

General Terms and Conditions for Certification Services

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions in this clause 1.1 apply to these General Conditions:

- 1.1.1 Accreditation Body means the authoritative body that grants accreditation, under which Green Council performs the Services;
- 1.1.2 Affiliate means any other entity that either directly or indirectly controls or is controlled by a Party or is under the common control with the Party in question. An entity shall be regarded as being in control of another entity if it owns, directly or indirectly, or is entitled to exercise, directly or indirectly, the votes attaching to 50% (fifty per cent) or more of the equity shares of the other entity or if it possesses, directly or indirectly, the power to determine the composition of the board of directors of the other entity;
- 1.1.3 Agreement means Green Council acceptance of a completed Order Form, Proposal, or other instructions for Services from the Client, or Green Council acceptance of an agreed quotation for Services, or any other written instruction or request for Services by a Client to the extent that they are accepted by Green Council, and performance of Services by Green Council for the Client. These General Conditions govern each agreement unless separate terms and conditions are agreed to in writing between the Client and Green Council;
- 1.1.4 Green Council means the certification-related entity of the Green Council of companies that has entered into the Agreement with the Client;
- 1.1.5 Certificate of Approval means the certificate issued by Green Council confirming that an audit has been passed for a product, service or process to be marketed or used for stated purposes under stated conditions;
- 1.1.6 Client means the person, firm, company, partnership, association, trust or government agency or authority that appoints Green Council to provide the Services and identified as such in the applicable Order Form, Proposal or agreed written instructions;
- 1.1.7 Client Information means all recodes, documents, instructions, manuals, measurements, specifications, requirements, and any other information and materials provided by the Client and necessary for Green Council to perform the Services;
- 1.1.8 Confidential Information means all and any non-public information disclosed by one Party to the other Party, including (but not necessarily limited to) data, know-how, concepts, manuals, reports, specifications, trade secrets, trademarks, company logos, and any other business, commercial, financial, legal, marketing or technical information;
- 1.1.9 Fees means the fees payable by the Client to Green Council for the Services, as set out in the applicable Order Form, Proposal or agreed written instructions, excluding accommodation, meals, subsistence, travel and any other incidental costs and expenses of Green Council incurred in respect of the performance of the Services, which will be charged separately at the actual cost thereof;
- 1.1.10 General Conditions means these General Conditions for Certification Services, as amended by Green Council from time to time;
- 1.1.11 Intellectual Property means all patents, rights to inventions, utility models, copyright and related rights, trademarks, logos, service marks, trade dress, business and domain names, rights in trade dress or get-up, rights in good will or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know how and trade secrets), methods and protocols for Services, and any other intellectual property rights, in each case whether capable of registration, registered or unregistered and including all applications for and renewals, reversions or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- 1.1.12 Multi-Site Offer means an offer issued by Green Council to a Client for the Services for two or more sites and/or locations;
- 1.1.13 Order Form means Green Council's standard form to be completed by the Client setting out the Services to be performed by Green Council, together with any other information concerning the performance of the Services under the terms of the Agreement. The fees for the Services may be set out in the Order Form or in a separate document, Proposal or price list;
- 1.1.14 Proposal means any proposal, quotation or other document issued by Green Council to the Client that sets out the Services, Fees and any other information and terms and conditions in relation to the performance of the Services;
- 1.1.15 Party and Parties means individually Green Council or the Client and collectively Green Council and the Client;
- 1.1.16 Reports means all documents and products created by Green Council in relation to or as are result of the performance of the Services, excluding the Certificate of Approval;

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1.1.17 Services means the certification services, covering audit and certification services against an appropriate recognized specification or part thereof, to be performed by Green Council for the Client under the Agreement and as set out in the applicable Order Form, Proposal or any other written instructions, to the extent that any such other written instructions are accepted by Green Council; and

1.1.18 Single-Site Offer means an offer issued by Green Council to a Client for the Services for one site and/or location.

1.2 Capitalized terms not otherwise defined herein shall have the meanings given to such terms by the "Conformity Assessment" vocabulary as stated in the ISO17000 standards.

1.3 In these General Conditions:

1.3.1 The singular includes the plural and vice versa;

1.3.2 A reference to any gender includes the other genders; and

1.3.3 A reference to a Party includes the successors in title and permitted assigns of that Party.

2. APPLICATION OF GENERAL CONDITIONS

2.1 Unless otherwise expressly agreed in writing and signed by both Parties, or solely to the extent otherwise required by mandatory application of law, these General Conditions will:

2.1.1 Apply to and be incorporated in the Agreement;

2.1.2 Apply to all actions and Services provided by Green Council; and

2.1.3 Prevail over any inconsistent terms or conditions contained in the Client's standard terms and conditions or any other communications with Green Council.

2.2 For the avoidance of doubt, under no circumstances will the Client's standard terms and conditions (if any) attached to, enclosed with or referred to in any Order Form or other document govern the Agreement or be binding on Green Council in any way whatsoever.

2.3 Green Council acts for the Client only. Except as provided in the Agreement, the Agreement is entered into solely between and may be enforced only by the Client and Green Council. The Agreement shall not be deemed to create any rights for the benefit of any third parties, including (without limitation) suppliers or customers of a Party, or to create any obligation of a Party to such third parties.

2.4 Green Council, in its sole and absolute discretion, may delegate the performance of all or a portion of the Services under the Agreement to an Affiliate, agent, consultant or subcontractor without the prior approval of the Client, and the Client hereby consents to such delegation. For the purposes of clause 11.1, the Client hereby consents to Green Council disclosing any and all of the Confidential Information of the Client to such Affiliate, agent, consultant or subcontractor for the sole purpose of performing the Services, in whole or in part.

2.5 The Services offered by Green Council are "open ended" and are subject to automatic renewal.

3. GENERAL

3.1 To achieve and preserve certification, Green Council's Clients are required to develop and maintain their management systems in accordance with applicable specifications, allowing unconditional access to Green Council to audit or otherwise verify these management systems against the applicable specifications.

3.2 The certification awarded by Green Council covers only, as the case may be, those services or products manufactured and/or supplied under the scope of the Client's management systems certified by Green Council. For certain certification schemes, amplification of the contents of this document is required. This is provided separately for the scheme concerned. Clients remain solely liable for any defect in their services and products and shall defend, protect and indemnify Green Council from any and all defects, claims or liability arising from said services and products.

3.3 The issued certification does not exempt Clients from their legal obligations in respect of the services or products or any other requirement in the scope of their management systems.

4. COMMENCEMENT AND DURATION

4.1 Unless otherwise agreed in writing by the Parties, the Services performed under the Agreement shall be provided by Green Council to the Client from the date of acceptance by the Client of the of Green Council's Order Form, Proposal or other written instructions.

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4.2 Subject to clause 16, the Services performed under the Agreement shall be supplied for the period as set out in the agreed Order Form, Proposal or other written instruction received from the Client and accepted by Green Council. Where no such period for performance of the Services has been stipulated, Green Council shall perform the Services within a reasonable time in its sole discretion.

4.3 This Agreement will be valid for a period of three (3) years and shall be renewed automatically at the end of this initial period for successive periods of 3 years unless the Client notifies the termination to Green Council with a notice period of three (3) months prior to the end of the three (3) years contractual period.

5. SERVICES

The Services to be provided by Green Council in terms of the Agreement may be executed in phases, as set out in this clause

5.1 REQUESTS FOR CERTIFICATION

5.1.1 The Contracting entity for the purpose of any Services provided under this Agreement which are accredited services and the accreditation body is HKCAS.

5.1.2 The Client will be asked to supply detailed information about the size and scope of its operations that will be subject to the Services.

5.1.3 Upon receipt of such information from the Client, Green Council shall issue an Order Form.

5.1.4 Where a Multi-Site Offer is made, this will be based on the information supplied by the Client and includes the multi-site criteria of the accreditation rules according to the latest edition of the relevant Accreditation Body rules for each certification schemes, such as but not limited to, IAF MD1 or IATF rules. Where any subsequent audit information supplied by the Client is found not to be accurate, Green Council reserves the right to amend and correct its offer and/or the Agreement accordingly to ensure compliance with the aforementioned rules.

5.2 THE INITIAL CERTIFICATION PROCESS

The details of the Services to be provided must be agreed between the Client and Green Council prior to Green Council Certification commencing any such Services.

5.2.1 PRE-AUDIT

The pre-audit is an optional chargeable audit, which is designed to preview the Client's management system for areas of specifications against which the Client asks for certification. Green Council will issue a Report to the Client detailing the findings of this audit in due time, including any identified appropriate actions.

5.2.2 STAGE 1 AUDIT

Green Council will undertake a readiness review to determine the preparedness of Stage 2 of the audit (understanding the requirements, collecting information of the scope of the management system, processes and location of the Client, reviewing the allocation of resources for Stage 2, planning for Stage 2, evaluating the internal audit systems).

5.2.3 STAGE 2 AUDIT

- (a) Green Council will provide an audit programme prior to the commencement of the audit.
- (b) The Green Council audit team will meet with the Client's management to discuss the details of the audit process and consider possible issues relating to the performance of the audit. The Green Council audit team will discuss any nonconformities, observations and opportunities for improvement if and when they are identified during the audit.
- (c) The Green Council audit team will prepare and present to the Client's management a Report of the audit, which will include the audit findings and the scope of certification and will seek agreement, where necessary, on the nature of any corrective actions to be taken.

5.2.4 CHANGES TO STAGE 1 AND STAGE 2 AUDITS

- (a) If as result of the Stage 1 Audit, Green Council determines that the Stage 2 arrangements (i.e. changes in the scope, man-days, auditors, sites) shall be adjusted, the Agreement may be amended.
- (b) Stage 1 shall be reiterated until it produces satisfactory results to proceed to Stage 2 if, based upon the information gathered during Stage 1 of the audit, Green Council decides that the required information were not provided and/or complete, which may result in a major non-conformity at Stage 2 with respect to the effective implementation of the management system.

- (c) When the Stage 1 & 2 Audits are planned back to back, Green Council has the right to postpone the Stage 2 Audit at the expenses of the Client if the results of the Stage 1 Audit are not satisfactory to proceed with the Stage 2 Audit.

5.2.5 NONCONFORMITY

- (a) When major non conformity or major changes occur, Green Council undertakes a "special follow up visit", which is charged at Green Council Certification's current rates.
- (b) All fees to review Client's proposed actions to close minor non conformities are charged on reimbursable basis for professional time and expenses.

5.2.6 ISSUANCE OF CERTIFICATE OF APPROVAL AND REPORTS

- (a) Green Council will issue to the Client a Certificate of Approval and Reports if and when all corrective actions agreed between the Client and the Green Council audit team have been completed.
- (b) The Certificate of Approval will detail the specification(s) to which the Client has been found compliant at the time of audit and the scope of the management system.

5.3 CERTIFICATION MAINTENANCE

5.3.1 SURVEILLANCE

- (a) Green Council operates a surveillance audit programme to record whether the Client's certification is found to be maintained. The programme is ongoing and is agreed with the Client in the Agreement.
- (b) Once Green Council has agreed the dates, the Client should make all necessary arrangement to maintain the agreed dates. The date of the first surveillance audit following initial certification shall not be more than twelve (12) months from the certificate decision date.
- (c) The interval of the surveillance audit shall be conducted for the certified organizations on a 6-monthly or a calendar yearly basis.

5.3.2 RE-CERTIFICATION

Every three (3) years Green Council will automatically review the Client's certification and, subject to the satisfactory results from the surveillance audits and/or the re-certification audit (including all corrective actions which have been agreed between the Client and the Green Council audit team and completed), Green Council will re-issue the Client's certification and the Certificate of Approval. It should be noted that this needs to be completed before expiry of the current Certificate of Approval to preserve the continuity of the certification. Once completed, certification will be reconfirmed.

5.4 CERTIFICATION CHANGES

The Client is required to inform Green Council promptly of any significant changes to its product(s) or services that may impact the certified management system(s) or any other circumstances, which may affect the validity of its certification. Change of site, additional sites, change of process, change of ownership, change of scope, change of number of employees, etc. are considered as changes which may affect the validity of the certification. Green Council will then take the appropriate action, such as conducting a special visit and/or changing the certification at the then current rates. Special visits can be conducted as well to investigate complaints received about the Client.

5.5 GREEN COUNCIL CERTIFICATION MARKS AND ACCREDITATION BODY SYMBOL

- 5.5.1 The Client shall use the Green Council Certification Mark and Accreditation Body symbol in accordance with the instructions for use that Green Council provides including the requirements provided in clause 12.
- 5.5.2 There shall be no ambiguity, in the mark or accompanying text, as to what has been certified. Green Council Certification mark and/or Accreditation Body symbol shall not be used on a product or product packaging seen by the final consumer or in any other way that may be interpreted as denoting product conformity except as provided for in clause 12.

5.6 ACCREDITATION BODY ACCESS

The Client shall allow the Green Council's Accreditation Body or their representatives' access to any part of the audit or surveillance process for the purposes of witnessing the Green Council's audit team during its performance of the audit of the management system to determine conformity with the requirements of the applicable standards. The Client shall not have the right to refuse such a request either by the Accreditation Body, its representatives or Green Council.

5.7 SUSPENSION, WITHDRAWAL OR CANCELLATION OF THE CERTIFICATE OF APPROVAL

Green Council reserves the right to suspend, withdraw, reduce, extend or cancel the Certificate of Approval at any time and shall give the Client a three (3) months' written notice or shorter notice as the situation may require depending upon the information available to Green Council. If such aforementioned actions are deemed necessary by Green Council, the Client will be fully briefed and will be given every possible opportunity to take corrective action before a final decision is taken on what action Green Council Certification should take after the expiration of such notification period.

5.7.2 Green Council reserves the right to publish the fact that such action has been taken.

6. GREEN COUNCIL'S OBLIGATIONS

6.1 Green Council shall, with reasonable care, skill and diligence as expected of a competent body experienced in the certification industry and in performing services of a similar nature to the Services and under similar circumstances, provide the Services and deliver the Certificate of Approval and/or the Reports to the Client.

6.2 Green Council, in the capacity of an independent party, provides information to its clients in the form of ascertainment, assessment or recommendations, relative to regulatory requirements, general industry standards and/or any other standards that may be mutually agreed in writing by the Parties.

6.3 In providing the Services, Green Council does not take the place of designers, architects, builders, contractors, manufacturers, producers, operators, transporters, importers, sellers, buyers or owners who, notwithstanding Green Council's actions, are not released from any of their obligations of whatever nature. If and to the extent that the Client releases any third party from its liabilities, obligations and duties with respect to the Client's products or services, or from its liabilities, obligations and duties with respect to information upon which Green Council relied in the performance of the Services, such unfulfilled liabilities of a third party will not cause Green Council's liability to increase and the Client shall assume and undertake as its own such liabilities, obligations and duties.

6.4 For the avoidance of doubt, under no circumstances does Green Council fulfill the role of an insurer or a guarantor in respect of the adequacy, quality, merchantability, fitness for purpose, compliance or performance of any management systems or processes subject of the Services, including the services, or any other activities undertaken or produced by the Client to which the Services relate. Notwithstanding any provision to the contrary contained herein or in any Certificate of Approval or in any Report, no warranty or guarantee, express or implied, including any warranty of merchantability or fitness for a particular purpose or use, is made by Green Council for any activities undertaken by the Client or systems or processes maintained or put in place by the Client.

6.5 Unless specifically instructed to the contrary by the Client and incorporated into the scope of the Services under the Agreement, documents concerning undertakings entered into between the Client and other interested parties, such as contracts of sale, supply or work contracts, letters of credit, bills of lading, specifications, datasheets, letters of commissioning, certificate of acceptance or conformity, and which are divulged to Green Council, shall be considered to be for information only, without either extending or restricting Green Council's scope of Services or obligations under the Agreement.

6.6 Green Council shall seek consent from and explain to the clients about the presence of the accreditation body assessment team in their certification audits.

7. CLIENT'S OBLIGATIONS

7.1 The Client must:

7.1.1 co-operate with Green Council in all matters relating to the Services;

7.1.2 provide, or cause its suppliers to provide, in a timely manner and at no charge, access to facilities, documents, data, and personnel as required by Green Council, its agents, subcontractors, consultants and employees, to perform the Services;

7.1.3 prepare and maintain the relevant premises and materials for the supply of the Services, including without limitation, identifying, monitoring, correcting or removing any actual or potentially hazardous conditions or materials from any of its premises before and during the supply of the Services;

7.1.4 adopt all necessary measures to ensure the safety and security of working conditions on site during performance of the Services and inform Green Council of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the relevant premises;

7.1.5 provide Green Council, its agents, subcontractors and representatives with all necessary transportation, equipment, materials, facilities that are required for Green Council to provide the Services, and access to premises where the Services are to be performed;

- 7.1.6 ensure that the Client's equipment is in good working order, under the Client's control and operation, suitable for the purposes for which it is used in relation to the Services and conforms to all relevant and applicable standards or requirements;
- 7.1.7 provide Green Council, either directly or through its suppliers and subcontractors, in a timely manner, such Client Information and other information as Green Council may require for the proper performance of the Services and ensure that such information is accurate in all material respects. Client Information shall be provided by the Client to Green Council at least twenty (20) days before the agreed start date of each audit;
- 7.1.8 where necessary, obtain and maintain all necessary licenses and consents and comply with all relevant legislation in relation to the Services and the use of the Client's equipment and facilities;
- 7.1.9 ensure that all documents, information and material made available by the Client to Green Council under the Agreement do not and will not infringe, or constitute an infringement or misappropriation of, any patent, copyright, trademark, trade secret, license or other intellectual property rights or proprietary rights of any third party; and
- 7.1.10 take all necessary steps to eliminate or remedy any obstructions to or interruptions in the performance of the Services.
- 7.1.11 make reference to the certification status in communication media such as the internet, brochures or advertising, or other documents;
- 7.1.12 not make or permit any misleading statement regarding its certification;
- 7.1.13 not use or permit the use of certification document or any part thereof in a misleading manner;
- 7.1.14 discontinues its use of all advertising matter that contains a reference to certification once the certification being withdrawn;
- 7.1.15 amends all advertising matter when the scope of certification has been reduced;
- 7.1.16 not allow reference to the management system certification to be used in certifies a products (including services) or process;
- 7.1.17 not allow the certification applies to activities and sites that are outside the scope of certification; and
- 7.1.18 not use the certification in such as manner that would bring the certification body and / or certification system into disrepute and lose public trust.
- 7.1.19 make reference to the use of statement or accompanying information on product packaging for a certified management system, including: 1. Identification (e.g. brand or name) of the certified client; 2. Type of management system and the applicable standard; and 3. Certification body issuing the certificate.
- 7.2 An Occupational Health & Safety (OH&S) certified client is required to inform Green Council (GC) without unreasonable delay and in no case later than three (3) calendar days after discovery of incidents such as a serious accident causing the death of or serious bodily injury to a person, a dangerous occurrence that occurs at a workplace, a breach of regulation necessitating the involvement of the competent regulatory authority, etc.,
- (i) The certified client must prepare and submit a serious incident disclosure report to GC for consideration. i.e. contains sufficient and appropriate information.
 - (ii) If the information contained in the disclosure report is deemed insufficient, GC may formally request and require supplemental information be provided by the certified client and/or form an audit team to conduct a special audit to gather further necessary information.
 - (iii) GC will determine whether the certified client is still satisfying the OH&S certification requirements and GC reserve the right to suspend or withdraw the certification if the client does not fulfill the OH&S requirements.
- 7.3 To the extent that Green Council renders Services, the Client agrees that Green Council does not owe any specific success but only such Services. The Client is responsible for exercising its own, independent judgment with regard to the information and recommendations provided by Green Council. Neither Green Council Certification nor any of its agents warrant the quality, outcome, effectiveness or appropriateness of any decision or action undertaken on the basis of the Certificate of Approval or Reports provided under the Agreement.
- 7.4 Green Council Certification reserves the right to unilaterally alter or extend the defined deadlines in the Agreement or postpone them if the Client fails to timely provide Green Council with the relevant Client Information.
- 7.5 Green Council's performance of its obligations under the Agreement is prevented or delayed by any act, omission, default or negligence of the Client, its agents, subcontractors, consultants or employees, Green Council shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.

8. FEES AND PAYMENT

- 8.1 In consideration for the provision of the Services by Green Council, the Client will pay the Fees in accordance with this clause 8, unless otherwise agreed in writing between the Parties. The Fees are exclusive of all applicable taxes, unless stated otherwise.
- 8.2 Green Council may, in its sole and absolute discretion, require the Client to provide an initial deposit or advance payment of an amount or percentage of the Fees as determined by Green Council, as security for payment of the Fees, on or before the date specified by Green Council or, if no date is specified, prior to commencement of the Services. Green Council will not commence provision of the Services unless and until any such upfront payment has been received in full by Green Council.
- 8.3 Green Council reserves the right to apply the initial deposit or advance payment to any amount due and unpaid and the payment of an initial deposit or advance payment in no way relieves the Client of timeous payment of any invoices.
- 8.4 Green Council shall invoice Clients on delivery of the Services. Under no circumstances will the Certificate of Approval and Reports be released until full payment has been received by Green Council.
- 8.5 The Client will pay each valid invoice submitted to it by Green Council, in full and in cleared funds and without deduction or set-off, within thirty (30) days of the date of the invoice.
- 8.6 Without prejudice to any other right or remedy that Green Council may have, if the Client fails to pay Green Council the initial deposit or advance payment, if any, or any subsequent invoice on or before the due date, Green Council may, in its sole and absolute discretion:
- charge interest on such sum from the due date for payment at the monthly rate of 2.5%, accruing on a daily basis and being compounded monthly until payment is made in full (both dates inclusive), whether before or after any judgment; and/or;
 - suspend all Services until payment has been made in full.
- 8.7 Time for payment shall be of the essence of the Agreement.
- 8.8 Green Council reserves the right to review and amend its charges annually and, in any case, automatically after the first three years cycle; as a minimum, these charges will be adjusted to take into account the inflation rate, any significant variation of the exchange rates, labour costs or costs implied by changes in the applicable certification schemes.
- 8.9 Notwithstanding clause 8.7, Green Council will be entitled to claim an increase or modification in the Fees if conditions or circumstances arise that were not reasonably foreseeable at the time the Agreement was entered into or which were beyond the reasonably control of Green Council or if the Client request any postponement or rescheduling of the Services, or any part thereof. If the Client refuses to accept any such increase or modification in the Fees then Green Council reserves the right not to commence or continue with the provision of the Services, or any part here of.
- 8.10 If the Client postpones or reschedules the audit service on less than thirty (30) working days' written notice to Green Council, Green Council reserves the right to charge the full man-day fee of the audit. This sum will not be discounted from the audit fee ultimately charged when the rescheduled audit is carried out.
- 8.11 If the Client cancels the Agreement on less than three (3) months written notice prior to the next due audit date, then the Client shall be liable for the full cost of the audit, including all audit man-day and administrative fees.
- 8.12 All fees are exclusive of accommodation, meals, subsistence, travel and any other incidental costs and expenses and will charged by Green Council as pre-agreed at a fixed rate or at the actual cost there of.
- 8.13 Unless otherwise agreed between the Parties in writing, all sums payable to Green Council will become immediately due and payable on termination of the Agreement for any reason whatsoever, despite any other provision of the Agreement. This clause 8.13 is without prejudice to any right of Green Council to claim interest, collection costs, legal costs or any other right in terms of law or the Agreement.

9. CANCELLATION, POSTPONEMENT OR RESCHEDULING OF THE SERVICES

- 9.1 Should the Client wish to cancel, postpone or reschedule commencement or further provision of the Services, or any part thereof, the Client must provide Green Council with prior written notification of not less than thirty (30) days in the event of postponements or rescheduling and not less than three (3) months in the event of cancellations.
- 9.2 Without detracting from 8.9 and 8.10, cancellation, postponement or rescheduling of the Services will in all instances entitle Green Council to claim full payment of the Fees for the Services that have been rendered and any and all costs incurred by Green Council as at the date of cancellation, postponement or rescheduling on presentation by Green Council of an invoice in respect thereof.
- 9.3 In addition, a cancellation charge, as provided in the Agreement between the Parties, will be levied by Green Council in the event of any cancellation, postponement or rescheduling of the Services. In the event that the initial deposit or advance payment, if any, exceeds the cancellation charge, such excess amount will be refunded to the Client (unless any other amount

is due and owing by the Client to Green Council). The Client agrees that any such cancellation charge is a reasonable measure of the costs incurred by Green Council in preparation of provision of the Services.

- 9.4 Under no circumstances will Green Council be liable for any claims, costs, damages or losses of any nature whatsoever and howsoever arising as a result of the Client's cancellation, postponement or rescheduling of the Services, or any part thereof.

10. CERTIFICATE OF APPROVAL AND REPORTS

- 10.1 The Client must not reproduce the Certificate of Approval or the Reports or make copies thereof without the prior written consent of Green Council. Neither the Client nor any third party is entitled to rely on any reproduction or copy of a Certificate of Approval or the Reports for which the prior written consent of Green Council has not been obtained.
- 10.2 The Certificate of Approval or the Reports are issued by Green Council and are intended for the exclusive use of the Client and shall not be published, used for advertising purposes, distributed, copied or replicated for distribution to any other person or entity or otherwise publicly disclosed without the prior written consent of Green Council.
- 10.3 The Certificate of Approval or the Reports are given only in relation to the written instructions, documents, information and samples provided to Green Council by the Client prior to the performance of the Services. Green Council cannot be held liable for any error, omission or inaccuracy in the Certificate of Approval or the Reports to the extent that the Client has given Green Council erroneous or incomplete information.
- 10.4 The Certificate of Approval or the Reports will reflect the findings of Green Council at the time of performance of the Services only and in respect of the Client Information made available to Green Council Certification prior to or during the performance of the Services. Green Council shall have no obligation to update the Certificate of Approval or the Reports after issuance, except as otherwise stated in the Agreement or agreed in writing between the Parties.
- 10.5 The Client (not Green Council or its Affiliates or their respective representatives) is solely and exclusively responsible for exercising its own, independent judgment with regard to the Certificate of Approval or the Reports, information and recommendations provided by Green Council and for any decision or action undertaken by the Client or any third party on the basis of the Certificate of Approval or the Reports provided by Green Council. Neither Green Council nor any of its Affiliates or their respective agents, subcontractors, officers, employees, representatives or assigns warrant the quality, outcome, effectiveness or appropriateness of any decision or action taken by the Client on the basis of the Certificate of Approval or the Reports provided under the Agreement.
- 10.6 Green Council is under no obligation to refer to or report on any facts or circumstances which are outside the scope of the Services and accepts no liability for not referring to or reporting on such facts or circumstances.

11. CONFIDENTIALITY

- 11.1 Each of the Parties shall not disclose or use for any purpose whatsoever any of the confidential knowledge or Confidential Information, which it may acquire or receive within the scope of the performance of the Agreement, without the prior written consent of the Party that disclosed the Confidential Information.
- 11.2 This confidentiality undertaking shall not apply to any information:
- 11.2.1 which is publicly available or becomes publicly available through no act of the receiving Party;
 - 11.2.2 which was in the possession of the receiving Party prior to its disclosure;
 - 11.2.3 which is disclosed to the receiving Party by a third party who did not acquire the information under an obligation of confidentiality;
 - 11.2.4 which is independently developed or acquired by the receiving Party without use of or reference to Confidential Information received from the disclosing Party;
 - 11.2.5 which is disclosed or is required to be disclosed in accordance with the requirements of law, any stock exchange regulation or any binding judgment, order or requirement of any court or other competent authority; or
 - 11.2.6 which is disclosed to an Affiliate of the receiving Party on a need to know basis.
- 11.3 The Certificate of Approval and the Reports are issued by Green Council and are intended for the exclusive use of the Client and shall not be published, used for advertising purposes, copied or replicated for distribution to any other person or entity or otherwise publicly disclosed without the prior written consent of Green Council.
- 11.4 Each Party shall be responsible for ensuring that all persons to whom Confidential Information of the other Party is disclosed under the Agreement shall keep such information confidential and shall not disclose or divulge the same to any unauthorized person or entity, and shall assume full responsibility for any breach of said undertaking.

- 11.5 On expiry or termination of the Agreement for any reason and at the discretion of the other Party, each Party shall return or destroy the other Party's Confidential Information which is at that time in its possession or under its control, provided that nothing herein shall prohibit Green Council from maintaining copies of documents provided by the Client, Certificate of Approval and Reports and analysis in accordance with its record retention policies and document retention policies as may be required by law or any Accreditation Body.
- 11.6 Notwithstanding the provision of clause 11, Green Council shall be authorized to make copies of Client Information, as may be required by the Accreditation Body's retention policy.
- 11.7 Notwithstanding the provision of clause 11, Green Council reserves the right to refer to the Client, using its name and/or logo, whether internally and externally, orally or in writing, and on any communication support, for marketing and/or commercial purposes without the prior consent of the Client being required.
- 11.8 Notwithstanding the provision of clause 11, Green Council reserves the right to use the Client's data for benchmarking and analysis purposes, being understood that any such use by Green Council will be in compliance with the application regulation protecting personal data and the data would be anonymous.

12. INTELLECTUAL PROPERTY

- 12.1 Each Party exclusively owns all rights to its Intellectual Property whether created before or after the commencement date of the Agreement and whether or not associated with any Agreement between the Parties.
- 12.2 Neither Party shall contest the validity of the other Party's Intellectual Property rights nor take any action that might impair the value or goodwill associated with the Intellectual Property of the other Party or its Affiliates.
- 12.3 The names, service marks, trademarks and copyrights of Green Council shall not be used by the Client except solely to the extent that the Client obtains the prior written approval of Green Council Certification and then only in the manner prescribed by Green Council.
- 12.4 The use of the Certificate of Approval is regulated by Green Council through a policy document explaining how to display and use the certification mark and associated logos, which is available upon request. Green Council will audit the use of the certification mark and/or associated logo by the Client at subsequent surveillance visits.
- 12.5 For the avoidance of doubt, nothing in the Certificate of Approval or in the Reports or any other writing shall convey to the Client any rights of ownership or license whatsoever to the Green Council's Intellectual Property, its proprietary software, proprietary audit methods, training materials and best practices manual, protocols, Green Council's name, logo, marks, or other trade dress or any other existing or future Intellectual Property rights or know-how developed and used by Green Council to perform the Services and to issue the Certificate of Approval and the Reports. Such Intellectual Property rights shall remain the sole property of Green Council.

13. DATA PROTECTION

Each Party shall take all necessary steps to ensure that it operates at all times in accordance with all applicable data protection laws and regulations.

14. LIMITATION OF LIABILITY

- 14.1 This clause 14 sets out the entire financial liability of Green Council (including any liability for the acts or omissions of its Affiliates, and their respective employees, directors, officers, agents, consultants, and subcontractors), to the Client in respect of the Services, the Certificate of Approval and/or the Reports, any breach of the Agreement, any use made by the Client of the Services, the Certificate of Approval and/or the Reports or any part thereof, and any representations, statements or tortious acts or omissions (including negligence) arising under or in connection with the Agreement.
- 14.2 Except as set out in clause 14.3 neither Party shall be liable to the other Party in any circumstances whatsoever for:
- (i) loss of business, or loss of use or loss of profit, loss of earnings, loss of production, loss of value, decrease in earnings from any goods or property, loss of financial advantage, business interruption or downtime; or
 - (ii) depletion of goodwill and/or similar losses; or
 - (iii) loss of contract; or
 - (iv) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
- 14.3 Nothing in these General Conditions limits or excludes the liability of either Party:

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- 14.3.1 for death or personal injury resulting from negligence; or
- 14.3.2 for any damage or liability incurred by the either Party as a result of fraud or fraudulent misrepresentation by the other Party; or
- 14.3.3 for any other loss which by law cannot be excluded or limited.
- 14.4 Without prejudice to clause 14.1, the total aggregate liability of Green Council and its Affiliates, and their respective employees, directors, officers, agents, consultants, and subcontractors, in contract, delict (including, but not limited to, negligence, gross negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in any manner in connection with or related to the Services, the Certificate of Approval, the Reports and the performance, or contemplated performance, of the Agreement shall be limited to the amount of fees paid or payable by the Client to Green Council in respect of the Services that give rise to Green Council's liability to the Client.
- 14.5 The Client hereby indemnifies Green Council and its Affiliates, and their respective employees, directors, officers, agents, consultants, and subcontractors, and holds them harmless against all and any claims, damages, expenses, liabilities, losses costs and/or expenses(including legal fees) of any nature whatsoever (including, but not limited to, negligence and gross negligence) arising from:
- 14.5.1 any act, omission, default, breach of contract or negligence of the Client, its agents, subcontractors, consultants or employees;
- 14.5.2 any claim by a third party in connection with the Services, Certificate of Approval and/or the Reports, including, without being limited to, where a Certificate of Approval and/or the Report is disclosed in full or in part to the third party with the consent of Green Council; and
- 14.5.3 any claim by a third party relating to the performance, purported performance or non-performance of any Services, to the extent that the aggregate of such claims exceeds the limitation of liability set out in clause 14.4.
- 15. FORCE MAJEURE**
- 15.1 For the purpose of this clause 15, "Force Majeure" shall mean any event or circumstance, the occurrence of which is beyond the reasonable control of the claiming Party, which inability could not have been prevented or over come by the claiming Party exercising reasonable foresight, planning and implementation, including (without limitation):
- (a) acts of war (whether declared or not) or terrorism, armed conflict, civil unrest, insurrection or riot (or the specific threats of such acts or events), blockade, embargo, riot, sabotage, malicious damage, acts of terrorism or the specific threats of such acts or events, or conditions attributable to such acts or events;
- (b) strike, work slowdown, lockout or other industrial disturbance or labour dispute (whether involving the workforce of the Party so prevented or of any other Party), or default of suppliers or of sub-contractors;
- (c) epidemics or pandemics;
- (d) forces of nature and natural disasters, fire, earthquake, cyclone, hurricane, flood, drought, lightning, storms, storm warnings, navigational and maritime perils, or other acts of God;
- (e) breakage, freezing, explosion, mechanical breakdown or other damage or malfunction resulting in the partial or complete shutdown of the facilities of the claiming Party; industrial action or labour disturbances, currency restrictions, commercial restrictions, embargo, action or inaction of a government agency, including any changes in law, failure of a supplier, public utility or common carrier or a computer disruption;
- (f) a change in law, hindrance of government or other act or failure to act by any government claiming jurisdiction over the Agreement or the Parties.
- 15.2 If, as a result of Force Majeure, a Party is rendered unable, wholly or in part, to carry out its obligations under the Agreement (other than the obligation to make payments of sums due to the other Party):
- 15.2.1 that Party must immediately notify the other Party in writing, giving reasonably full particulars of the Force Majeure and an estimate of its likely duration;
- 15.2.2 use all possible diligence to remove or mitigate the effects of such Force Majeure as soon as reasonably possible; and
- 15.2.3 the obligations under the Agreement shall be suspended to the extent that the obligations are affected by such Force Majeure and for so long as the Force Majeure continues.
- 15.3 On the cessation of the Force Majeure, the claiming Party must immediately give written notice to the other Party of such cessation and resume performance of the obligations suspended as a result of the Force Majeure.
- 15.4 Neither Party shall be liable for any loss or damage resulting from any delay or failure in performance of its obligations hereunder resulting directly or indirectly from an event of Force Majeure.

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15.5 If the disability continues for a continuous period of more than 15 (fifteen) days from the date the claiming Party gave written notice under clause 15.2, then either Party shall be entitled (but not obliged) to terminate this Agreement, or any part thereof, immediately on written notice to the other Party and, subject to the provisions of this Agreement, neither Party shall have a claim against the other Party as a result of such termination.

16. TERMINATION

16.1 Green Council may terminate the Agreement at any time and for any reason, without incurring any liability to the Client, by giving a minimum of 30 (thirty) days' written notice to the Client, or such other period as may be reasonable in Green Council's sole opinion in the circumstances.

16.2 Without prejudice to any other rights or remedies which the Parties may have, either Party may terminate the Agreement, without liability to the other Party, immediately on written notice to the other Party if the other Party:

16.2.1 fails to pay any amount due under the Agreement on the due date for payment and remains in default for 10 (ten) days after being notified in writing to make such payment;

16.2.2 commits a material breach of the Agreement and (if such breach is capable of being remedied) fails to remedy such breach within 10 (ten) days after being notified in writing of the breach;

16.2.3 repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;

16.2.4 becomes unable to pay its debts as and when they become due;

16.2.5 becomes insolvent or enters receivership (for financial or other reasons) or judicial management, or commences insolvency or business rescue proceedings;

16.2.6 assigns or transfers any right or obligations under the Agreement, other than as authorised under this Agreement;

16.2.7 suspends or ceases, or threatens to suspend or cease, all or a substantial part of its business.

16.3 On termination of the Agreement for any reason:

16.3.1 the Client shall immediately pay to Green Council all of Green Council's outstanding unpaid invoices (which shall become immediately due and payable) and interest, if any, on any outstanding sums and, in respect of Services supplied but for which no invoice has been submitted, Green Council may submit an invoice, which shall be payable by the Client immediately on receipt thereof;

16.3.2 the accrued rights and liabilities of the Parties as at the termination and the continuation of any provision of the Agreement expressly stated to survive or implicitly surviving the termination, shall not be affected.

16.4 On termination of the Agreement (however arising), clauses 9, 12, 14, 23 and 24 shall survive and continue in full force and effect.

17. NOTICES

17.1 Notices or other communications between the Parties in terms of the Agreement shall be validly sent by personal delivery, pre-paid registered post, facsimile or email to the addresses specified by the Parties in writing.

17.2 Such notices shall be deemed to be delivered (unless the contrary is proven):

17.2.1 if by way of pre-paid registered post, 7 (seven) days after the date of posting;

17.2.2 if by personal delivery, on the date of delivery;

17.2.3 if by way of facsimile, at the time of transmission, subject to confirmation of receipt;

17.2.4 if by way of email, after being received in readable form and after automatic electronic acknowledgment of receipt or confirmation of receipt by the recipient.

18. WAIVER

A waiver of any right under the Agreement is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a Party in exercising any right or remedy under the Agreement or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

19. SEVERANCE

If any provision of the Agreement (or part thereof) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision (or part thereof) shall, to the extent required, be deemed not to form part of the Agreement, and the validity and enforceability of the other provisions of the Agreement shall not be affected. If a provision of the Agreement (or part thereof) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

20. ASSIGNMENT

20.1 The Client shall not, without the prior written consent of Green Council, cede, assign, transfer, subcontract or deal in any manner with all or any of its rights or obligations under the Agreement.

20.2 The Client acknowledges that, and hereby expressly consents to, Green Council at any time ceding, assigning, transferring, subcontracting or dealing in any manner with all or any of its rights or obligations under the Agreement.

21. NO PARTNERSHIP

Nothing in the Agreement is intended or be deemed to constitute a partnership, joint venture, trust or association of any kind between the Parties, nor constitute either Party the agent of the other Party for any purpose. Neither Party shall have authority to bind the other Party in any manner whatsoever.

22. ENTIRE AGREEMENT

22.1 The Agreement constitutes the whole agreement between the Parties and supersedes all previous agreements and communications between the Parties relating to the Services.

22.2 Each Party acknowledges that, in entering into the Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than for breach of contract as expressly provided in the Agreement.

23. GOVERNING LAW AND JURISDICTION

23.1 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of the Hong Kong Special Administrative Region of the People's Republic of China, notwithstanding any conflicts of laws rules that could require the application of any other law.

23.2 The Parties irrevocably agree that the courts of the Hong Kong Special Administrative Region of the People's Republic of China shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Agreement or its subject matter.

24. RIGHTS OF THIRD PARTIES

To the fullest extent permitted by law and except as expressly provided for in the Agreement, a person who is not a party to the Agreement shall not have any rights under or in connection with the Agreement.

Approved by:


Linda W. P. Ho
Chief Executive Officer
Green Council

Date:

Dec 6, 2021