

Terms and Conditions for BASEC Services

1.7 TERMS & CONDITIONS OF BUSINESS

1.7.1 Interpretation

1.7.1.1 In these Terms & Conditions

'BASEC' means British Approvals Service for Cables whose registered office is at Presley House, Presley Way, Crownhill, Milton Keynes, MK8 0ES. Registered in England, No 1150237.

'Client' means the person, company, firm or other body seeking the 'Services'

'Agreement' means the contract for the provision of the Services which will consist of some or all of the following documents, dependent on the Services to be provided: BASEC quotation, BASEC Certification Agreement, Client's order, these Terms and Conditions, BASEC PCR, Certification Scheme Regulations documents, Rules for Use of Certification Marks, as specified by BASEC.

'Services' means the provision of certification, listing (publication), testing, investigatory works, training or other services as set out in a BASEC quotation, Client purchase order, or BASEC invoice. The Services may also comprise or include the provision of a Report.

'Report' means the report(s) relating to the Services and is intended only for the Client's internal use and benefit.

'Consumer' means the person, firm, company or other body that uses the Client's product, process, system or service being Certified or tested by the Services.

'Certification' means BASEC's conformity assessment, approval, registration, initial or annual listing or recognition of products, processes, systems or services and 'Certification Services', 'Certificate' and 'Certified' shall be construed accordingly.

1.7.1.2 The headings in these Terms & Conditions are for convenience only and shall not affect their interpretation.

1.7.1.3 Reference to any statute or statutory provision includes a reference to the statute or statutory provisions as from time to time amended, extended or re-enacted.

1.7.1.4 The revision status of these Terms & Conditions is stated at the bottom of each page. This revision supersedes all previous revisions, and upon issue to Clients is deemed to be the prevailing Terms & Conditions for all new and existing Agreements.

1.7.1.5 These Terms apply to the Agreement to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1.7.1.6 Any quotation given by BASEC shall not constitute an offer, and is only valid for a period of 30 business days from its date of issue, or as specified in the quotation.

1.7.1.7 An Agreement shall come into existence when both BASEC and the Client sign a BASEC Certification or Testing Agreement or BASEC issues a written acknowledgement of a Client's order for the Services. The continued instruction by the Client shall also be deemed acceptance of these Terms.

1.7.1.8 A Certification Agreement shall last for 4 years subject to termination pursuant to clause 1.7.8. An Agreement for Services other than Certification Services shall remain in force until the Services have been provided when it shall automatically terminate, subject to earlier termination in accordance with clause 1.7.8.

1.7.2 Responsibilities of the Client – Common to all Services

1.7.2.1 The Client shall, at their own expense, supply BASEC in a timely manner with copies of all documents, materials, information, data and samples necessary to perform the Services, translated into English if necessary. The Client shall ensure the accuracy of all this material. BASEC shall have no liability for any loss or damage to such documentation, however caused.

1.7.2.2 The Client shall fully cooperate with BASEC's representative and any UKAS representative and give access at all times to the premises, data and other facilities as are required by BASEC to carry out the Services. The Client shall give BASEC at least fourteen clear days' written notice in the event that the Client wishes to postpone or cancel any service. The Client agrees to be responsible for all reasonable costs, charges or losses sustained by BASEC because of any cancellation or postponement. If less than 14 clear days' notice are given, the client agrees to pay the full fees for the assessment or testing.

1.7.2.3 If BASEC's performance of its obligations is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, BASEC shall not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay.

1.7.2.4 The Client shall ensure that BASEC representatives are accompanied at all times by a Client representative. The Client's representative shall operate any equipment or machinery including computer terminals to access information, except as required by BASEC and agreed in writing by BASEC.

1.7.2.5 The Client shall notify BASEC of any changes to its contact details or legal entity status, including ownership, within 7 days of the change (subject to clause 1.7.11 below). Certification is only transferrable with the written agreement of BASEC.

For product, process and system Certification schemes

1.7.2.6 Unless otherwise required in the Agreement the Client shall:

- (a) provide the Consumer with adequate instructions for the proper siting, installation, maintenance, and operation and, where required by law, disposal of the product (or system);
- (b) provide BASEC with samples, or access to samples, of Certified product (or system) which are representative of current production methods for re-examination or re-assessment, and will be responsible at its own expense for delivering the products or materials to such premises as BASEC directs.

Terms and Conditions for BASEC Services

- (c) keep adequate records to permit the Consumer to trace product and to allow a product, (process or system) recall to be effected.

1.7.2.7 The Client shall manufacture the product or provide the process, system or service as Certified by BASEC and no changes which may affect the quality or performance of the product, process, system or service shall be made unless notice of the proposed change has been given and written authorisation obtained from BASEC.

1.7.2.8 Should the Client become aware of any shortfall in the performance of the product, process, system or service, howsoever caused, the Client shall inform BASEC immediately and shall take all steps - including, for the avoidance of doubt, a product recall - that BASEC shall reasonably require to rectify such shortfall in performance as soon as reasonably practicable.

1.7.2.9 Where required by the Agreement the Client shall permit periodic audits, as specified by BASEC, and provide access to the facilities identified on certificates issued by BASEC for the maintenance of any Certification.

1.7.2.10 Where required by the Agreement audits shall also be undertaken at service and/or installation locations identified by the Client.

1.7.2.11 The Client shall maintain a record of complaints, failures and remedial actions taken.

1.7.2.12 The Client may only use the BASEC Certification marks and/or notified body number and/or claim Certification for the manufacture of product or for the provision of the process, system, or service identified on valid certificates issued by BASEC and as set out in the BASEC document "Rules for the Use of Marks".

1.7.2.13 If the product, process, system, or service ceases to be certified and or listed by BASEC, then the Client shall cease using and will remove or obliterate any mark and/or notified body number from the product, service and/or from any promotional material.

1.7.2.14 The Client shall not supply any product, process or system which does not conform to the requirements set out in the Agreement.

1.7.2.15 The Client shall not, without BASEC's written permission, alter, modify, deface or destroy the Certificate.

1.7.2.16 The Client may publicise the fact that Certification has been granted and use the Certificate as evidence of Certification. The Client may copy the Certificate provided that each copy is clearly identified as a copy.

1.7.2.17 The original and any copies of the Certificate remain the property of BASEC and must be returned immediately on termination of the Agreement or if requested by BASEC.

1.7.2.18 The Client may appeal any decision by BASEC not to issue, to reduce or to withdraw Certification, using the procedure set out by BASEC.

For testing (not related to Certification)

1.7.2.19 The Client shall be responsible at its own expense for delivering the products or materials to such premises as BASEC directs. The Client acknowledges that products and materials may be tested to destruction and BASEC shall have no liability to the Client in this respect. Unless agreed otherwise in writing, samples submitted for testing shall become the property of BASEC on delivery to BASEC.

1.7.2.20 The Client shall be responsible for any delays in testing resulting from any material, products, documentation and/or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form or arising from their late arrival or non-arrival or any fault of the Client that results in extended occupation of a test rig or equipment or significant delays to other Client's projects. The Client shall be responsible for all reasonable costs, charges or losses sustained by BASEC by reason of such delays.

1.7.2.21 The Customer shall not identify the product as Certified or approved by or use the name of BASEC or make any reference to any test or Report or Service for any advertising, sales or promotional purpose or through any use whatsoever that could imply certification by BASEC.

1.7.2.22 Unless required by law, or with BASEC's written permission, the Client shall not reproduce or distribute any Report to any external third party and when permitted only in its entirety and without any change, deletion or addition to it.

1.7.2.23 The Client must notify BASEC immediately if it becomes aware of any unauthorised use of the whole or any part of the Report.

1.7.3 Rights and responsibilities of BASEC

1.7.3.1 BASEC will only grant Certification when the Client has demonstrated compliance with all requirements. BASEC may at any time make changes to the Certification requirements which are necessary to comply with any applicable safety or other statutory requirements, or which are necessary to comply with the relevant standards or which are necessary to meet the requirements of the relevant accreditation authority and the Client shall comply with such changes as soon as reasonably practicable after notification of such changes.

1.7.3.2 BASEC reserves the right in its sole judgement to change or revise its standards, criteria, methods or procedures, however, reasonable notice will be given to the Client such that continued conformance with BASEC's requirements is practicable.

1.7.3.3 BASEC, its employees and agents agree to maintain as confidential and not to use or disclose to any third party any confidential information obtained from the Client in connection with the Services without the consent of the Client except where it is necessary to enable BASEC to perform the Services, except as required by law, or as specified in clause **1.7.3.4**.

The following shall not be subject to such restrictions:

- (a) Information already in the possession of BASEC prior to its disclosure by the Client or which subsequently comes into its possession free from any obligation of confidentiality; or

Terms and Conditions for BASEC Services

- (b) Information which is public knowledge (otherwise than as a breach of these Terms); or
- (c) Information which is necessary to enable BASEC to achieve or maintain approval and / or accreditation; or
- (d) Information which is required by an accreditation body or notification authority to be disclosed.

1.7.3.4 BASEC reserves the right in its sole judgement to disclose confidential information to appropriate parties where, in BASEC's view, public safety may become at risk or where the reputation of BASEC may be materially prejudiced.

1.7.4 Fees

1.7.4.1 The Client shall pay to BASEC the fees set out in the Agreement.

1.7.4.2 All fees quoted to the Client for the provision of the Services are exclusive of any value added tax, for which the Client shall be additionally liable at the applicable rate.

1.7.4.3 The Client agrees that it will reimburse BASEC for any expenses incurred by BASEC relating to the provision of the Services and that it is wholly responsible for any freight, customs duty or customs clearance fees relating to any test samples.

1.7.4.4 All sums payable to BASEC shall be paid by the Client (together with any applicable value added tax, and without any set-off or other deduction) within 30 days of the date of BASEC's invoice unless a shorter period has been agreed in writing. If payment is not received by the due date, BASEC may suspend or withdraw Certification and any associated listing. If payment is not made by the due date, BASEC may exercise its statutory right to claim interest and compensation for debt recovery under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).

1.7.4.5 Initial assessments and testing will not be conducted until payment has been received in full. The initial audit for Product or Management Systems Certification is carried out in two parts (stage 1 and 2), usually back to back. If during the stage 1 audit the auditor identifies potential major NC's, then the stage 2 audit may be postponed and any resulting costs may be invoiced or quoted separately.

1.7.4.6 Investigatory works and training will not be conducted until payment has been received in full.

1.7.4.7 The Client agrees that, should they not meet their obligations under a Certification Agreement, e.g. non-provision of samples for testing, then BASEC has the right to retain monies pre-paid and/or charge an administration fee.

1.7.4.8 The Client agrees that, should they cancel an order for advisory, training or other services not relevant to a Certification Agreement, or for non-provision of samples, then the following fees apply: if cancellation is made between 1 and 14 days prior to commencement of the Services 100% of the fee is payable; if cancellation is made between 15 and 27 days prior to commencement then 50% of fee is payable; for Services cancelled 28 or more days prior

to commencement then an administration charge of 10% shall apply.

1.7.4.9 All sums payable to BASEC under an Agreement shall become due immediately on its termination, despite any other provision.

1.7.5 Health & Safety

1.7.5.1 Where BASEC is required to access the property of the Client or Consumer for the purposes of carrying out the Services then the Client and/or consumer shall provide unhindered access to all relevant working facilities required by BASEC and shall provide safe access and a safe working environment which complies with all health and safety law requirements.

1.7.5.2 The Client agrees to make full and immediate written disclosure to BASEC of all relevant information concerning any defect or any potential hazard of the product or material being handled or tested when submitting it for testing or as soon as they become aware of it.

1.7.6 Warranties and liabilities

1.7.6.1 BASEC shall provide the Services with reasonable care and skill.

1.7.6.2 BASEC shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.

1.7.6.3 Nothing in these Terms limits or excludes BASEC's liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation, or any other liability which cannot be limited or excluded by applicable law.

1.7.6.4 Subject to clause 1.7.6.3, BASEC shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement for: loss of profits; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; loss of or damage to reputation or goodwill; loss of use or corruption of software, data or information; or any indirect or consequential loss.

1.7.6.5 Subject to clauses 1.7.6.3 and 1.7.6.4, BASEC's total liability to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with an Agreement shall be limited to the amount which has actually been paid by the Client to BASEC for the provision of the Services under that Agreement.

1.7.6.6 Except in respect of death or personal injury, the Client will look only to BASEC (and not to any individual engaged by BASEC, including any directors of BASEC) for redress if the Client considers that there has been any breach of this Agreement. The Client agrees not to pursue any claims in contract, tort (including negligence) or for breach of statutory duty against any individuals working for and on behalf of BASEC in carrying out its obligation under the Agreement at any time, whether named expressly in the Agreement or not.

Terms and Conditions for BASEC Services

1.7.6.7 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

1.7.6.8 BASEC shall use reasonable endeavours to meet the timescales set out in the Agreement but time shall not be of the essence and BASEC shall not be liable for any losses arising from any delay.

1.7.6.9 The Client acknowledges that Certification does not imply or express any warranty of any kind with respect to the Client's product or service. The Client acknowledges that it is solely responsible for the suitability of any Certified product or service for any purpose, for defects or for failure in service. In addition, BASEC shall not be liable for any claim that the Client's product or service infringes the intellectual property rights of any third party.

1.7.6.10 The Client agrees to indemnify BASEC against any losses suffered by or claims made against BASEC as a result of any breach by the Client of the Agreement including, but not limited to, misuse by the Client of any Certification granted by BASEC under this Agreement.

1.7.7 Force Majeure

1.7.7.1 Neither party shall be liable to the other for any delay in performing or failure to perform any obligation under this Agreement to the extent that such delay or failure to perform is a result of war, acts of terrorism, civil disorder, riots, natural disasters, strikes or labour disputes or failure of utilities.

1.7.7.2 A party whose performance is affected by such a Force Majeure event shall promptly notify the other party in writing of the events and likely duration.

1.7.7.3 If the Force Majeure Event continues for sixty (60) days then either party may terminate this Agreement by giving at least ten (10) days' written notice to the other party.

1.7.8 Suspension and/or termination

1.7.8.1 At the date of suspension or termination of this Agreement for whatever reason any Certification granted under this Agreement shall immediately cease to be valid.

1.7.8.2 Either party may terminate a Certification Services Agreement by giving 90 days' notice in writing to the other.

1.7.8.3 Without prejudice to any other rights, BASEC may immediately suspend or withdraw any Certification due to unsatisfactory performance, unsatisfactory results in meeting requirements of re-examination, unsatisfactory quality system or non-conformance with any part of this Agreement (including non-payment of any fees due).

1.7.8.4 Without prejudice to any other rights, either party may terminate the Agreement immediately by notice in writing to the other if the other:

- (a) commits a breach of the Agreement which, in the case of a breach capable of remedy, has not been remedied within 14 days of being notified in writing to do so;

- (b) is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation in such manner that the company resulting from such reconstruction or amalgamation if a different legal entity shall agree to be bound by and assume the obligations of the relevant party under the Agreement) or compounds with or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed or ceases for any reason to carry on business or takes or suffers any similar action which in the opinion of the party giving notice means that the other may be unable to pay its debts.

1.7.8.5 Once an Agreement comes into existence, the Client will be liable for costs incurred until the date of termination or expiry.

1.7.8.6 Suspension or termination of the Agreement for whatever reason shall not affect the accrued rights of the parties arising in any way out of the Agreement as at the date of suspension or termination and, in particular, but without limitation, the right to recover damages against the other.

1.7.8.7 On termination or expiry of the Agreement:

- (a) the Client shall immediately pay to BASEC all of the outstanding unpaid fees and interest and, in respect of Services supplied but for which no invoice has been submitted, BASEC may submit an invoice, which shall be payable immediately on receipt;
- (b) all clauses which are expressed or implied to continue shall continue in force.

1.7.8.8 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

1.7.9 Variation

No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

1.7.10 No partnership of agency

1.7.10.1 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

1.7.10.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

1.7.11 Assignment

Neither party shall assign, transfer, sub-contract or in any other manner make over to any third party the benefit of the Agreement, without the prior written consent of the other. The burden under the Agreement shall only be transferred under a novation agreement.

Terms and Conditions for BASEC Services**1.7.12 Third parties**

Save as expressly provided in this agreement, no term shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party (being any person other than the parties, their permitted successors and assignees).

1.7.13 Entire agreement

The Agreement embodies and sets out the entire agreement and understanding of the parties and supersedes all prior oral or written agreements understandings or arrangements relating to the subject matter of the Agreement. Neither party shall be entitled to rely on any understanding or arrangement, which is not expressly set out in the Agreement.

1.7.14 Waiver

No failure or delay on the part of either party to exercise any right or remedy under the Agreement shall be construed as or operate as a waiver nor shall any single or partial exercise of any right or remedy, as the case may be. The rights and remedies provided in these Terms are cumulative and are not exclusive of any rights or remedies provided by law.

1.7.15 Notices

1.7.15.1 A notice to be given in relation to the Agreement shall be in writing and may be delivered personally or by sending it by pre-paid first class post or fax to the intended recipient's address as set out in the Agreement or to any other address notified in writing by that party or via email to an appointed email address. A notice delivered personally shall be deemed to have been served on delivery. A notice sent by post shall be deemed to have been served at an address within the United Kingdom at the expiry of 48 hours from the date of posting and at an address outside the United Kingdom at the expiry of 72 hours from the date of posting. Where any notice is given by fax service of the same shall be deemed to be effected upon receipt of the normal confirmation of receipt. Notice given via email will be deemed to have been served when a confirmation receipt email is received.

1.7.15.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

1.7.16 Arbitration

Any dispute or difference, other than non-payment of fees set out in clause 1.7.4, arising out of or in connection with this Agreement shall be determined by the appointment of a single arbitrator to be agreed between the parties, or failing agreement within fourteen days, after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the President or a Vice President of the Chartered Institute of Arbitrators.

1.7.17 Severability

If any provision of the Agreement is held to be invalid or unenforceable such provision shall be deemed to be severed from the Agreement and the remaining provisions shall remain in force.

1.7.18 Governing law

This Agreement shall be governed by and construed in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English courts.