



Field Evaluation and Special Inspection Legal & Commercial Terms

1. **Scope of application.** These Legal and Commercial Terms govern Nemko's provision of Field Evaluation and Special Inspection, hereinafter referred to as the Services.
2. **Legal venue & choice of law.** These Legal & Commercial Terms and the provision of the Services shall be governed and construed in accordance with the laws of the Nemko legal entity which issues the quotation, without regard to principles of conflicts of law. Any dispute arising in relation to or as a consequence of this quote or the Services concerned, which cannot be settled amicably through negotiations between the parties, shall be brought exclusively before the courts of this Nemko legal entity.
3. **Cancellation.** Customer may cancel agreed inspections. In case of cancellations, the following applies:
 - i. For cancellations made more than 7 weekdays prior to the scheduled start date, no fees apply.
 - ii. For cancellations made between 7 and 3 weekdays prior to the scheduled start date, Customer shall pay 50% of the agreed fee.
 - iii. For cancellations made less than 3 weekdays prior to the scheduled start time, Nemko reserves the right to charge the agreed fee in its entirety.
4. **Misrepresentation.** Equipment labelled by Nemko shall not be represented by the Customer as being certified. Any report or label issued by Nemko may only be used to indicate to Authorities Having Jurisdiction (AHJ's) that labeled products are essentially in conformity with the specified standards. The report or labels issued by Nemko do not represent technical due diligence, goods inspection, pre-shipment inspection, commissioning inspection or reports or similar documents that are established for the purpose of sales or purchase of equipment. Nemko waives all and any responsibility for Customer or third party reliance on the report for such purposes. Customer waives all and any claims against Nemko based on reliance on Nemko's reports for these purposes, and shall indemnify and hold Nemko harmless for any claims that Nemko may receive from third parties arising from such use or reliance on the reports and labels.
5. **Reporting.** Nemko shall be notified without undue delay of any situation where a Nemko labelled equipment has subsequently been found to be hazardous or non-conforming with the specifications applied at the time of the labelling. In cases where a product bearing the label is found not to be in compliance with relevant, applicable technical requirements or is found to potentially be hazardous, the Customer acknowledges that corrective actions shall be undertaken.
6. **Indirect losses.** Nemko shall not in any way be liable towards the Customer for any of the Customer's consequential or indirect losses arising from or in connection with this Agreement or the performance of the Services concerned, including but not limited to interruption of loss of use, business, contract or revenue, loss of goodwill, loss of profit or anticipated profit, loss of production, delayed market access, wasted overhead, cost of substitute equipment, recall costs, downtime costs, product liabilities or other special, punitive or other forms of indirect losses, howsoever they may arise, whether under contract, tort (including negligence), strict liability or otherwise.



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7. **Limitation of liability and indemnification obligations.** UNLESS OTHERWISE SET OUT IN THE APPLICABLE SERVICE AGREEMENT, AND EXCEPT IN CASE OF INFRINGEMENT OF THIRD PARTY IPR, IN CASE OF BREACH OF THE CONFIDENTIALITY OBLIGATIONS SET OUT HEREIN, OR IN CASE OF GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FRAUD, FRAUDULENT MISREPRESENTATION, OR OTHER SIMILAR CIRCUMSTANCE FOR WHICH A PARTY MAY NOT LAWFULLY LIMIT ITS LIABILITY UNDER THE AGREEMENT'S APPLICABLE LAW, THE MAXIMUM CUMULATIVE LIABILITY AND INDEMNIFICATION OBLIGATIONS OF NEMKO ARISING FROM OR IN CONNECTION WITH THE PROVISION OF THE SERVICES, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE) OR IN STRICT LIABILITY, SHALL BE LIMITED TO USD 300,000 (THREE HUNDRED THOUSAND US DOLLARS).
8. **Force majeure.** Neither Party shall be in breach of the Agreement, nor liable for any failure or delay in performance hereunder if the cause of such failure or delay is attributable to events beyond reasonable control of the affected Party, including but not limited to armed conflict terrorist attack, civil war, riots, toxic hazards, epidemics, pandemics, natural disasters, extreme weather, fire, explosion, failure of utility service, labour disputes, breakdown of infrastructures, including outages or disruptions in telecommunications systems and similar, cyber-attacks despite market standard preventive and mitigating actions having been taken, sanctions, or any public restrictions following any of the incidents above; or any other incidents beyond reasonable control (force majeure). In the event of a force majeure occurrence, the affected Party shall notify the other Party without undue delay of the particulars of the situation. Either Party shall be entitled to terminate the Agreement with immediate effect should the force majeure endure for more than 30 calendar days.
9. **Sanctions, embargos and trade restrictions.** Each Party may terminate the Agreement, subject to 30 calendar days written notice to the other Party, without any liabilities or penalties, if the Party, its ultimate parent company or the ultimate parent company's subsidiaries or affiliates can demonstrate that they are subject to sanctions, embargo or penalties by a government, United Nations, European Union or similar organizations related to the Services which are provided hereunder or that they would be considered to be illegal or in conflict with applicable law.
10. **Compliance.** Each Party shall in its conduct of business related to the Services, comply with applicable law, in particular applicable anti-bribery law.
11. **Third party rights.** No one other than the Parties to the Agreement, their successors and permitted assignees, shall have any right to enforce the rights set out in the Agreement. No person other than the Parties to the Agreement shall have any rights under declaratory legislation or background law which give third parties rights to enforce or enjoy the benefit of any term of this Agreement. The rights of the Parties to agree any amendment or waiver under the Agreement are not subject to the consent of any other person. In case third parties initiate legal proceedings against Nemko in connection with a product certified under this Agreement, Nemko shall be entitled to initiate a recourse claim against Customer before the court concerned.