

## INTERTEK TESTING SERVICES HONG KONG LIMITED FCB CERTIFICATION TERMS AND CONDITIONS

### RECITALS

INTERTEK provides a service for evaluating whether products provided by the Client comply with designated standards or specified requirements. Subject to the terms of this Certification Agreement, products found to be in compliance by INTERTEK may be eligible for inclusion on a list maintained by Innovation, Science and Economic Development Canada's Certification and Engineering Bureau (hereinafter referred to as ISED).

The Client desires to submit or has submitted certain devices, equipment, materials or systems manufactured by or for the Client to INTERTEK for evaluation in order that the product may be considered for certification by INTERTEK.

If the submitted product is found to be eligible for certification of this Certification Agreement shall be executed by INTERTEK and the Client setting forth the terms and conditions to which the parties hereto must adhere.

For the purpose of this Agreement, the Client may be either, or any combination of, the Applicant, the Grantee, or the Responsible Party.

**NOW THEREFORE**, for and in consideration of the mutual covenants herein expressed and other lawful and valuable consideration, the parties hereto agree as follows:

### 1. DEFINITIONS

**1.1 Agent.** The term Agent shall mean the party authorized by the Applicant to sign the certification application.

**1.2 Applicant.** The term Applicant shall mean the party making certification application.

**1.3 Grantee.** The term Grantee shall mean the party to whom the grant of authorization is issued.

**1.4 INTERTEK Requirements.** The term INTERTEK Requirements shall mean (a) the granting requirements contained in the issued ISED Certificate of the product, (b) the standard(s), if any, applicable to the Product, (c) the terms of this Certification Agreement, and, (d) any requirements separately applied as a condition of the certification. Certifications performed by the INTERTEK under the terms of this agreement shall comply fully with existing ISED rules and regulations, including but not limited to ISED RSP-100.

**1.5 Product.** The term Product shall mean a Client's device, equipment, material or system that has been submitted for evaluation and certification, found to be in compliance with INTERTEK Requirements and approved for certification.

**1.6 Responsible Party.** The term Responsible Party is the Grantee or, if the Product is modified by other than Grantee or a party under Grantee's authority, the modifier becomes the Responsible Party.

**1.7 Post-Certification Audits.** The term Post-Certification Audits shall refer to the process of ensuring continuing conformity of the Product to the existing ISED rules and regulations, including but not limited to ISED RSP-100.

### 2. CERTIFICATION

**2.1 Evaluation.** INTERTEK is an independent certification body providing evaluation and certification services to determine whether representative samples of a Product comply with designated national and international standards, specifications, ISED requirements and/or codes. INTERTEK does not publish standards, specifications and/or codes, and, therefore, does not warrant to the Client that the standard used for the evaluation is adequate. The Client understands and agrees that INTERTEK has only evaluated the submitted Product samples and does not guarantee or warrant the quality or compliance of all units of the Product manufactured or produced by the Client. The Client further acknowledges that as an independent certification body, INTERTEK assumes no responsibility for the design of the Product.

**2.2 Client Obligations.** The Client shall at all times comply with the INTERTEK Requirements and shall inform INTERTEK in writing, without delay, of changes that may affect its ability to comply with the INTERTEK requirements, including but not limited to the change of the legal, commercial, organizational status or ownership, organization and

management, contact address and production sites and major changes to the quality management system. The Product will not be eligible for certification if it has been modified or changed by the Client after testing or evaluation. If the Client wishes to modify or change the Product, it must first obtain the approval of INTERTEK. The Client agrees to notify INTERTEK in writing of any reports that it receives of serious personal injury or property damage involving the Product. The Client shall notify INTERTEK of any certified Product which has left the control of the Client that does not comply with INTERTEK Requirements. The Client warrants that a quality control program is established and maintained to ensure Product compliance with the INTERTEK Requirements. The Client agrees that if the certification applies to ongoing production, the certified product continues to fulfil the product requirements. The Client shall make claims regarding certification consistent with the scope of certification.

**2.3 Reservation of Rights.** INTERTEK reserves the right, upon reasonable notice to the Client, to re-evaluate the Product. This re-evaluation may be a revision of the applicable standard, new information regarding the characteristics of the material used in the Product or other information that raises a question concerning the conformance of the Product to INTERTEK Requirements.

**2.4 Revision or Withdrawal of the INTERTEK Requirements.** INTERTEK reserves the right, upon reasonable notice to the Client, to revise or withdraw the INTERTEK Requirements. If the INTERTEK Requirements are revised, the Client shall be entitled to continue certification of the Product upon a demonstration to the satisfaction of INTERTEK that the Product complies with the revised INTERTEK Requirements. If the INTERTEK Requirements are withdrawn, the Client's right to the certification of the Product shall terminate pursuant to the terms of Article 5 of this Certification Agreement. In the case of a revision or withdrawal of INTERTEK Requirements, INTERTEK shall provide a notice specifying a date by which the Product must meet the revised INTERTEK Requirements or for such termination.

**2.5 Third Parties.** The Client agrees that INTERTEK has entered into a contractual relationship with the Client to perform testing or evaluation services on the Product. INTERTEK agrees to perform such services with due care. INTERTEK does not guarantee or warrant that third parties will accept or recognize the results obtained by INTERTEK or the INTERTEK certification of the Product.

**2.6 Complaint.** The Client shall make all necessary arrangements for investigation of complaints. The Client shall keep a record of all complaints together with relevant information/document made known to the client relating to the product's compliance with requirements of the relevant standard, and to make these records available to INTERTEK when requested.

**2.7 Advertising.** INTERTEK shall allow the Client to refer to INTERTEK and the relevant certification in advertising and promotional material for the Product, contingent upon the Client obtaining the prior, express, written approval of INTERTEK. In making reference to its product certification in communication media such as documents, brochures or advertising, the Client complies with the requirements of INTERTEK or as specified by the certification scheme. The Client shall not use its product certification in such manner as to bring INTERTEK into disrepute and shall not make any statement regarding its product certification that INTERTEK may consider misleading or unauthorized.

**2.8 Post-Certification Audits.** As a part of the certification program, and in accordance with ISED RSP-100, the Client shall cooperate with the INTERTEK representatives who conduct Post-Certification Audits. Post-Certification Audits may also include sampling, retesting, evaluation and follow-up actions.

**2.9 Suspension, Withdrawal, or Termination of Certification.** Upon suspension, withdrawal, or termination of certification, the Client shall immediately discontinue its use of all advertising matter that contains any reference thereto and take all actions as required by the certification scheme and take all other required measures.

**2.10 Certification Document.** If the Client provides copies of the certification documents to others, the documents shall be reproduced in their entirety or as specified in the certification scheme.

### 3. INDEMNIFICATION AND LIABILITY

**3.1 Indemnification.** The Client agrees to hold INTERTEK harmless and to defend and indemnify INTERTEK against any liability, loss, or damage from claims, demands, costs (including legal fees), or judgments arising out of any negligent or intentional acts of the Client or third parties relating to the Product, or arising from or relating to submissions, filings or information submitted to ISED.

**3.2 Liability.** INTERTEK will not, under any circumstances, be liable to the Client for any indirect, special, punitive, or consequential damages, or any third party claims which may arise as a result of the services provided in this Certification Agreement. The maximum aggregate liability of INTERTEK for damages in connection with this Certification Agreement shall not exceed the FCB program evaluation fee for each application paid to INTERTEK by the Client.

**3.3 Evaluation Supporting.** The Client shall make all necessary arrangements for the conduct of evaluation and audit, including provision for examining documentation and records, and access to the relevant equipment, location(s), area(s), personnel, and Client's subcontractors. The Client represents that the information, samples and related documents supplied by it or its agents to INTERTEK, are accurate, complete and in true copy and the Client also acknowledges that INTERTEK is relying upon such information, samples or related documents without further verification by INTERTEK as to its accuracy, completeness or truth. Where INTERTEK is only able to witness an analysis by the Client or by any third party INTERTEK will provide confirmation, if such be the case, that a correct sample has been analyzed but will not otherwise be responsible for the accuracy of such analysis. The Client agrees to hold INTERTEK harmless and indemnify the Company from any liability of whatever kind or nature, including but not limited to court costs and reasonable attorneys fees if information, samples or documentation provided by the Client are inaccurate, incomplete or false.

**3.4 Intellectual property rights.** The Client shall guarantee that the product samples and related documents (including but not limited to certificates and/or reports) provided to INTERTEK will under no circumstances infringe the legal rights including the intellectual property rights of any third parties. In case there are any legal proceedings raised with respect to the dispute of the legal rights of any third parties, the Client shall indemnify and keep indemnified INTERTEK against all claims, costs, damages, losses and expenses arising from the exercise or purported exercise of the services as requested by the Client.

#### **4. FAILURE TO COMPLY WITH INTERTEK REQUIREMENTS**

**4.1 Remedial Action.** In the event that INTERTEK detects any deviation or variance in the Product from INTERTEK Requirements, or improper or unauthorized use of INTERTEK name, or incorrect references to the certification scheme, or misleading use of licenses, certificates, or any other mechanism for indicating a product is certified, found in documentation or other publicity, upon written notice to the Client INTERTEK reserves the right, in its sole discretion, to take such action as it deems necessary, including but not limited to:

- (a) Requiring the Client, at its own expense, undertake corrective action to ensure that the Product complies with INTERTEK requirements;
- (b) Suspension or revocation of the certification;
- (c) Inform ISED for further action;
- (d) Termination of this Certification Agreement pursuant to Article 5;
- (e) Notification of regulatory authorities and the public;
- (f) Compliance with any applicable statutes, rules or regulations.

**4.2 Injunctive Relief.** The Client acknowledges that the manufacture, sale, delivery, shipment, distribution, or promotion of the Product would mislead or endanger the public if such Product does not comply with the INTERTEK Requirements. The Client further acknowledges that a breach of this Certification Agreement can not be adequately compensated by money damages. The Client agrees that in the event of a breach of the Certification Agreement, INTERTEK shall have the right to obtain a temporary restraining order without prior notice to the Client, together with an action for a preliminary and permanent injunction, and such other and further relief as may be provided by law. Said injunction shall provide for compliance with the provisions in Article 5.3 of this Certification Agreement.

#### **5. TERMINATION OF THE AGREEMENT**

**5.1 Termination By Either Party.** Either party may, for any reason, terminate this Certification Agreement, as to any Product, upon not less than sixty (60) days written notice to the other party. Such notice shall designate a termination date and the notice period shall be

deemed to commence upon the date of mailing of the notice to the other party by registered or certified mail, return receipt requested.

**5.2 INTERTEK Right To Terminate.** INTERTEK may terminate this Certification Agreement, as to any Product, without prejudice to any other rights or remedies that INTERTEK may have, upon either of the following:

- (a) Immediately upon written notice, if INTERTEK determines that the Product fails to comply with the INTERTEK Requirements or the Client is in default pursuant to Article 6.3;
- (b) Thirty (30) days after the Client receives written notice in the event of: (i) the filing of a voluntary or involuntary petition in bankruptcy; (ii) the making of any arrangement or composition with creditors by the Client; (iii) the appointment of a receiver for the Client; or (iv) the voluntary or involuntary liquidation of the business of the Client.

**5.3 Client Obligations Upon Termination.** Upon termination of this Certification Agreement, the Client shall:

- (a) Continue to honor the terms of Article 3 of this Certification Agreement concerning indemnification and liability, which terms shall survive the termination of this Certification Agreement.
- (b) Pay any remaining outstanding charges owing to INTERTEK.

#### **6. ADMINISTRATIVE PROVISIONS**

**6.1 Confidentiality.** Without written authorization from the Client, INTERTEK will not voluntarily disclose to third parties, other than the ISED and accreditation bodies, confidential and proprietary information which the Client provides to INTERTEK. This obligation shall not apply to information which is already available to the public or acquired from other sources without confidentiality restrictions. INTERTEK agrees that this obligation to maintain confidentiality shall survive the termination of this Certification Agreement. The client allows that the information and related documents provided for certification will be available to the public on the ISED website or will be accessed under the provisions of the Access to Information Act of Canada, unless the eligible information and related documents are held confidential.

**6.2 Subpoena.** If INTERTEK is served with a Subpoena, Court Order, or similar document requesting the disclosure of confidential or proprietary information supplied to INTERTEK by the Client, INTERTEK shall promptly notify the Client. In the event that the Client chooses to contest the request, INTERTEK shall cooperate with the Client. The responsibility for contesting the request shall rest solely with the Client. If the Client declines to contest the request or is not successful in contesting the request, INTERTEK will provide the requested information. Any costs incurred by INTERTEK in responding to the request, including reasonable attorney's fees, shall be reimbursed by the Client immediately upon invoicing by INTERTEK.

**6.3 Fees.** Charges for maintaining the certification will be billed to the Client or a designated payor. Payment shall be due upon presentation of invoices and the Client shall be considered in default if the charges are not paid within thirty (30) days. INTERTEK reserves the right to adjust the billing rate, and to issue special charges in the event additional costs are incurred by INTERTEK as a result of Client's failure to adhere to the INTERTEK Requirements.

**6.4 No Assignment.** The rights running to the Client under this Certification Agreement may not be assigned to or acquired by any other person or corporation without INTERTEK's written authorization.

**6.5 Term.** This Certification Agreement shall continue in effect for a period of one year from the date first above written and shall automatically be renewed thereafter for periods of one year, unless the termination rights provided for in this Certification Agreement are exercised.

**6.6 Jurisdiction.** This Certification Agreement shall be interpreted in accordance with and governed by the laws of the jurisdiction within which the INTERTEK office stated in the opening paragraph is located.

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