is a suspicion that a product, for which we have rendered Services on the orders of the Customer, may have caused personal injury and property damage;
- c. With respect to the relevant accreditation bodies, market supervisory authorities and other testing agencies as applicable;
- d. If the Customer breaches material obligations of these T&Cs;
- e. If it is stipulated in these T&Cs or otherwise agreed that there is no confidentiality obligation.

17.9 We reserve all titles and copyright, and all other rights which may exist, to all cost proposals, drawings, plans, figures, weight and dimension specifications, performance and usage data, and other technical data and descriptions and all other information and documentation which we provide to the Customer in connection with our offers or otherwise in connection with execution of the contract and which are not prepared specially for the Customer on the orders of the same (jointly referred to as "Intertek Information"). The Customer must handle Intertek Information in the strictest confidence. In particular, this information must not be disclosed or otherwise made available to third parties without our explicit, prior, written consent or consent in text form. Upon our request and at our discretion, the Customer shall return and/or destroy the Intertek Information and all reproductions (including digital copies) in full.

#### **18. Termination**

18.1 The contract begins no later than on the day, on which the Service are rendered, and lasts until the Services have been rendered, unless the contract was terminated before this pursuant to the provisions of Sec. 18 of these T&Cs.

18.2 The contract may be terminated:

- a. by either Party if the other Party is persisting with a material breach of the obligations in the contract or the T&Cs 30 days after receiving written notice from the terminating Party - by registered mail or by courier - urging the other Party to resolve or cease this material breach of obligations;
- b. by us if the Customer fails to make a payment by the respective due date and/or the Customer fails to comply with a request for payment after receiving a new request for payment; or
- c. either Party by giving written notice to the other Party in the event that there arise grounds for the insolvency of the other Party (in particular inability to pay or over-indebtedness), or if the application to initiate insolvency proceedings for the estate of the other Party is rejected due to a lack of assets.

18.3 Any termination or ending of the contract shall not affect rights and obligations of the Party that have already arisen. Moreover, any termination or ending of the contract shall not affect those regulations which shall apply or continue to apply explicitly or by their nature.

#### **19. Final provisions**

19.1 In the event of inconsistencies between these T&Cs and the terms and conditions of testing and certification of an Intertek Company and/or accreditation body, then the terms and conditions of testing and certification of this Intertek Company and/or accreditation body shall take precedence.

19.2 The failure of a Party to insist on strict adherence to every regulation of the contract, or failure of a Party to exercise any rights or legal recourse which are due to the Party shall not constitute any waiving of such and shall not entail any restriction of the obligations arising from the contract. Any waiving in relation to a breach of obligations shall not constitute a waiving in relation to other breaches of obligations. A waiving of a right or legal recourse pursuant to the contract shall become effective only if it has been explicitly designated as a waiver and if written notice thereof has been given to the other Party.

19.3 The registered office of the respective Intertek Company shall act as place of performance for all rights and obligations arising from our Services.

19.4 Exclusive place of jurisdiction for all claims between us and merchants or legal persons under public law or special funds under public law is Stuttgart, unless mandatory legal regulations prohibit this. This also applies in such cases where the Customer does not have a general place of jurisdiction in the Federal Republic of Germany or has moved his place of jurisdiction overseas before the action is brought. However, we have the right to also bring an action against the Customer at his statutory place of jurisdiction.

19.5 The contractual relationship is subject to the law of the Federal Republic of Germany, under exclusion of the UN CISG and provisions on conflict of laws.

19.6 Unless he has our explicit consent (at least in text form), the Customer may not assign or pledge his rights or claims against us, in particular claims due to defects or due to breaches of obligations on our part, to third parties, either in part or in whole; Sec. 354a HGB (German Commercial Code) is not affected.

19.7 We store our Customers' data as part of our mutual business relationships in accordance with the German Data Protection Act (Bundesdatenschutzgesetz) and General Data Protection Regulation. Our Privacy Policy is available on our website where it can be viewed by the Customer.