



## **TERMS AND CONDITIONS FOR SECURITY ASSESSMENTS SERVICES**

### **1. General**

These terms and conditions govern the supply of security assessment services (the "Security Assessment Services") by any of the affiliated companies of SGS SA or any of their agents (each a "Company") to the Client (the "Contractual Relationship(s)").

### **2. Definitions**

In these terms and conditions the following terms shall have the following meanings:

"Client" means any organisation and where appropriate shall include such organisation's Related Third Parties, or Unrelated Third Parties.

"Client Assessments" means assessments of the Client and, if requested, shall also include assessments of Related Third Parties, performed by the Company using the Client Questionnaire.

"Client Questionnaire" means the document issued by the Client which reflects its security procedures and systems and against which the Company will perform the Services and issue its findings.

"Company Assessments" means assessments of the Client and, if requested, shall also include assessments of Related Third Parties, performed by the Company using the Company Questionnaire.

"Company Questionnaire" means the document issued by the Company which reflects the security procedures and systems and scoring guidelines against which, once validated by the Client, the Company will perform the Services and issue its findings.

"Deliverable" means the assessment results and related report, if applicable, that will be provided to the Client upon completion of the Services.

"Related Third Parties" mean the suppliers, manufacturers, freight forwarders and similar service providers under contract to an organisation.

"Services" means either of Client or Company Assessments performed by Company using either the Client Questionnaire or the Company Questionnaire.

"Unrelated Third Parties" mean prospective third party suppliers, manufacturers, freight forwarders and similar service providers.

### **3. Provision of Services**

(a) The Company will provide the Services using reasonable care and skill and in accordance with the contents of the Client Questionnaire or the Company Questionnaire.

(b) The contents of the Deliverable represent the Company's review of facts and documents in existence at the time of performance of the Services only and within the limits of the instructions received and are solely for the benefit of the Client which is responsible for acting as it sees fit on the basis of such Deliverable.

(c) The Company may delegate the performance of all or part of the Services to an agent or subcontractor and Client authorises Company to disclose all information necessary for such performance to the agent or subcontractor.

(d) Client acknowledges that the Company, by providing the Services, neither takes the place of Client or any third party, nor releases them from any of their obligations, nor otherwise assumes, abridges, abrogates or undertakes to discharge any duty of Client to any third party or that of any third party to Client.

### **4. Obligations of Client**

The Client will:

(a) prepare the Client Questionnaire or, in the event the Company Questionnaire is to be used for the provision of Services, confirm to the

Company in writing that it agrees with the contents and scope set forth therein.

(b) ensure that sufficient information, instructions and documents are given in due time (and, in any event not later than 48 hours prior to the desired intervention) to enable the required Services to be performed;

(c) procure all necessary access for the Company's representatives to the premises where the Services are to be performed and take all necessary steps to eliminate or remedy any obstacles to, or interruptions in, the performance of the services;

(d) comply with the Company's requests to conduct interviews, meetings or discussions with the Client's employees and agents on any matters relating to the Services, within such deadlines as the Company shall establish;

(e) supply, if required, any special equipment and personnel necessary for the performance of the Services;

(f) ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of services and will not rely, in this respect, on the Company's advice whether required or not;

(g) inform Company in advance of any known hazards or dangers, actual or potential, associated with any order or samples or testing including, for example, presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution or poisons;

(h) in the event Client requests that the Services encompass Related Third Parties, ensure that all Related Third Parties are made aware that they will be assessed and require them to comply with the Client obligations set forth in this Article 4.

### **5. Fees and Payment**

(a) Fees not established between the Company and Client at the time the order is placed or a contract is negotiated shall be at the Company's standard rates (which are subject to change) and all applicable taxes shall be payable by Client.

(b) Unless a shorter period is established in the invoice, Client will promptly pay not later than 30 days from the relevant invoice date or within such other period as may be established by the Company in the invoice (the "Due Date") all fees due to the Company failing which interest will become due at a rate of 1.5% per month (or such other rate as may be established in the invoice) from the Due Date up to and including the date payment is actually received.

(c) Client shall not be entitled to retain or defer payment of any sums due to the Company on account of any dispute, counter claim or set off which it may allege against the Company.

(d) Notwithstanding any jurisdiction election set forth herein, Company may elect to bring action for the collection of unpaid fees in any court having competent jurisdiction.

(e) Client shall pay all of the Company's collection costs, including attorney's fees and related costs.

(f) In the event any unforeseen problems or expenses arise in the course of carrying out the services the Company shall endeavour to inform Client and shall be entitled to charge additional fees to cover extra time and cost necessarily incurred to complete the services.

(g) If the Company is unable to perform all or part of the services for any cause whatsoever outside the Company's control including failure by Client to comply with any of its obligations provided for in Article 4 above the Company shall nevertheless be entitled to payment of:

(1) the amount of all non-refundable expenses incurred by the Company; and

(2) a proportion of the agreed fee equal to the proportion of the services actually carried out.

## 6. Use and Ownership of Deliverable

(a) Upon completion by Company, the Deliverable shall be presented to the Client in its entirety. The Client may, at its sole discretion, submit said Deliverable to any government or other appropriate agency or otherwise to any third party to which such submission may be of interest.

(b) The ownership of the Deliverable provided to the Client by the Company in connection with the Services shall remain vested in the Client. Company has the right to make and retain copies of said Deliverable for the purposes of Company's own records subject to the provisions of Article 9 below.

(c) Receipt of the Deliverable does not mean that any government or any other third party will validate Client's security procedures and systems nor that Client will be listed as a participating company in any government or third party security program, nor that Client will be selected or approved as a service provider by any other company.

## 7. Suspension or Termination of Services

(a) The Company shall be entitled to resign from its duties for any reason and without cause by written notice served upon the Client at least 30 days prior to the proposed effective date of such resignation.

(b) The Client may remove the Company for any reason and without cause by written notice served upon the Company at least 30 days prior to the proposed effective date of such removal.

(c) Upon resignation or removal, all fees then due and payable shall be paid to Company. Client acknowledges that, should Company resign or be removed prior to delivery of the Deliverable, no portion of said Deliverable which may be in the possession of Client may be used for any reason, including as the basis for any work performed by any substitute service provider and Client shall indemnify and hold Company harmless from and against any claims which may be brought against Company by any such misuse.

## 8. Liability and Indemnification

### (a) Limitation of Liability:

(1) The Company is neither an insurer nor a guarantor and disclaims all liability in such capacity. Clients seeking a guarantee against loss or damage should obtain appropriate insurance.

(2) The Deliverable is issued on the basis of information, documents and/or discussions provided by, or on behalf of, Client and solely for the benefit of Client who is responsible for acting as it sees fit on the basis of such Deliverable. Neither the Company 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 on the basis of such Deliverable nor for any incorrect results arising from unclear, erroneous, incomplete, misleading or false information provided to the Company by, or on behalf of, the Client.

(3) The Company shall not be liable for any delayed, partial or total non-performance of the Services arising directly or indirectly from any event outside the Company's control including failure by Client to comply with any of its obligations hereunder.

(4) The liability of the Company in respect of any claim for loss, damage or expense of any nature and howsoever arising shall in no circumstances exceed a total aggregate sum equal to the fee paid in respect of the specific Service which gives rise to such claim.

(5) The Company shall have no liability for any indirect or consequential loss (including loss of profits).

(6) In the event of any claim, Client must give written notice to the Company within 30 days of discovery of the facts alleged to justify such claim and, in any case, the Company shall be discharged from all liability for all claims for loss, damage or expense unless suit is brought within one year from:

(i) the date of performance by the Company of the Service which gives rise to the claim; or

(ii) the date when the Service should have been completed in the event of any alleged non-performance.

(b) Indemnification: Client shall guarantee, hold harmless and indemnify the Company and its officers, employees, agents or subcontractors against all claims (actual or threatened), liabilities, demands, penalties, forfeitures, suits, judgements and the associated costs and expenses (including attorneys' fees) which the Company may hereafter incur, become responsible for or pay out as a result of (1) Client's breach of any term or provision of the Contractual Relationship; (2) Client's failure to comply with any regulatory provisions to which it is subject due to the nature of its business and the products it sells; (3) any negligent or wilful acts, errors or omissions by Client, its employees, officers, agents, representatives, subcontractors and Related Third Parties; or (4) Client's products and/or services.

## 9. Confidentiality

(a) As used herein, "Confidential Information" shall include any and all oral and written information provided to SGS by the Client and the Deliverable (the "Client Information") as well as the terms set forth herein and the Company Questionnaire (the "Company Information") provided, however, that Confidential Information shall not include any information which (1) is or hereafter becomes generally known to the public; (2) was available to the receiving party on a non-confidential basis prior to the time of its disclosure by the disclosing party; (3) is disclosed by an independent third party with a right to make such disclosure. Unless required by law, neither party shall disclose the other's Confidential Information to any person or entity except as expressly provided for herein.

(b) In the event a receiving party becomes legally compelled to disclose any of the Confidential Information (the "Compelled Party"), the Compelled Party shall provide the other party with prompt notice so that such party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Article. In the event that such protective order or other remedy is not obtained or the party waives compliance, the Compelled Party shall only furnish that portion of the Confidential Information which the Compelled Party is legally required to disclose and will seek to obtain reasonable assurance that confidential treatment will be accorded the Confidential Information so disclosed.

## 10. Miscellaneous

(a) If any one or more provisions of these General Conditions are found to be illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(b) During the course of providing the Services and for a period of one year thereafter Client shall not directly or indirectly entice, encourage or make any offer to Company's employees to leave their employment with the Company.

(c) Use of the Company's corporate name or registered marks for advertising purposes is not permitted without the Company's prior written authorisation.

(d) Except as expressly provided for herein, the Client may not assign any of its rights or obligations hereunder without the Company's prior written consent.

(e) These terms and the order confirmation form, which together reflect the Contractual Relationship(s), shall constitute the entire agreement between the parties with respect to the subject matter with all other prior contracts, proposals, representations, negotiations and understandings, either oral or in writing, being hereby superseded. Any amendment or modification hereof shall only be binding if it is made in writing and signed by the authorised representatives of each party.

## 11. Governing Law, Jurisdiction and Dispute Resolution

Unless specifically agreed otherwise, all disputes arising out or in connection with Contractual Relationship(s) hereunder shall be governed by the substantive laws of Switzerland exclusive of any rules with respect to conflicts of laws and be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The arbitration shall take place in Paris (France) and be conducted in the English language.