

**GENERAL TERMS AND CONDITIONS**

**FOR**

**THE PERFORMANCE OF TESTING AND CERTIFICATION SERVICES**

**Article 1 Applicability**

1.1 These General Terms and Conditions shall apply to all agreements with DEKRA Certification to perform testing or certification services or have testing or certification services performed of products, management systems and processes, as well as professional skills of persons and certification services rendered by or on behalf of DEKRA Certification. These General Terms and Conditions shall apply unless the parties have expressly otherwise agreed in writing.

1.2 In these General Terms and Conditions DEKRA Certification means DEKRA Testing and Certification Co., Ltd. and all companies of whose voting capital DEKRA S.E., the holding parent company of DEKRA Testing and Certification Co., Ltd., directly or indirectly owns fifty percent or more.

1.3 The party who has requested DEKRA Certification to render testing and/or certification services intended herein is hereinafter referred to as "the Other Party".

**Article 2 Validity of quotations**

If any quotation submitted by DEKRA Certification does not state the term of validity, this term shall be a period of thirty (30) days.

**Article 3 Effectuation of the agreement**

A quotation submitted by DEKRA Certification shall result in an agreement to perform testing or certification services only if the Other Party has explicitly accepted such quotation in writing within its term of validity, or if DEKRA Certification has confirmed in writing an order of the Other Party.

**Article 4 Delay of the order**

4.1 In the event of delay in or prolongation of the services agreed upon, DEKRA Certification shall have the right to charge the Other Party for any additional expenses incurred, if no blame for such delay or prolongation can be attributed to DEKRA Certification employees or to any persons involved in the performance of the services by order in writing of DEKRA Certification.

4.2 The provisions of Article 4.1 shall also apply in the event that the testing is performed for the purpose of certification by a third party and that third party requires one or more additional testing and/or inspections to be performed. The same applies when it is the choice of the Other Party to request additional testing or certification services. In such cases DEKRA Certification shall not be responsible for the delay.

**Article 5 Rates and payments**

5.1 The rates agreed upon will be increased by Value Added Tax (VAT) and any other taxes connected with the services to be performed by DEKRA Certification and for which DEKRA Certification is responsible. The rates are based upon the execution of orders.

5.2 DEKRA Certification is entitled to adjust its rates once a year.

5.3 In the event that the Other Party requests a retesting or certification services due to the incompleteness or inadequacy shown

by the testing, or for any other reason, the Other Party shall be charged separately for the costs thereof.

5.4 Unless or otherwise agreed by both Parties, payments shall be made without deduction or setoff of any kind within thirty days from the date of invoice. Possible complaints concerning the invoice shall be lodged within 7 days after its receipt of the invoice from DEKRA Certification, but shall not lead to suspension of the obligation to pay.

5.5 In the event that the Other Party fails to effect payment within the term stated, the Other Party shall owe DEKRA Certification interest at interest rate 5% p.a., starting on the due date and ending on the date of payment.

5.6 In the event that DEKRA Certification takes measures for the recovery of debts or for the maintenance of its rights in respect of the Other Party, the Other Party is bound to indemnify all expenses incurred by DEKRA Certification to this end. These expenses shall include all payments made to third parties called in for the execution of such measures and all expenses incurred by DEKRA Certification within its own organization, which may reasonably be attributed to the said measures.

5.7 Prior to the (further) execution of orders, DEKRA Certification is at all times entitled to require sufficient security or prepayment of part of the service fee to be furnished by the Other Party for its obligations towards DEKRA Certification.

5.8 In case the Other Party fails to observe the provisions of Articles 7.2, 7.3, 8, 16.2, 16.3 or 17, the Other Party shall forfeit a penalty from its security to DEKRA Certification of NTD 100,000 for each incident at a maximum, notwithstanding the right of the latter to claim actual damages incurred. The Other Party remains at all times responsible towards third parties, including the public authorities concerned, for compliance with the relevant legal requirements.

#### **Article 6 Cooperation by the Other Party**

6.1 The Other Party shall, at its own cost (including shipping costs), make available to DEKRA Certification any and all materials, information and data required by DEKRA Certification to perform the testing or certification services agreed upon.

6.2 Samples will be destroyed after the performance of the testing, unless or otherwise agreed by both Parties or the Other Party has made a prior request in writing to get back the same at its own cost, however in case the Other Party fails to get the samples back after the deadline, DEKRA Certification has full discretion on dealing with the samples according to its own procedure. Storage life for the samples (unless or otherwise agreed by both Parties): 3 months for small samples, 2 weeks for big samples.

6.3 The Other Party shall allow DEKRA Certification access to the appropriate production locations and shall ensure the security of the persons concerned.

6.4 In the event that continuation of DEKRA Certification's accreditations requires third-party witnessing of DEKRA Certification's testing, the Other Party shall lend its full cooperation thereto.

#### **Article 7 Reports and certification**

7.1 DEKRA Certification shall submit to the Other Party a written report of the results of the testing performed.

7.2 The contents of the reports, exhibits, certificates and/or letters originating from DEKRA Certification may be published only if reproduced word for word, in their entirety and in the language in which they were written.

7.3 Unless DEKRA Certification has expressly prior in written consent granted the Other Party the right to use a certification mark, certificate, DEKRA seal, and/or other usage object (together "Usage Objects"), the Other Party shall not in any manner suggest to third parties that there has been certification by DEKRA Certification, as intended in Article 13.

#### **Article 8 Confidentiality**

8.1 Each party shall treat as confidential any and all information received by the other party in the course of the performance of the services agreed upon or acquired in any other manner, the secrecy of which is known or should reasonably be recognized by the receiving party. Each party shall use such information only for the purpose of carrying out the obligations agreed upon. These obligations shall remain in force notwithstanding the termination or dissolution of the agreement(s) in question. The methods and techniques applied by DEKRA Certification shall in any event be deemed to be confidential.

8.2 DEKRA Certification shall be authorized to provide information to third parties on the basis of the applicable conditions of the relevant accreditation or designation of DEKRA Certification as a certifying institution. Likewise, if the request for an testing is aimed at certification by a third party, DEKRA Certification shall be authorized to provide information to that third party.

8.3 The provisions of Article 8.1 do not apply to information which

- is or will become public without a wrongful act of the receiving party, or
- is lawfully made available to the receiving party by a third party without the obligation of confidentiality, or
- was demonstrably already in the receiving party's lawful possession prior to the receipt thereof, or
- was designated in writing as non-confidential by the Other Party, or
- is published or disclosed to the appropriate authority by the receiving party due to a legal obligation to do so.

8.4 After the termination or expiration of the agreement(s) between the parties, each party shall, without delay, return to the other party the confidential information received from that party, subject to the right of the first party to retain copies of such documents as proof of the test and certification results and for the event that a dispute between the parties arises.

8.5 DEKRA Certification's employees are bound to follow rules of conduct in order to guarantee the confidentiality and the independence of the testing performed.

### **Article 9 Subcontracting**

DEKRA Certification shall be entitled to engage third parties for the performance of the activities agreed upon, but assumes the full responsibility and liability therefore, without prejudice to the provisions of Article 10. The provisions of Article 8.5 shall apply to such third parties.

### **Article 10 Liability**

10.1 DEKRA Certification shall only be bound towards the Other Party to pay damages that are a result of a negligent failure of DEKRA Certification to carry out any of its obligations agreed upon on behalf of the Other Party or as a result of a wrongful act of DEKRA Certification, only if and insofar this is set forth in the provisions of these General Terms and Conditions.

10.2 DEKRA Certification's liability in respect of any damage, claim for loss, or expense of any nature intended in Article 10.1 shall be limited to a total aggregate sum equal to 10 times the amount of the fee paid by the Other Party in respect of the specific services which gives rise to such claim or NTD 5,000,000, whichever is the lesser.

10.3 In no event shall DEKRA Certification be liable for any consequential damages, including but not limited to damages resulting from delay in the performance of the services agreed upon, loss of information of the Other Party, loss of profit, loss of sales and damage of reputation or goodwill of the Other Party or third parties.

10.4 Any liability for damages on the part of DEKRA Certification shall lapse if the Other Party has not informed DEKRA Certification in writing of the damages within thirty days after the date the damages were

discovered or reasonably should have been discovered. DEKRA Certification's liability shall lapse in any case if the Other Party has not initiated legal action for the recovery of the damages within two years after the date of the performance of the services which caused the damage.

10.5 The Other Party shall indemnify DEKRA Certification against all expenses and claims by third parties - including DEKRA Certification personnel - for compensation of damage resulting from or caused in connection with performances by DEKRA Certification for the Other Party. Only when DEKRA Certification may seek exemption or limited liability for other based authentication protocol, the other Party shall have no obligation to provide indemnity for DEKRA Certification.

10.6 The limitations of liability of DEKRA Certification intended in these General Terms and Conditions do not apply to damages caused by willful misconduct or gross negligence on the part of DEKRA Certification or its management.

10.7 The limitations on the obligation to pay damages as well as the Other Party's obligation to indemnify in accordance with these General Terms and Conditions, are also stipulated for the benefit of DEKRA Certification's employees and for the benefit of third parties which DEKRA Certification has engaged for the performance of the obligations agreed upon.

10.8 DEKRA Certification shall not be liable for failure to fulfill any of its obligations in case the failure is caused by circumstances beyond DEKRA Certification's control (force majeure). During force majeure DEKRA Certification's obligation to fulfill its obligations shall be suspended. In the event that the performance of DEKRA Certification's contractual obligations is made impossible by force majeure for a period longer than thirty days, each party shall be entitled to dissolve the agreement without judicial intervention and without any obligation whatsoever to compensate the damages of the Other Party.

#### **Article 11 Termination of the agreement**

11.1 Notwithstanding the provisions stated in the foregoing articles, in the event that the Other Party fails, fails to properly or fails to timely fulfill any of its obligations towards DEKRA Certification, DEKRA Certification shall be entitled to terminate performance of the agreement, or to dissolve the agreement without judicial intervention, in whole or in part, without any obligation for DEKRA Certification to pay damages, but without prejudice to DEKRA Certification's right to seek compensation for the detriment resulting from the Other Party's failure and the suspension or the dissolution of the agreement. The same applies if DEKRA Certification fears that the Other Party will fail to fulfill its obligations and the Other Party does not provide adequate security for such fulfillment upon DEKRA Certification's first request to do so. In those instances all accounts receivable by DEKRA Certification from the Other Party will become payable forthwith.

11.2 In the event of the Other Party's bankruptcy, suspension of payment, or liquidation, if the Other Party is placed under a trustee or administrator or under any other form of legal restraint, the Other Party will be deemed to be in default by operation of law; this will give DEKRA Certification the right, without formal notice of default and without judicial intervention, to dissolve the agreement in whole or in part on the same conditions as stated above.

11.3 In the event of early termination of the agreement by DEKRA Certification for good cause, in the event of impossibility of performance resulting from the sphere of risk/responsibility of the customer of the Other Party or in the event of any voluntary termination by the Other Party, DEKRA Certification shall retain its claim to remuneration for the performances rendered up until then.

#### **Article 12 Disputes and applicable law**

12.1 Any disputes resulting from or connected with the execution of an agreement governed by these General Terms and Conditions shall, unless agreement is made to the contrary, be brought for settlement solely before the competent Court in the domicile of DEKRA Certification in Taiwan.

12.2 The conclusion and execution of the agreements governed by these General Terms and Conditions shall be governed by the laws of Taiwan, unless agreement is made to the contrary.

**IN THE EVENT THAT THE OTHER PARTY AND DEKRA Certification ENTER INTO A CERTIFICATION AGREEMENT, THE FOLLOWING TERMS AND CONDITIONS SHALL ALSO APPLY (these terms and conditions do not apply in case of certification by third parties)**

#### **Article 13 Certification agreement**

The following provisions shall apply to all agreements entered into by DEKRA Certification in which the Other Party is granted the right to make use of a Usage Object. Only written agreements signed by both parties are valid.

#### **Article 14 Non-exclusive and none-sublicence**

Where the Other Party receives a Usage Object, it shall be granted the non-exclusive right to use it in accordance with the following provisions. The Other Party is not entitled to pass on the right of use granted or to issue sublicences in respect of the same.

#### **Article 15 Fees**

15.1 The fees agreed upon for the right intended in Article 13 will (also) serve to cover the Usage Object and registration costs made by DEKRA Certification, and the Other Party shall pay such fees in advance.

15.2 Unless otherwise agreed, the testing services and follow-up certification services performed by DEKRA Certification within the framework of the Usage Object shall be charged against the rates then applicable, subject to the provisions of Article 5.

#### **Article 16 Publicity and publications**

16.1 DEKRA Certification shall be entitled to publish the issuance or withdrawal (if any) of the Usage Object.

16.2 The Other Party has no right to use DEKRA Certification's name for any other purpose than in connection with the Usage Object by DEKRA Certification, without DEKRA Certification's prior consent in writing to do so and notwithstanding the provisions of Article 17.5. The Other Party shall make use of the Usage Object submitted by DEKRA Certification without detriment to the good name and reputation of DEKRA Certification. Any and all publications must be made in such manner that no wrong suggestion is made with respect to the field of use or the location for which the Usage Object applies or with respect to the applicable standards or requirements. In case of certification of a management system or process only, the affixing of Usage Objects on the products is not permitted.

16.3 In the event that – in the opinion of DEKRA Certification – the Other Party has released false or incorrect announcements or publications, the Other Party shall be obliged to rectify the same, if requested to do so by DEKRA Certification, and to do so without delay and to DEKRA Certification's satisfaction.

#### **Article 17 Compliance with rules and regulations**

17.1 The Other Party shall comply with the applicable legal rules and directives as well as the requirements and provisions laid down by DEKRA Certification, and shall render assistance for the inspections and follow-up testing services. The Other Party shall be charged separately for samples purchased by DEKRA Certification in connection with such follow-up testing and certification services.

17.2 In case of product certification, the Other Party guarantees that the products in question, to be introduced onto the market by the Other Party or on its behalf, correspond to the product type(s) tested by DEKRA Certification. The Other Party shall – at the discretion of DEKRA Certification – deposit a sample or a description of such product at DEKRA Certification's premises ("Delivered Duty Paid" DEKRA designated address,

, in accordance with "INCOTERMS 2000").

If it proves that the marketed product does not correspond with the type tested by DEKRA Certification, DEKRA Certification shall, notwithstanding the provisions of Article 17.5, be entitled to require the Other Party to:

- remove or arrange for the removal of the product from sale and refrain from or prevent the sale of remaining stocks, and/or
- warn the public about the product, and/or
- recall or arrange for the recall of products (via the distribution channels) already sold to the public, and to do so in accordance with such instructions as DEKRA Certification may give and such requirements as DEKRA Certification may make concerning the activities in question.

17.3 In case of management system or process certification, the Other Party shall, during the term of the certification agreement, ensure the compliance of the management system or process with the applicable standard and the strict observance of the procedures and rules in question. The Other Party shall keep a protected quality or process manual at DEKRA Certification's disposal. Article 6 fully applies.

17.4 In case the Other Party resolves to make any alterations to the products, management system(s) and/or process(es) tested by DEKRA Certification which may affect the conformity of the same with the relevant requirements and/or standards, the Other Party shall inform DEKRA Certification without delay about the alterations planned, including the data listed in the Usage Object in question. The certification agreement and the associated Usage Object shall apply to altered products, management systems or processes only if and from the time that such products, systems or processes are approved by DEKRA Certification.

17.5 In case any of the following scenarios, DEKRA Certification is entitled to, in its discretion, require the Other Party to fulfill obligations of payment of retesting expenses in accordance with the requirements of this General Terms and Conditions within a given period (Article 4 to Article 12 under this General Terms and Conditions totally applicable) , restrict, suspend, disqualify and/or withdraw the Usage Object at any time,

- the conditions for the awarding the Usage Object are not (or no longer) fulfilled, due to, among other things, submission of incomplete or untrue information in the certification process;
- the applicable rules and/or standards, on which the test was based, expire or are altered in such manner that the certified products, management systems, processes or persons no longer comply therewith;
- the Other Party does not fulfill the obligations assigned in connection with the Usage Object, e.g. the obligation on notification regarding modifications or work obligations defined in the certification agreement with DEKRA Certification, particularly obligations on payment, are not fulfilled;
- the agreement regarding auditing or certification with DEKRA Certification is resolved or terminated;
- the Object Usage is used contrary to the conditions of use;
- the necessary surveillance audit or another audit arranged by DEKRA Certification is not completed within the time limits or not completed fully;
- the surveillance audit indicates that the specifications for awarding the Usage Object are no longer provided/maintained;
- there are changes to the test criteria and retesting is not desired or possible;
- other reasons for withdrawal of the Usage Object in compliance with these General Terms and Conditions or certification agreement.

In the event of withdrawal or suspension, DEKRA Certification is entitled to declare the decision of withdrawal or suspension to the public, the Other Party shall not indicate that it still has the right to use the Usage Object by any means in any form. The Other Party shall refrain from using the Usage Object, particularly in respect of advertising which makes reference to the DEKRA seal or other test document, and return all Usage Object requested by DEKRA Certification. Notwithstanding, the claims for damages or other claims remain



unaffected. The same applies in the event that the certification agreement expires by operation of law or is terminated by either party.

17.6 The Other Party shall use the Usage Object in no manner that might damage the reputation of DEKRA Certification or be regarded as misleading. The Other Party shall use the Usage Object only in accordance with the applicable laws, particularly in respect of the law on unfair competition. In the event that the certification is only related to a management system or process, the Other Party is not entitled to affix any certification marks and/or DEKRA seals of DEKRA Certification on its products. In case of product certification, the Other Party shall, in accordance with the corresponding laws and regulations or the requirements brought up by DEKRA Certification, affix the certification marks and/or DEKRA seals on the products in question in a visible, legible and indelible form. The certification mark and/or DEKRA seals may only be used in the form (including but not limited to scale and layout) in which it was issued and delivered. Changes, in particular in the design, in the color or text, are not permitted. The Other Party shall not be entitled to use only extracts of certification marks and/or DEKRA seals, i.e. the certification mark and/or DEKRA seal may in each case only be used in their entirety. Where the Other Party also receives certification marks and/or DEKRA seals in electronic form, it shall be entitled to change certification marks and/or DEKRA in its size; a reduction in size is only permitted up to a minimum character size of Arial 4. In the case of any change in size, the text contained in/on certification marks and/or DEKRA must remain completely legible, and the proportions of texts and marks shall not be altered. The Other Party shall not create an impression for third parties that DEKRA Certification is responsible for the activities of the Other Party. The Other Party shall not apply any mark or seals which may be confused with the certification marks and/or DEKRA seals covered by the certification agreement.

17.7 The Other Party shall maintain a record of all complaints and/or incidents relating to or involving products, management systems and/or processes certified by DEKRA Certification, and of any action taken by the competent authorities in connection with such complaints and/or incidents, and shall immediately make this record available to DEKRA Certification for perusal if asked to do so. The said record shall state how each complaint or incident was dealt with and whether corrective action was undertaken in response.

#### **Article 18 Disputes and complaints**

18.1 Any complaint that made by the Other Party regarding the services rendered by DEKRA Certification shall be dealt with by DEKRA Certification in accordance with the applicable procedure.

18.2 In the event that DEKRA Certification receives complaints pertaining to products, management systems, processes or persons it has certified, DEKRA Certification will investigate the accuracy of such complaints. The complainant as well as the Other Party shall be heard and the results of the investigation shall be reported to them both. In the event that DEKRA Certification considers the complaint well-founded, the Other Party shall take measures without delay in order to satisfy the complainant insofar as possible and to prevent a subsequent complaint.

18.3 In case of a difference of perception concerning a complaint as intended in Article 18.2, shall be resolved by the parties in accordance with Article 12 of this General Terms and Conditions.

#### **Article 19 Indemnification**

19.1 The Other Party shall indemnify and hold DEKRA Certification harmless against any and all claims to recover damages resulting from products certified by DEKRA Certification and introduced onto the market by the Other Party, or resulting from the use of such products.

19.2 DEKRA Certification is not liable for impermissible use of the Usage Object. In the event that a client of the Other Party or a third party (such as consumer protection agency) files a claim against the Other Party relating to the Other Party's use of the Usage Object due to breach of legal requirements (such as when advertising with the DEKRA seal), DEKRA Certification is also not liable.

#### **Article 20 Term and termination of the certification agreement**

20.1 Unless agreement is made to the contrary, the term of the certification agreement shall be 5 years.

20.2 In case of a limited period of validity of the certificate(s) in question, each party shall have the right to give notice to terminate the certification agreement as of the date of the expiration of the current validity period of the certificate. In the event that the certification agreement covers more than one certificate, the agreement can be terminated with respect to each certificate as of the date of the expiration of the current validity period of the certificate in question. DEKRA Certification will not terminate the certification agreement unless continuation of the same cannot reasonably be required from DEKRA Certification for business reasons and notwithstanding the provisions of Articles 11 and 17.

20.3 In the event that the certificate(s) in question do(es) not have a limited period of validity, each party may terminate the agreement with respect to each certificate subject to three months' notice. The provision of the last sentence of Article 20.2 shall apply.

20.4 In any case, if the applicable laws or regulations are invalid or changed, resulting in the failure of the certified products, management systems, processes or personnel to comply, the certification agreement will be invalid for the relevant certifications

#### **Article 21 Severance**

Should one of the above provisions be legally invalid, the validity of the remaining stipulations and of the contract shall remain unaffected. Any invalid provisions shall be replaced by new regulations which have the same economic effect as their aim. Insofar as provisions have not become a contractual component, the content of the contract is governed by legal regulations.

#### **Article 22 Non transfer**

Without the prior written consent by both Parties, rights and obligations under the certification agreement shall not be transferred to any 3<sup>rd</sup> party.

**DEKRA Testing and Certification Co., Ltd.**

[www.dekra.com.tw](http://www.dekra.com.tw)