

Terms and Conditions

1 General

1.1 Nemko AS and its subsidiaries (hereinafter called “the Company”) are enterprises which provide various services to its Clients.

1.2 These General Terms and Conditions (hereinafter called “the Terms”) shall apply to all services provided by the Company to the Client unless specifically agreed otherwise in writing. For tasks involving certification, the Terms will be supplemented by Special Conditions which will be attached to the Terms. Deviations from the Terms must be confirmed by the Company in the Order Confirmation to be valid. The Company has the right to change the Terms. Any changes to the Terms shall take effect upon 30 days’ written notice to the Client.

The Contractual Performance of Services

2.1 The Company shall, with reasonable care, skill and diligence, supply the services in compliance with

a) the Client’s special instructions as confirmed by the Company in writing, cf. Clause 2.2 below. recognized technical standards, trade customs, usages and practices, unless other specification is specifically agreed upon in writing,

a) such methods as the Company shall deem suitable on technical and/or financial grounds,

b) applicable statutes, codes, laws and regulations.

2.2 The scope of the Contractual Performance by the Company shall be defined in writing on placement of order. The Company shall bear no responsibility for the correctness of the guidelines and standards on which services have been based.

2.3 The Client shall, free of all costs, provide the Company with all information, documentation, test sample(s), extra components etc. required to enable the Company to perform the services. The Company shall not be liable for any incorrect advice, judgment, recommendation, findings, decision or conduct based upon any inaccurate or incomplete information supplied by the Client. The Company is under no obligation to refer to or report upon any facts or circumstances which are outside the specific agreed scope of the Contractual Performance and accepts no liability in respect of the same.

2.4 The Company undertakes no responsibility whatsoever for damages that might occur to the test sample(s), components etc. during testing, storage or transport. The Client shall maintain at its own cost all applicable insurance policies covering all submitted material. Test samples not collected within four weeks from the Company dispatching a Return Notice will be discarded at the Client’s cost. The same applies if none of the boxes of the Application Form for “Test discarded at the Client’s cost. The same applies if none of the boxes of the Application Form for “Test sample(s) after examination” are ticked off.

3 Deadlines and Compensation for delayed performance

3.1 The Company shall provide the Client with a suggested time schedule and assessment plan. The time schedule shall be deemed as approximate, and shall be binding only if this has been explicitly agreed upon in writing.

3.2 If the Company exceeds a binding deadline for the Contractual Performance for more than 30 days caused by reasons for which the Company is solely responsible, the Client shall have the right to claim liquidated damages. The liquidated damages shall amount to 1 % of the total value of the order for each full week of delayed performance up to a total of 10 % of the total value of the order. Any further claims for damages shall be governed by the provisions set out in Section 8 “Liability”.

4 Safety, Health and Environment (SHE)

4.1 The Client shall inform the Company of any real or potential SHE hazard which may be relevant or involved or introduced in the Contractual Performance and/or any necessary safety measures required for the Contractual Performance, prior to or during the performance of the Contractual Performance.

4.2 Whenever the Company undertakes to work on site, the Client shall provide all adequate safety measures to ensure a working environment that is safe and in accordance with any relevant legislation and to ensure that the risk that cannot be eliminated are controlled at a tolerated level.

4.3 Any Client requirements specifying participation in screening programs shall be communicated to the Company and the Company’s employees prior to commencement of work.

5 Variation orders

Terms and Conditions

5.1 The Client is entitled to request additional work. All variation order requests shall be in writing, clearly defining the variation required (hereinafter referred to as Variation Order).

5.2 No Variation Order shall be implemented before the Parties reach an agreement regarding the extent, the remuneration, and the revised time schedule.

6 Duration and Termination

6.1 The Terms shall remain in force and effect until terminated by any one of the parties, upon 30 days written notice.

6.2 If the Client terminates the order, the Client shall, in addition to any payment due to the Company for work already delivered by the Company, make payment for all direct costs and expenses reasonably incurred on part of the Company relating to the terminated part of the work.

6.3 The Company shall have the right to terminate the order and these Terms with immediate effect if the Client is in material breach of its obligations hereunder, if the Client goes bankrupt or if the Client enters into liquidation proceedings. It shall be considered a material breach if the Client fails to pay within 30 days after the due date of an invoice.

7 Warranty

7.1 Warranty by the Company does only cover the explicitly commissioned Contractual Performance of services stated in Section 2 above.

7.2 Any warranty given by the Company shall initially be restricted to a supplementary performance to be completed within a reasonable time limit. If such supplementary performance fail (i.e. be impossible, be unjustifiably refused or delayed by the Company), the Client is entitled to a reductions of the price or rescission of the order.

7.3 The Client shall lose its right to invoke a warranty claim if it fails to report the warranty claim without undue delay to the Company after it has or ought to have discovered the basis for the warranty claim.

7.4 A warranty claim shall in any case be time-barred after one year following the delivery of the Contractual Performance.

8 Liability and Indemnification

8.1 Except for gross negligent or willful acts or omissions on part of the Company, the Company, its affiliated entities, the Companies subcontractors, their respective agents, and employees thereof shall not be liable for any indirect loss or damages, claims or liabilities that may be suffered by the Client arising from or related to the performance of the order.

8.2 The total aggregate liability of the Company shall under no circumstances exceed two times the amount of fees paid by the Client to the Company for the Contractual Performance of the order. Claims with regard to any defects are limited to one year after the completion of the Contractual Performance.

8.3 The Client shall maintain at its own cost all applicable insurance policies with a reputable insurance company to cover any potential loss or damages which the Client may have to the Company in connection with the order. Notwithstanding the above Clauses the Client shall use the insurance in its full scope before any compensation can be claimed from the Company.

8.4 The Client shall guarantee, hold harmless and indemnify the Company against all claims, suits and liabilities made by any third party for loss, damage or expense of whatsoever nature and howsoever arising relating to the performance of the order.

9 Force Majeure

9.1 Delay in or failure of performance of the Company shall not constitute a default or give rise to any claim for damage if and to the extent such delay or failure is caused by any event beyond the control of the Company which the Company had no reasonably way of preventing or grounds to anticipate, including but not limited to an act of war, natural disaster, fire, explosion, labor dispute or other typical Force Majeure events.

9.2 In the event of the Company being prevented for any reason beyond its control, including events of Force Majeure, for performing or completing the services, the Client agrees;

a) to reimburse the Company for any expenditures actually made or incurred,

b) to pay the proportion of fees due for the services which have been actually carried out and to release the Company from all responsibility for partial or total non-performance.

Terms and Conditions

10 Subcontracting and Assignment

10.1 The Company shall have the right to transfer, assign or subcontract all or parts of its duties under the order to any of its sister companies or subsidiaries, or any other competent contractor.

10.2 The Client may only transfer or assign its rights under the order with the prior written consent of the Company.

11 Foreign Assignments

11.1 For orders received by the Company for assignments outside of its country, the Company shall have the option to forward the order on behalf of the Client to the appropriate foreign based associated Company or correspondent which will be solely and fully responsible for all matters in connection with the order received, including directly acting for and reporting to the Client.

11.2 As a condition of the Company forwarding such assignment on the Client's behalf, it is understood that the forwarding Company will act as an agent only on behalf of the Client and shall bear no responsibility with regard to the services rendered by the Company or correspondent to whom the assignment is forwarded. This Agreement shall be applicable as between the Client and the Company or correspondent to whom the assignment is forwarded.

12 Prices and Payment

12.1 Unless a fixed price or other calculation bases has been agreed upon, the Client shall pay the Company for the services in accordance with the at all times current Company prices. The prices shall be subject to VAT (value added tax) and/or other taxes at the applicable statutory rate.

12.2 If the Company requires any specialized equipment which it must rent or hire to enable it to provide the services, the Company may charge the Client an amount equal to the cost of the hire or rental plus fifteen per cent.

12.3 Payment shall take place in accordance with invoices and their terms of payment. The Company may require payment in advance. If the Company has required payment in advance, the balance will be settled upon completion of the order.

12.4 Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Company on the due date, the Company may;

- a) charge interest on such sum from the due date of payment at the monthly rate of 1,5 %, accruing on a daily basis and being compounded monthly until payment is made, and
- b) suspend all services until payment has been made in full. Notwithstanding any such suspension of the services, the Client shall pay the Company for all rendered services by the Company up to the date of suspension, plus all interest and suspension costs and expenses incurred by the Company. The Client shall reimburse the Company for all costs and expenses of collection of the invoiced amount, including reasonable legal fees.

12.5 If the Client has any objections to the invoice, such objections must be made in writing to the Company within 14 days after receipt. The Client accepts that objections to the invoice raised later than 14 days are considered time-barred. The Client is not entitled to offset any amount owed to the Company against amounts owed to the Client.

13 Confidentiality

13.1 Both parties agree to treat as confidential any information provided by the other party and use such information only for the purposes of the order. The Company shall have the right to copy and file any written documents submitted for perusal which are important or necessary for the Contractual Performance of the Terms.

13.2 Both parties agree to give its employees and others access to such information only on a need to know basis and shall not transfer, publish, disclose or otherwise make available such information or any portion thereof to any third party without the other party's prior written consent unless such information is:

- a) known prior to the information being disclosed by the other party,
- b) part of a the public domain at the time of disclosure, or
- c) required to be disclosed by public authorities in accordance with applicable law.

13.3 This confidentiality Section shall apply notwithstanding the completion of the order or termination of the Terms.

Terms and Conditions

14 Intellectual property rights

14.1 In as far as expert opinions, test results, calculations and the like that are protected by copyright are prepared within the scope of the Contractual Performance, the Company shall grant the Client a simple, non-transferable right of use, dependent on whether this is required by the underlying purpose of the order.

14.2 The transfer of copyright shall not include the transfer of any other rights. The Client shall not be entitled to change (e.g. process) or use expert opinions, test results, calculations and the like outside its business.

14.3 If there is a change of control in the Client's company, the rights granted to the Client in Clause 14.1 above shall apply only with the prior written consent of the Company. Change of control shall mean any sale, lease, exchange or other transfer (in one transaction or a series of transactions) of all or substantially all of the assets of the Client.

15 Severability

15.1 If any Clause or Section in the Terms, or any part thereof, is deemed unenforceable under mandatory law, then said Clause or Section, or part thereof, shall to the extent necessary be considered void and all other terms, conditions or Sections shall have the same effect as if the voided Clause or Section, or part thereof, had not existed.

16 Disputes and Applicable law

16.1 The Terms shall be interpreted as though prepared by the parties and shall not be construed unfavourably against either party.

16.2 Any dispute arising in relation to or as a consequence of the Terms, which cannot be settled amicably through negotiations between the Parties, shall be governed by and construed in accordance with the laws of the actual place of business of the Company that invoices the Client for services, without regard to any conflict-of-law rule or principal that would give effect to the laws of another jurisdiction.

System Certification

1 Certification holder's obligations and rights

1.1 Certification phase

- The management system must be documented and implemented, and have been in operation for at least 3 months.
- Internal audits must be able to document its effectiveness.
- At least one management review must have been completed and document the management system's effectiveness.
- The required copies of the description of the system and relevant procedures must be in Nemko AS's hands no later than 4 weeks before the audit. This requirement can be deviated from when the parties agree to this.
- One person from the management team should act as the contact person during certification.
- Key personnel must be available during the audit.
- Information about all relevant matters should be provided in connection with the certification.
- Nemko AS must be given access to premises and sites where work that falls within the scope of the certification is carried out.
- All relevant safety equipment must be made available to the auditors where the enterprise finds this necessary.
- If an audit has to be terminated during the audit, due to gross negligence by the client, Nemko has the right to invoice parts or the whole cost for the audit.
- If Norwegian Accreditation decides to observe Nemko AS in an audit, they shall be given access to the certificates holders premises.

1.2 While the certification is valid

- The management system must be in operation and documented.
- Nemko AS must be informed about any changes to the system that could necessitate a new compliance verification process.
- Nemko AS must be informed if the certification holder is taken over by another enterprise, in the event of a change of ownership, or if the certified area is wound up.

Terms and Conditions

- The certificate must only be utilised in accordance with its stated validity and invalid certificates must be withdrawn immediately.

- A record must be kept of all customer complaints regarding the certified system.

1.3 Certification holder's rights

- The certification holder has the right to object to Nemko's choice of auditing personnel.

- The certification holder is entitled to use the certification body's and IQNet's logos in their activities, though not as labels on products or packaging material.

- Comprehensive guidelines regarding the use of logos will be provided upon the issuing of a certificate.

- If Nemko AS is wound up or goes bankrupt, certification holders are entitled, without a continued duty to provide information, to select another certification company.

2 Certification body's obligations and rights

2.1 Nemko AS's obligations

- Nemko AS shall:

- conduct professional audits/validations in accordance with its own quality system,

- only use audit managers who satisfy the requirements stated in its own quality system and the expert personnel/environmental specialists that are utilised must have relevant experience from the branches the employers represent,

- carry out audits pursuant to the agreed timetable,

- submit an audit report within 14 working days after the concluding meeting,

- immediately provide information about the results of audits and changes related to certification.

- treat all information confidentiality,

- only utilise auditors who have signed valid secrecy declarations,

- only utilise impartial auditors who are accepted by the client,

- inform the employer/certification holder if Nemko AS is taken over by another enterprise, in the event of a change of ownership, if the relevant accreditation is wound up or lost, or if Nemko Certification is wound up or goes bankrupt.

2.2 Nemko AS's rights

If the certification holder:

- neglects to rectify demonstrated deficiencies within the correct period,

- conceals significant changes to the management system or provides false information during audits,

- misuses the certificate,

- does not pay the agreed amount at the right time, or

- goes bankrupt or winds up the enterprise,

Nemko AS can initiate the following measures regardless of the nature of the breach of agreement:

- reduce the scope of the certificate.

- suspend the certificate.

- withdraw the certificate.

A reduction in the scope of the certificate can, for example, involve a unit/department or a work process being removed from the scope of the certification.

If the certificate holder terminates the agreement during the contract period, the validity of the certificate(s) will end 60 days from the termination date.

Suspension means that the certificate is temporarily withdrawn, but the enterprise retains its certificate number and period of validity. Suspensions occur for reasons of a more extensive nature than that which is the case in the event of a reduction of scope, but does not indicate that the certificate is being withdrawn in its entirety. For example, suspensions can be initiated in the event of larger reorganisations or other circumstances relating to the management system. The duration of the suspension can be up to 6 – six – months, after which the certificates will be withdrawn.

Withdrawal can take place with immediate effect if it is discovered that the certification holder is not fulfilling the requirements and provisions upon which the certification was based. In the event of suspension and withdrawal all reference to the certificate must be removed from letterheads, envelopes, brochures, items, etc.

Nemko AS is entitled, upon request, to publicise decisions about the final or temporary withdrawal of certificates. Any withdrawal will mean that the certification holder will be stricken from the register of certification holders.

Nemko AS reserves the right to implement price adjustments during the agreement period in accordance with normal wage and price increases.

Nemko AS reserves the right to carry out extra follow-up audits if:

Terms and Conditions

- significant organisational changes are implemented in the enterprise
- a change over ownership occurs that may be of significance vis-à-vis the enterprise's area of activities and validity
- significant deficiencies in and alterations to the management system are discovered

3 Amendments to provisions and standards

Nemko AS reserves the right to amend the contents of this document. In cases where certificates were issued before the implementation of such amendments, certification holders are required to undertake to fulfil the amended When a current standard is amended, certification holders are required, prior to the next renewal, to bring their management system into compliance with the amended requirement. Certification holders shall, however, be given a reasonable period of time to implement the necessary changes.

4 Register of certification holders

A register of certification holders shall be kept by Nemko AS. Information from this register regarding what each individual holder's certificate covers will be available to the public.

Date and Signature