

ER CERTIFICATION LTD - TERMS AND CONDITIONS OF BUSINESS DEFINITIONS

ER Certification Ltd. means the certification provider (registered in England, No. 06885800) whose registered office is at 78 Borough Road, Altrincham, Cheshire, WA15 9EJ

'CLIENT' means the person, company, firm or other body which is responsible for the product certified.

'AGREEMENT' means a contract for the provision of the Certification Services as set out in the Contract Schedule or other documents such as Scheme rules, these Terms and Conditions of Business, a Fee schedule or quotation, as appropriate. The contents of the Contract Schedule may be amended, modified or supplemented from time to time in accordance with these Terms.

'USER' means the person, company, firm or other body that uses the product or system being certified.

'CERTIFICATION' means approval, registration or licensing of products.

'PRODUCT' means any manufactured item which is the subject of a certificate under any scheme or certification process issued by ER Certification Ltd.

'CERTIFICATE SCHEDULE' means a descriptive document listing any product(s) named or to be named in the Certificate.

'CONTRACT SCHEDULE' means an additional document outlining the scope of the Agreement between the ER Certification Ltd. and the Client.

'CERTIFICATE' means the document issued to the Client detailing the extent of certification issued to them by the ER Certification Ltd..

RESPONSIBILITIES OF THE CLIENT

GENERAL

The Client shall at his own expense supply ER Certification Ltd personnel with copies of all documents, materials, information and data that may affect the Certification decision and be necessary to perform the Certification service. The Client shall ensure the accuracy of all this material and insure against its accidental loss or damage. The Client shall at his own expense retain duplicate copies of all this material. ER Certification Ltd shall have no liability for any loss or damage, howsoever caused to these items. The Client shall take all necessary measures to ensure that the manufacture of the product is as approved by ER Certification Ltd and no changes which may affect the quality or performance of the product shall be made unless notice of the proposed change has been given and written authorisation obtained from ER Certification Ltd. Should the Client be or become aware of any shortfall in the performance of the product or service, howsoever caused, the Client shall inform ER Certification Ltd immediately. The Client shall permit periodic assessments and provide access to the facilities identified on certificates issued by ER Certification Ltd for the maintenance of certification. Where requested, the client should not with-hold approval for the ER Certification auditor(s) to be accompanied by an external observer, who will be compliant with our normal rules for confidentiality and prior disclosure of any conflict of interest. Permission for attendance of said observer will be normally sought in advance from the Client by ER Certification Ltd.. Where, however, that external observer attends on behalf of the United Kingdom Accreditation Service (UKAS) access shall be provided without the requirement for prior consent.

The Client shall ensure that at all times ER Certification Ltd assessors are accompanied by / have access to a representative of their organisation. The Client's representative shall operate any equipment or machinery including computer terminals to access information.

PRODUCT CERTIFICATION SCHEMES

The Client shall, where required in the scheme documents: - provide the user of the certificated products with adequate instruction for the proper siting, installation, maintenance, and operation and where required by law, disposal of the product. - provide services to ensure proper installation, inspection or maintenance for products of such nature that it would not be reasonable to expect the average user to be able to provide such installation, inspection or maintenance. - keep adequate records to demonstrate the traceability of finished products such that a product recall (if required) would be possible in a reasonable timeframe. - keep such records as are deemed necessary for the satisfactory control of the business processes defined by ER Certification Ltd either contained in the scheme document(s) or any associated documents which form part of the requirements of ER Certification. This will include but is not limited to Quality Records and Customer complaints. The Customer Complaints Register shall be fully transparent with all complaints registered by date, fully detailed with a link to original Order and Job number/s. Complaints shall be responded to within 7 days of receipt, and where appropriate, a date agreed for inspection. Remedial action, if necessary, shall be agreed and completed within 30 days, were possible. Where agreement cannot be reached an Independent Assessor shall be appointed to adjudicate and his/her findings shall be binding on both parties to the complaint. If the customer refuses to accept any form of resolution they shall be advised to seek recourse through the relevant legal authorities. A detailed record of all communication and resolution, signed off by both parties, shall be kept with the original complaint in the Complaints Register. ER Certification Ltd reserves the right to carry out follow-up off-site inspection if deemed necessary, during audit with any additional costs covered by the client.

The Client shall only use the ER Certification Ltd Mark and/or claim certification for the manufacture of products identified on current Certificates and/or schedules issued by ER Certification Ltd. The Client shall, on request, provide ER Certification Ltd with samples of approved product(s) which are representative of current production methods for re-examination or re-assessment together with a list of approved products as supplied for external/off-site checking if deemed necessary. Where external/off-site checking is deemed necessary the client shall bear all costs incurred by ER Certification in the event of noncompliances being identified. The Client shall not use its product certification in such a manner as to bring ER Certification Ltd. into disrepute. Furthermore, the Client shall not make any statement regarding its product certification that ER Certification Ltd may consider misleading or unauthorised. In the event that the Client is no longer able to conform with certification requirements they shall, without delay, inform ER Certification accordingly. Changes may include those to :- the legal, commercial, organisational status or ownership; organization and management (e.g. key managerial, decision-making or technical staff); modifications to the product or the production method; contact address and production sites; major changes to the quality management system/factory production control system..

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ER Certification Ltd

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Director W F Keating

Co Reg No. 06885800

RESPONSIBILITIES OF ER CERTIFICATION LTD

ER Certification Ltd may at any time make any changes to the Certification scheme which are necessary to comply with any applicable safety or other statutory requirements, or which are necessary to comply with the relevant standards and guidelines or which are necessary to meet the requirements of the relevant accreditation authority. ER Certification Ltd reserves the right in its sole judgement to change or revise its, criteria, methods or procedures, however, reasonable notice shall be given to Clients such that continued compliance with ER Certification Ltd requirements is practicable. ER Certification Ltd may sub-contract certification work to approved sub-contractors. An agreement shall be signed by the sub-contractor and ER Certification Ltd setting out the terms under which the Certification work is to be carried out. The sub-contractor will be entered into the Approved Sub-Contractor Register and Record Form with details kept of the WER Auditor Competence criteria and Record. The sub-contractor will observe the confidentiality rules as laid down in the ER Certification Product Certification Manual at all times. Any possible conflict of interest between the sub-contractor and the Client shall be brought to the attention of ER Certification Ltd. Where necessary, the Client's consent for the subcontractor to operate shall be obtained prior to commencement of the Certification process. ER Certification Ltd, its employees and approved sub-contractors agree to maintain as confidential and not to use or disclose to any third party any information supplied or derived from the Client in connection with the Services without the consent of the Client except where it is necessary to enable ER Certification Ltd to perform its services or where they are required to do so for legal reasons. The following shall not be subject to such restrictions: - Information which was already in the possession of ER Certification Ltd prior to its disclosure by the Client. - Information which is or shall lawfully become part of the public domain - Information which is necessary to enable ER Certification Ltd to achieve or maintain its accreditation.

CHARGES

The Client shall pay to ER Certification Ltd the charges set out in the Agreement or as advised by presentation of an ER Certification invoice for the specific work to be conducted. Payment of said charges shall be made in full to ER Certification Ltd before any certification documentation is submitted to the relevant external authority or certification issued by the ER Certification Ltd. All charges quoted to the Client for the provision of the Certification Services are exclusive of any Value Added Tax, for which the Client shall be additionally liable at the applicable rate. Our normal policy is to request that payment be made on the day of our visit, but if this is not possible all sums payable to ER Certification Ltd 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 ER Certification Ltd's invoice. If payment is not received by the due date, ER Certification Ltd may suspend or withdraw certification. If payment is not made on the due date, ER Certification Ltd shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgement) at the rate of 4% above the base rate of HSBC Bank PLC from the due date until the outstanding amount is paid in full. In the event of any non-payment of fees, ER Certification Ltd reserves the right to exercise a lien over all goods, services and reports supplied and which are subject to the non-payment and that remain separately identifiable.

VARIATIONS TO AGREEMENT

Services required beyond the Contract Schedule or Declaration will normally require written acceptance by the Client of a revised Contract Schedule or Declaration together with agreement to pay any additional charges. It is acknowledged, however, that existing clients may request such revisions verbally at short notice and agree verbally to additional charges which will be confirmed by means of an invoice from ER Certification Ltd.

SAFETY

Where ER Certification Ltd is required to access the property of the Client for the purposes of carrying out Certification Services then the Client shall provide unhindered access together with all relevant working facilities required by ER Certification Ltd and shall provide safe access and a safe working environment which complies with all health and safety law requirements. The Client shall make a full and immediate written disclosure to ER Certification Ltd of all relevant information concerning any defect in or potential hazards of the product being submitted hereunder.

OWNERSHIP & COPYRIGHT

The copyright and ownership of the Certificate and any Certificate Schedules remains vested in ER Certification Ltd. The use of all marks, logos, Certificates, Certificate Schedules and the ER Certification Ltd name must not extend either outside of the Agreement or beyond any termination date and all existing references must be removed (to include but not limited to; vehicle markings, publicity materials, websites, letter heads flyers). All Certificates & Certificate Schedules remain the property of ER Certification Ltd. and must be returned to ER Certification Ltd or destroyed (proof required) upon request or at termination of the Agreement. Authority to reproduce logos, Marks, Certificate Schedules and Certificates must be sought in advance and will not be unreasonably withheld. Use of the CMS Mark, its positioning and size, is the subject of additional documentation dependent on the type of product being Certificated and will be provided separately as appropriate. Where the Client wishes to provide copies of the Certification documents, including but not limited to Certificates and Schedules, to others the documents shall be reproduced in their entirety unless otherwise approved by ER Certification Ltd. In the event that the Client wishes to reproduce logos and certificates which include UKAS logos relating to the accreditation of ER Certification Ltd schemes by UKAS, the Client shall ensure that they satisfy current conditions for the usage of UKAS logos, as available from the UKAS website.

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TERMINATION AND SUSPENSION ER Certification shall monitor the use of all marks, logos, Certificates, certificate Schedules and the use of its name at time of audit or more frequently if deemed necessary. Any breach of or misuse will be dealt with appropriately. Minor breaches shall result in the issue of a nonconformity notice requiring the issue to be resolved within 14 days with evidence being provided for checking of compliance. Additional monitoring visits at additional cost may, at the discretion of ER Certification Ltd., may be arranged if these are deemed necessary to ensure compliance.

More serious non-compliances will result in immediate suspension of the client from the relevant scheme, and the Client will be notified accordingly in writing. The suspension will only be lifted upon ER Certification Ltd being satisfied that the non-compliance(s) has been fully resolved. Additional monitoring visits at additional cost will normally be conducted by ER Certification Ltd. in order to ensure that the noncompliance issue(s) have been fully resolved.

It is anticipated that suspension duration will be limited to a maximum of 6 months, unless there are mitigating circumstances outside the control of the Client and ER Certification Ltd. has agreed to take these into account. In the event of non-resolution after a period of 6 months suspension, the certification agreement shall be terminated by ER Certification Ltd.. Recertification will require a new application to be made by the Client, with a subsequent audit being conducted prior to issue of certification.

Non-compliances generally fall into the following categories: unsatisfactory performance, unsatisfactory results in meeting requirements of re-examination, unsatisfactory quality system, or where fraud, deception or misleading information has been supplied by the Client or for violation of any part of this Agreement or non-conformance with any part of this Agreement. Failure to comply will result in the Agreement being terminated immediately by ER Certification Ltd. Any certificate or licence or listing issued under this Agreement shall immediately cease to be valid and the continued use of it by the Client will be deemed to be a fraudulent offence. Formal notice of termination will be issued in writing by ER Certification Ltd., together with details of reason(s) for termination and all relevant bodies will be informed as necessary. The client shall bear all costs relating to additional visits, assessment, and related costs incurred by ER Certification during this process.

ER Certification Ltd shall not be required to fulfil its duties and obligations under the Agreement, and the provisions of this clause shall not apply, if at any time ER Certification Ltd is prevented from fulfilling its duties and obligations by any acts or omissions of the Client or the Client's personnel, provided always that in order to avail itself of this provision ER Certification Ltd must give written notice to the Client of any such act or omission of the Client within 72 hours of the occurrence of such act or omission. Either party may terminate the Agreement forthwith by notice in writing to the other if the other: - Commits a Breach of the Agreement which in the case of a breach capable of remedy shall not have been remedied within 14 days of the receipt by the other of a notice from the innocent party identifying the Breach and requiring its remedy; - 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 Client 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.

WARRANTIES AND LIABILITY ER Certification Ltd 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. Except in respect of death or personal injury caused by ER Certification Ltd's negligence, or as expressly provided in these Terms, ER Certification Ltd shall not be liable to the Client by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of ER Certification Ltd, its servants or agents or otherwise) which arise out of or in connection with the provision of the Certification Services or their use by the Client and the entire liability of ER Certification Ltd under or in connection with the Agreement shall not exceed the amount which has actually been paid by the Client to ER Certification Ltd for the provision of the its services, except as expressly provided in these Terms. ER Certification Ltd shall not be liable to the Client or be deemed to be in Breach of the Agreement by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Contract Schedule or Declaration, if the delay or failure was due to any fire or explosion, the loss of or damage to any products or materials in the course of carrying out any investigations or tests on them or any cause beyond ER Certification Ltd's reasonable control. ER Certification Ltd does not imply or express any warranty of any kind with respect to the Client's product. ER Certification assumes no responsibility for defects, failure in service or patent infringement. ER Certification Ltd shall have no liability to the Client for loss, damage, costs, expenses or other claims for compensation arising from provision of non-conforming product for whatever reason. ER Certification Ltd provides Certification of products as "fit for purpose" in its opinion using relevant standards and guidelines or which are necessary to meet the requirements of the relevant accreditation authority. Whilst in our opinion a Product complies with these documents and every reasonable effort is made to ensure that it satisfies these documents, no absolute guarantee can be given as to the ultimate acceptability of the products or Certificates to any Regulatory Body whose approval may be required by the Client. The Client agrees to indemnify ER Certification Ltd against any losses suffered by or claims made against ER Certification Ltd as a result of misuse by the Client of any approval or licence granted by ER Certification Ltd under this Agreement.

ASSIGNMENT Neither party shall assign, transfer, sub-contract or in any other manner make over to any third party the benefit and/or burden of the Agreement without the prior written consent of the other.

ENTIRE AGREEMENT The Agreement embodies and sets forth 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 forth in the Agreement.

GOVERNING LAW The Agreement shall be governed by and construed in accordance with English Law.

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