

测试的普通条款

上海标检产品检测有限公司（以下简称“本公司”）替客户进行所需测试或检定时，当根据以下条款进行，惟本公司亦保留拒绝接受任何客户有关测试或检定的委托，并毋须给予任何理由：

1. 本公司只为给予本公司指示的某客户或机构（以下简称“该客户”）提供服务。除非获得该客户的授权，任何人士皆没有权利向本公司给予任何指示，尤其有关该测试的范围、报告及证书的送达方面。
2. 所有须接受测试或检定的物资、设备及其它财产皆须由该客户自资及根据本公司的规定送达至本公司。当有关的测试或检定完成后，该客户被本公司要求时，须自行提取有关物资或设备。无论在何种情况下若该客户未能于测试报告的签发日期起计的 30 日内提取有关物资或设备（若该物资属于易消耗性质，例如食物及水的样本，有关时限则为 7 日），本公司可以酌情弃置该物资或设备及毋须赔偿该客户。
3. 该客户在本公司提供服务前或正在服务时，须遵守以下条款：
 - (a) 提供及时的指示和足够的资料，务求令本公司能提供有效的服务；
 - (b) 在本公司的要求下，提供任何设备及人员，让本公司能有效地提供服务；
 - (c) 采取所有必须的行动，以消除或补救任何会阻碍本公司提供服务的事物；
 - (d) 预先通知本公司有关该样本或进行测试时据涉及的真确或潜在危险；
 - (e) 为本公司的员工或代表提供所有必须的通行，令致本公司能有效地提供该客户所需的服务；
 - (f) 在本公司提供该服务期间，确保在本公司提供服务的有关环境、地点及其装置的安全措施已经执行；
 - (g) 无论本公司已否发出测试报告或证书，该客户须充分履行其与其他方所签订的合同（如销售合同）的责任，否则本公司毋须向该客户承担任何责任。
4. 在本公司接受该客户委托的前提下，本公司将会发出测试报告及证书，在该客户委托范围内呈报本公司的意见；惟本公司毋须在该客户的委托范围以外呈报任何事实。该客户须提交充足和准确的测试样本资料给本公司，否则本公司不会对证书和/或报告上的任何有关错误负上任何责任。
5. 本公司是被该客户不可撤换地授权以本公司的酌情方法送达测试报告或证书予该客户所指定的或由本公司根据实际情况、行业习惯、习性或是一般做法而决定的其它地方。
6. 本公司将以保密的方法处理及签发有关测试报告予客户。在未得本公司的同意下，该测试报告不得作全部或部分翻制，或作宣传或其它未经本公司许可的用途。当该客户从本公司收到有关测试报告后，可以展示或传送该测试报告或由本公司所制定该测试报告的核证版本予其顾客、供应商或其它直接有关人士。在不影响第 7 条款的前提下，除非被有关政府机构、法律或法庭命令所要求，本公司在未经客户的同意前，将不会与其他方就测试报告的内容进行任何讨论、书信的往来或透露。
7. 除非该客户在递交协议书时以书面反对，本公司将有权透露有关测试的文件及/或档案予任何第三者认证/认可机构作审核或其它相关用途。本公司无须因透露文件及/或档案的内容负上任何责任。
8. 假若该客户准备利用本公司所签发的测试报告在司法或仲裁程序上，该客户于呈交样本予本公司作测试前必须明确阐述此用途。
9. 除非本公司的确进行抽样测试及于有关测试报告中阐明此事实，该测试报告只适用于已被测试的样本，而不适用于大量额度的有关货品。
10. 任何记载该客户与其他方相互关系的文件（如销售合同、信用状、运载证明书），本公司一概视为纯粹资料，将不会影响本公司接受该客户所委托的服务范围或责任。
11. 假若该客户并未指定该测试所应用的测试方法或标准，本公司将会自行选择适当的方法或标准；有关该测试方法的资料可以从本公司取得。
12. 在本公司或其它进行测试的地方或在往返本公司与该进行测试地方的期间，假若物资、设备或财物发生任何损失或损坏，无论是由于本公司的职员、代理或独立承包商的任何行为、疏忽或失职所造成，本公司的职员、代理或独立承包商皆毋须负上任何责任及不会遭受任何追讨。
13. 本公司对由于利用本公司所签发的任何测试报告或通讯内的资料而造成的损失，概不会承担任何责任。
14. 在不影响第 12 和第 13 条款的前提下，本公司就任何损失所承担的赔偿总额将不会超过与该追讨有关的本公司可收取服务费用的 5 倍；本公司的赔偿责任亦绝对不会包含任何该客户的间接、特殊或随后引致的损失（即并非由事故立刻造成，但其结果导致的破坏或损失）。
15. 假若本公司被任何非本公司能控制的因素导致未能提供该测试服务，而该测试服务亦已备受委托或有关协议已经协定，该客户仍须向本公司支持以下费用：
 - (i) 所有本公司已付的与该测试服务有关的费用及支出；
 - (ii) 与本公司已经提供的测试服务成比例的部分已协议的该测试服务费用或佣金；同时本公司毋须继续承担有关该测试服务中尚未完成的部分或全部责任。
16. 除非有关追讨是在与该追讨有关的本公司所提供服务的日期起计的一年内提出，或是由本公司应该提供服务的日期起计的一年内提出，本公司将毋须就该追讨负任何赔偿责任。
17. 该客户同意本公司并不纯因与该客户建立合约关系或提供测试服务而代替该客户承担向其他方的责任。此外，本公司并非保险承保人或担保人，将不承担有关的任何责任。
18. 就其他方提出任何追讨本公司、雇员、代理或独立承包商有关本公司提供或未能提供测试服务的任何损失或支出，而与该测试服务有关的追讨总额超过第 14 条款所订的赔偿限额，该客户须赔偿予本公司上述追讨总额超出第 14 条款所订的赔偿限额的差额。
19. 假若该测试报告被不适当地运用，本公司将会保留权利撤回该测试报告，及采取任何适当的措施。
20. 该客户同意其委托本公司进行测试所得之报告，并不能作为针对本公司法律行动的依据。
21. 本公司接纳及存档某样本是建基于肯定的基础，即该样本已经该客户投保或承担由于本公司在分析或处理该样本期间发生的火灾、盗窃或任何损失，并且不能向本公司或其职员、代理或独立承包商追讨任何损失。
22. 假若该客户的要求令致有关该样本的测试须于该客户或任何第三方的实验室进行，则本公司只会代为传送有关该测试的结果，对其准确性概不负任何责任。如本公司只可证明该客户或任何第三方的实验室已进行有关测试，则本公司只可确认某正确的样本已经被测试，而毋须为该测试的准确性负任何责任。
23. 假若本公司于提供测试服务的过程中需要未可预计的额外时间或支出，则本公司可以根据该基础向该客户收取额外的费用。
24. 本公司在提供测试服务期间所衍生的任何报告、证书或其它物资，其相关的所有法律产权（包括知识产权），皆由本公司所拥有。
25. 该客户应于本公司所发出的发票日期或由本公司以书面同意的特定日期内准时支持有关该测试的所有费用，否则该客户需要支付本公司发票日期起计至实际付款日期的利息（以每月 3 厘计）。该客户亦须支付本公司用于追讨该笔欠款的所有费用，包括法律费用。
26. 当本公司收到该客户的请求，本公司可以电子媒介传递有关测试服务的结果，但该客户应注意，电子媒介传递不能保证其所含资料不会流失、延缓或被其他方截取。对于电子媒介传递导致其所含的任何资料出现泄露、差错或遗漏，本公司将不会负任何责任。
27. 在有需要情况下，本公司可以将全部或部分测试服务向外承判予合格的承包商，该客户若在呈交测试服务的申请表时未有提出对上述的反对，该客户将被视作同意上述本公司的安排。
28. 本公司根据有关该客户所需的测试或检定服务的个别情况，保留在上列所有普通条款上再增加特别条款的权力（此第 28 条款在该客户接获本公司的有关通知方生效）。
29. 对于本公司和该客户因本协议所产生的任何争议或索赔或有关本协议之违反，终止或无效，上述条款应优先于各方或其代理人先于口头或书面上已协议之任何其它条款。
30. 上述条款适用于中华人民共和国法律，凡因上述条款产生的或与上述条款有关的任何争议应通过友好协商解决，如果协议不成，该争议应提交中国国际经济贸易仲裁委员会，按照申请仲裁时该会现行有效的仲裁规则进行仲裁。仲裁裁决是终局的，对双方均有约束力。仲裁费用应由败诉方承担。
31. 以上的普通/特别条款若在英文或中文的版本上出现歧义，则在该歧义部份而言，概以英文为准。

GENERAL CONDITIONS OF TESTING

STC (Shanghai) Company Limited., (the "SHSTC"), while reserving the right to decline, without giving any reason whatsoever, any request for the undertaking of a test or investigation, will carry out at the request of the clients the required test or investigation subject always to the following conditions: -

1. The SHSTC only acts for the person or body originating the instructions (the "Clients"). No other party is entitled to give instructions, particularly on the scope of testing or delivery of report or certificate, unless authorized by the Clients.
2. All materials, equipment and other property to be tested or investigated shall be delivered at the costs of the Clients and in accordance with the requirements of the SHSTC. At the conclusion of the test or investigation, the Clients shall, if required by the SHSTC, collect the materials or equipment. In any event, if the materials or equipment are not collected by the Clients within 60 days from the issuance date of the test report, the SHSTC may at its discretion dispose of the same without any compensation to the Clients.
3. The Clients shall always comply with the followings before or during the SHSTC providing its services:-
 - (a) give timely instructions and adequate information to enable the SHSTC to perform the services effectively;
 - (b) supply, when requested by the SHSTC, any equipment and personnel for the performance of the services;
 - (c) take all necessary steps to eliminate or remedy any obstruction in the performance of the services;
 - (d) inform the SHSTC in advance of any hazards or dangers, actual or potential, associated with any order of samples or testing;
 - (e) provide all necessary access for the SHSTC's staff and/or representative(s) to enable the required services to be performed effectively;
 - (f) ensure all essential steps are taken for safety of working conditions, sites and installations during the performance of services;
 - (g) fully discharge all its liabilities under any contract like sales contract with a third party, whether or not a report or certificate has been issued by the SHSTC, failing which the SHSTC shall be under no obligation to the Clients.
4. Subject to the SHSTC's accepting the Clients' instructions, the SHSTC will issue reports and certificates which reflect statements of opinion made with due care within the scope of instructions but the SHSTC is not obliged to report upon any facts outside the instructions. The Clients shall always render adequate and accurate information and particulars of the test sample to the Centre, failing which the Centre shall not be responsible for any faults and/or mistakes on the certification and/or reports in relation thereto.
5. The SHSTC is irrevocably authorized by the Clients to deliver at its discretion the report or the certificate to any third party when instructed by the Clients or where it implicitly follows from circumstances, trade custom, usage or practice as determined by the SHSTC.
6. A test report will be issued in confidence to the Clients and it will be strictly treated as such by the SHSTC. It may not be reproduced either in its entirety or in part and it may not be used for advertising or other unauthorized purposes without the written consent of the SHSTC. The Clients to whom the Report is issued may, however, show or send it, or a certified copy thereof prepared by the SHSTC, to his customer, supplier or other persons directly concerned. Subject to Clause 7, the SHSTC will, without the consent of the Clients, neither enter into any discussion or correspondence with nor disclose to any third party concerning the contents of the report unless required by the relevant governmental authorities, laws or court orders.
7. The SHSTC shall be at liberty to disclose the testing-related documents and/or files anytime to any third-party accreditation and/or recognition bodies for audit or other related purposes unless disagreed with by the Clients in writing at the time of them submitting the applications. No liabilities whatsoever shall attach to the SHSTC's act of disclosure,
8. The Applicant wishing to use the SHSTC's reports in court proceedings or arbitration shall inform the SHSTC to that effect prior to submitting the sample for testing.
9. The report will refer only to the sample tested and will not apply to the bulk, unless the sampling has been carried out by the SHSTC and is stated as such in the Report.
10. Any documents containing engagements between the Clients and third parties like contracts of sale, letters of credit, bills of lading, etc. are regarded as information for the SHSTC only and do not affect the scope of the services or the obligations accepted by the SHSTC.
11. If the Clients do not specify the methods / standards to be applied, the SHSTC will choose the appropriate ones and further information regarding the methods can be obtained by direct contact with the SHSTC.
12. No liability shall be incurred by and no claim shall be made against the SHSTC or its servants, agents, employees or independent contractors in respect of any loss or damage to any such materials, equipment and property occurring whilst at the SHSTC or any work places in which the testing is carried out, or in the course of transit to or from the SHSTC or the said work places, whether or not resulting from any acts, neglect or default on the part of any such servants, agents, employees or independent contractors of the SHSTC.
13. The SHSTC will not be liable, or accept responsibility for any loss or damage howsoever arising from the use of information contained in any of its reports or in any communication whatsoever about its said tests or investigations.
14. Subject to Clauses 12 and 13, the total liability of the SHSTC in respect of any claim of loss, damage or expense of whatsoever nature shall not exceed a total sum equal to five times the amount of the service fee payable in respect of the services directly related to such claim, and the SHSTC's liability shall not include any indirect, special or consequential loss of the Clients.
15. In the event of the SHSTC prevented by any cause outside the SHSTC's control from performing any service for which an order has been given or an agreement made, the Clients shall pay to the SHSTC:-
 - i) the amount of all abortive expenditure actually made or incurred; and
 - ii) a proportion of the agreed fee or commission equal to the proportion (if any) of the service actually carried out by the SHSTC.and the SHSTC shall be relieved of all responsibility whatsoever for the partial or total non-performance of the required service.
16. The SHSTC shall be discharged from all liability for all claims for loss, damage or expense unless suit is brought within one calendar year after the date of the performance by the SHSTC of the service relating to the claim or in the event of any alleged non-performance within one year of the date when such service should have been completed.
17. The Clients acknowledge that the SHSTC does not, either by entering into a contract or by performing service, assume or undertake to discharge any duty of the Clients to any other persons. The SHSTC is neither an insurer nor a guarantor and disclaims all liability in such capacity.
18. The Clients shall hold harmless and indemnify the SHSTC and its officers, employees, agents or independent contractors against all claims made by any third party for loss, damage or expense of whatsoever nature including reasonable legal expenses relating to the performance or non-performance of any services to the extent that the aggregate of any such claims relating to any one service exceed the limits mentioned in Clause 14.
19. In the event of improper use of the report, the SHSTC reserves the right to withdraw it, and to adopt any other measures which may be appropriate.
20. Samples submitted for testing are accepted on the understanding that the report issued cannot form the basis of, or be the instrument for, legal action against the SHSTC.
21. Samples are deposited with and accepted by the SHSTC on the basis that either they are insured by the Clients or the Clients assumes entire responsibility for loss through fire, theft, burglary or for damages arising in the course of analysis or handling, without recourse whatsoever to the SHSTC or its servants, agent, employees or independent contractors.
22. If the requirements of the Clients require the analysis of samples by the Client's or any third party's laboratory, the SHSTC will only convey the result of the analysis without responsibility for its accuracy. If the SHSTC is only able to witness an analysis by the Client's or any third party's laboratory the SHSTC will only confirm that the correct sample has been analyzed without responsibility for the accuracy of any analysis or results.
23. In the event of any unforeseen additional time or costs being incurred in the course of carrying out any of its services, the SHSTC shall be entitled to charge the Clients additional fees to reflect the additional time and costs incurred.
24. All rights (including but not limited to copyright) in any reports, certificates or other materials produced by the SHSTC in the course of providing its services shall remain vested in the SHSTC.
25. The Clients shall punctually pay on the date of invoice or within such other period agreed in writing by the SHSTC all charges rendered by the SHSTC or interest will become due at the rate of three per cent per month from the date of invoice until actual payment. The Clients are also responsible for settling all the SHSTC's costs of collecting the charges owed, including legal fees.
26. Test results may be transmitted by electronic means at the Client's request. However, it should be noted that electronic transmission cannot guarantee the information contained will not be lost, delayed or intercepted by third party. The SHSTC is not liable for any disclosure, error or omission in the content of such messages as a result of electronic transmission.
27. If necessary, the SHSTC may subcontract part of or all tests to competent subcontractors. If no objection is raised at the time of the Clients submitting the application, the SHSTC shall assume the Client's approval.
28. The SHSTC reserves the right to include Special Conditions in addition to the foregoing General Conditions if warranted by the particular circumstances of the required test or investigation [this clause is only effective when the other party has been informed].
29. For any dispute, controversy or claims arising out of relating to this agreement, or the breach, termination or invalidity thereof between the Centre and the Applicant, the foregoing General Conditions shall take precedence over any other terms and conditions, whether oral or written, previously agreed by the parties or the agents or representatives of either parties.
30. The foregoing General Conditions shall be governed and construed according to the laws of People's Republic of China. Any disputes arising out of or relating to the foregoing General Conditions shall be settled through friendly negotiations. In case no settlement can be reached through negotiations, such disputes shall be submitted to China International Economic and Trade Arbitration Commission for arbitration which shall be conducted in accordance with the Commission's arbitration rules in effect at the time of applying for arbitration. The arbitral award rendered by the said Commission shall be final and binding upon both parties. The arbitration fee shall be borne by the losing party.