Terms and Conditions

Key facts

These key facts are intended to provide a brief overview of these terms and conditions and are not intended to replace them in any way.

You agree to:

- Abide by these terms and conditions and applicable scheme documents and certification requirements
- Pay the appropriate certification fees and charges for the services as and when requested.
- Provide examples of your systems, processes, procedures and work activities for assessment
- Promote the certification schemes and not bring them into disrepute

We will:

- Provide non discriminatory assessment and certification activities.
- Undertake assessments of your activities and as defined in the applicable scheme documents and certification requirements
- Provide certificates and promote your certificated services on our websites where we are satisfied that you have met all of the applicable certification requirements.

1. INTERPRETATION

1.1 In these Terms

'We', 'us' or 'our' refer to ECA Certification Limited, (registered in England, No. 06418028) whose registered office is at ESCA House, 34 Palace Court, London, W2 4HY.

'You' or 'your' means the person, company, firm or other body which is responsible for the Work, Certified or where the context allows, an applicant wanting to be certified by us.

'Work' means the assessed activities that are included on a certificate as the scope of certification. Assessed activities may include some or all of the following: design, installation, set to work, commissioning, inspection, testing, handover and maintenance.

'Scheme' means any certification scheme offered by us to which you have applied.

'Agreement' means the contract for the provision of the Certification Services (normally consisting of a completed application, a scheme document, these Terms, a publication setting out the use of the appropriate Certification Mark(s), PN 100 "Complaints and Appeals Procedure" and a Fee sheet), as amended, modified or supplemented from time to time in accordance with these Terms.

'User' means the person, firm, company or other body that uses the Work Certified.

'Certification' means assessment, approval, registration, initial or annual listing or recognition of Work and 'Certification Services' and 'Certified' shall be construed accordingly.

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

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.

2. YOUR RESPONSIBILITIES

2.1 You shall at your own expense supply 'Us' with copies of all documents, materials, information and data necessary to perform the Certification Services translated into English if necessary. You shall ensure the accuracy of all this material and insure against its accidental loss or damage and at your own expense retain duplicate copies of all this material. We shall have no liability for any such loss or damage, however caused, including due to negligence.

2.2 You shall provide Work as Certified by us and no changes which may affect the quality or performance of the Work shall be made unless notice of the proposed change has been given and written authorisation obtained from us.

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2.3 Should you become aware of any shortfall in the performance of Work, howsoever caused, the you must inform us immediately and shall take all steps we shall reasonably require to rectify such shortfall as soon as reasonably practicable.

2.4 You shall not use certification in such a manner as to bring us into disrepute and not make any statement regarding certification which we may consider misleading or unauthorised including the use of certificates or reports or any part thereof.

2.5 Where required by the Agreement you shall permit periodic assessments and provide access to the facilities identified on certificates issued us for the maintenance of Certification.

2.6 Where required by us you shall provide examples of relevant completed or work in progress for us to assess and access to this work.

2.7 You shall ensure that our assessors are accompanied at all times by a representative of your Company. Your representative shall operate any equipment or machinery including computer terminals to access information.

2.8 You shall maintain a record of complaints, failures and remedial actions taken.

2.9 You shall notify us of any changes to your contact details or legal entity immediately and within 7 days of the change.

2.9 You may only use appropriate Certification Mark(s) and/or claim Certification for the provision of Work identified on valid certificates issued by us and as set out in the appropriate publication on the use of the Certification Mark(s). You may only use the appropriate Certification Mark whilst you maintain a current certificate from us and will cease using and will remove or obliterate any Mark or claim or certification and recognition if your certificate is suspended or withdrawn or if the mark is amended or changed.

3. OUR RIGHTS AND RESPONSIBILITIES

We may appoint a third party to perform parts of the certification services including assessment activities and collection of fees.

3.1 We will take notice of information received from third parties about Applicants. Any such information will be considered and could result in applications being declined or terminated.

3.2 We will only grant Certification when you have demonstrated compliance with all requirements. We 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 you shall comply with such changes as soon as reasonably practicable after notification of such changes.

3.3 We will inform you of any partial and full re-assessments that are required to achieve or maintain certification. At the initial assessment stage prior to certification you will be granted one further opportunity for assessment (partial or full re-assessment) subject to receipt of payment for additional assessment as detailed in the appropriate scheme fee sheet. If after such a re-assessment certification cannot be granted, then the application will automatically terminate and the applicant will be informed that a further full application including payment of application and assessment fees will be required before any further assessment work is conducted.

3.4 We reserve the right in its sole judgement to change or revise its standards, criteria, methods or procedures, however reasonable notice will be given to you such that continued conformance with our requirements is practicable.

3.5 We reserve the right to change our Company name, certification descriptors, brands, certification marks and logos at our sole discretion and will not be liable for any costs incurred by you to change websites, printed materials, sign writing on vehicles or any other use or reference to these certification details.

3.6 We, our employees and agents agree to maintain as confidential and not to use or disclose to any third party any information derived from you in connection with the Certification Services without your consent except where it is necessary to enable us to perform our services.

The following shall not be subject to such restrictions:

3.6.1 Information which was already in the our possession prior to its disclosure by you or which subsequently comes into our possession free from any obligation of confidentiality; or

3.6.2 Information which has been independently developed by us; or

3.6.3 Information which is or shall lawfully become part of the public domain; or

3.6.4 Information which is necessary to enable us to achieve or maintain approval and/ or accreditation.

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3.6.5 Information which is required to be disclosed by law. Note in this case we will provide you with details of information provided as permitted by the law.

4. CHARGES

4.1 You agree to pay us the charges set out in the appropriate Fee sheet.

4.2 All sums payable to us and / or collected by a nominated third party on our behalf shall be paid by you including any applicable Value Added Tax, and without any set-off or other deduction, prior to any certification services being performed. If payment is not received by the due date, we may refuse to perform certification services and / or suspend or withdraw Certification previously granted.

4.3 **Withdrawal from the scheme and refund policy**

If you voluntarily withdraw from the Scheme the following refund policy will apply:

- more than 21 days prior to an agreed assessment date, all fees paid for work not yet carried out will be refunded.
- less than 21 days prior to an agreed assessment date, then 50% of all fees paid for work not yet carried out will be refunded.

4.4 **Visit cancellation and re-arrangement policy**

Where an arranged visit is cancelled within 21 days of the agreed visit date, an additional fee will be charged (see appropriate scheme fee sheet for details). No additional fees or charges will be payable if a visit is cancelled more than 21 days in advance of an agreed visit date

5. SAFETY

5.1 Where we are required to access your property for the purposes of carrying out the Certification Services then you shall provide unhindered access together with all relevant working facilities required by us and shall provide safe access and a safe working environment which complies with all health and safety law requirements.

6. WARRANTIES AND LIABILITY

6.1 We warrant to you that the Certification Services will be undertaken using reasonable care and skill.

6.2 We shall have no liability to you for any loss, damage, costs, expenses or other claims for compensation arising from any material or instructions supplied by you 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 which is yours.

6.3 Except in respect of death or personal injury caused by our negligence, or as expressly provided in these Terms, We shall not be liable to you by reason of any representation, or any implied warranty, condition or other term, or any duty at common law or under statute, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of us, our servants or agents or otherwise) which arise out of or in connection with the provision of the Certification Services or their use by you and our entire liability under or in connection with the Agreement shall not exceed the amount which you have actually paid to us for the provision of the Certification Services

6.4 Except in respect of death or personal injury, you will look only to us (and not to any individual engaged by us, including any directors of ECA Certification) for redress if you consider that there has been any breach of this Agreement. You agree 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 us in carrying out its obligation under the Agreement at any time, whether named expressly in the Agreement or not.

6.5 We shall use reasonable endeavours to meet the timescales set out in the Agreement and shall not be liable for any losses arising from any delay.

6.6 We do not imply or express any warranty of any kind with respect to your Work, and we assume no responsibility for defects, failure in service or infringement of patents, trademarks or brands.

6.7 You agree to indemnify us against any losses suffered by or claims made against us as a result of any breach by you of the Agreement including, but not limited to, misuse by you of any Certification granted by us under this Agreement.

7. SUSPENSION OR TERMINATION

7.1 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.

7.2 Either party may terminate this Agreement by giving 90 days notice in writing to the other.

7.3 We may immediately terminate an application under condition 3.4 or may immediately suspend any Certification granted or terminate the Agreement due to unsatisfactory performance, unsatisfactory results in meeting the requirements of re-examination, unsatisfactory quality system or non-conformance with any part of this Agreement

7.4 Either party may terminate the Agreement forthwith by notice in writing to the other if the other:

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7.4.1 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;

7.4.2 is unable to pay its debts or enters into compulsory or voluntary liquidation 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.

7.5 Once you have accepted the Agreement, you will be liable for costs incurred and committed until the date of termination.

7.6 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. The provisions of sub-clauses 2.9, 3.4, 6.2, 6.3, 6.4, 6.6, 6.7, 7.6, 7.7 and 14 shall survive any termination

7.7 On suspension or termination of the Agreement, however caused, we reserve the right to publish notice of this suspension or termination and the reason(s) for suspension or termination and share this information with others.

8. ASSIGNMENT

Certificates remain our property. 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 this Agreement shall only be transferred under a novation agreement.

9. 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).

10. 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.

11. WAIVER

No failure or delay on the part of either party hereto to exercise any right or remedy under this Agreement or any single or partial exercise of any such right or remedy shall be construed or shall operate as a waiver thereof.

12 NOTICES

Any notice to be given hereunder shall be in writing and may be delivered personally or by sending it by pre-paid first class post or by facsimile to the intended recipient's address given herein or to any other address supplied with reference to and in accordance with this clause to the other party hereto at their address for the purpose of service under the Agreement. 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. A notice delivered by facsimile shall be deemed to have been served upon receipt of the normal confirmation of receipt or, if that is out of normal business hours of the recipient, on the next business day.

13. 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.

14. 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.

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