

General Scheme Requirements for Nemko Field Evaluation and Special Inspection

1. Introduction

- a. Nemko's provision of Field Evaluation and Special Inspection of Unlabelled/Unapproved Equipment services ("the Services") is subject to the applicable agreement between Nemko and Customer ("Agreement") and is governed by these Nemko Scheme Requirements ("the Requirements").
- b. The Requirements set out basic expectations to Customer and the Services, and include provisions that are deemed necessary for Nemko to establish essential Equipment compliance, as well as compliance with Nemko's applicable accreditations, authorizations and recognitions as well as for safeguarding Nemko's integrity, impartiality and independence. The Requirements may be supplemented by Scheme specific requirements set out in the applicable scheme or standard ("Scheme").
- c. The purpose of the Services is to establish satisfactory evidence that the Equipment as installed or ready for installation ("the Equipment") essentially comply with the relevant requirements in the context of installation.
- d. Nemko provides the Services under recognitions from Authorities Having Jurisdiction ("AHJ"). The AHJ may always impose requirements in addition to those set out in the Requirements or the applicable Scheme. Requirements that are specific for individual AHJs are not addressed herein.
- e. Nemko's Special Inspection services are provided in accordance with Model Code SPE-1000 as accredited by Standards Council of Canada and applicable recognitions and regulations from Authorities Having Jurisdiction ("AHJ"). For the scope of Nemko North America Inc's accreditation, see www.scc.ca. The Special Inspection services are not provided for Equipment intended for hazardous locations.
- f. Nemko's Field Evaluation services for hazardous (as defined in the NFPA 70 Code) and ordinary locations are provided in accordance with one or more of the following frameworks:
 - i. Frameworks of NFPA (National Fire Protection Association) 790 (Competence) and 791 (RP for evaluation of unlabelled Equipment) and application recognitions and regulations of the AHJ, as ISO/IEC 17020 accredited by International Accreditation Service, USA (IAS), according to IAS Accreditation Criteria (AC354). For the scope of Nemko North America Inc's accreditation, including the precise standards, see www.iasonline.org.
 - ii. Frameworks NSF/ANSI (2, 4, 7 and 8) Standards for Field Evaluation of Food Processing Equipment, as accredited by ANAB (ANSI – American National Standards Institute – National Accreditation Board). For the scope of Nemko North America Inc's ISO/IEC 17020 accreditation, including the precise standards, see anab.ansi.org.
 - iii. Frameworks of applicable gas standards (e.g, ANSI, UL, NFPA) used for limited-scope Field Evaluations. This service is unaccredited based on mutual understanding between Nemko, Customer and AHJ.
- g. When purchasing a Service from Nemko, the Requirements and any Scheme specific requirements are deemed to have been accepted by the Customer as an integral part of the Agreement.

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- h. The Requirements shall also apply for non-accredited Services. Non-accredited services shall be identified in detail in the Nemko Quote and any issued report.
- i. All references to Nemko shall be understood as references to the Nemko Legal entity which is party to the Agreement.
- j. Nemko and Customer are hereinafter referred to as Party in singular and Parties in plural.

2. Authority

The Customer warrants that it has the right and authority to

- a. Order the Services related to the Equipment and pertaining documentation, hardware, software and supporting equipment etc covered by the Agreement.
- b. Undertake and execute the obligations set out in the Requirements and the specific Schemes concerned, including but not limited to, the right to disclose design details regarding the Equipment and to grant access to sites, as well as to allow Nemko's representatives to take photos of the Equipment and its components in their environment.
- c. Undertake obligations on behalf of the owner or user of the Equipment, to the extent different from the Customer, to comply with these Requirements and any applicable Scheme-specific and AHJ requirements, including but not limited to the obligation to notify Nemko as Field Evaluation Body of any relevant circumstances occurring before the inspection or after the application of the label.

3. Order of precedence

The Requirements and any Scheme-specific requirements shall take precedence over any deviating provisions in the Agreement or any related purchase order. Any changes in the Requirements in individual Agreements shall in order to be enforceable, require the written agreement of the Parties with explicit, precise reference to the clauses of these Requirements that shall be modified or set aside. Unless this amendment procedure is complied with, any deviating provisions included in Customer's purchase orders, requests for quotes or similar, shall be disregarded as null and void.

4. The Services

- a. Nemko shall provide the Services in accordance with the Requirements and the agreed Scheme(s).
- b. Unless otherwise agreed in the Agreement with explicit reference to this provision, Nemko's quotations are based on a successful conformity assessment. Any circumstances that require mitigation or repeat testing/examination, will trigger additional costs which shall be covered on a time and materials basis based on standard hourly rates unless otherwise explicitly agreed in writing.
- c. Unless otherwise explicitly agreed in writing between the Parties, all agreed or estimated progress plan(s) for the provision of the Services are based upon the assumption that Customer provides the necessary and relevant, accurate and complete information and documents, including but not limited to
 - Critical components list, including identification of manufacturer, model name/type, model designation and certification mark status
 - complete schematics,

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- electrical block diagrams,
- previous Special Inspection (SI) or US Field Evaluation report(s),
- Certification documentation for the original certified equipment if the FE/SI is being performed due to equipment modification,
- technical descriptions and specifications,
- an electrical parts list, and
- installation guidelines, user guides and operating manuals in relevant format)

hereinafter referred to as “Materials”, as well as access to relevant locations, personnel and facilities.

- d. Customer is responsible for all aspects of the Materials. Nemko is entitled to rely on the accuracy and completeness of the Materials for the purposes of quoting and the performance of the Services.
- e. All critical components of the Equipment shall have the relevant certification marks. The list of critical components shall be made available to Nemko in reasonable time prior to inspections.
- f. In case of Customer's delay, any agreed progress plan or estimate may as a minimum be extended correspondingly. Nemko reserves the right to further extensions, taking into account other assignments which collide with the Services due to the delays.
- g. Customer shall ensure that the Equipment is powered and functional in order for Nemko to complete the evaluation.
- h. Qualified personnel from Customer or manufacturer shall be available at the installation site to operate the Equipment and perform assembly/disassembly to the extent required by Nemko.
- i. In case the conclusion of the agreed process and assessment is that the requirements in the applicable Schemes are not met, reports will reflect this, and labels will not be applied.
- j. Customer shall familiarize itself with the report issued within a reasonable time after completion of the corresponding part of the Services, and inform Nemko without undue delay about any identified errors or omissions.
- k. The application of a label does not release Customer from its responsibility for the compliant design and use or other aspects of the Equipment. Neither does the labelling directly or indirectly represent or imply a transfer from Customer to Nemko of the risks or liabilities arising from or in connection with the Equipment or the use thereof.

5. Personnel and use of external resources

- a. Appropriate personnel shall be appointed for the performance of the Services, in accordance with any applicable requirements. Unless otherwise agreed, substitute personnel may be assigned to the Services, at any time, and without extra cost and risk for Customer. Substitute personnel shall be suitably qualified and competent.
- b. Nemko's personnel hold the general knowledge that is required in order to perform the Services.
- c. Nemko uses resources working under Nemko's quality systems or subcontractors for the purpose of the provision of the Services. Use of subcontractors shall not relieve Nemko from its obligations



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under the Agreement, and shall not require prior consent from Customer. Any objections from Customer's side shall be raised by Customer prior to entering into the Agreement.

- d. Nemko will regularly, at own cost and risk, extend the team performing the Services with observers for purposes such as internal training, peer evaluations, internal or external witness assessment and mandatory supervision by accreditation bodies, scheme owners, Authority Having Jurisdiction and similar stakeholders.

6. Integrity of Nemko's personnel

- a. Nemko shall be informed without undue delay of (i) any actual or potential Health, Safety and Environmental risk which Customer is aware of and which is reasonably relevant for the performance of the Services, and (ii) any of Customer's implemented or planned measures against such risks that Customer requires Nemko's personnel to adhere to.
- b. Nemko's personnel shall have unrestricted access to the Equipment, relevant Materials and sites in order to the extent necessary to perform the Services in a professional and impartial manner.
- c. The access shall not be conditional upon the execution by the representative or Nemko of any additional agreement, waiver or release which in any way affects the representative's or Nemko's legal rights or obligations. Any such document executed in contravention of this provision shall be without force or effect. In particular, Nemko's personnel shall not sign individual non-disclosure obligations. All Nemko representatives are bound by individual non-disclosure agreements with Nemko.
- d. Nemko's performance of the Services involves visits on Customer's controlled facility or site, and the Customer is responsible for the adequacy, stability, safety and legal compliance of the site environment, including reasonable measures to mitigate or control relevant risks. This applies whether Customer is in direct control of the site or not.
- e. Whenever Nemko personnel is present on Customer's facilities or sites, they shall adhere to reasonable Health & Safety instructions that apply for the site, to the extent that they are provided in reasonable time before the visit.
- f. Nemko's personnel, including its subcontractors, may refuse to carry out any activity, or to visit any area or site, if in their sole discretion they consider that relevant risks are unacceptable or not adequately addressed, contained or otherwise mitigated. Such situations also include verbal or physical harassment based on or related to gender, sexuality or other. Any such decision shall suspend both parties' obligations, excluding Customer's obligation to pay for performed Services, without any liability or penalty until the parties have agreed on how to proceed.

7. Communication

Nemko may at Nemko's discretion, require that Customer and Nemko interact through Nemko's online customer platform or similar digital meeting place in connection with specific Services. This for the purpose of sharing of documentation and access to reports, certificates and other documentation relevant for or generated in the course of the Services.

Nemko may use Microsoft® Outlook® or Teams® for the purpose of communication with Customer and third parties for the purpose of a project. Customer shall inform Nemko without undue delay if in

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Customer's view these means of communication are not satisfactory. The Parties will then agree on communication channels going forward.

8. Labelling and use of report

- a. Upon completion of the Services, Nemko shall apply the relevant label in accordance with the applicable requirements, provided that Nemko by application of the relevant criteria finds that there is satisfactory evidence of conformity with the applicable requirements. In case such evidence is not established, Nemko shall issue a statement covering the findings.
- b. Pre-payment of all dues when agreed in the Agreement, is a condition for the application of the label.
- c. Customer shall not adjust or alter the label and the corresponding report in any manner whatsoever, including, but not limited to, by translating the documents concerned.
- d. Nemko's evaluation is based on an evaluation of the Materials given access to and a physical evaluation of the Equipment, at the time of the issuance of the label and report concerned. Subsequent modification of the labelled Equipment or any part thereof, or replacement of parts thereof with spare or replacement parts which are not identical to those included in evaluated Equipment, invalidate Nemko's approval and the issued report, unless Nemko confirms otherwise.
- e. The label is valid for the installation at the precise location at the time of the evaluation. In case the Equipment is moved, a new Field Evaluation is required. However, inspection may be performed off-site before the Equipment is ready to be installed, to the extent allowed under the relevant Scheme.
- f. Equipment labelled shall not be represented by the Customer as being certified.
- g. Any report or label issued by Nemko may only be used to indicate to Authorities Having Jurisdiction (AHJ's) that labelled products have been inspected and that the conclusion was that the Requirements were deemed to be met.
- h. The report or labels issued by Nemko do not represent technical due diligences, goods inspection, pre-shipment inspection and commissioning inspection, or reports or similar documents that are established for the purpose of sales or purchase of Equipment, and shall not be represented as such.
- i. Authorities having Jurisdiction may require that safety markings be also in additional languages. Unless otherwise agreed in writing, Nemko solely provides Field Evaluation labels in English and Special Inspection labels in English or French.

9. Customer's reporting

- a. Prior to commencement of the Services, Customer shall inform Nemko about any incidents during transportation or installation as well as about quality problems or safety issues arising in connection with the Equipment or the use thereof.
- b. To the extent required under the applicable Scheme, Customer shall immediately notify Nemko in writing if Customer discovers or has grounds to suspect that the Equipment as evaluated, has, subsequent to labelling, been found to be potentially hazardous or otherwise in relevant breach of the applicable requirements.

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- c. In such case Nemko shall be authorized to carry out an extraordinary investigation, in order to determine whether the label shall be maintained or not. As required by accreditation or regulation, , Nemko shall inform accreditation bodies and AHJs about the concerns raised by Customer and the contemplated activities from Nemko's side.
- d. Nemko's follow up of reporting shall be covered by Customer on a time and materials basis, applying Nemko's standard hourly rates from time to time.

10. Consequences of termination of the Agreement

- a. Nemko's exercise of its independent third party role depends on the existence of a valid agreement between Nemko and Customer.
- b. Upon termination of the Agreement, these Requirements and any Scheme specific requirements shall remain in force between the Parties for as long as the Equipment is in use or five years, whichever comes first.

11. Customer complaints

In case of Customer complaints, Customer shall provide such complaints in writing without undue delay after becoming aware of the circumstances giving grounds for concerns. Nemko may require such complaints to be filed in a certain format. Nemko's accredited complaint procedures apply.

12. Enforcement activities

Unless otherwise explicitly stated in the Agreement with reference to this provision, the following activities shall be charged to the Customer on a time and materials basis, or based upon a standard fee:

- 1. Work associated with the closing of non-compliances identified during evaluations.
- 2. Requests for access to Materials or files by public authorities, courts, counterparties, Scheme owners, Authorities Having Jurisdiction or civil society stakeholders in connection with or due to products or systems covered by the Agreement.
- 3. Costs arising on Nemko's side in connection with Customer's notification of circumstances which trigger follow up from Nemko's side after application of the label.

13. Intellectual Property

- a. Customer warrants that it has the necessary authority to grant Nemko the right to use, amend, process, store and give Nemko access to all Materials for the purpose of the Services, regardless of format.
- b. Each party shall remain the sole owner of any of its Intellectual Property and rights thereto existing prior to the date of the Agreement. In particular, Nemko shall remain the owner and hold all rights to the Nemko schemes, protocols, checklists as well as templates for labels and reports.
- c. Nemko shall hold all intellectual property rights to the report issued to Customer under the Agreement, including the copyright.
- d. Customer shall hold a restricted, non-transferrable, global and royalty free license to use the valid reports, certificates, attestations, certification marks, labels and other Deliverables in accordance with the applicable Schemes.

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- e. Customer shall not disclose reports issued by Nemko to third parties fully or partially without Nemko's prior written consent, which shall not be unreasonably withheld. Such consent shall not be required for disclosures to other conformity assessment bodies or public administrations.
- f. Nemko shall be entitled to collect, store, process and use for conformity assessments as well as maintenance and updates of its schemes and systems and archiving obligations under applicable Schemes, the know-how and documentation acquired or generated in the course of the performance of the Services. In addition, Nemko shall be entitled to use materials received or generated under the Agreement in an anonymous and aggregated form, for its internal training and competence building related to the independent third party conformity assessment role, always subject to the confidentiality obligations set out in these Requirements.
- g. Any reports shall only be made available by Customers to third parties in their entirety without altering the content, context or original language. Reports are digital, unless otherwise agreed between the Parties with reference to this provision.

14. Confidentiality

Unless otherwise agreed between Nemko and the Customer, the following shall apply:

- a. Nemko shall apply market standard efforts to safeguard the confidentiality of any information it receives in connection with the provision of the Services.
- b. Unless otherwise instructed by the Customer, solely the Customer shall have access to the project documentation, deliverables and results.
- c. Solely the Customer shall have the right to instruct Nemko to disclose information to third parties. Third parties in this provision includes but is not limited to, any Customer's parent companies, affiliates, subsidiaries, shareholders or subcontractors. The instruction shall identify in detail which information shall be released.
- d. If Nemko is instructed by Customer to release information to a third party, Customer shall hold Nemko harmless from any claims towards Nemko from the recipient party which exceed the limitation of liability provision included in the applicable terms and conditions, in case of full or partial reliance on the reports concerned.
- e. The confidentiality obligations set out in this provision shall not apply to the extent the information is required to be disclosed by any relevant accreditation body or Scheme owner, Authorities Having Jurisdiction, any competent court or other relevant public authority in accordance with applicable law, court order or other public regulation. Nemko does not undertake any obligations of prior notification to Customer holder in case of mandatory disclosure in accordance with this item e).
- f. In addition, information shall not be considered confidential to the extent: (i) the information was known to the recipient prior to the information being disclosed by the other party, (ii) it becomes known to the recipient through a third party without known confidentiality obligations towards Customer; (iii) the information is or becomes generally available in the public domain through no act or failure to act on the part of the recipient, or (iv) it is in the professional discretion of Nemko as an independent conformity assessment body, necessary to issue a warning to the public regarding safety or use.

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- g. These confidentiality obligations shall survive the completion of the Services and termination of the Agreement, and remain in effect for as long as the relevant information can reasonably be deemed to be confidential information according to this Agreement.
- h. Nemko is not in a position to undertake an obligation to return or delete Materials after the finalization of the Services. Nothing herein shall prevent Nemko from keeping a copy of all confidential information related to the provision of the Services for its internal contract, accreditation and risk management purposes.
- i. These Requirements do not constitute confidential information.