

OMIC

OVERSEAS MERCHANDISE INSPECTION CO., LTD.

GENERAL CONDITIONS OF BUSINESS

1. Application

Unless otherwise specifically agreed in writing, OVERSEAS MERCHANDISE INSPECTION CO., LTD. and its Group of Companies including affiliated companies (hereinafter called "OMIC") shall undertake services in accordance with these General Conditions of Business (hereinafter called "General Conditions"), and all offers and tenders for services, resulting contracts and agreements shall be governed by these General Conditions. In the event that any of the provisions of the General Conditions proves to be invalid or illegal, that shall not in any way affect, impair or invalidate any other provisions and all other provisions of the General Conditions shall remain in full force and effect.

2. Provision of Services

- 2.1 OMIC shall provide its services solely for the benefit of the persons or bodies from whom the orders and instructions to act originated (hereinafter called the "Client"). No other party is entitled to give orders and instructions to OMIC, including on the scope of inspection or delivery of certificates or reports, unless pre-authorized by the Client and agreed to by OMIC.
- 2.2 OMIC is a business enterprise engaged in activities relating to the area of overseas and domestic merchandise inspection and testing. As such, OMIC generally provides the following services, as more specifically set forth in the specific agreement or order.
 - (a) overseas and domestic merchandise inspections, supervision, surveys, verifications, examinations, sampling, testing, certification, laboratory analysis, measurement, expediting, fumigation and other similar services as may be agreed by OMIC;
 - (b) consulting, audits and advisory services in connection with the foregoing matters and other areas;
 - (c) issuance of certificates and/or reports relevant to the above-mentioned services.
- 2.3 OMIC will provide its services with due care and skill and in accordance with the Client's specific instructions as confirmed by OMIC, or in the absence of such instructions in accordance with:
 - (a) any relevant standard method, trade custom, usage, practice; and/or
 - (b) the terms of OMIC's specific inspection procedures where applicable; and/or
 - (c) such methods as OMIC may consider appropriate based on technical, operational and/or financial grounds.
- 2.4 OMIC may delegate, at its discretion, the performance of all or part of its services required by the Client to the affiliates, agents or subcontractors of OMIC without notification to the Client. In such case, the Client authorizes OMIC to disclose necessary information to the parties concerned as required for such performance.
- 2.5 The Client shall ensure that all enquiries and orders for the supply of services must be accompanied, by the timely provision of sufficient information, specifications and instructions to enable OMIC to evaluate and perform the required services properly.
- 2.6 The Client represents and warrants that any information, samples and related documents it (or its agents or representatives) supplies to OMIC is true, accurate and complete and is not misleading in any respect. The Client further acknowledges that OMIC may rely on such information, samples or other related documents and materials provided by the Client, without any duty for OMIC to confirm or verify the accuracy or completeness thereof, in providing its services.
- 2.7 OMIC shall not, by performing services or by issuing a certificate or report, assume any duty or responsibility to any third party. OMIC undertakes to perform only the services agreed to the Client.
- 2.8 In the event OMIC receives documents reflecting engagements contracted between the Client and third parties, or third parties' documents, such as copies of sale contracts, letters of credit, bills of lading, etc. in the course of providing its services, such documents shall be considered to be provided for informational purposes only, and shall not extend or restrict the scope of services or obligations accepted by OMIC.

3. Fees and Payment

- 3.1 OMIC shall charge for services rendered based on quotations provided in advance, taking account of the orders/instructions of the Client and scope of the agreed services. In the event that no charge is agreed in advance, OMIC shall charge inspection fees based on its internal fee schedule and shall invoice the Client for any equipment or materials supplied.
- 3.2 The charges for OMIC's services are expressed exclusive of any applicable taxes. The Client shall pay any applicable taxes on the charges at the rate and in the manner prescribed by law.
- 3.3 All quotations for fees and services are given on the basis that the services shall be performed within the next thirty (30) days unless otherwise specified. Thereafter the quotation shall be void.
- 3.4 In the event any unforeseen problems or expenses arise in the course of carrying out the services, OMIC shall endeavor to inform the Client of the fact and shall be entitled to charge reasonable additional fees to cover the additional time and expenses incurred to complete the services.
- 3.5 In the event OMIC is prevented from performing or completing any service for which an order has been given or an agreement made, due to any cause beyond its reasonable control, the Client shall pay OMIC:
 - (a) the amount of all OMIC's expenditures actually incurred; and
 - (b) a proportion of the agreed fee equal to the proportion (if any) of the service actually carried out.Under these circumstances, OMIC shall be relieved of all responsibility whatsoever for the partial or total non-performance of the required service.
- 3.6 The Client shall punctually pay OMIC all charges rendered by OMIC no later than 30 days after the relevant invoice date or within such other period as may have been agreed in writing with OMIC, failing which, and without prejudice to any other rights of remedies available to OMIC, interest shall be due at the rate of 18 per cent per annum (or the maximum rate permitted by applicable law) from the due date of the invoice until payment. The Client further agrees and undertakes to indemnify and reimburse OMIC for any and all costs for collection and enforcement, including, without limitation, attorney's fees, costs and necessary disbursements.
- 3.7 The Client shall not be entitled to set off, retain or defer payment of any sums due to OMIC on account of any dispute or any alleged claim, counterclaim or crossclaim against OMIC.
- 3.8 In the event of any suspension of payment, arrangement with creditors, bankruptcy, insolvency, receivership or cessation of business with respect to the Client or failure of the Client to pay part or all of sums owing to OMIC, OMIC shall be entitled to suspend all further performance of its services and withhold the issuance of any certificate and/or report of inspection and testing or other material requested forthwith and without liability until payment of all sums owing to OMIC together with interest thereon is made.

4. Inspection Certificates/Reports

- 4.1 Subject to the Client's instructions, OMIC shall issue certificates and/or reports of inspection and/or test reports which reflect statements and opinions made with due care based upon and within the limitation of instructions received and/or scope of services agreed by both Parties. OMIC shall not be obliged to refer to or report upon any facts or circumstances which are outside such instructions and/or scope of services.
- 4.2 Any certificate or report produced by OMIC is prepared for the Client's exclusive use only and not for the use of any other person or entity.
- 4.3 If the Client requests that OMIC deliver any certificate or report to a third party or if delivery to a third party is a trade custom, usage or practice, OMIC shall not thereby assume any liability whatsoever to such third party. No person or entity other than the Client shall have any rights arising out of any such certificate or report against OMIC or its agents, subcontractors, officers and employees.
- 4.4 The Client shall not modify or use extracts of the foregoing certificates and/or reports without written pre-permission of OMIC.
- 4.5 If the Client requests OMIC to transmit certificates, reports or testing results via the internet or by email, OMIC may send electronic versions of such documents in accordance with such instruction. In this event, the Client acknowledges and accepts every possible risk or potential danger associated therewith and OMIC shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of, or reliance on,

said means and systems.

- 4.6 OMIC's opinion or views contained in certificates or reports issued following testing or analysis of samples submitted to or drawn by OMIC for analysis relate to such samples only and do not express any opinion or view relating to the bulk from which the samples were drawn. If an opinion on the bulk is requested, special arrangements on the inspection and sampling must be made by written agreement with OMIC well in advance by the Client.
- 4.7 Should the Client request that OMIC witness or otherwise attend any third party's or the Client's intervention such as the analysis or testing of samples or fumigation treatment, the Client agrees that OMIC's sole responsibility is to be present at the time of such intervention and to forward the results, or to confirm the occurrence, of the intervention. The Client agrees that OMIC is not responsible for the condition or calibration of any apparatus, instruments or measuring devices or fumigant used, the analysis/test/fumigation methods applied, the qualifications, actions or omissions of such parties' personnel or the analysis/test/fumigation results.
- 4.8 Any certificate or report produced by OMIC shall refer to OMIC's findings only at the time and place of the inspection, analysis, testing or other services provided.

5. Requirements for the Inspection Site

- 5.1 The Client shall:
 - (a) procure all necessary and timely access for OMIC's representatives to the premises where the services are to be performed to enable the required services to be performed effectively and take all necessary steps to eliminate or remedy any obstacles to, or interruptions in, the performance of the services;
 - (b) supply, if required, any special equipment and personnel necessary for the performance of the required services;
 - (c) ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of the required services and shall not require or rely on OMIC's advice with respect thereto;
 - (d) inform OMIC in advance of any known hazards or dangers, actual or potential, associated with any request for the provision of services by OMIC, including, but not limited to, the presence or risk of radioactive, toxic or noxious or explosive elements or materials, defects, environmental pollution or other dangers, and of any legal requirements or other matters which may be applicable particularly in so far as they may affect employees or any representatives of OMIC and/or be relevant to the provision of services;
 - (e) accept that OMIC may exercise a "stop work authority" in any circumstances where working conditions are considered by its employee (or other representative of OMIC) to be unsafe. Such "stop work notice" may be issued verbally by OMIC without notice to the Client (subject to providing confirmation in writing within 48 working hours). Once such notice is issued, OMIC shall be discharged from any obligation to continue to provide its contracted services until such working conditions have been rectified by the Client to the satisfaction of OMIC. During the period of suspension of its services, OMIC shall be free of any liability for any additional costs or liabilities incurred or potentially incurred by the Client.
- 5.2 If OMIC's inspector finds that the relevant location or stowage is not suitable for carrying out a proper inspection or survey of goods, or where the required equipment for inspection or survey is not available, the inspector may, if reasonably practical in the circumstances, draw samples of goods from another appropriate location and carry out the inspection or survey at an appropriate place or the premises of OMIC. The Client shall be responsible for all costs and expenses incurred in relation thereto.

6. Liability and Indemnification

- 6.1 The Client shall fully exercise all its rights and discharge all its liabilities under any relevant sales or other contract with a third party and at law, whether or not a certificate or report has been issued by OMIC; if the Client fails to do so, OMIC shall be under no obligation to the Client.
- 6.2 OMIC undertakes to exercise due care and skill in the performance of its services and accepts responsibility for non-fulfilment of its obligations only where skill and care is not exercised and negligence by OMIC is proven. The liability of OMIC in respect of any claims for loss, damage or expense of whatsoever nature and howsoever arising in respect of any breach of contract and/or any failure to exercise due skill and care by OMIC shall under no circumstances exceed a total aggregate sum equal to ten (10) times the amount of the fees paid or payable in respect of the specific service required under the particular contract with OMIC which gives rise to such claims; provided that where such fee relates to a number of services and a claim arises in respect of one of those services, the resulting liability shall be apportioned by reference to the estimated time involved in the performance of the relevant service.
- 6.3 The Client shall give written notice of any claim to OMIC within thirty (30) days of discovery of the facts alleged to justify such claim; if the Client fails to do so, such claim shall be considered to be waived. In any case OMIC, its affiliates, agents and subcontractors and their respective officers, directors and employees shall be discharged from all liability for all claims including for loss, damage or expense unless suit is brought within one (1) year from the date of performance by OMIC of the service which gives rise to such claim or from the date when the service should have been completed in the event of any alleged nonperformance.
- 6.4 The Client shall indemnify and hold harmless OMIC, its affiliates, agents and subcontractors and their respective officers, directors and employees against all claims (actual or threatened) made by any third party for loss, damage or expense of whatsoever nature including all legal expenses and related costs and howsoever arising relating to the performance, purported performance or non-performance of any services.
- 6.5 OMIC, its affiliates, agents and subcontractors and their respective officers, directors and employees shall have no liability in respect of any claims for indirect, consequential or punitive damages and loss, including, but not limited to, loss of profits, loss of business, loss of opportunity, loss of goodwill and costs of product recall and/or cancellation of contracts entered into by the Client.
- 6.6 OMIC shall hold no responsibility for our findings if the location for operations as to the agreed scope of services is physically or practically invisible and/or inaccessible even with reasonable attempts by the concerned inspector and/or parties.
- 6.7 To the fullest extent permitted by law, the protection, benefits, and limitations of liability granted to OMIC in these General Conditions shall apply, mutatis mutandis, to all officers, directors and employees of OMIC and its affiliates, agents and subcontractors as long as they provide services on behalf of OMIC.
- 6.8 OMIC, its affiliates, agents and subcontractors and their respective officers, directors and employees shall not be liable to the Client or be deemed to be in default for any delay or failure in performance or interruption of the services and/or any other obligations resulting directly or indirectly from "Force Majeure," including, without limitation, acts of God, civil disturbances, war, warlike conditions (including acts of terrorism), riot, fires, floods, earthquakes, embargoes, governmental restriction, strikes or other labor disturbances, system malfunctions, breakdown of telecommunications or any other cause beyond OMIC's reasonable control, provided that OMIC promptly gives the Client a written notice thereof.

7 Insurance Obligation

- 7.1 OMIC is neither an insurer nor a guarantor and disclaims all liability in such capacity. Any Client seeking a guarantee against loss or damage should obtain appropriate insurance itself.
- 7.2 Each party shall be responsible for the arrangement and costs of its own company insurance which includes, without limitation, comprehensive business insurance, professional indemnity, cargo insurance, employer's liability, motor insurance and property insurance.

8. Confidentiality

Each party shall undertake to keep confidential any and all business and trade secrets and all other confidential or proprietary information ("Confidential Information") obtained within the contractual relationships hereunder, and shall not disclose them to third parties or use them except as required for the purpose of the contractual relationship hereunder, without the prior written consent of the other party. Confidential Information shall not include information that is (i) publicly known or accessible, already known or disclosed to the receiving party by a third party without breach of any obligation of secrecy, (ii) required to be disclosed to accreditation bodies for the purpose of assessments or pursuant to any legal or regulatory requirement to which the receiving party shall be subject. Additionally, OMIC may disclose Confidential Information to affiliates, agents or subcontractors for the purposes of performing its obligations for related job orders from the Client.

9. Waiver

Subject to Clause 6.3, no failure or delay to require the performance by the other party of any provision of these General Conditions shall operate as a waiver or otherwise in any way adversely affect the validity or enforceability of such provision after such time. No waiver by either party of a breach of any provision of these General Conditions shall be construed as a waiver by such party of any succeeding breach of such provision.

10. Governing Law and Jurisdiction

Unless specifically agreed otherwise, all disputes arising from or in connection with the contractual relationship hereunder shall be governed and construed in accordance with the law of Japan and shall be subject to the exclusive jurisdiction of the Japanese courts.