

# PROJECT PROPOSAL

**VISIONAR WINDOW SYSTEMS INC.**

Bruce Friesen  
5430 275th Street  
Langley, BC V4W 3X7  
Canada

**QUOTE NO**

Qu-01505275-0

**PROJECT NAME**

Intertek Testing per ASTM F2090

**COMPILED BY**

Claudia Cosma

**DATE**

December 12, 2024



December 12, 2024

Bruce Friesen  
Visionar Window Systems  
5430 275th Street  
Langley, BC V4W 3X7  
Canada

Dear Bruce,

From concept through market entry, Intertek helps you do it right the first time and reach the market faster, stay on schedule, and remain within budget. We harness our global experience with standards to help you design for conformance and manage the regulatory process. We can provide the road map to your success by performing a comprehensive evaluation of your needs and presenting global solutions based on our in-depth knowledge of your industry and its regulatory requirements. Most importantly, we allow you to concentrate on your core business objectives.



To achieve this, we have carefully selected a team of experts with over 17 years of average experience that can make your life easier by guiding you to the fastest and most cost effective route. What really sets us apart from other consultants is our direct knowledge of the standards themselves and how they can be applied to your specific products. Our knowledge of and expertise in overcoming regulatory, market, and supply chain hurdles is unrivaled.



The following quotation has been designed to meet your specific and unique needs, identified through our preliminary discussions and assessment. We thank you for the opportunity to provide service for your consulting requirements.

Yours sincerely,

*Claudia Cosma*

Claudia Cosma  
Inside Sales Representative

<b>Prepared For:</b>	Bruce Friesen Visionar Window Systems 5430 275th Street Langley, BC V4W 3X7 Canada
	+1 503-453-2614
	bruce@visionarwindows.com

<b>Prepared by:</b>	Claudia Cosma Inside Sales Representative Intertek 1500 Brigantine Drive Coquitlam British Columbia V3K 7C1 Canada
	1-604-245-1485
	claudia.cosma@intertek.com

Intertek provides the building products and materials industry with a variety of testing, certification, and engineering evaluation services. As a full-service testing partner, Intertek offers product conformity and performance testing as well as structural, physical, and mechanical evaluations and flammability, flame spread, fire resistance, and environmental testing. For over a century, Intertek has been the accepted symbol of compliance for thousands of manufacturers across a wide range of product categories. This proposal itemizes the services applicable for your noted product.

**Scope of Work:**

Intertek Testing per ASTM F2090

**Project Fees:**

The fees below are based on the information provided on your request, assumptions as noted previously and are valid for 30 days from date of issuance.

Item #	Evaluation Standard/Description	Net Price
		<b>C\$5,238.00</b>
1	<p>INTERTEK BP TEST/EVAL*CEI Testing and/or Evaluation Scope: Testing outlined below will be completed per the requirements of the current version of ASTM F2090. All testing will be performed at Intertek</p> <p>The testing will be performed at Intertek Kent, WA</p> <p>Referenced Standards ASTM F2090 - Standard Specification for Window Fall Prevention Devices With Emergency Escape (Egress) Release Mechanisms</p> <p>The following fees shall apply and include a comprehensive eReport in PDF format.</p> <p>Testing Breakdown &amp; Fees:</p> <p>Window Opening Control Device Testing (includes static load testing and 4000 operation cycles) Fee: \$4,000</p> <p>Wood Test Buck Construction Fee: \$900</p> <p>Comprehensive Test eReport Fee: \$650</p> <p>Test Specimen Installation (\$220 per hour) Fee: \$220</p> <p>Disposal Fee \$50</p> <p>Discount Quote Discount (10%) \$582.00</p> <p>– See Comments</p> <p>Total Estimated Cost: \$5,238</p> <p>Optional Items Charged If Performed:</p>	C\$5,238.00

Item #	Evaluation Standard/Description	Net Price
	<p>Window Purchase Fee: \$800.00</p> <p>Comments Intertek-ATI will provide a wood test buck for each sample for the installation of each specimen in accordance with the customer-provided installation drawings. Installation drawings must indicate fastener type and spacing, required shim space, and any other details pertinent to the installation of the product.</p> <p>Any fasteners or installation clips used for installation of the product must be supplied by the client.</p> <p>Once sample installation is complete, the customer will be required to approve the sample installation prior to testing. Intertek-ATI is not responsible for the test sample performance.</p> <p>Shipping Address:</p> <p>Intertek 22155 68th Avenue South Kent, WA 98032-1937 Re: Quotation Number: 316787R0</p> <p>Note: - Any expenses incurred, not addressed above, will be charged back to the client in accordance with Intertek's expenses policy</p>	
2	INTERTEK BP EXP*CEI Expenses As per Intertek expense policy	C\$0.00
<b>TOTAL (CAD)</b>		<b>C\$5,238.00</b>

**Project Conditions:**

Unless outlined in the Project Assumptions, the following conditions apply to this project:

**Services:****Additional Certification Services and Fees:**

For services that result in the authorization of a certification mark; additional follow-up or surveillance services may be required at an additional fee which will be charged separately. Please ask your sales representative for additional information or refer to our website:

<http://www.intertek.com/certification>

**Expenses:**

Unless specifically detailed within this proposal, travel expenses, all shipping costs including express shipment of deliverables, local taxes, and miscellaneous expenses required to complete your project are not included and will be invoiced in addition to the fees quoted at cost plus a 25% administrative fee.

**Payment Terms & Invoicing:**

Unless credit has been established, a 100% deposit of quoted fees (plus estimated expenses) will be required prior to your project start date. To apply for credit terms, please submit credit references or contact us for a Credit Application. Upon review, our credit department may extend terms of Net 30 Days or 50% Deposit (US Customers Only). To pay by credit card in CAD visit [pay.intertek.com/can20](http://pay.intertek.com/can20). To pay by credit card in USD visit [pay.intertek.com/usa20](http://pay.intertek.com/usa20).

Unless specifically noted, Intertek will issue invoices upon delivery of test data, reports, or project status updates; billing for projects lasting more than 30 days may occur on billable hours or tasks completed in that specific month at the rate indicated within the proposal.

**Samples and Documentation:**

The following is required prior to starting your evaluation:

- One complete and fully operational sample of each product to be evaluated. Please consult with your Intertek project manager for approval of representative or “worst-case” configurations. Additional samples may be required as the evaluation progresses.
- Operations manual and/or operating instructions.
- Completed “Product Information Packet” which will include bill of materials, electrical ratings, schematics, and component data. Please contact your sales representative for detail.
- Completed Sample Submission Form

**Project Completion:**

We estimate your project will be completed and report(s) issued within four (4) weeks of the date all required samples and documentation are received. To avoid unnecessary delays, please mark quote number Qu-01505275-0 on the outside of shipping materials containing samples or documentation. Expedited scheduling options are available.

**Report Delivery:**

We are proud to offer you complete electronic Test Report delivery, management, and archiving via a secure customer portal at no additional cost to you. To login, register, or find more details visit [www.intertek.com/client-portals](http://www.intertek.com/client-portals).

**Project Cancellations:**

Postponements or cancellations will be accepted if sufficient written notice is given to Intertek. In the event of a cancellation within two business days of your scheduled project start date, a \$1,500.00 cancellation fee plus any incurred expense may be invoiced to Visionar Window Systems

### Proposal Authorization

Visionar Window Systems 5430 275th Street Langley, BC V4W 3X7 Canada	Quote #: Qu-01505275-0 Quote Issued Date: December 12, 2024
-------------------------------------------------------------------------------	----------------------------------------------------------------

To accept this proposal please have an authorized representative complete and sign this authorization page and return it along with the entire proposal and completed Sample Submission Form to the attention of your Intertek Representative noted below. A copy of your signed purchase order is required prior to scheduling this project. If the project is to take place at an Intertek facility, please make sure to provide sample disposition instructions.

By signing this proposal, you confirm that you have read and accept the terms and conditions within and attached and authorize Intertek to proceed with the work as outlined in this document.

**Accepted by:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Printed

**Being an authorized representative of:**

\_\_\_\_\_  
Legally Registered name of the Company who is authorizing commencement of this quotation

\_\_\_\_\_  
Acceptance Date Preferred Project Start Date Purchase Order #

Thank you for choosing Intertek!

Sincerely,

*Claudia Cosma*

Claudia Cosma  
Inside Sales Representative  
1500 Brigantine Drive  
Coquitlam British Columbia V3K 7C1  
Canada  
1-604-245-1485

claudia.cosma@intertek.com



### Testing and Evaluation Terms and Conditions:

These terms and conditions, together with any proposal, estimate or fee quote, form the agreement between you (the Client) and the Intertek entity (Intertek) providing the services contemplated therein.

#### 1. INTERPRETATION

1.1 In this Agreement the following words and phrases shall have the following meanings unless the context otherwise requires:

- (a) Agreement means this agreement entered into between Intertek and the Client;
- (b) Charges shall have the meaning given in Clause 5.1;
- (c) Confidential Information means all information in whatever form or manner presented which: (a) is disclosed pursuant to, or in the course of the provision of Services pursuant to, this Agreement; and (b) (i) is disclosed in writing, electronically, visually, orally or otherwise howsoever and is marked, stamped or identified by any means as confidential by the disclosing party at the time of such disclosure; and/or (ii) is information, howsoever disclosed, which would reasonably be considered to be confidential by the receiving party.
- (d) Intellectual Property Right(s) means copyrights, trademarks (registered or unregistered), patents, patent applications (including the right to apply for a patent), service marks, design rights (registered or unregistered), trade secrets and other like rights howsoever existing.
- (e) Report(s) shall have the meaning as set out in Clause 2.3 below;
- (f) Services means the services set out in any relevant Intertek Proposal, any relevant Client purchase order, or any relevant Intertek invoice, as applicable, and may comprise or include the provision by Intertek of a Report;
- (g) Proposal means the proposal, estimate or fee quote, if applicable, provided to the Client by Intertek relating to the Services;

1.2 The headings in this Agreement do not affect its interpretation.

#### 2. THE SERVICES

2.1 Intertek shall provide the Services to the Client in accordance with the terms of this Agreement which is expressly incorporated into any Proposal Intertek has made and submitted to the Client.

2.2 In the event of any inconsistency between the terms of this Agreement and the Proposal, the terms of this Agreement shall take precedence. This Agreement takes precedence over any terms and conditions set forth in any Client purchase order or otherwise, all of which Client terms are hereby rejected. Acceptance of Services constitutes acceptance of all terms and conditions set forth in this Agreement. Neither Intertek's commencement of performance or delivery of the services constitutes an acceptance of Client's terms or conditions.

2.3 The Services provided by Intertek under this Agreement and any memoranda, laboratory data, calculations, measurements, estimates, notes, certificates and other material prepared by Intertek in the course of providing the Services to the Client, together with status summaries or any other communication in any form describing the results of any work or services performed (Report(s)) shall be only for the Client's use and benefit.

2.4 The Client acknowledges and agrees that if in providing the Services Intertek is obliged to deliver a Report to a third party, Intertek shall be deemed irrevocably authorized to deliver such Report to the applicable third party. For the purposes of this clause an obligation shall arise on the instructions of the Client, or where, in the reasonable opinion of Intertek, it is implicit from the circumstances, trade, custom, usage or practice.

2.5 The Client acknowledges and agrees that any Services provided and/or Reports produced by Intertek are done so within the limits of the scope of work agreed with the Client in relation to the Proposal and pursuant to the Client's specific instructions or, in the absence of such instructions, in accordance with any relevant trade custom, usage or practice. The Client further agrees and acknowledges that the Services are not designed or intended to address all matters of quality, safety, performance or condition of any product, material, services, systems or processes tested, inspected or certified and the scope of work does not necessarily reflect all standards which may apply to product, material, services, systems or process tested, inspected or certified. The Client understands that reliance on any Reports issued by Intertek is limited to the facts and representations set out in the Reports which represent Intertek's review and/or analysis of facts, information, documents, samples and/or other materials in existence at the time of the performance of the Services only.

2.6 Client is responsible for its actions and use of any Report. Neither Intertek nor any of its officers, employees, agents or subcontractors shall be liable to Client nor any third party for any actions taken or not taken by the Client or any third party instructed or advised by the Client, on the basis of such Report.

2.7 In agreeing to provide the Services pursuant to this Agreement, Intertek does not abridge, abrogate or undertake to discharge any duty or obligation of the Client to any other person or any duty or obligation of any person to the Client.

#### 3. INTERTEK'S WARRANTIES

3.1 Intertek warrants exclusively to the Client:

- (a) that it has the power and authority to enter into this Agreement and that it will comply with relevant legislations and regulations in force as at the date of this Agreement in relation to the provision of the Services;
- (b) that the Services will be performed in a manner consistent with that level of care and skill ordinarily exercised by other companies providing like services under similar circumstances;
- (c) that it will take reasonable steps to ensure that whilst on the Client's premises its personnel comply with any health and safety rules and regulations and other reasonable security requirements made known to Intertek by the Client in accordance with Clause 4.3(f);
- (d) that the Reports produced in relation to the Services will not infringe any legal rights (including Intellectual Property Rights) of any third party. This warranty shall not apply where the infringement is directly or indirectly caused by Intertek's reliance on any information, samples or other related documents provided to Intertek by the Client (or any of its agents or representatives).

3.2 In the event of a breach of the warranty set out in Clause 3.1 (b), Intertek shall, at its own expense, perform services of the type originally performed as may be reasonably required to correct any defect in Intertek's performance.

3.3 Intertek makes no other warranties, express or implied. All other warranties, conditions and other terms implied by statute or common law (including but not limited to any implied warranties of merchantability and fitness for purpose) are, to the fullest extent permitted by law, excluded from this Agreement. No performance, deliverable, oral or other information or advice provided by Intertek (including its agents, sub-contractors, employees or other representatives) will create a warranty or otherwise increase the scope of any warranty provided.

#### 4. CLIENT WARRANTIES AND OBLIGATIONS

4.1 The Client represents and warrants:

- (a) that it has the power and authority to enter into this Agreement and procure the provision of the Services for itself;
- (b) that it is securing the provision of the Services hereunder for its own account and not as an agent or broker, or in any other representative capacity, for any other person or entity;
- (c) that any information, samples and related documents it (or any of its agents or representatives) supplies to Intertek (including its agents, sub-contractors and employees) is, true, accurate representative, complete and is not misleading in any respect. The Client further acknowledges that Intertek will rely on such information, samples or other related documents and materials provided by the Client (without any duty to confirm or verify the accuracy or completeness thereof) in order to provide the Services;
- (d) that any samples provided by the Client to Intertek will be shipped pre-paid and will be collected or disposed of by the Client (at the Client's cost) within thirty (30) days after testing unless alternative arrangements are made by the Client. Notwithstanding Clause 4.3(b), Intertek is not liable for any delays, loss or damage of samples in transit. Unless otherwise agreed in writing, Intertek shall deliver samples FCA Origin (Intertek's facility as "FCA Point") using Intertek's standard methods for packaging. Title and risk of loss passes to Client upon delivery of the goods to the FCA Point in the event that such samples are not collected or disposed of by the Client within the required thirty (30) days period, Intertek reserves the right to destroy the samples, at the Client's cost; and
- (e) that any information, samples or other related documents (including without limitation certificates and reports) provided by the Client to Intertek will not, in any

circumstances, infringe any legal rights (including Intellectual Property Rights) of any third party.

**4.2** In the event that the Services provided relate to any third party, the Client shall cause any such third party to acknowledge and agree to the provisions in this Agreement and the Proposal prior to and as a condition precedent to such third party receiving any Reports or the benefit of any Services.

**4.3** The Client further agrees:

- (a) to co-operate with Intertek in all matters relating to the Services and appoint a manager in relation to the Services who shall be duly authorized to provide instructions to Intertek on behalf of the Client and to bind the Client contractually as required;
- (b) to provide Intertek (including its agents, sub-contractors and employees), at its own expense, any and all samples, information, material or other documentation necessary for the execution of the Services in a timely manner sufficient to enable Intertek to provide the Services in accordance with this Agreement. The Client acknowledges that any samples provided may become damaged or be destroyed in the course of testing as part of the necessary testing process and undertakes to hold Intertek harmless from any and all responsibility for such alteration, damage or destruction;
- (c) that it is responsible for providing the samples/equipment to be tested together, where appropriate, with any specified additional items, including but not limited to connecting pieces, fuse-links, etc.;
- (d) to provide instructions and feedback to Intertek in a timely manner;
- (e) to provide Intertek (including its agents, sub-contractors and employees) with access to its premises as may be reasonably required for the provision of the Services and to any other relevant premises at which the Services are to be provided;
- (f) prior to Intertek attending any premises for the performance of the Services, to inform Intertek of all applicable health and safety rules and regulations and other reasonable security requirements that may apply at any relevant premises at which the Services are to be provided;
- (g) to notify Intertek promptly of any risk, safety issues or incidents in respect of any item delivered by the Client, or any process or systems used at its premises or otherwise necessary for the provision of the Services;
- (h) to inform Intertek in advance of any applicable import/export restrictions that may apply to the Services to be provided, including any instances where any products, information or technology may be exported/ imported to or from a country that is restricted or banned from such transaction;
- (i) in the event of the issuance of a certificate, to inform and advise Intertek immediately of any changes during the term of the certificate which may have a material impact on the accuracy of the certification;
- (j) to obtain and maintain all necessary licenses and consents in order to comply with relevant legislation and regulation in relation to the Services;
- (k) that it will not use any Reports issued by Intertek pursuant to this Agreement in a misleading manner and that it will only distribute such Reports in their entirety;
- (l) in no event will the contents of any Reports or any extracts, excerpts or parts of any Reports be distributed or published without the prior written consent of Intertek (such consent not to be unreasonably withheld) in each instance; and
- (m) that any and all advertising and promotional materials or any statements made by the Client will not give a false or misleading impression to any third party concerning the services provided by Intertek.

**4.4** Intertek shall be neither in breach of this Agreement nor liable to the Client for any breach of this Agreement if and to the extent that its breach is a direct result of a failure by the Client to comply with its obligations as set out in this Clause 4. The Client also acknowledges that the impact of any failure by the Client to perform its obligations set out herein on the provision of the Services by Intertek will not affect the Client's obligations under this Agreement for payment of the Charges pursuant to Clause 5 below.

## **5. CHARGES, INVOICING AND PAYMENT**

**5.1** The Client shall pay Intertek the charges set out in the Proposal, if applicable, or as otherwise contemplated for provision of the Services (the Charges).

**5.2** The Charges are expressed exclusive of any applicable taxes. The Client shall pay any applicable taxes on the Charges at the rate and in the manner prescribed by law, on the issue by Intertek of a valid invoice.

**5.3** The Client agrees that it will reimburse Intertek for any expenses incurred by Intertek relating to the provision of the Services and is wholly responsible for any freight or customs clearance fees relating to any testing samples.

**5.4** The Charges represent the total fees to be paid by the Client for the Services pursuant to this Agreement. Any additional work performed by Intertek will be charged on a time and material basis.

**5.5** Intertek shall invoice the Client for the Charges and expenses, if any. The Client shall pay each invoice within thirty (30) days of receiving it.

**5.6** If any invoice is not paid on the due date for payment, Intertek shall have the right to charge, and the Client shall pay, reasonable collection costs and interest on the unpaid amount, calculated from the due date of the invoice to the date of receipt of the amount in full at a rate equivalent to 3% per cent per annum above the base rate from time to time of HSBC Bank in the relevant currency.

## **6. INTELLECTUAL PROPERTY RIGHTS AND DATA PROTECTION**

**6.1** All Intellectual Property Rights belonging to a party prior to entry into this Agreement shall remain vested in that party. Nothing in this Agreement is intended to transfer any Intellectual Property Rights from either party to the other.

**6.2** Any use by the Client (or the Client's affiliated companies or subsidiaries) of the name "Intertek" or any of Intertek's trademarks or brand names for any reason must be prior approved in writing by Intertek. Any other use of Intertek's trademarks or brand names is strictly prohibited and Intertek reserves the right to terminate this Agreement immediately as a result of any such unauthorized use.

**6.3** In the event of provision of certification services, Client agrees and acknowledges that the use of certification marks may be subject to national and international laws, regulations and a separate certification agreement.

**6.4** All Intellectual Property Rights in any Reports, document, graphs, charts, photographs or any other material (in whatever medium) produced by Intertek pursuant to this Agreement shall belong to Intertek. The Client shall have a license to use any such Reports, document, graphs, charts, photographs or other material provided such usage is in compliance with the terms of this Agreement.

**6.5** The Client agrees and acknowledges that Intertek retains any and all proprietary rights in concepts, ideas and inventions that may arise during the preparation or provision of any Report (including any deliverables provided by Intertek to the Client) and the provision of the Services to the Client.

**6.6** Photographs or video recordings of the Client's own project may be taken by the Client if authorized by Intertek and used for the Client's own internal purposes. Photographs or video recordings may not be used for marketing or publicity, or distributed to a third party or otherwise published without Intertek's prior review and consent in writing; taking photographs of other Intertek customer's samples, test setups or facilities, or recording in any manner any test specimen other than the test specimen related to the Customer's project is prohibited; and the Client agrees to hold in strict confidence and not use any proprietary information disclosed either advertently or inadvertently. The Client shall defend, hold harmless, and indemnify Intertek for any breach of this clause.

## **7. CONFIDENTIALITY**

**7.1** Where a party (the Receiving Party) obtains Confidential Information of the other party (the Disclosing Party) in connection with this Agreement (whether before or after the date of this Agreement) it shall, subject to Clauses 7.2 to 7.4:

- (a) keep that Confidential Information confidential, by applying the standard of care that it uses for its own Confidential Information;
- (b) use that Confidential Information only for the purposes of performing obligations under this Agreement; and
- (c) not disclose that Confidential Information to any third party without the prior written consent of the Disclosing Party.

**7.2** The Receiving Party may disclose the Disclosing Party's Confidential Information on a "need to know" basis:

- (a) to any legal advisers and statutory auditors that it has engaged for itself;
- (b) to any regulator having regulatory or supervisory authority over its business;
- (c) to any director, officer or employee of the Receiving Party provided that, in each case, the Receiving Party has first advised that person of the obligations under Clause 7.1 and ensured that the person is bound by obligations of confidence in respect of the Confidential Information no less onerous than those set out in this Clause 7; and

(d) where the Receiving Party is Intertek, to any of its subsidiaries, affiliates or subcontractors.

**7.3** The provisions of Clauses 7.1 and 7.2 shall not apply to any Confidential Information which:

- (a) was already in the possession of the Receiving Party prior to its receipt from the Disclosing Party without restriction on its use or disclosure;
- (b) is or becomes public knowledge other than by breach of this Clause 7;
- (c) is received by the Receiving Party from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
- (d) is independently developed by the Receiving Party without access to the relevant Confidential Information.

**7.4** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent required by law, a valid subpoena or other court order, provided that the Receiving Party has given the Disclosing Party prompt written notice of the requirement to disclose and where possible given the Disclosing Party a reasonable opportunity to prevent the disclosure through appropriate legal means. If Intertek is requested by Client or a third party to prepare for and/or respond to any discovery requests, including participation and preparation for any depositions or other testimony related to the services performed, Client will reimburse Intertek for the costs incurred, including reasonable legal fees and travel expenses, immediately upon invoicing by Intertek. Intertek retains the right to participate in and observe testimony preparation given the nature of the services provided.

**7.5** Each party shall ensure the compliance by its employees, agents and representatives (which, in the case of Intertek, includes procuring the same from any sub-contractors) with its obligations under this Clause 7.

**7.6** No license of any Intellectual Property Rights is given in respect of any Confidential Information solely by the disclosure of such Confidential Information by the Disclosing Party.

**7.7** With respect to archival storage, the Client acknowledges that Intertek may retain in its archive for the period required by its quality and assurance processes, or by the testing and certification rules of the relevant accreditation body, all materials necessary to document the Services provided.

## **8. AMENDMENT**

**8.1** No amendment to this Agreement shall be effective unless it is in writing, expressly stated to amend this Agreement and signed by an authorized signatory of each party.

## **9. FORCE MAJEURE**

**9.1** Neither party shall be liable to the other for any delay in performing or failure to perform any obligation under this Agreement to the extent that such delay or failure to perform is a result of:

- (a) war (whether declared or not), civil war, riots, revolution, acts of terrorism, military action, sabotage and/or piracy;
- (b) natural disasters such as violent storms, earthquakes, tidal waves, floods and/or lightning; explosions and fires;
- (c) strikes and labor disputes, other than by any one or more employees of the affected party or of any supplier or agent of the affected party; or
- (d) failures of utilities companies such as providers of telecommunication, internet, gas or electricity services.

**9.2** For the avoidance of doubt, where the affected party is Intertek any failure or delay caused by failure or delay on the part of a subcontractor shall only be a Force Majeure Event (as defined below) where the subcontractor is affected by one of the events described above.

**9.3** A party whose performance is affected by an event described in Clause 9.1 (a Force Majeure Event) shall:

- (a) promptly notify the other party in writing of the Force Majeure Event and the cause and the likely duration of any consequential delay or non-performance of its obligations;
- (b) use all reasonable endeavors to avoid or mitigate the effect of the Force Majeure Event and continue to perform or resume performance of its affected obligations as soon as reasonably possible; and
- (c) continue to provide Services that remain unaffected by the Force Majeure Event.

**9.4** If the Force Majeure Event continues for more than sixty (60) days after the day on which it started, each party may terminate this Agreement by giving at least ten (10) days' written notice to the other party.

## **10. LIMITATIONS AND EXCLUSIONS OF LIABILITY**

**10.1** The maximum aggregate liability of Intertek in contract, tort (including negligence and breach of statutory duty) or otherwise for any breach of this Agreement or any matter arising out of or in connection with the Services to be provided in accordance with this Agreement shall not exceed the total amount of Charges paid or payable by the Client to Intertek under this Agreement for the Services giving rise to the claimed loss or damage.

**10.2** Neither party shall be liable to the other in contract, tort (including negligence and breach of statutory duty) or otherwise for any:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of opportunity (including without limitation in relation to third party agreements or contracts);
- (d) loss of or damage to goodwill or reputation;
- (e) loss of anticipated savings;
- (f) cost or expenses incurred in relation to making a product recall;
- (g) loss of use or corruption of software, data or information; or
- (h) any indirect, consequential loss, punitive or special loss (even when advised of their possibility).

**10.3** Any claim by the Client against Intertek (always subject to the provisions of this Clause 10) must be made within ninety (90) days after the Client becomes aware of any circumstances giving rise to any such claim. Failure to give such notice of claim within ninety (90) days shall constitute a bar or irrevocable waiver to any claim, either directly or indirectly, in contract, tort or otherwise in connection with the provision of Services under this Agreement.

## **11. INDEMNITY**

**11.1** The Client shall indemnify and hold harmless Intertek, its officers, employees, agents, representatives, contractors and sub-contractors from and against any and all claims, suits, liabilities (including costs of litigation and attorney's fees) arising, directly or indirectly, out of or in connection with:

- (a) any claims or suits by any governmental authority or others for any actual or asserted failure of the Client to comply with any law, ordinance, regulation, rule or order of any governmental or judicial authority;
- (b) claims or suits for personal injuries, loss of or damage to property, economic loss, and loss of or damage to Intellectual Property Rights incurred by or occurring to any person or entity and arising in connection with or related to the Client's products or equipment and the Services provided hereunder by Intertek, its officers, employees, agents, representatives, contractors and sub-contractors;
- (c) the breach or alleged breach by the Client of any of its obligations set out in Clause 4 above;
- (d) any claims made by any third party for loss, damage or expense of whatsoever nature and howsoever arising relating to the performance, purported performance or non-performance of any Services to the extent that the aggregate of any such claims relating to any one Service exceeds the limit of liability set out in Clause 10 above;
- (e) any claims or suits arising as a result of any misuse or unauthorized use of any Reports issued by Intertek or any Intellectual Property Rights belonging to Intertek (including trademarks) pursuant to this Agreement; and
- (f) any claims arising out of or relating to any third party's use of or reliance on any Reports or any reports, analyses, conclusions of the Client (or any third party to whom the Client has provided the Reports) based in whole or in part on the Reports, if applicable.

**11.2** The obligations set out in this Clause 11 shall survive termination of this Agreement.

## **12. INSURANCE POLICIES**

**12.1** Each party shall be responsible for the arrangement and costs of its own company insurance which includes, without limitation, general liability, professional indemnity, employer's liability, automobile insurance and property insurance.

**12.2** Intertek expressly disclaims any liability to the Client as an insurer or guarantor.

**12.3** The Client acknowledges that although Intertek maintains workers' compensation and employer's liability insurance, such insurance does not cover any employees of the Client or any third parties who may be involved in the provision of the Services. If the Services are to be performed at premises belonging to the Client or third parties, Intertek's workers' compensation and employer's liability insurance does not provide coverage for non-Intertek employees.

### **13. TERMINATION**

**13.1** This Agreement shall commence upon the first day on which the Services are commenced and shall continue, unless terminated earlier in accordance with this Clause 13, until the Services have been provided.

**13.2** This Agreement may be terminated by:

(a) either party if the other continues in material breach of any obligation imposed upon it hereunder for more than thirty (30) days after written notice has been dispatched by that Party by recorded delivery or courier requesting the other to remedy such breach;

(b) Intertek on written notice to the Client in the event that the Client fails to pay any invoice by its due date and/or fails to make payment after a further request for payment; or

(c) either party on written notice to the other in the event that the other makes any voluntary arrangement with its creditors, or becomes subject to an administration order, or becomes bankrupt, or goes into liquidation, or a trustee takes possession or a receiver is appointed of any of the property or assets of the Client, or the other party otherwise ceases, or threatens to cease, to carry on business.

**13.3** In the event of termination of the Agreement for any reason and without prejudice to any other rights or remedies the parties may have, the Client shall pay Intertek for all Services performed up to the date of termination. This obligation shall survive termination or expiration of this Agreement.

**13.4** Any termination or expiration of the Agreement shall not affect the accrued rights and obligations of the parties, nor shall it affect any provision which is expressly or by implication intended to come into force or continue in force on or after such termination or expiration.

### **14. ASSIGNMENT AND SUB-CONTRACTING**

**14.1** Intertek reserves the right to delegate the performance of its obligations hereunder and the provision of the Services to one or more of its affiliates and/or sub-contractors when necessary. Intertek may also assign this Agreement to any company within the Intertek group.

### **15. GOVERNING LAW AND DISPUTE RESOLUTION**

**15.1** This proposal, and any work performed pursuant to this proposal, shall be governed by the laws of the jurisdiction within which the Intertek facility making the proposal is located. Any action brought hereon shall be venued in said jurisdiction.

### **16. MISCELLANEOUS**

#### **Severability**

**16.1** If any provision of this Agreement is or becomes invalid, illegal or unenforceable, such provision shall be severed and the remainder of the provisions shall continue in full force and effect as if this Agreement had been executed without the invalid illegal or unenforceable provision. If the invalidity, illegality or unenforceability is so fundamental that it prevents the accomplishment of the purpose of this Agreement, Intertek and the Client shall immediately commence good faith negotiations to agree an alternative arrangement.

#### **No partnership or agency**

**16.2** Nothing in this Agreement and no action taken by the parties under this Agreement shall constitute a partnership, association, joint venture or other co-operative entity between the parties or constitute any party the partner, agent or legal representative of the other. Waivers

**16.3** Subject to Clause 10.3 above, the failure of any party to insist upon strict performance of any provision of this Agreement, or to exercise any right or remedy to which it is entitled, shall not constitute a waiver and shall not cause a diminution of the obligations established by this Agreement. A waiver of any breach shall not constitute a waiver of any subsequent breach.

**16.4** No waiver of any right or remedy under this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing.

#### **Whole Agreement**

**16.5** This Agreement and the Proposal contain the whole agreement between the parties relating to the transactions contemplated by this agreement and supersedes all previous agreements, arrangements and understandings between the parties relating to those transactions or that subject matter. No purchase order, statement or other similar document will add to or vary the terms of this Agreement.

**16.6** Each party acknowledges that in entering into this Agreement it has not relied on any representation, warranty, collateral contract or other assurance (except those set out or referred to in this Agreement) made by or on behalf of any other party before the acceptance or signature of this Agreement. Each party waives all rights and remedies that, but for this Clause, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

#### **Third Party Rights**

**16.7** A person who is not party to this Agreement has no rights to enforce any of the terms of this Agreement.

#### **Further Assurance**

**16.8** Each party shall, at the cost and request of any other party, execute and deliver such instruments and documents and take such other actions in each case as may be reasonably requested from time to time in order to give full effect to its obligations under this Agreement.

(updated Jan 2021)