

GENERAL CONDITIONS OF TESTING

STC(shanghai) company Limited., (the "SHSTC"), while reserving the right to decline, without giving any reason whatsoever, any request for the undertaking of a test or investigation, will carry out at the request of the clients the required test or investigation subject always to the following conditions:-

1. The SHSTC only acts for the person or body originating the instructions (the "Clients"). No other party is entitled to give instructions, particularly on the scope of testing or delivery of report or certificate, unless authorized by the Clients.
2. All materials, equipment and other property to be tested or investigated shall be delivered at the costs of the Clients and in accordance with the requirements of the SHSTC. At the conclusion of the test or investigation, the Clients shall, if required by the SHSTC, collect the materials or equipment. In any event, if the materials or equipment are not collected by the Clients within 60 days from the issuance date of the test report, the SHSTC may at its discretion dispose of the same without any compensation to the Clients.
3. The Clients shall always comply with the following before or during the SHSTC providing its services:-
 - (a) giving timely instructions and adequate information to enable the SHSTC to perform the services effectively;
 - (b) supply, when requested by the SHSTC, any equipment and personnel for the performance of the services;
 - (c) take all necessary steps to eliminate or remedy any obstruction in the performance of the services;
 - (d) inform the SHSTC in advance of any hazards or dangers, actual or potential, associated with any order of samples or testing;
 - (e) provide all necessary access for the SHSTC's representative to enable the required services to be performed effectively;
 - (f) ensure all essential steps are taken for safety of working conditions, sites and installations during the performance of services;
 - (g) fully discharge all its liabilities under any contract like sales contract with a third party, whether or not a report or certificate has been issued by the SHSTC, failing which the SHSTC shall be under no obligation to the Clients.
4. Subject to the SHSTC's accepting the Client's instructions, the SHSTC will issue reports and certificates which reflect statements of opinion made with due care within the scope of instructions but the SHSTC is not obliged to report upon any facts outside the instructions.
5. The SHSTC is irrevocably authorized by the Clients to deliver at its discretion the report or the certificate to any third party when instructed by the Clients or where it implicitly follows from circumstances, trade custom, usage or practice as determined by the SHSTC.
6. A test report will be issued in confidence to the Clients and it will be strictly treated as such by the SHSTC. It may not be reproduced either in its entirety or in part and it may not be used for advertising or other unauthorized purposes without the written consent of the SHSTC. The Clients to whom the Report is issued may, however, show or send it, or a certified copy thereof prepared by the SHSTC, to his customer, supplier or other persons directly concerned. Subject to Clause 7, the SHSTC will, without the consent of the Clients, neither enter into any discussion or correspondence with nor disclose to any third party concerning the contents of the report unless required by the relevant governmental authorities, laws or court orders.
7. The SHSTC shall be at liberty to disclose the testing-related documents and/or files anytime to any third party accreditation and/or recognition bodies for audit or other related purposes unless disagreed with by the Clients in writing at the time of them submitting the applications. No liabilities whatsoever shall attach to the SHSTC's act of disclosure.
8. Applicants wishing to use the SHSTC's reports in court proceedings or arbitration shall inform the SHSTC to that effect prior to submitting the sample for testing.
9. The report will refer only to the sample tested and will not apply to the bulk, unless the sampling has been carried out by the SHSTC and is stated as such in the Report.
10. Any documents containing engagements between the Clients and third parties like contracts of sale, letters of credit, bills of lading, etc. are regarded as information for the SHSTC only and do not affect the scope of the services or the obligations accepted by the SHSTC.
11. If the Clients do not specify the methods / standards to be applied, the SHSTC will choose the appropriate ones and further information regarding the methods can be obtained by direct contact with the SHSTC.
12. No liability shall be incurred by and no claim shall be made against the SHSTC or its servants, agents, employees or independent contractors in respect of any loss or damage to any such materials, equipment and property occurring whilst at the SHSTC or any work places in which the testing is carried out, or in the course of transit to or from the SHSTC or the said work places, whether or not resulting from any acts, neglect or default on the part of any such servants, agents, employees or independent contractors of the SHSTC.
13. The SHSTC will not be liable, or accept responsibility for any loss or damage whatsoever arising from the use of information contained in any of its reports or in any communication whatsoever about its said tests or investigations.
14. Subject to Clauses 12 and 13, the total liability of the SHSTC in respect of any claim of loss, damage or expense of whatsoever nature shall not exceed a total sum equal to five times the amount of the service fee payable in respect of the services directly related to such claim, and the SHSTC's liability shall not include any indirect, special or consequential loss of the Clients.
15. In the event of the SHSTC prevented by any cause outside the SHSTC's control from performing any service for which an order has been given or an agreement made, the Clients shall pay to the SHSTC:-
 - i) the amount of all abortive expenditure actually made or incurred; and
 - ii) a proportion of the agreed fee or commission equal to the proportion (if any) of the service actually carried out by the SHSTC.
and the SHSTC shall be relieved of all responsibility whatsoever for the partial or total non-performance of the required service.
16. The SHSTC shall be discharged from all liability for all claims for loss, damage or expense unless suit is brought within one calendar year after the date of the performance by the SHSTC of the service relating to the claim or in the event of any alleged non-performance within one year of the date when such service should have been completed.
17. The Clients acknowledge that the SHSTC does not, either by entering into a contract or by performing service, assume or undertake to discharge any duty of the Clients to any other persons. The SHSTC is neither an insurer nor a guarantor and disclaims all liability in such capacity.
18. The Clients shall hold harmless and indemnify the SHSTC and its officers, employees, agents or independent contractors against all claims made by any third party for loss, damage or expense of whatsoever nature including reasonable legal expenses relating to the performance or non-performance of any services to the extent that the aggregate of any such claims relating to any one service exceed the limits mentioned in Clause 14.
19. In the event of improper use of the report, the SHSTC reserves the right to withdraw it, and to adopt any other measures which may be appropriate.
20. Samples submitted for testing are accepted on the understanding that the report issued cannot form the basis of, or be the instrument for, legal action against the SHSTC.
21. Samples are deposited with and accepted by the SHSTC on the basis that either they are insured by the Clients or the Clients assumes entire responsibility for loss through fire, theft, burglary or for damages arising in the course of analysis or handling, without recourse whatsoever to the SHSTC or its servants, agent, employees or independent contractors.
22. If the requirements of the Clients require the analysis of samples by the Clients or any third party's laboratory, the SHSTC will only convey the result of the analysis without responsibility for its accuracy. If the SHSTC is only able to witness an analysis by the Clients or any third party's laboratory the SHSTC will only confirm that the correct sample has been analyzed without responsibility for the accuracy of any analysis or results.
23. In the event of any unforeseen additional time or costs being incurred in the course of carrying out any of its services, the SHSTC shall be entitled to charge the Clients additional fees to reflect the additional time and costs incurred.
24. All rights (including but not limited to copyright) in any reports, certificates or other materials produced by the SHSTC in the course of providing its services shall remain vested in the SHSTC.
25. The Clients shall punctually pay on the date of invoice or within such other period agreed in writing by the SHSTC all charges rendered by the SHSTC or interest will become due at the rate of three per cent per month from the date of invoice until actual payment. The Clients are also responsible for settling all the SHSTC's costs of collecting the charges owed, including legal fees.
26. Test results may be transmitted by electronic means at the Clients request. However, it should be noted that electronic transmission cannot guarantee the information contained will not be lost, delayed or intercepted by third party. The SHSTC is not liable for any disclosure, error or omission in the content of such messages as a result of electronic transmission.
27. If necessary, the SHSTC may subcontract part of or all tests to competent subcontractors. If no objection is raised at the time of the Clients submitting the application, the SHSTC shall assume the Client's approval.
28. The SHSTC reserves the right to include Special Conditions in addition to the foregoing General Conditions if warranted by the particular circumstances of the required test or investigation [this clause is only effective when the other party has been informed].
29. The foregoing General Conditions shall be governed and construed according to laws of People's of republic of China. Any dispute shall be conclusively settled under rules of arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. Unless otherwise agreed, the arbitration shall take place in Shanghai.