

Terms and Conditions

Promet Metals Testing Laboratory Limited agrees to provide the Services (as defined below) to the Customer (defined below) on the terms and conditions set out herein below. By using the Services you are deemed to have accepted the terms and conditions set out below and will be bound by them. No terms or conditions put forward at any time by the Customer shall form any part of the Agreement.

1. DEFINITIONS

- 1.1 Unless otherwise stated, the following expressions shall bear the meanings set out in this Clause when used in these terms and conditions.
- (i) **"Agreement"** means the agreement containing these terms and conditions between Promet (defined below) and the Customer (defined below) for the supply of Services (defined below).
 - (ii) **"Promet"** means Promet Metals Testing Laboratory Limited
 - (iii) **"Customer"** means the person or persons who enter(s) into this Agreement. Where the Customer comprise more than one persons, those persons shall have joint and several liabilities in respect of the Agreement entered into with Promet.
 - (iv) **"Hong Kong"** means Hong Kong Special Administrative Region of the Peoples' Republic of China.
 - (v) **"Intellectual Property"** means copyrights, trademarks, patents, service marks, trade names, registered/ unregistered designs and other forms of intellectual property whether or not registered or registrable.
 - (vi) **"Invoice"** means any invoice or bill of Services rendered to the Customer.
 - (vii) **"Application Form"** means any document required to be filled by the Customer based on Quotation if any issued to such customer.
 - (viii) **"Price"** means the fees, charges, expenses, taxes and disbursements specified in the Quotation prepared by Promet to the Customer.
 - (ix) **"Services"** means the non-exclusive services in respect of the testing / analysis / inspection / consultation / certification / calibration of such metal or steel products / goods / materials tested by Promet rendered to the Customer as particularised in Clause 2 hereof.
 - (x) **"Quotation"** means any quotation made by Promet in respect of Services proposed to be rendered to the Customers.
- 1.2 The headings in the Agreement are only used for reference and shall not affect the interpretation of the content thereof.
- 1.3 Unless the context otherwise requires:
- 1.3.1 words importing one gender include all genders;
 - 1.3.2 words importing the singular include the plural and vice versa; and
 - 1.3.3 references to persons include bodies, incorporated or unincorporated.

2. THE SERVICES

- 2.1 Promet will provide Services using reasonable care and skill, in accordance with the Customers' instructions as set out in the Quotation and/or the Application Form as confirmed and agreed by Promet and in accordance with the terms and conditions set out in the Agreement.
- 2.2 Any Agreement shall not be binding on Promet unless and until Application Form has been approved or a notice of acceptance with particulars of the Services to be rendered to the Customer is issued by Promet.
- 2.3 The Customer shall submit all the corresponding samples or items to Promet's office within 14 days of Promet's acceptance to provide the Services to the Customer as referred to in clauses 2.1 and 2.2 above. Promet shall have no further obligation to carry out any of the Service and shall be entitled to treat the Agreement to be rescinded by the Customer on expiry of the said 14 days and any deposit paid shall be forfeited by Promet.
- 2.4 The result of the Services is only confined to the sample or material supplied by the Customer. The result of the Services shall reflect the findings of Promet at the time of testing only and is provided by Promet to the Customer for the benefit of the Customer but no other. Neither Promet nor its officers and employees shall be liable to the Customer nor to any third party for any decision or action made or taken based on the result of the Services. In no circumstances shall Promet's responsibility extend beyond the aforesaid scope of the Services. In any event, Promet shall have no obligation to update the result of the Services after its issuance after otherwise agreed by Promet and subject to any terms and conditions as Promet may impose.
- 2.5 The Customer guarantees and confirms that the samples or items on which the Service is to be rendered are not subjects of an existing / potential court proceedings.
- 2.6 It shall be the Customer's responsibility to notify Promet of the standards/ requirements with which any sample submitted must comply. In absence of specific and unequivocal instruction, Promet will adopt any test or method it sees fit in its sole discretion over which the Customer shall have no objection.
- 2.7 Promet will, in its sole discretion but subject to any prior agreements with the Customer, test any sample submitted to it or sampled by Promet from bulk provided and submitted by Customer to do the testing. Promet shall not be treated as rendering any opinion as to the description, quantity or fitness of any sample for the purpose of which it is said to be intended unless Promet agrees to do so in writing.
- 2.8 Unless otherwise agreed or set out in the Customers' instructions based on the Quotation and/or the Application Form as confirmed and agreed by Promet, Promet shall have adequate time to perform its Services. Any indication or suggestion of timing for the performance or completion of the Services by Promet shall not be treated as binding and effective.
- 2.9 Promet may engage other laboratories or inspection bodies to perform part/all of the Services quoted. In the event of any subcontracting, the Client agrees that this clause serves as written notification of this intent and instructs that Promet is not required to name the subcontracting organisation or organisation in the Report.
- 2.10 Promet may delegate the performance of all or part of the Services to an agent or sub-contractor and in this connection, the Customer authorises Promet to disclose information necessary for the performance by the said agent or sub-contractor.

3. FEES OR PAYMENT

- 3.1 Unless otherwise agreed in writing, Price shall be determined by price quoted in the Quotation issued by Promet to the Customer and shall be paid in full without any deduction or set off in accordance with the credit terms if any therein.
- 3.2 Price shall be paid in Hong Kong currency unless Promet otherwise agrees to accept any other currencies at the exchange rate so determined by Promet.
- 3.3 The Customer undertake to pay the Price punctually all billings rendered to them from time to time.
- 3.4 The Customer by entering into this Agreement with Promet, agrees to pay for disbursements incurred on their behalf such as expenditure of communication, transportation, purchase of any materials / tools/ equipment/ components or parts which are directly related to the Services.
- 3.5 The Customer shall pay the deposit amount or any sum upon Promet's request and in the manner prescribed by Promet or otherwise set out in the Quotation. Any failure to do so by the Customer shall be treated as a fundamental breach of the Agreement and Promet shall have the right to treat the Agreement with such the Customer as repudiated in addition to its rights and remedies against the Customer.
- 3.6 If Promet shall be unable to perform all or part of the Services for any cause whatsoever outside its control including any failure by the Customer to comply with its obligations contained herein, Promet shall be entitled:-
- (1) to the payment of all deposit and part payment paid by the Customer to Promet or otherwise to keep the same; and
 - (2) to the payment of a proportion of the price equal to the proportion of the Services actually carried out by Promet and in case of a dispute, Promet's opinion should be final and conclusive.

4. CONSEQUENCES OF NON-PAYMENT

- 4.1 All outstanding sums due from the Customer to Promet shall bear interest at the interest rate of 2% per month.
- 4.2 Promet shall have the sole discretion to terminate the Agreement or withhold to perform all or any further Services if the Customer fails to pay any sum upon due without prejudicing Promet's rights, powers or remedies against the Customer under the Agreement or under general law.
- 4.3 The Customer shall pay all of Promet's costs incurred for the purpose of collecting any outstanding sum, including but not limited to legal costs on a solicitor and own client basis.

5. SAMPLES

- 5.1 Unless otherwise requested in writing by the Customer and accepted by Promet, Promet shall not be responsible for keeping any sample or materials submitted by the Customer and such sample or materials may be discarded at Promet's sole discretion. The Customer shall reimburse all costs and expenses incurred by Promet in discarding such sample / materials.
- 5.2 Unless otherwise requested in writing by the Customer and accepted by Promet, Promet shall have the right to retain any sample or materials for any other uses in connection with the Services without notifying the Customer.
- 5.3 If the Customer requests in writing and accepted by Promet that the samples or materials submitted by it shall be returned, the Customer agrees that it shall be responsible for any costs reasonably incurred by Promet for the return of such samples or materials.
- 5.4 Promet shall not in any way be held responsible or liable for any loss or damage caused to any samples or materials submitted by the Customer for the purpose of receiving the Services from Promet.

6. WARRANTIES / OBLIGATIONS OF THE CUSTOMER

- 6.1 The Customer shall provide Promet with all information and/or materials as soon as is practicable requested by Promet within the time limit as prescribed by Promet to carry out the Services in accordance with Clause 2 hereinabove.

- 6.2 The Customer warrants that it will provide Promet with written notice of all known or suspected hazards or unusual substance that may arise in the use or misuse of materials / samples supplied by the Customer in relation to the test performed by Promet or generally to the provision of the Services.
- 6.3 The Customer warrants that all samples or materials submitted to Promet, whether or not they are submitted for the purpose of receiving Services from Promet, may be legally dealt with by Promet in any manner as reasonably contemplated without contravening any applicable laws and that they are well packed with suitable and secured packing as may be necessary such that they shall be in such contemplated condition as shall enable Promet to carry out the Services.
- 6.4 The Customer shall notify Promet in writing of any fragility, volatility, sensitivity to static/ light/ temperature/ humidity/ magnetic field or any nature of the samples or materials submitted thereby which requires particular attention, caution or procedure for proper and lawful handling, transportation and/or storage.

7. CONFIDENTIALITY / DATA AND DOCUMENT RETENTION

- 7.1 Unless otherwise specifically requested by the Customer and agreed by Promet in writing, Promet shall have the right to retain and/or reproduce copies in any forms/ manners of any documents, including but not limited to the results of the Services, in relation to the provision of the Services to the Customer. Promet may at its sole discretion disclose the same or any part thereof to any third parties (individual, incorporated or unincorporated bodies), their employees, agents, subcontractors, related associations or affiliates.
- 7.2 Nothing herein shall be construed as restricting Promet's right of disclosure of the documents mentioned in Clause 7.1 above for audit purposes or for meeting with the requirements/ requests of the applicable judicial, governmental or regulatory authorities.
- 7.3 Where there is any duty to preserve confidentiality on the part of Promet arising impliedly or expressly provided by the applicable laws, the Customer agrees to waive such duty in favour of Promet to the fullest extent permitted by the applicable laws.
- 7.4 After the Services have been rendered to the Customer, Promet assumes no responsibility for retaining any documents relating to the Services rendered to the Customer. However, Promet may, in its sole discretion, retain a copy of all such documents for as long as it deems fit.
- 7.5 Unless otherwise agreed by Promet in writing, the Customer warrants that any part of or the entire results of the Services will not be made public and/or used in connection with or for the purpose of any advertising, promotional, publicity undertaking or whatsoever.
- 7.6 The Client agrees and accepts that Client's information, test/inspection reports and other data may be inspected by HOKLAS/HKIAS during their assessments of Promet.

8. MEANS OF COMMUNICATION

- 8.1 Provided that there is mutual agreement of the parties hereto in writing prior to entering into this Agreement, electronic means of communication, including but not limited to facsimile and e-mails, shall be effective means of communication between the parties without replacing other means of communications between the parties permitted herein.
- 8.2 If the parties hereto agree to the use of such electronic communication pursuant to Clause 8.1 above, the Customer acknowledges that there might be interception by third parties / uncontrollable risks which might result in delay or failure in the communication between the parties. Promet shall not be held responsible for these risks which are out of its control.
- 8.3 The Customer acknowledges that such electronic communication agreed and adopted pursuant to Clause 8.1 above is unencrypted and Promet shall not be liable in any way for any damage/ loss resulting from the use of such electronic communication.
- 8.4 Save as aforesaid, any notice required to be given herein or document shall be sufficiently given if given in writing or by facsimile to the last known postal address or fax number. Such notice or document shall be deemed to have been received and given at the time when in the ordinary course of transmission or delivery it should have been transmitted or delivered to the address or fax number.

9. WAIVER AND VARIATION

- 9.1 No failure or delay by Promet in exercising any right, power or remedy under the Agreement shall constitute a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any other right, power or remedy.
- 9.2 No variations of any provision of the Agreement or these Terms and Conditions shall be effective unless expressly agreed by Promet in writing.
- 9.3 Promet reserves its right to amend these Terms and Conditions from time to time without prior notice.

10. LEGAL RELATIONSHIP

- 10.1 Neither Promet nor the Customer shall be treated as the agent of the other, nor shall it represent that it has authority to make any commitments on the others' behalf.
- 10.2 Nothing herein shall be construed as forming a partnership between the parties.

11. INDEMNITY

- 11.1 The Customer agrees to indemnify and keep indemnified Promet any actions, claims, demands, costs, charges and/or expenses incurred by or made against Promet, its employees, officers, advisors and/or agents in respect of any claims, losses, liabilities and/or damages as a result of any infringement or alleged infringement by the Customer of any Intellectual Property.
- 11.2 The Customer further agrees to indemnify and keep indemnified Promet any actions, claims, demands, costs, charges and/or expenses incurred by or made against Promet, its employees, officers, advisors and/or agents in respect of any claims, losses, liabilities and/or damages as a result of the provision of Services to the Customer and/or the use or disclosure of the result of the Services and/or any breach by the Customer of any terms and conditions in this Agreement.

12. LIMITATION OF LIABILITY

- 12.1 The aggregate liability of Promet arising out of any breach of any provision in the Agreement or common law/ statutory duties (including but not limiting to negligence, breach of duty of care and misrepresentation or otherwise) committed by Promet, its employees, agents, subcontractors or any other third party shall not exceed the Price .
- 12.2 In the event that the Customer shall be entitled to make any claim against Promet, the Customer must give written notice to Promet within 14 days of discovery of facts or circumstances leading to any such claim and in any case, Promet shall be discharged absolutely from all liabilities or responsibilities in connection with any claim for loss, damage or expenses unless any suit shall be brought within 12 months upon the date of performance of the Services by Promet which gives rise to the claim or the date when the Services should have been completed in the event of any breach of this Agreement by Promet.
- 12.3 Promet assumes no responsibility for the accuracy of results obtained from the provision of the Services and makes no warranties or representations of any kind with respect to the results of the Services whether express or implied, including but not limited to any conditions or warranties of merchantability or fitness for a particular purpose. The Customer shall assume all risk and liability in connection with the use of the Services and the results thereof.
- 12.4 Notwithstanding the above, Promet disclaims all warranties or any representations in relation to the Services, including and without limitation, all implied terms and conditions as to merchantability, fitness for a particular purpose, reasonable time for performance and to use care and skill, to the fullest extent permitted by law.
- 12.5 To the fullest extent permitted by law, Promet assumes no responsibility for any direct, incidental, special, consequential, indirect or punitive loss or damage (including, without limitation, damages for loss of business profit, sales or goodwill, business interruption, or other pecuniary loss) that may be suffered or caused as a result of the provision of the Services to the Customer, or any related delay, error or omissions whether arising from any claims made by any third party that may be incurred by the Customer or otherwise.
- 12.6 Promet shall not be liable to make good any loss or damage however arising out of delay or in failure to make the availability of the Services or any part thereof arising out of or in connection with any event which is outside the control of Promet.

13. SAVING PROVISION

- Any provision herein prohibited by or regarded as unlawful or unenforceable under any applicable law shall, to the fullest extent as possible, be severed from this Agreement and so far as possible, without modifying the rest of the Agreement.

14. DISPUTE RESOLUTION

- 14.1 If there is any dispute arising out of or in connection with the provision of the Services or any provision of the Agreement, the aggrieved party (i.e. Promet or the Customer) shall give a notice in writing specifying the particulars of the dispute to the other party.
- 14.2 Promet and the Customer shall in good faith attempt to negotiate a settlement to any dispute between them arising out of or in connection with the provision of the Services or any provision of the Agreement.
- 14.3 If dispute in Clause 14.1 above cannot be resolved within 3 months of the receipt of the notice mentioned in Clause 14.1 above by the other party, parties hereto shall submit to the non-exclusive jurisdiction of the courts of Hong Kong Special Administrative Region.

15. GOVERNING LAW

- The Agreement and the Terms and Conditions shall be construed in accordance with and governed by the laws of Hong Kong Special Administrative Region.