

**1. Area of Application**

1.1 All Orders accepted by Eurofins BioPharma Product Testing UK Limited or any of its subsidiaries or affiliates (collectively, "ES") will be governed by these General Terms and Conditions of Sales (the "Terms and Conditions"), including orders placed by telephone which have not been confirmed in writing and orders made by delivery of samples. A contract with these Terms and Conditions comes into being when an order that has been placed with ES is accepted by ES. An order placed with ES is considered as accepted by ES when (a) ES proceeds to fulfil that order, without need for any written confirmation from ES or (b) ES accepts the order in writing.

1.2 These Terms and Conditions supersede and replace all prior verbal or written price quotations and agreements between the parties and, unless specifically indicated otherwise therein, take precedence over all conflicting or inconsistent provisions of subsequent written agreements between the parties. No officer (other than the Managing Director of ES), employee, agent or subcontractor of ES has the authority to alter or waive any of these Terms and Conditions or to make any representation which conflicts with or purports to override any of these Terms and Conditions; and no such alteration, waiver or representation shall be binding upon ES, unless it is in writing and signed by the Managing Director of ES.

**2. Placement of Order**

2.1 A customer's order will be valid only if it is sent by mail or fax or other electronic message on letterhead of the customer or by using ES-approved sample dispatch sheets or electronic order forms and the commercial aspects of the order which are not specifically set out in these Terms and Conditions (including price, estimated turnaround times and delivery date) must be agreed at the time of the order. The customer must confirm in writing orders given by telephone immediately after they are made and in any event, will be deemed to have placed an order if the customer sends samples to ES quoting the customer reference given to it by ES. ES is not obligated to start any analytical work unless the order is clear and it has been provided all required information.

2.2 Unless specifically accepted in writing and signed by the Managing Director of ES, any terms proposed or submitted by a customer at any time (including, but not limited to, terms or provisions in the customer's purchase order, instructions or other document) which differ from these Terms and Conditions are rejected as a material alteration of these Terms and Conditions and shall be of no force or effect. Furthermore, special terms or conditions of prior orders which have been agreed by ES in accordance with these Terms and Conditions, including special pricing, will not automatically apply to subsequent orders. Each order accepted by ES will be treated as a separate contract between ES and the customer.

2.3 ES is entitled to charge management and administrative fees of up to £25.00 in connection with the request for additional services to an existing order. A request for additional services on samples that have entered the laboratory will be treated as a new order and may postpone estimated delivery date accordingly.

2.4 Any logistic service off-site of the laboratory must be paid in full, unless it has been

cancelled or modified by the customer at least forty eight hours (48) in advance for collection services, ninety six (96) hours in advance for sampling services and one (1) week in advance for auditing services.

**3. Price and Terms of Payment**

3.1 If the acknowledgment of an order does not state otherwise, ES' prices apply "ex works", excluding packaging, which is charged separately. Any additional cost or disbursement (e.g. incurred by ES in connection with the order) must be paid by the customer.

3.2 Prices are exclusive of all applicable taxes (including sales, use and VAT) and are based on tariffs in force at the day of the remittance of the offer to the customer. Applicable taxes are those in force at the date of invoicing.

3.3 Unless specifically agreed otherwise by ES in its acceptance of an order, payment of all invoices is due strictly within 30 days of the invoice date. Any dispute about invoices must be raised in writing within 30 days of the invoice date. The challenge of an analytical result will not entitle a customer to defer payment. Any invoice which remains outstanding after due date, may be additionally charged with an administration fee of £25.00 in respect of ES' costs in dealing with such outstanding payment, and also may carry interest at the rate of one percent (1%) per month or the maximum interest rate permitted by applicable law, whichever is lower.

3.4 Invoices are subject to a minimum invoice charge of £150.00 excluding VAT or other applicable taxes. ES has the right to charge an administrative fee of up to £25.00 to re-issue an invoice.

3.5 The payment method is cheque, bank transfer or direct debit. Any other method of payment must receive prior agreement from ES. The customer undertakes to provide bank account details where relevant.

3.6 ES is entitled to require payment of up to 100% of the quoted order price as a condition of acceptance.

**4. Duties of Customer in Delivering Samples or Materials**

4.1 The samples or materials must be in a condition that makes the preparation of reports/analyses or the production of ordered products possible without difficulty. ES is entitled to conduct an initial examination of the samples or materials to check their condition before processing the samples, drawing up a report or using them in production. The customer shall bear the costs of this initial examination, if the samples or materials do not comply with the requirements described in this clause 4.1. If the result of the initial examination is that an analysis or production is impossible or is possible only under more difficult conditions than originally anticipated – for example, because the samples or materials have been interspersed with foreign materials or substances that were not reported by the customer or are degraded – ES shall be entitled to terminate or interrupt the order and the customer shall bear costs incurred by ES to that point.

4.2 The customer must ensure, and hereby warrants, that no sample poses any danger, including on its site, during transportation, in the laboratory or otherwise to ES premises, instruments, personnel or representatives. It is the customer's responsibility to ensure compliance with hazardous waste regulations, including regarding information, labelling, transportation and disposal and to inform ES personnel or representatives about sample health and safety concerns, including any known or suspected toxic or other contaminant that may be present in the sample and its likely level of

contamination as well as the risks to ES premises, instruments, personnel and representatives related to the contamination. The customer shall be responsible for, and indemnifies ES against, all costs, damages, liabilities and injuries that may be caused to or incurred by ES or its personnel or representatives including on the sampling site, during the transportation or in the laboratory by the customer's sample or by sampling site conditions. The customer shall bear all extraordinary costs for adequate disposal of hazardous waste resulting from the sample, whether or not described as hazardous waste. At ES' request, the customer must provide ES with the exact composition of the samples.

**5. Property Rights on Sample Material and Sample Storage**

5.1 All samples become the property of ES to the extent necessary for the performance of the order. Unless the customer pays for storage, ES shall have no obligation or liability for samples sent to ES for storage, including samples requiring refrigeration. If the customer pays for storage, ES will take commercially reasonable steps to store the samples, according to professional practice.

5.2 ES can dispose of or destroy samples immediately after the analysis has been performed, unless ES and the customer have agreed in writing on the terms of ES' retention of the sample. ES also can dispose of or destroy the samples after the agreed upon retention period, without further notice and at customer's cost, should an extra cost for ES arise to comply with any regulation (for example, with respect to disposal of hazardous waste). If the customer requests the return of unneeded sample material, ES will return them to the customer, at the customer's cost and risk.

**6. Delivery Dates, Turnaround Time**

6.1 Delivery dates and turnaround times are estimates and do not constitute a commitment by ES. Nevertheless, ES shall make commercially reasonable efforts to meet its estimated deadlines.

6.2 Results are generally sent by email and/or by UK post, or via other electronic means, to the attention of the persons indicated by the customer in the order, promptly after the analysis is completed.

**7. Transfer of Property**

7.1 Title in any analysis results, products, equipment, software or similar supplied by ES to the customer will remain with ES until all invoices in respect thereof have been paid by the customer in full, and until such full payment, the customer shall have no property rights or other rights to use them. In addition, even if ES has accepted and begun to fulfil an order, ES has the right at any time stop processing that order and to stop doing any work for a customer if that customer is late in paying any amount due to ES, whether for that or any other order.

7.2 Even after payment in full by the customer, ES shall retain the right to store, use and publish all analysis results in an anonymous form which does not identify the customer.

**8. Limited Warranties and Responsibilities**

8.1 Orders are handled in the conditions available to ES in accordance with the current state of technology and methods developed and generally applied by ES and the results

may not always be absolutely precise and/ or relevant. Analyses, interpretations, assessments, consulting work and conclusions are prepared with a commercially reasonable degree of care but ES cannot guarantee that these will always be correct or absolute. This limited warranty expires six months after the delivery date of the samples, if the acknowledgement of the order does not specifically state otherwise. In all cases, the customer must independently verify the validity of any results, interpretations, assessments and conclusions supplied by ES, if it wishes to rely on the same in respect of matters of importance and shall do so at its own risk.

8.2 Each analytical report relates exclusively to the sample analyzed by ES. If ES has not expressly been mandated and paid for the definition of the sampling plan (including which samples of which raw materials and finished products and at which frequency should be analysed) and the definition of the precise range of analysis to be performed or if the customer has not followed ES recommendations, ES shall not bear any responsibility if the sampling plan and/or the range of analysis to be performed prove to be insufficient or inappropriate.

8.3 The customer is responsible for the proper delivery of samples sent to ES for examination/analyses or materials sent for production. Unless otherwise specifically agreed in writing by ES, ES accepts no responsibility for any loss or damage, which may occur to any sample in transit or to any facility or site where logistics services are being delivered. The customer will at all times be liable for the security, packaging and insurance of the sample from its dispatch until it is delivered to the offices or the laboratories of ES. ES will use commercially reasonable care in handling and storing samples, but ES shall not be held responsible for any loss or destruction of samples even after their receipt at its laboratories.

8.4 The customer warrants and represents to ES that all samples sent to ES for analysis are safe and in a stable condition and undertakes to indemnify ES for any losses, injuries, claims and costs which ES, or its personnel, may suffer as a result of any sample not being in a safe or stable condition, notwithstanding that the customer may have given an indication on the sample or any order form of any perceived problem with the sample. The customer must always inform ES in writing prior to shipment and label the packaging, samples and/ or containers appropriately, if the samples are dangerous or otherwise of a hazardous nature.

8.5 Unless explicitly agreed in writing by all parties, the contractual relationship shall be between exclusively the customer and ES. There shall be no third party beneficiary or collateral warranty relating to any order and the customer shall indemnify and hold ES harmless from and against any and all third party claims in any way relating to the customer or to the order by the customer.

8.6 Where ES supplies any software to the customer, the customer shall use such software in accordance with the applicable licence terms, instructions and manuals.

#### **9 Limitation of Liability**

9.1 Except to the extent that such limitations are not permitted or void under applicable law and subject at all times to clause 9.2: (a) ES

(together with its workers, office clerks, employees, representatives, managers, officers, directors, agents and consultants and all ES partners and affiliates, the "ES Indemnifying Parties") shall be liable only for the proven direct and immediate damage caused by the ES Indemnifying Party's breach of its obligations under these Terms and Conditions in connection with the performance of an order and then, only if ES has received written notice thereof not later than six (6) months after the date of the customer's knowledge of the relevant claim (unless any longer period is prescribed under applicable law and cannot be contractually limited), and (b) in all cases (whether arising under contract, tort, negligence, strict liability, through indemnification or otherwise), the ES Indemnifying Parties' aggregate liability in respect of all or any claims in relation to an order, and the customer's exclusive remedy, with respect to ES' services which fall under these Terms and Conditions, shall be limited to the lesser of: (i) the direct and immediate loss or damage caused by the ES Indemnifying Party's breach of its obligations under these Terms and Conditions in connection with the performance of the order and (ii) ten times the amount ES actually received from the customer in relation to the order up to fifty thousand pounds sterling (£50,000).

9.2 The ES Indemnifying Parties shall not be liable for any of the following: (i) loss of business profits; or (ii) depletion of goodwill or other similar losses; or (iii) loss of business opportunities; or (iv) loss of contracts; or (v) loss of revenue; or (vi) loss of anticipated savings; or (vii) loss of or damage to data; or (viii) for any special indirect or consequential losses, costs, charges, expenses or damages incurred by the customer or by any third party. However, the ES Indemnifying Parties only exclude and limit their liability as permitted by applicable law. The ES Indemnifying Parties do not exclude or limit their liability for death or personal injury caused by their negligence, for their fraudulent misrepresentation or for breach of implied terms under any applicable statute regarding ES' right to transfer good title (subject at all times to clause 7).

9.3 It is a condition of ES' acceptance of an order that the customer indemnifies the ES Indemnifying Parties for any losses, injuries, claims and costs which the ES Indemnifying Parties may suffer as a result of arising from or in any way connected with its role under or services or products or software provided pursuant to these Terms and Conditions, except to the extent that the ES Indemnifying Parties are required to bear them according to these Terms and Conditions, and by placing an order the customer agrees to provide that indemnification.

#### **10. Repeated Analysis**

Objections to test results can be made within thirty (30) days after the customer receives the results. However, unless it would appear that the results of the repeated analysis do not match those of the first one, the customer shall bear the costs of the repeat testing or review. Furthermore, a repeated analysis will be possible only if ES has a sufficient amount of the original sample on hand when it receives the customer's objection. Otherwise the customer will be required to pay all costs, including sampling, transportation, analytical and disposal costs for the repeat analysis.

#### **11. Force Majeure**

ES cannot be held liable for delays, errors, damages or other problems caused by events or circumstances which are unforeseen or beyond ES' reasonable control, or which result from compliance with governmental requests, laws and regulations.

#### **12. Confidentiality & Processing of Customer Data**

12.1 ES shall be entitled to save and process personal or commercial data received from the customer in any way, no matter whether such data stem from the customer directly or from a third party and shall use commercially reasonable efforts to keep such data confidential, in compliance with applicable law.

12.2 ES shall use commercially reasonable efforts to keep all analysis results and service reports confidential, subject to ES' rights set forth in clause 7.2 and the right to use them in order to demonstrate its entitlement to payment for services rendered.

12.3 Analysis results are prepared and supplied exclusively for the use of the customer and should not be divulged to a third party for any purposes without the prior written agreement of ES. In addition, the customer is required to maintain secrecy concerning all services provided by ES and their results as well as the composition of products and software delivered by ES. Analysis results are not to be publicly disclosed or exploited without the prior written consent of ES. Even if such written consent is given by ES, the customer (a) remains responsible for any consequences due to the divulgence of such results to a third party and any reliance of such third party on such results and (b) hereby agrees to indemnify the ES Indemnified Parties against any liability which the ES Indemnified Parties may incur as a result of such divulgence or any such third party reliance.

#### **13. Disclaimer and Miscellaneous**

**13.1 EXCEPT AS EXPRESSLY SET OUT IN THESE TERMS AND CONDITIONS, ALL CONDITIONS, WARRANTIES AND OTHER TERMS (INCLUDING ANY IMPLIED WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) AS TO THE MANNER, QUALITY AND TIMING OF THE TESTING SERVICE AND RESULTS, EQUIPMENT, PRODUCTS OR SOFTWARE SUPPLIED BY ES ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE WARRANTIES, OBLIGATIONS AND LIABILITIES OF ES CONTAINED IN THESE TERMS AND CONDITIONS ARE EXCLUSIVE.**

13.2 These Terms and Conditions may be modified in writing from time to time by ES and orders will be governed by the most recent version of these Terms and Conditions that is in effect at the time ES accepts the order.

13.3 Should a court waive, limit or hold to be invalid, illegal or unenforceable any part of these Terms and Conditions, all other parts shall still apply to the greatest extent possible.

13.4 Failure by either ES or the customer to exercise the rights under these Terms and Conditions shall not constitute a waiver or forfeiture of such rights.

13.5 Except as expressly set out in these Terms and Conditions, a person who is not a party to this contract shall not have any rights under or in connection with it.

#### **14. Governing Law/ Jurisdiction**

14.1 The construction, validity and performance of these Terms and Conditions and any contract which incorporates these Terms and Conditions shall be governed by the laws and the commercial courts of England which shall have exclusive jurisdiction.

## CERTIFICATION SERVICES ANNEX

Where ES is providing certification services the terms of this Annex shall apply.

### 1. EXECUTION OF SERVICES

- 1.1 ES shall not be obliged to enter into or maintain any commercial or other relationship with any entity or issue or maintain a certificate previously issued to any entity whose activities conflict with the obligations of ES as specified in its accreditation contract with any accreditation body, or which, in the sole opinion of ES, reflect badly on the good name of ES.
- 1.2 The services shall be carried out in accordance with procedures designed to ensure that any initial assessment, surveillance or re-certification audit is in compliance with the requirements of the relevant standard. ES reserves the right at its sole discretion to modify, amend or in any way alter the conduct and procedure of any activity, including any audit visit, if ES deems this necessary in order to satisfy the requirements of the standard, which may change from time to time.
- ### 2. PRICE
- 2.1 If the customer postpones all or part of the services with less than thirty (30) working days' notice from the start date that was mutually agreed following acceptance by the customer of the quotation, ES reserves the right to either:
- 2.1.1 charge a fee amounting to the greater of: (i) 25% of the price; or (ii) the applicable day rate for a relevant employee; or
- 2.1.2 where the costs and resources cannot be defrayed, charge all or part of the price as appropriate.
- 2.2 Should the customer wish to cancel the services, and without prejudice to ES's other rights and remedies hereby reserved, ES shall charge and be entitled to recover either:
- 2.2.1 a fee amounting to 50% of the price in question; or
- 2.2.2 where the costs and resources cannot be defrayed, all or part of the price as appropriate
- plus the cost of any work performed up to the receipt by ES of the notice of the cancellation, calculated in accordance with the applicable day rate for a relevant employee.

### 3. OBLIGATIONS OF CUSTOMER

- 3.1 Where ES is to provide certification services to the customer, the customer shall:
- 3.1.1 always comply and conform with and fulfil the provisions and requirements of the applicable standard, including implementing appropriate changes when they are communicated by ES and within the minimum period specified by ES;
- 3.1.2 ensure that if a certification applies to ongoing production, the certified product continues to fulfil the standard requirements;
- 3.1.3 make claims regarding certification consistent with the scope of the certification;
- 3.1.4 comply with the requirements of ES or as specified by the standard in making reference to its certification in communication media such as documents, brochures or advertising, the internet or other documents;
- 3.1.5 comply with any requirements that may be prescribed in the standard relating to the use of marks of conformity, and on information related to the certified product;
- 3.1.6 not use its certification in such a manner as to bring ES into disrepute and not make any statement regarding its certification that ES may consider misleading or unauthorized, nor use or permit to be used the certificate in a misleading manner;
- 3.1.7 keep a record of all complaints made known to it relating to compliance with certification and make these records available to ES when requested, and take appropriate action with respect to such complaints and any deficiencies found in products that affect compliance with certification, and document the actions taken;
- 3.1.8 not imply that the certificate applies to activities and sites that are outside the scope of certification, nor allow reference to its certification to be used in such a way as to imply that ES certifies a product (including service) or process which has not been certified;
- 3.1.9 not use its certification in such a manner that would bring the certification system into disrepute and lose public trust;
- 3.1.10 only provide copies of certification documents to others if such documents have been reproduced in their entirety, or as specified in the applicable standard;
- 3.1.11 comply with all agreements and arrangements between the customer and the standard setting body (if applicable) and all standard setting body requirements;
- 3.1.12 inform ES, without delay, of matters that may affect the customer's capability to comply with the applicable standard or the capability of the system to continue to fulfil the requirements of the applicable standard. These include, for example but without limitation, changes relating to:
- 3.1.12.1 the legal, commercial, organizational status or ownership of the customer;
- 3.1.12.2 organization and management (e.g. key managerial, decision-making or technical staff);
- 3.1.12.3 contact address and sites;
- 3.1.12.4 scope of operations under the system; or
- 3.1.12.5 major changes to the system and processes
- and the customer agrees to pay any applicable additional fees and expenses deemed necessary for ES to assess the impact and maintain confidence in the system;
- 3.1.13 ensure that its system complies with the current versions of the standard(s) against which it is certified. Current versions of the rules, regulations and standards can be obtained from the respective websites of the standard setting bodies, or from ES or from the standards issuing authority;
- 3.1.14 comply with any conditions set by ES for the issue of a report and recognise that ES has clear and explicit rights to revise the

- requirements of certification within the period of validity of the certificate;
- 3.1.15 acknowledge that initial certification will only be granted once all non-compliances have been actioned in accordance with the applicable standard;
- 3.1.16 acknowledge that on-going certification is reliant on continued compliance with the standards, rules and regulations of the relevant standard setting body, which may change from time to time, including the requirement to address any non-conformances to the satisfaction of ES in the specified time periods; and
- 3.1.17 declare to ES any activity which may create a conflict of interest in relation to its certified system.
- 3.2 The customer represents and warrants to ES that, in the event of the issuance of a certificate, to inform ES in writing immediately of any changes during the term of the certificate which may have a material impact on the accuracy of the certification.
- 3.3 The customer agrees to indemnify, keep indemnified and hold harmless ES from and against all Losses which ES may suffer or incur arising out of or as a result of:
- 3.3.1 any defects in the customer's products, services or system; and
- 3.3.2 the use or misuse by the customer of any certificate, licence, logo, service mark or trade mark provided by ES in accordance with these Terms and Conditions.
- Notwithstanding any other provision of these Terms and Conditions, the customer's liability under this indemnity shall be unlimited.
- 3.4 The customer acknowledges the authority of the accreditation body and agrees to assist ES and accede to any reasonable request made by the accreditation body in relation to the certification e.g. witness audits.
- 3.5 Where the customer's product is the subject of its certification, the customer shall inform ES in writing of any product recall under the scope of the certificate within three (3) working days.
- ### 4. SUSPENSION OR WITHDRAWAL OF CERTIFICATION
- 4.1 ES shall be entitled to suspend or withdraw part or all of a certification on seven (7) days' written notice (or within such timescales as ES may reasonably specify, including with immediate effect in the case of urgent need) when, in the reasonable opinion of ES:
- 4.1.1 the customer's acts, omissions or conduct bring or may bring ES, the accreditation body, the standard setting body, or a standard into disrepute;
- 4.1.2 the customer represents, promotes or advertises any products or systems which are outside the scope of its certificate as certified by ES;
- 4.1.3 the customer makes fraudulent misrepresentation or provides ES with any inaccurate or misleading information, which is not corrected within three (3) working days or immediately on being notified by ES;
- 4.1.4 the customer is in breach of or is not subject to the requisite ancillary licence agreements, including any attributable to the accreditation body;
- 4.1.5 the customer fails to maintain or demonstrate an effective system such that the confidence in the certificate is adversely affected; or
- 4.1.6 the customer has persistently or seriously failed to meet certification requirements for a particular part or parts of a relevant standard.
- 4.2 Where permitted by the relevant standard, ES will afford the customer a reasonable opportunity to take corrective action before the suspension or withdrawal takes effect. In the event of suspension or withdrawal of all or part of a certificate, ES reserves the right to make public the fact that such action has been taken.
- 4.3 In the event ES is unable to supply certification or is no longer able to continue to supply certification accredited by the relevant accreditation body or otherwise withdraws from supplying certification, ES will notify the customer within thirty (30) days and the certificates will be suspended ipso facto within six (6) months after the date of withdrawal.
- 4.4 In the event that ES suspends or withdraws a certificate, the customer (including the customer's group companies) shall:
- 4.4.1 immediately refrain from any claims or representations (oral or written, express or implied) that products comply with the requirements of the certificate, ES or the standard setting body;
- 4.4.2 immediately refrain from further promotion of the certificate or use of any references to the certificate, including discontinuing use of all advertising matter that contains a reference to certification;
- 4.4.3 immediately at its own expense remove all service mark(s), trade mark(s), certification mark(s) and other names and logos belonging to ES, the accreditation body and the standard setting body from its products, information, website, documents, advertising or marketing or any other materials;
- 4.4.4 immediately cease to sell any products bearing any service mark(s), trade mark(s), certification mark(s) and other names and logos belonging to ES, the accreditation body and the standard setting body;
- 4.4.5 immediately cease and desist from using all service mark(s), trade mark(s), certification mark(s) and other names and logos belonging to ES, the accreditation body and the standard setting body;
- 4.4.6 amend all advertising matter if part of a certificate has been suspended or withdrawn;
- 4.4.7 make the suspended status of the certification publicly accessible;
- 4.4.8 notify the standard setting body; and
- 4.4.9 take any other measure required by ES or prescribed by a standard.
- 4.5 Where a customer's certification has been suspended or withdrawn, and where a product has been supplied with a claim that it complies with a standard(s) by the customer to a customer/purchaser, the customer shall:
- 4.5.1 immediately identify all relevant customers/purchasers who are in receipt of, or have ordered, such product, and notify each of such

- customers/purchasers of the suspension or withdrawal (as the case may be) in writing within three (3) working days (or within such timescales as a standard may specify) of the suspension or withdrawal, and maintain records of such notification; and
- 4.5.2 provide such co-operation and information as may be required by ES or the accreditation body to enable ES or the accreditation body to verify and confirm that the customer is in compliance with all its obligations to ES and the accreditation body.
- 4.6 In the event that ES withdraws a certificate, the customer (including the customer's group companies) shall promptly return the original and all copies of the certificate to ES or destroy the original, and commit to destroy any electronic copies and hardcopies in its possession or control.
- 5. CONFIDENTIALITY**
- 5.1 The obligations of the parties under this clause 5 of this Annex shall apply in addition to clause 12 **Confidentiality**.
- 5.2 The customer agrees that information relating to its certification and scope of certification can be made publicly available by ES and the standard setting body.
- 5.3 ES shall inform the customer, in advance, of any other information it intends to place in the public domain. All other information, except for information that is made publicly accessible by the customer, shall be considered confidential.
- 5.4 Where prescribed by a standard setting body:
- 5.4.1 the customer shall be required to promptly provide to ES and the standard setting body and their respective authorised agents all such information, documentation books and records deemed necessary by ES or standard setting body; and
- 5.4.2 the customer agrees that ES and/or the standard setting body shall have the right to use and process any information relating to the customer or otherwise provided by or through the customer including but not limited to any supply base report; ES public summary reports; data required by the standard setting body for calculations and regulatory reporting; any data required by the standard setting body to be supplied to the customer's purchaser/customer with each batch of biomass supplied or sold.
- 6. AUDIT CONDUCT**
- 6.1 ES will appoint competent qualified auditors to conduct audits and assessments of the customer's compliance with the relevant standard(s).
- 6.2 The customer will ensure that reasonable cooperation and assistance is provided to ES to allow audit and assessment services to be delivered at a frequency determined by ES in order for ES to maintain confidence in the customer's on-going compliance with the relevant standard(s).
- 6.3 ES will issue audit and non-conformance reports, if appropriate, after each audit activity. The customer shall allow the accreditation body, or its representative, access to any part of the audit or surveillance process. This will include the right of access to confidential information. The Customer will not have the right under these Terms and Conditions to refuse such a request either by the accreditation body, its representative, or ES.
- 6.4 ES reserves the right to conduct an unannounced audit at short notice if required by the standard setting body or as part of the certification scheme requirements to investigate complaints, or in response to changes, or as follow up on a suspended customer. In such cases:
- 6.4.1 ES shall describe and make known in advance to the customer the conditions under which these short notice visits are to be conducted, and
- 6.4.2 ES shall exercise additional care in the assignment of the audit team because of the lack of opportunity for the customer to object to audit team members.
- 6.5 Where prescribed by a relevant standard, the customer shall make all necessary arrangements for:
- 6.5.1 the conduct of the evaluation and surveillance (if required, and as determined by ES), including provision for examining documentation and records, and access to the relevant equipment, location(s), area(s), personnel, and the customer's subcontractors;
- 6.5.2 investigation of complaints; and
- 6.5.3 the participation of observers, if applicable, including the accreditation body, or its representative, for the purposes of witnessing ES's audit team performing the audit of the system to determine conformity with the requirements of the standard.
- 6.6 Where prescribed by a standard, the customer agrees that:
- 6.6.1 a copy of the audit report and any subsequent certificate or audit result shall be supplied to the Standard setting body and the accreditation body in the agreed format for the particular standard used;
- 6.6.2 all documents in relation to the audit shall be made available to the accreditation body/standard setting body upon request. All documents submitted to the standard setting body shall be copies of original documents. Documents provided to the standard setting body will be treated as confidential;
- 6.6.3 the auditor may be accompanied by other personnel for training, assessment or calibration purposes and this activity may include:
- 6.6.3.1 training of new auditors by ES;
- 6.6.3.2 witness audits by accreditation bodies; and
- 6.6.3.3 witness audits by the standard setting body; and
- 6.6.4 the standard setting body reserves the right to conduct its own audit or visit to a site once certificated in response to complaints or as part of the routine standard setting body compliance activity to ensure the integrity of the standard. Such visits may be announced or unannounced. The standard setting body may contact the site directly in relation to its certification status or for feedback on ES's performance, or investigation into reported issues.
- 6.7 Where prescribed by a standard, the customer shall grant ES and the standard setting body and their respective authorised agents the right at any reasonable time to have access to the customer's premises (or to arrange for such authorised representatives to have access to other relevant premises owned or controlled by the customer or its group companies) for the purpose of inspecting and taking copies of any information, documentation, goods, books and records deemed necessary by ES or the standard setting body.
- 7. APPEALS AND COMPLAINTS**
- If the customer wishes to complain or appeal about certification decisions of ES it shall do so in accordance with ES's complaints and appeals processes which may change from time to time and are publicly available and can be provided on request.
- 8. MATERIALITY (BASIS OF OPINION)**
- Where ES provides certification services, ES conducts certification through a sampling process to determine if the system meets the standard(s). Any statement of conformity issued by ES in the form of reports, certificates or other communications is based on these sampling processes. ES does not warrant, represent or undertake that these statements mean that all activities are in conformance with the relevant standard(s) at the time of audit or that subsequent to the audit activity those activities audited will continue to be in conformity with the relevant standard. The customer undertakes to make all of its customers and end users aware of the foregoing provisions of this clause. ES accepts no liability to the customer in the event that any loss or claim is suffered by the customer as a result of any finding that the system does not comply with the standards.