

## TERMS & CONDITIONS FOR BCL SERVICES

### 1. Interpretation

#### 1.1. In these Terms & Conditions

'BASEC' means BASEC Conformity Limited, registered office is at The Black Church, St. Mary's Place, Dublin, D07 P4AX 0ES. Registered in Ireland, No 617855.

'Certification' means BASEC's conformity assessment, registration, initial or annual listing or recognition of products, processes, systems or services and 'Certification Services', 'Certificate' and 'Certified' shall be construed accordingly.

'Certification Services Agreement' or 'Agreement' means the contract between BASEC and the Customer for the provision of the Services incorporating the Order, these Terms and Conditions, the Product Certification Requirements and the Trademark Licence Agreement'.

'Confidential Information' means any commercial, financial or technical information, information relating to the Services, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed pursuant to this Agreement, except Confidential Information shall not include any information already in the possession of BASEC prior to its disclosure by the Customer or which subsequently comes into its possession free from any obligation of confidentiality, information which is in the public domain and obtained other than through the provision of the Services, information which is necessary to enable BASEC to achieve or maintain approval and / or accreditation, or information which is required by an accreditation body or notification authority to be disclosed.

'Consumer' means the person, firm, company or other body that uses the Customer's product, process, system or service being Certified or tested by the Services.

'Customer' means the person, company, firm or other body seeking the 'Services'

'Force Majeure' means an event or sequence of events beyond any party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract [including an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required for performance of the Contract; strike, lockout or boycott or other industrial action including strikes or other industrial disputes involving the Supplier's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay

'Product Certification Requirements' or 'PCR' means the requirements set out in BASEC's document titled Product Certification Requirements'.

'Quote' means the Customer's order for the Services as set out in the BASEC quotation.

'Report' means the report(s) relating to the Services and is intended only for the Customer's internal use and benefit.

'Services' means the provision of certification, listing (as published on BASEC's website [www.baseconformity.ie](http://www.baseconformity.ie)), testing, investigatory works, training or other services as set out in a BASEC quotation, Customer purchase order, or BASEC invoice. The Services may also comprise or include the provision of a Report.

'Trademark Licence' means the licence granted to the Customer by BASEC under the Trademark Licence Agreement.

'Trademark Licence Agreement' means the licence agreement between BASEC and the Customer.

- 1.2. The headings in these Terms & Conditions are for convenience only and shall not affect their interpretation.
- 1.3. Reference to any statute or statutory provision includes a reference to the statute or statutory provisions as from time to time amended, extended or re-enacted.
- 1.4. The revision status of these Terms & Conditions is stated at the bottom of each page. This revision supersedes all previous revisions, and upon issue to Customers is deemed to be the prevailing Terms & Conditions for all new and existing Agreements.
- 1.5. These Terms apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.6. Any quotation given by BASEC shall not constitute an offer and is only valid for a period of 60 days from its date of issue, or as specified in the quotation.
- 1.7. A contract shall come into existence when both BASEC and the Customer sign the Quote or BASEC issues a written acknowledgement of a Customer's order for the Services. The continued instruction by the Customer shall also be deemed acceptance of these Terms.

### 2. Responsibilities of the Customer – Common to all Services

- 2.1. The Customer shall comply with the Product Certification Requirements.
- 2.2. The Customer shall, at their own expense, supply BASEC in a timely manner with copies of all documents, materials, information, data and samples necessary to perform the Services, translated into English if necessary.
- 2.3. The Customer shall ensure the accuracy of all material it provides to BASEC. BASEC shall have no liability for any loss or damage to such documentation or from inaccuracies of this material, however caused.
- 2.4. The Customer shall fully cooperate with BASEC's representative and any UKAS representative and give access at all times to the premises, data and other facilities as are required by BASEC to carry out the Services.
- 2.5. The Customer shall give BASEC at least fourteen clear days' written notice in the event that the Customer wishes to postpone or cancel any visit or test.
- 2.6. The Customer shall be liable for all reasonable costs, charges or losses incurred by BASEC due to any cancellation or postponement of services. If less than 30 clear days' notice is given, the Customer agrees to pay the full fees. If cancellation is made between 30 and 60 days prior to commencement then 50% of fee is payable but all travel costs already incurred; greater than 60 days prior to commencement then an administration charge of 15% shall apply, plus all travel costs already incurred.

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- 2.7. If BASEC's performance of its obligations is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, BASEC shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.
- 2.8. The Customer shall ensure that BASEC representatives are accompanied at all times by a Customer representative. The Customer's representative shall operate any equipment or machinery including computer terminals to access information, except as required by BASEC and agreed in writing by BASEC.
- 2.9. The Customer shall notify BASEC of any changes to its contact details or legal entity status, including ownership, within 7 days of the change (subject to clause 11 below).

**For product, process and system certification schemes**

- 2.10. Unless otherwise agreed the Customer shall:
- 2.10.1. provide the Consumer with adequate instructions for the proper siting, installation, maintenance, and operation and, where required by law, disposal of the product (or system)
  - 2.10.2. at its own cost provide BASEC with samples, or access to samples, of Certified product (or system) which are representative of current production methods for re-examination or re-assessment to such location as BASEC directs.
  - 2.10.3. keep adequate records to permit the Consumer and BASEC to trace a product and to allow a product, (process or system) recall being affected.
- 2.11. The Customer shall manufacture the product or provide the process, system or service as Certified by BASEC and shall not make any changes which may affect the quality or performance of the product, process, system or service without the prior written approval from BASEC.
- 2.12. In the event the Customer becomes aware of any shortfall in the performance of the product, process, system or service, howsoever caused, the Customer shall inform BASEC immediately and shall follow BASEC's instructions as to how to proceed.
- 2.13. Where required by the Certification Services Agreement the Customer shall permit periodic audits, as specified by BASEC, and provide access to the facilities identified on certificates issued by BASEC for the maintenance of any Certification.
- 2.14. Where required by the Agreement audits shall also be undertaken at organisational and/or installation locations identified by the Customer.
- 2.15. The Customer shall maintain a record of complaints, failures and remedial actions taken.
- 2.16. The Customer may only use the BASEC Certification marks and/or notified body number and/or claim Certification for the manufacture of product or for the provision of the process, system, or service identified on valid certificates issued by BASEC and in accordance with the Trademark Licence Agreement.
- 2.17. If the product, process, system, or service ceases to be certified by BASEC, then the Customer shall cease using and remove or obliterate any mark and/or notified body number from the product, service and/or from any promotional material.

- 2.18. The Customer shall not supply any product, process or system which does not conform to the requirements set out in the Certification Services Agreement.
- 2.19. The Customer shall not, without BASEC's written permission, alter, modify, deface or destroy the Certificate.
- 2.20. The Customer may publicise the fact that Certification has been granted and use the Certificate as evidence of Certification. The Customer may copy the Certificate provided that each copy is clearly identified as a copy.
- 2.21. The original and any copies of the Certificate remain the property of BASEC and must be returned immediately on termination of the Agreement or if requested by BASEC.
- 2.22. The Customer may appeal any decision by BASEC not to issue, to reduce or to withdraw Certification, using the procedure set out by BASEC.

**For testing (not related to Certification)**

- 2.23. The Customer shall be responsible at its own expense for delivering the products or materials for testing to such premises as BASEC directs. The Customer acknowledges that products and materials may be tested to destruction and BASEC shall have no liability to the Customer in this respect. Unless agreed otherwise in writing, samples submitted for testing shall become the property of BASEC on delivery to BASEC and BASEC may dispose of them at its discretion.
- 2.24. The Customer shall be responsible for any delays in testing resulting from any material, products, documentation and/or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form or arising from late arrival or non-arrival or any fault of the Customer that results in extended occupation of a test rig or equipment or significant delays to other projects. The Customer shall be responsible for all reasonable costs, charges or losses incurred by BASEC by reason of such delays.
- 2.25. The Customer shall not identify the product as Certified or approved by or use the name of BASEC or make any reference to any test or Report or Service for any advertising, sales or promotional purpose or through any use whatsoever that could imply certification by BASEC unless or until it has been certified.
- 2.26. Unless required by law, or with BASEC's written permission, the Customer shall not reproduce or distribute any Report to any external third party and when permitted, only in its entirety and without any change, deletion or addition to it.
- 2.27. The Customer must notify BASEC immediately if it becomes aware of any unauthorised use of the whole or any part of the Report.

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### 3. Rights and Responsibilities of BASEC

- 3.1. BASEC will only grant Certification when the Customer has demonstrated compliance with all necessary requirements under the certification being obtained. BASEC may at any time and at its sole discretion make changes to the Certification Services rules and requirements which are necessary to comply with any applicable safety or other statutory requirements, or which are necessary to comply changes in legislation or with the relevant standards or where necessary to meet the requirements of the relevant accreditation authority and the Customer shall comply with such changes as soon as reasonably practicable after notification of such changes.
- 3.2. BASEC reserves the right in its sole judgement to change or revise its rules, standards, criteria, methods or procedures, however, reasonable notice will be given to the Customer such that continued conformance with BASEC's requirements is practicable.
- 3.3. Subject to clause 3.4 BASEC, its employees and agents agree to maintain as confidential and not to use or disclose to any third party any Confidential Information obtained from the Customer in connection with the Services without the consent of the Customer except where it is necessary to enable BASEC to perform the Services or as required by law.
- 3.4. BASEC reserves the right, having served due notice, and in its sole discretion to disclose Confidential Information to appropriate parties where, in BASEC's view, public safety may become at risk or where the reputation of BASEC may be materially prejudiced.

### 4. Fees

- 4.1. The Customer shall pay to BASEC the fees set out in the Quote or as otherwise advised by BASEC.
- 4.2. All fees quoted to the Customer for the provision of the Services are exclusive of any value added tax, or duties for which the Customer shall be additionally liable at the prevailing rates.
- 4.3. Initial assessments, testing, investigatory works and training will not commence or be conducted until payment has been received in full.
- 4.4. All fees quoted and invoiced to the Customer represents the minimum charge and no credit is given for shortfall of samples, mix of samples provided, and any lack of customer production against certificates.
- 4.5. The Customer shall reimburse BASEC for any expenses incurred by BASEC relating to the provision of the Services and accepts that it is wholly responsible for any freight, customs duty or customs clearance fees relating to any test samples. The Customer will reimburse BASEC costs incurred for travel, hotels and subsistence where costs are not paid directly by the Customer.
- 4.6. All sums payable to BASEC shall be paid by the Customer (together with any applicable value added tax, and without any set-off or other deduction) within 7 days of receipt of BASEC's invoice.
- 4.7. If payment is not received by the due date, BASEC may suspend or withdraw the provision of the Services and any associated work including the completion of Reports and may exercise its statutory right to claim interest and

compensation for debt recovery under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).

- 4.8. The Customer agrees that, should they not meet their obligations under a Certification Agreement, e.g. non-provision of samples for testing, then BASEC has the right to retain monies pre-paid and/or charge an administration fee.
- 4.9. The fees are subject to an annual price increase as communicated by BASEC.
- 4.10. All sums payable to BASEC under an Agreement shall become due immediately on termination of the Agreement, despite any other provision.

### 5. Health & Safety

- 5.1. Where BASEC is required to access the Customer's organisation for the purposes of carrying out the Services then the Customer shall provide unhindered access to all relevant working facilities required by BASEC and shall provide safe access and a safe working environment which complies with all health and safety law requirements.
- 5.2. The Customer agrees to make full and immediate written disclosure to BASEC of all relevant information concerning any defect or any potential hazard of the product or material being handled or tested when submitting it for testing or as soon as they become aware of it.

### 6. Trade Marks

- 6.1. BASEC grants to the Customer a Trademark Licence in accordance with the Trademark Licence Agreement.
- 6.2. The Customer shall comply with all of its obligations set out in the Trademark Licence Agreement.

### 7. Warranties and Liabilities

- 7.1. BASEC shall provide the Services with reasonable care and skill.
- 7.2. BASEC shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation, arising from any material or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Customer.
- 7.3. Nothing in these Terms limits or excludes BASEC's liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation, or any other liability which cannot be limited or excluded by applicable law.
- 7.4. Subject to clause 7.3, BASEC shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement (whether direct or indirect) for: loss of profits; loss of sales or business or opportunity; loss of agreements or contracts; loss of anticipated savings; loss of or damage to reputation or goodwill; loss of use or corruption of software, data or information; or any special, indirect or consequential loss.
- 7.5. Subject to clauses 7.3 and 7.4, BASEC's total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with an Agreement shall be limited to the amount which has actually been paid by the Customer to BASEC for the provision of the Services under that Agreement.

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- 7.6. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.
- 7.7. BASEC shall use reasonable endeavors to meet the timescales set out in the Agreement but time shall not be of the essence and BASEC shall not be liable for any losses arising from any delay.
- 7.8. The Customer acknowledges that Certification does not imply or express any warranty of any kind with respect to the Customer's product or service. The Customer acknowledges that it is solely responsible for the suitability of any Certified product or service for any purpose, for defects or for failure in service. In addition, BASEC shall not be liable for any claim that the Customer's product or service infringes the intellectual property rights of any third party.
- 7.9. The Customer agrees to indemnify BASEC against any losses suffered by or claims made against BASEC as a result of any breach by the Customer of the Agreement including, but not limited to, misuse by the Customer of any Certification granted by BASEC under this Agreement.

### 8. Force Majeure

- 8.1. Neither party shall be liable to the other for any delay in performing or failure to perform any obligation due to Force Majeure.
- 8.2. A party whose performance is affected by such a Force Majeure event shall promptly notify the other party in writing of the events and likely duration.
- 8.3. If due to Force Majeure a party is or shall be unable to perform a material obligation or is delayed in or prevented from performing its obligations for a continuing period of sixty (60) days then either party may terminate this Agreement by giving at least ten (10) days' written notice to the other party.

### 9. Termination

- 9.1. This Certification Services Agreement may be terminated pursuant to this clause 9.
- 9.2. On termination of this Certification Services Agreement for whatever reason any Certification granted under this Agreement shall immediately cease to be valid.
- 9.3. Either party may terminate this Certification Services Agreement by giving 90 days' notice in writing to the other.
- 9.4. Without prejudice to any other rights, BASEC may immediately suspend or withdraw any Certification due to unsatisfactory performance, unsatisfactory results in meeting requirements of re-examination, unsatisfactory quality system or non-conformance with any part of this Agreement (including non-payment of any fees due).
- 9.5. Without prejudice to any other rights, either party may terminate the Agreement immediately by notice in writing to the other if the other:
- 9.5.1. commits a breach of the Agreement which, in the case of a breach capable of remedy, has not been remedied within 14 days of being notified in writing to do so;
- 9.5.2. is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation in such manner that the company resulting from such reconstruction or

amalgamation if a different legal entity shall agree to be bound by and assume the obligations of the relevant party under the Agreement) or compounds with or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed or ceases for any reason to carry on business or takes or suffers any similar action which in the opinion of the party giving notice means that the other may be unable to pay its debts.

### 9.6. On termination or expiry of the Agreement:

- 9.6.1. the Customer shall immediately pay to BASEC all of the outstanding unpaid fees and interest and, in respect of Services supplied but for which no invoice has been submitted, BASEC may submit an invoice, which shall be payable immediately on receipt;
- 9.6.2. all clauses which are expressed or implied to continue shall continue in force.
- 9.7. Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

### 10. Variation

No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

### 11. Conflict

For the avoidance of doubt, in the event that a conflict in interpretation exists between the rules and requirements of the PCR and BASEC's Terms and Conditions for Service then the requirements of the Terms and Conditions for Service will have precedence.

### 12. No Partnership of Agency

- 12.1. Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 12.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

### 13. Assignment

- 13.1. BASEC may at any time assign, transfer, sub-contract or deal in any other manner with any or all of its rights under the Agreement. The Customer shall not assign, transfer, sub-contract or in any other manner make over to any third party the benefit of the Agreement, without the prior written consent of BASEC. The Customer hereby provides BASEC with irrevocable consent to novate all rights and obligations of BASEC under the Agreement to a subsidiary or other member of BASEC's Group at any time. BASEC shall notify the Customer in writing 14 days before the effective date of any such novation, identifying the member of BASEC's Group to which the Agreement will novate ("Incoming Party") and the effective date of the novation ("Novation Date"). With effect from the Novation Date, the following shall apply:

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- (a) BASEC transfers all its rights and obligations under the Agreement to the Incoming Party, provided the Incoming Party has entered into a written agreement with BASEC pursuant to which it agrees to perform the Agreement and be bound by its terms in every way as if it were the original party to it in place of BASEC.
- (b) The Incoming Party shall enjoy all the rights and benefits of BASEC under the Agreement.
- (c) The Customer agrees to perform the Agreement and be bound by its terms in every way as if the Incoming Party were the original party to it in place of BASEC.
- (d) All references to BASEC in the Agreement shall be read and construed as references to the Incoming Party.
- (e) The Customer appoints BASEC as its agent to execute in its name and on its behalf any documents necessary for BASEC to give full legal effect to the novation.
- (f) Insofar as necessary, the Customer ratifies and confirms, and agrees to ratify and confirm, anything that BASEC acting as its agent under this clause 13 may do in the proper and lawful exercise, or purported exercise, of its right to novate the Agreement to the Incoming Party.

The Customer shall use its reasonable endeavours to execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this clause 13 within 30 days after a written request from BASEC.

### 14. Third parties

Save as expressly provided in this agreement, no term shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party (being any person other than the parties, their permitted successors and assignees).

### 15. Entire agreement

The Agreement embodies and sets out the entire agreement and understanding of the parties and supersedes all prior oral or written agreements understandings or arrangements relating to the subject matter of the Agreement. Neither party shall be entitled to rely on any understanding or arrangement, which is not expressly set out in the Agreement.

### 16. Waiver

No failure or delay on the part of either party to exercise any right or remedy under the Agreement shall be construed as or operate as a waiver nor shall any single or partial exercise of any right or remedy, as the case may be. The rights and remedies provided in these Terms are cumulative and are not exclusive of any rights or remedies provided by law.

### 17. Notices

17.1. A notice to be given in relation to the Agreement shall be in writing and may be delivered personally or by sending it by pre-paid first class post to the intended recipient's address as set out in the Agreement or to any other address notified in writing by that party or via email to an appointed email address. A notice delivered personally shall be deemed to have been served on delivery. A notice sent by post shall be deemed to have been served at an address within the United Kingdom at the expiry of 48 hours from the date of posting and at an

address outside the United Kingdom at the expiry of 72 hours from the date of posting. Notice given via email will be deemed to have been served when a confirmation receipt email is received.

17.2. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### 18. Arbitration

Any dispute or difference, other than non-payment of fees, arising out of or in connection with this Agreement shall be determined by the appointment of a single arbitrator to be agreed between the parties, or failing agreement within fourteen days, after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the President or a Vice President of the Chartered Institute of Arbitrators.

### 19. Severability

If any provision of the Agreement is held to be invalid or unenforceable such provision shall be deemed to be severed from the Agreement and the remaining provisions shall remain in force.

### 20. Governing law and jurisdiction

This Agreement shall be governed by and construed in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English courts.