

## **SGS On-Track Terms of Use**

The use of the SGS On-Track web portal is governed by the SGS General Conditions of Service (see Part 1 below) and supplemented by the SGS On-Track Terms and Conditions for Economic Operators (see Part 2 below). In case of contradiction between the SGS General Conditions of Service and the SGS On-Track Terms and Conditions for Economic Operators, the latter shall prevail.

During registration, you will be asked to accept the SGS General Conditions of Service (Part 1). If you do not agree to be bound by the SGS General Conditions of Service (Part 1), you may not access or use our web portal.

You will be asked to give your express agreement to the SGS On-Track Terms and Conditions for Economic Operators (Part 2) only at the time you submit a claim on our web portal.

### **Part 1: SGS General Conditions of Service**

#### **1. General**

(a) Unless otherwise agreed in writing or except where they are at variance with (i) the regulations governing services performed on behalf of governments, government bodies or any other public entity or (ii) the mandatory provisions of local law, all offers or services and all resulting contractual relationship(s) between any of the affiliated companies of SGS SA or any of their agents (each a "Company") and Client (the "Contractual Relationship(s)") shall be governed by these general conditions of service (hereinafter the "General Conditions").

(b) The Company may perform services for persons or entities (private, public or governmental) issuing instructions (hereinafter, the "Client").

(c) Unless the Company receives prior written instructions to the contrary from Client, no other party is entitled to give instructions, particularly on the scope of the services or the delivery of reports or certificates resulting therefrom (the "Reports of Findings"). Client hereby irrevocably authorises the Company to deliver Reports of Findings to a third party where so instructed by Client or, at its discretion, where it implicitly follows from circumstances, trade custom, usage or practice.

#### **2. Provision of Services**

(a) The Company will provide services using reasonable care and skill and in accordance with Client's specific instructions as confirmed by the Company or, in the absence of such instructions:

- (1) the terms of any standard order form or standard specification sheet of the Company; and/or
- (2) any relevant trade custom, usage or practice; and/or

(3) such methods as the Company shall consider appropriate on technical, operational and/or financial grounds.

(b) Information stated in Reports of Findings is derived from the results of inspection or testing procedures carried out in accordance with the instructions of Client, and/or our assessment of such results on the basis of any technical standards, trade custom or practice, or other circumstances which should in our professional opinion be taken into account.

(c) Reports of Findings issued further to the testing of samples contain the Company's opinion on those samples only and do not express any opinion upon the lot from which the samples were drawn.

(d) Should Client request that the Company witness any third party intervention, Client agrees that the Company's sole responsibility is to be present at the time of the third party's intervention and to forward the results, or confirm the occurrence, of the intervention. Client agrees that the Company is not responsible for the condition or calibration of apparatus, instruments and measuring devices used, the analysis methods applied, the qualifications, actions or omissions of third party personnel or the analysis results.

(e) Reports of Findings issued by the Company will reflect the facts as recorded by it at the time of its intervention only and within the limits of the instructions received or, in the absence of such instructions, within the limits of the alternative parameters applied as provided for in clause 2(a). The Company is under no obligation to refer to, or report upon, any facts or circumstances which are outside the specific instructions received or alternative parameters applied.

(f) 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.

(g) Should Company receive documents reflecting engagements contracted between Client and third parties or third party documents, such as copies of sale contracts, letters of credit, bills of lading, etc., they are considered to be for information only, and do not extend or restrict the scope of the services or the obligations accepted by the Company.

(h) 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.

(i) All samples shall be retained for a maximum of 3 months or such other shorter time period as the nature of the sample permits and then returned to Client or otherwise disposed of at the Company's discretion after which time Company shall cease to have any responsibility for such samples. Storage of samples for more than 3 months shall incur a storage charge payable by Client. Client will be billed a handling and freight fee if samples are returned. Special disposal charges will be billed to Client if incurred.

### **3. Obligations of Client**

The Client will:

- (a) 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;

- (b) 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;
- (c) Supply, if required, any special equipment and personnel necessary for the performance of the services;
- (d) 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;
- (e) 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;
- (f) Fully exercise all its rights and discharge all its liabilities under any relevant sales or other contract with a third party and at law.

#### **4. 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) 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 clause 3 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.

## **5. Suspension or Termination of Services**

The Company shall be entitled to immediately and without liability either suspend or terminate provision of the services in the event of:

- (a) failure by the Client to comply with any of its obligations hereunder and such failure is not remedied within 10 days that notice of such failure has been notified to Client; or
- (b) any suspension of payment, arrangement with creditors, bankruptcy, insolvency, receivership or cessation of business by Client.

## **6. 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) Reports of Findings are issued on the basis of information, documents and/or samples 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 Reports of Findings. 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 Reports of Findings nor for any incorrect results arising from unclear, erroneous, incomplete, misleading or false information provided to the Company.
- (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 10 times the amount of the fee paid in respect of the specific service which gives rise to such claim or US\$20,000 (or its equivalent in local currency), whichever is the lesser.
- (5) The Company shall have no liability for any indirect or consequential loss including without limitation loss of profits, loss of business, loss of opportunity, loss of goodwill and cost of product recall. It shall further have no liability for any loss, damage or expenses arising from the claims of any third party (including, without limitation, product liability claims) that may be incurred by the Client.
- (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) by any third party for loss, damage or expense of whatsoever nature including all legal expenses and related costs and howsoever arising relating to the performance, purported performance or non-performance, of any services.

## **7. 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.

## **8. 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.

## **Supplemental Terms - Specific On-Track confidentiality obligations**

- (a) The Company shall keep confidential all information, instructions and documents that are submitted by Client to the Company through the web portal ("Client Submitted Information") and the Company shall not use or authorise or permit the use, copy or disclosure of Client Submitted Information or any part of it except:
- (i) for the purposes of provision of services by the Company to Client;
  - (ii) disclosure to the Participating Manufacturers (as defined in the SGS On-Track Terms and Conditions for Economic Operators) in order to enable them to validate claims and as part of management information in order to track the progress of claims; and
  - (iii) disclosure to its professional advisers, agents or representatives for the purpose of obtaining professional advice.
- (b) The obligations in (a) above shall not apply to Client Submitted Information which:
- (i) is in or comes into the public domain (otherwise than in breach of these terms);
  - (ii) the Company receives from an independent third party having the right to disclose the same;

- (iii) was in the Company's possession prior to the date of receipt from Client; or
- (iv) is required to be disclosed by law or by any statutory or regulatory authority.

## **Part 2: SGS On-Track Terms and Conditions for Economic Operators**

Before submitting a claim on our web portal, you will be asked to give your express agreement to the Terms and Conditions below.

### **SGS On-Track Terms and Conditions for Economic Operators**

#### **1. Introduction**

- 1.1 These terms and conditions shall govern the submission of claims through our web portal for reimbursement of the Equipment.

#### **2. Interpretation**

- 2.1 In these terms and conditions:

- (a) "Equipment" means the software and hardware that is necessary to read and transmit TPD recorded data to the repositories system;
- (b) "Participating Manufacturers" means the tobacco manufacturers participating in this provision of equipment approach – the full list of the Participating Manufacturers is found in <insert hyperlink>;
- (c) "Reimbursement Fees" means the reimbursement of any claim submitted through our web portal;
- (d) "TPD" means the Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products;
- (d) "we" means SGS Société Générale de Surveillance SA; and
- (e) "you" means an economic operator as understood under the TPD Article 15 (7); and "us", "our" and "your" should be construed accordingly.

#### **3. Equipment**

- 3.1 You are responsible for choosing the Equipment and ensuring that the Equipment will allow you to comply with your obligations under the TPD.

3.2 You declare that the Equipment is or will be used to comply with your obligations under the TPD and the implementing acts.

#### **4.1 Reimbursement of Claim**

4.1 You will receive the Reimbursement Fees within thirty days of validation of the corresponding claim.

4.2 We will reimburse you in your local currency.

4.3 You are fully liable for all taxes arising from or relating to the purchase and / or use of the Equipment. You will not be reimbursed for value-added tax, sales taxes, and any other taxes.

#### **5. Obligations of the Manufacturers under the TPD**

5.1 Upon receipt of the Reimbursement Fees, you accept that the Participating Manufacturers have fulfilled and are discharged from all obligations under the TPD (including Article 15(7)) in relation to you.

#### **6. Non-Participating Manufacturers Notice**

6.1 The Reimbursement Fees represent only the proportionate share of the Participating Manufacturers in the Equipment. If you are also a Distributor of cigarettes or roll-your-own products from tobacco manufacturers other than the Participating Manufacturers, you need to approach such other tobacco manufacturer(s) on your own.

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#### **7. Audits**

7.1 We reserve the right to audit and investigate any claim submitted through our web portal.

7.2 You commit to paying back any Reimbursement Fees which our audit or investigation show to have been used improperly.

#### **8. Warranties and representations**

8.1 You warrant and represent to us that:

- (a) you are legally capable of entering into binding contracts;
- (b) you have full authority, power and capacity to agree to these terms and conditions and if you are submitting a claim on behalf of an entity, that you have such full authority, power and capacity to agree to these terms and conditions on behalf of such entity; and
- (c) all the information that you provide to us in connection with your claim is true, accurate, complete and non-misleading.

8.1 All of our warranties and representations relating our web portal are set out in these terms and conditions. To the maximum extent permitted by applicable law, all other warranties and representations are expressly excluded.

## **9. Exclusions of liability**

9.1 We will not be liable to you in respect of any losses arising out of any event or events beyond our reasonable control.

9.2 We will not be liable to you in respect of any business losses, including (without limitation) loss of or damage to profits, income, revenue, use, production, anticipated savings, business, contracts, commercial opportunities or goodwill.

9.3 We will not be liable to you in respect of any loss or corruption of any data, database or software.

## **10. Economic Operator**

10.1 To the best of your knowledge you will continue to be an economic operator (as defined by the TPD) for the five subsequent years following the receipt of the Reimbursement Fees.

10.2 In the event that you either (i) cease to be an economic operator (as defined by the TPD) at any point during the five years following the receipt of the Reimbursement Fees, or (ii) fail to obtain the relevant economic operator identifier code within a reasonable time of the relevant competent ID issuer becoming available to accept applications for economic operator identifier codes, you shall return to the relevant Participating Manufacturers the Equipment purchased or, at your option, on a pro-rata basis, reimburse any funds paid to you, taking into account factors such as wear and tear and the remaining life of the Equipment.

## **11. Third Party Rights**

11.1 The Participating Manufacturers shall have the right to enforce against you any of our rights under this agreement.

## **12. Scope**

12.1 These terms and conditions shall not constitute or effect any assignment or licence of any intellectual property rights.

## **13. Variation**

13.1 We may revise these terms and conditions from time to time by publishing a new version on our web portal.

13.2 A revision of these terms and conditions will apply to contracts entered into at any time following the time of the revision, but will not affect contracts made before the time of the revision.

#### **14. Assignment**

14.1 You hereby agree that we may assign, transfer, sub-contract or otherwise deal with our rights and/or obligations under these terms and conditions.

14.2 You may not without our prior written consent assign, transfer, sub-contract or otherwise deal with any of your rights and/or obligations under these terms and conditions.

#### **15. No waivers**

15.1 No breach of any provision of a contract under these terms and conditions will be waived except with the express written consent of the party not in breach.

15.2 No waiver of any breach of any provision of a contract under these terms and conditions shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of that contract.

#### **16. Severability**

16.1 If a provision of these terms and conditions is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.

16.2 If any unlawful and/or unenforceable provision of these terms and conditions would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

#### **17. Survival**

17.1 Termination or expiration of this agreement between us shall not prejudice the provisions of this Article, or the following Articles: 7 (Audit), 9 (Exclusions of liability), 10 (Economic Operator), 11 (Third Party Rights) or any other Article which should reasonably survive termination of this Agreement which shall continue in full force and effect.

#### **18. Our details**

18.1 This web portal is owned and operated by SGS Société Générale de Surveillance SA

18.2 We are registered in Switzerland and our registered office is at 1 Place des Alpes, Geneva, Switzerland

#### **19. Language**

19.1 Where these terms and conditions are not in the English language and there is any conflict or contradiction between the translated terms and conditions and the English

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language version, the English language version of the terms and conditions shall prevail.