Annex A10 Terms of Contract

Terms of Contract applicable to the inspection and certification activities by CU Inspections India Private Limited, hereinafter called "the Company"

1. Applicability and validity

1.1 These ToC shall apply to all quotations and offers (of contract) issued by CU Inspections India Pvt Ltd. (hereinafter: the "Company") and agreements entered into by and between the Company and the Principal for the provision of Services (defined below) by the Company to the *principal*.

1.2 The applicability of the (purchase) terms and conditions of the Principalis expressly refuted and the terms and conditions of the Principal do not apply to the Service Agreement between the Company and the Client, not even additionally.

1.3 If any provision of these ToC or any part thereof shall be found or held to be invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions shall in no way be affected or impaired and the remaining provisions shall remain in full force and effect to the maximum extent permitted by the applicable laws and the invalid provision shall be replaced by a provision which reflects the intent of the original provision as closely as possible.

1.4 In the event of any inconsistency between the terms of the Service Agreement and the terms of these ToC the terms of the Service Agreement shall take precedence. The terms of the Service Agreement and these ToC shall take precedence over any alternative terms and conditions (in any other document connected with this transaction) unless expressly otherwise agreed between the Parties in writing.

1.5 If the Principal has entered into a contract with a critical office of the Company, and this offices loses its critical status for the activities covered in the Service Agreement, all rights and obligations of the Service Agreement will automatically be transferred to the Company.

2. Offers and Agreements

2.1 By signing the Service Agreement the Company and the Principal enter into a formal agreement (hereinafter: the "Service Agreement") on the terms and conditions as specified therein as well as in all documents (including these ToC) referred to and included therein which shall apply to and be deemed an integral part of the Service Agreement (together hereinafter: the "Documents"). For the purpose of these ToC Service Agreement shall include any supplements thereto and all Documents referred to therein.

2.2 The Company and the Principal agree to be bound by and to comply with all the terms and conditions of the Service Agreement, including any supplements thereto and all other Documents referred to in the Service Agreement.

2.3 All offers or quotations issued by the Company shall be without any obligation unless explicitly stated otherwise in the offer.

2.4 All offers and quotations are valid for the period as mentioned in the offer concerned. If no period of validity is mentioned, the offer will be valid for fourteen (14) days after the day on which the offer was submitted by the Company.

2.5 The Service Agreement (including the Documents) constitutes the entire agreement between the Company and the Principal to the subject matter described therein and shall supersede all previous understandings, arrangements or agreement (whether in oral or in writing) between the Parties for the comparable scope of certification.

3. Obligations and restrictions of the Client

3.1 The Principal represents and warrants that it has the right, power and authority to enter into and perform its obligations under the Service Agreement and that the execution or performance of the Service Agreement shall not infringe upon or violate the rights of any third party or violate any laws.

3.2 The Principal shall not assign any of its rights nor delegate the performance of any of its obligations under the Service Agreement and/or the Documents, except with the prior written consent of the Company (such consent not to be unreasonably withheld or delayed) and only to the extent specified in such consent. Any attempt of the Principal to assign any of its rights or to delegate the obligations under the Service Agreement, without the consent of the Company, is void.

3.3 The Principal must, upon request by the Company, withdraw and/or rectify any misleading or incorrect publications, indications or information with regard to its assessed and/or certified activities to the satisfaction of the Company. Any directions from the Company to this end shall be duly followed.

3.4 The Principal shall:

- **i.** when it meets the requirements of the Documents, be entitled to use the applicable mark(s) of conformity, on products which have been certified by Control Union and for which it holds a valid product scope certificate;
- **ii.** refrain from using or referring to a (quality) management system certification mark or certificate granted by the Company in any way that may be interpreted as denoting product conformity;
- **iii.** not ever use a certification granted by the Company for activities or products for which it was not issued;
- **iv.** when using a mark of conformity or making reference to the certification granted by the Company, at all times comply with the requirements imposed by the Company or as specified in the Documents;
- **v.** in case the Principal provides copies of the certification documents to other (third) parties, reproduce the documents in their entirety or as specified in the Documents.

3.5 The Principal must inform the Company immediately upon becoming aware of any incorrect and/or unauthorized use of a mark of conformity or any misleading or incorrect publications referring to the Company or the Documents.

3.6 The Principal is obliged to accept any assessment by the Certification Body, it's Accreditation Body, the Scheme Owner or Scheme Administrator, a Governmental Body or any other formally appointed body in conformance with the Documents.

3.7 The Principal can make a substantiated reference to Force Majeure (see 13).

3.8 The Principal is entitled to voice substantiated objections against the presence of individual persons in the assessment, in which case the assessing body shall make every reasonable effort to replace the protested person.

3.9 The Company may, at its discretion, where possible, in consultation with the Client, replace the person or persons charged with performing the assessment, if and in so far as the Company believes that such replacement would benefit the performance of the assessment.

3.10 The Company shall be neither in breach of the Service Agreement nor liable to the Principal for any breach of the Service Agreement if and to the extent such breach is caused by the failure of the Principal to comply with its obligation set out in this ToC.

4. (Performance of) Services

4.1 The Company's standard services may include all or any of the following (hereinafter: the "Services"): Inspections and Certifications of products, processes, services, processing and/or production units or management systems of the Principal stated in the Service Agreement (hereinafter: the "Object") according to the applicable Documents (as mentioned in the Service Agreement). Inspections are defined to include: assessments, audits, inventories or surveillance.

4.2 The Company will provide the Services as further stipulated in the Service Agreement for the certification of the Object in accordance with the terms and conditions set out in the Service Agreement and the Documents (including these ToC). The Principal knowledges that any Services provided by the Company are performed within the limits of the scope of services agreed upon between the Parties.

4.3 The Services will be performed in a manner consistent with the degree of care and skill ordinarily exercised by other companies providing like services under similar circumstances. In the performance of Services under the Service Agreement, the Company will apply professional personnel having, in the reasonable opinion of the Company, the required skills, experience and competence in order to execute the Services in an appropriate way.

4.4 The Company reserves the right to delegate the performance of its obligations under the Service Agreement to any of its affiliates and/or reputable service provider (hereinafter: the "Sub-Contractor(s)"), provided, however that the Company shall be and remain fully responsible for the acts, omissions and defaults of any duly appointed Sub-Contractor as if they were the acts, omissions or defaults of the Company. The Company may disclose to its Sub-Contractors any Confidential Information (as defined below) necessary to perform the Services.

4.5 If the Company, in its sole discretion, finds it necessary and reasonable to perform additional inspections, the costs for these extra inspections shall be for the account of the Client. These costs shall be based on the yearly fee as agreed upon by and between the Company and the Principal and shall be charged on the the yearly fee as agreed upon by and between the Company and the Principal and shall be charged on the basis of real made costs.

4.6 The Principal shall duly provide all cooperation reasonably required for the proper and timely execution of the assessment and shall provide full access to all information and facilities that relate to the scope of this Service Agreement. The Principal shall make all required arrangements for the accomplishment of the assessment activities. The Principal shall duly make available to the Company any and all information and documents that the Company deems necessary, in the specified form and manner, and shall guarantee the correctness, completeness and reliability of said information and documents and guarantee that such information or documentation is not misleading in any respect. Additionally, the Principal must provide the Company and any parties rightfully involved in the certification process (see 3.6) unobstructed access without prior notification to all areas, premises and units which fall within the scope of the assessment and make personnel and equipment available for the effective performance of assessment activities. The Principal shall ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of the assessment. It shall take all necessary steps to eliminate or remedy any obstructions to or interruptions in the performance of the assessments and inform the 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.

4.7 The Company shall, in the performance of the Services on the Client's premises take reasonable steps that it shall comply with all health and safety regulation of the Principal, provided that the Principal makes the Company aware of the same prior to the commencement of the Services and such regulations do not inhibit the correct performance of the Service.

4.8 If so required by the Documents for the purpose of verification, samples for analysis must be made available by the Principal and must be placed free of charge at the Company's disposal. The Company will not hold any responsibility for the accuracy of the results of such analyses.

4.9 The Company specifically disclaims any representations or warranties, expressed or implied regarding the Services, including any implied warranties arising from course of dealing or course of the performance of the Services. The representations and warranties set forth in the Service Agreement (including these ToC) are the only warranties made by the Company and shall not be enlarged or diminished without the Company's prior written consent.

4.10 The Company is neither an insurer nor a guarantor and disclaims all liability in such capacity. A Principal seeking a guarantee against loss or damages should obtain appropriate insurance.

5. Reports and Certificates

5.1 Any Report or Certificate provided by the Company and the copyright contained therein shall be and remain the property of the Company and the Principal shall not alter or misrepresent the contents of such Reports and Certificates. The Principal shall be entitled to make copies for its internal purposes only, which shall clearly state that it is a copy.

5.2 Any Report issued to the Principal shall be only for the Client's use and benefit.

5.3 The Principal understands and acknowledges that reliance on any Report or Certificates issued by the Company is limited to the facts and representations set out in such Report or Certificate which represent the Company's findings at the time of the performance of the Services.

5.4 The Company scope certificate is granted to the Principal on a non-exclusive basis.

5.5 The scope certificate shall be valid until the expiration date mentioned on the certificate, provided that:

i. no deviations, alterations and/or other changes have occurred with regard to the production method and units on the date they were inspected, such production method and production units having been granted a certification based on that assessment; and

ii. the Service Agreement has not been terminated due to any reason whatsoever.

5.6 Verbal affirmations or agreements regarding the certification by or with the Company's personnel, do not bind the Company in any way. Only upon taking a formally substantiated certification decision by the Company shall a certificate be granted to the Client.

6. Confidentiality

6.1 Where the Company obtains confidential information of the Principal in relation to the performance of the agreed certification services, it shall, subject to Clause 6.2 and 6.3:

i. keep that information confidential, by applying the same care that is uses for its own confidential information

ii. use that confidential information only for the purpose of the Service Agreement

iii. not disclose that confidential information or give access to that confidential information to a third party, without the prior written consent of the Client, except to the extent required by law and/or the Documents.

6.2 To gain and maintain confidence in certification, the Company will provide appropriate access to, or disclosure of, non-confidential information about the conclusions of specific audits (e.g. audits in response to complaints) to specific interested parties.

6.3 The Principal may disclose confidential information to its affiliates, and to its and their officers, employees or Sub-Contractors, on a need to know basis only. For the purpose of this Clause "Affiliate" means with respect to any person, any other person which directly or indirectly controls, is controlled by, or is under direct or indirect control with such person . A person will be deemed to control another person if such person possesses, directly or indirectly, the power to direct or cause the direction of the management or policy of such other person, whether through the ownership of voting share capital of such entity or any other comparable equity or ownership interest.

6.4 Clause 6.1 shall not apply to any confidential information that:

i. is or becomes generally known or available to the public without breach of this Clause;

ii. is known to the Company at the time of disclosure, or as evidenced by written records of the Company;

iii. is known or independently developed by the Company and can be proven as such through written records of the Company;

iv. is disclosed to the Company in good faith by a third party who has an independent right to such subject matter and information; or

v. is required to be disclosed by law or any regulatory authority, provided that the Company has given the Principal written notice of the requirement to disclose and where possible give the Principal the reasonable opportunity to prevent the disclosure through appropriate legal means.

6.5 The Company shall ensure the compliance by its affiliates and its and their officers, employees or Sub-Contractors with its obligations under this Clause, provided however that the Company shall at all-time remain responsible for the Confidential Information.

6.6 The Principala knowledges that the Company may retain in its archive for the period required by law or the rules of the relevant accreditation body, all information and documents related to the Services provided.

7. Marks of conformity

7.1 The Principal is entitled to use any applicable mark of conformity in accordance with the provisions and requirements stipulated in the relevant Documents (including but not limited to the relevant Document regarding the use of the Company marks of conformity).

7.2 The Principal may use the relevant Company mark(s), on products which have been certified by the Company and for which the Principal holds a valid product scope certificate issued by the Company.

7.3 The Principa lshall upon receiving notice of suspension or withdrawal of its certification, discontinue all use of communications that contain a reference to certification, as instructed by the Company, and revise all advertising materials accordingly when the scope of certification has been reduced. In case the Principal has attached a mark directly to the product, it will refrain from bringing this product on the market whilst under suspension.

7.4 The right to use the Company mark of conformity is granted to the Principal on a non-exclusive basis.

7.5 When making reference to the product certification granted by the Company in (the) media such as documents, brochures or advertising, the Principal shall at all times comply with the requirements imposed by the Company or as specified in the Documents.

8. Liability

8.1 *The liability of the Company in respect of any claims for loss, damage or expense of whatsoever nature and howsoever arising in respect of any breach of contract and/or any failure to exercise due skill and care by the Company shall in no circumstances exceed a total aggregate sum equal to ten (10) times the amount of the fee or commission payable in respect of the specific service required under the particular contract with the Company which gives rise to such claims provided.*

8.2 *The Company shall have no liability in respect of any claims for indirect or consequential loss including loss of profit and/or loss of future business and/or loss of production and/or cancellation of contracts entered into by the Principal. Where the fee or commission payable relates to a number of services and a claim arises in respect of one of those services the fee or commission shall be apportioned for the purposes of this paragraph by reference to the estimated time involved in the performance of each service.*

8.3 Nothing contained in the Service Agreement shall be construed so as to exclude or limit the liability of any Party for death or personal injury resulting from the wilful intent or gross negligence of said Party or any of its officers, employees or agents, or for fraudulent misrepresentation or to any extent not permitted by law.

8.4 The Principal shall guarantee, hold harmless and indemnify the Company and its affiliates and its and their officers, employees and Sub-Contractors against all claims made by any third party for loss, damage or expense of whatsoever nature and howsoever arising relating to the performance, the purported performance or non-performance of any Services to the extent that the aggregate of any such claims relating to any one Service exceed a total aggregate sum equal to 10 (ten) times the amount of the fee or commission payable in respect of the services required under this Service Agreement.

8.5 Any claim by the Principal against the Company must be made within 60 days after the Principal becomes aware of any circumstances giving rise to any such claim. Failure to give such notice of claim within 60 day shall constitute a waiver of any such claim.

9. Fees

9.1 All fees and additional charges are exclusive of any applicable Value Added Tax, Sales Tax or similar tax in the country concerned..

9.2 In the event that any unforeseen problems or expenditures arise in the course of carrying out any of the contracted services, the Company shall be entitled to make additional charges to cover additional time and cost necessarily incurred to complete the service.

9.3 The Company reserves the right to alter the agreed fee based on (inter)national index figures or the Company policy. The Company will send a notification of a change in the fee structure to the Principal at least three (3) months before the day it comes into effect.

9.4 In case of cancellation of the assessment visit by either the Principal or the Company (due to non-payment of the invoice), all costs already made for the assessment visit such as but not limited to costs for flight tickets, visa, vaccinations, etc. will be charged to the Client.

9.5 If the Principal desires amendments or additions to the Service Agreement with regard to the unit(s), product(s), process(es) and/or service(s) which must be assessed after the Service Agreement has been executed, the Principal shall formally apply for these amendments or additions by means of an application form. The Company shall provide the Principal with an amended Service Agreement, covering the amended scope of certification and any and all related adjustments in audit time allocation and costs.

9.6 The Principal shall pay, defend, indemnify and hold harmless the Company and its affiliates from and against all taxes and charges (including any penalties, fines or interest thereon) imposed by any competent authority with respect to the Services performed by the Company.

9.7 The Principal shall not be entitled to retain or defer payment of any sums due to the Company on account of any dispute, counterclaim or set off which may allege against the Company.

10. Term and termination

10.1 The Service Agreement may not be terminated prematurely by either Party. Such termination shall not affect (the performance of) any on-going specific Services, unless expressly otherwise agreed in writing.

10.2 Either Party may terminate the Service Agreement with immediate effect, by giving written notice to the other Party, if the other party:

i. becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise; or
ii. commits a material breach of its obligations under this Service Agreement and, if such breach is capable of remedy, the breach is not remedied within ten (10) business days of written notice of breach; or
iii. damages the other Party's name, reputation or business in any way;
iv. the Principal misuses the certifications obtained from the Company in any way;
v. the Principal fails to pay any amount it owes to the Company within one month after the expiration of the payment deadline.

10.3 In case of termination of the Service Agreement by the Company:

i. the Principal shall upon receiving notice of withdrawal of its certification return the scope certificates by registered mail to the Company within one week after the termination of the Service Agreement;
ii. all rights of the Principal resulting from the Service Agreement shall terminate with immediate effect, including any rights to have units and/or products inspected and/or certified;
iii. the Company shall not be obliged to refund the fee which has already been paid by the Client;
iv. the Company shall be obliged to maintain confidentiality regarding the Information to the extent possible, except to the extent it must disclose such Information as required by law or by the terms of the Documents;
v. the Principal may no longer use the Company indications and/or certificates, shall withdraw these indications and/or certificates, and shall inform the Company about this.

10.4 Any term that is intended to survive termination of the Service Agreement will survive expiration or termination of the Service Agreement.

11. *Complaints,* Appeals *and Applicable Law*

11.1 The Principal may appeal against a certification decision of the Company, or request to the Company to reconsider a decision it has made relating to the item of inspection only (hereinafter: "Appeal(s)")

11.2 The Principal may file a complaint against behaviour of Company staff (hereinafter: “Complaint”).
Complaints and Appeals must be received by the Company within 6 (six) weeks after the inspection decision, or certification-decision and shall be submitted to the Company's office in the India in accordance with the CU Appeal Regulation (which can be consulted and downloaded at: Complaints - Control Union Certifications).

11.3 *Complaints and* Appeals shall be in writing and shall be effected in English only.

11.4 The Principal acknowledges that the Company may reject a *Complaint or* Appeal and will not handle such *Complaint or* Appeal if the Principal fails to comply with Clause 11.3 or 11.4 of these ToC.

11.5 All *Complaints and* appeals under this Clause will be handled in accordance with the CU *Complaints and* appeal procedure and the Company shall inform the Principal of the decision concerning the complaint or Appeal together with the motivation thereof in writing and within 2 (two) months after receipt of the Appeal.

11.6 The Principal shall keep records of and report to the Company any complaints regarding those aspects of the products or management system covered by the Service Agreement.

11.7 The Parties shall endeavour to settle amicably any conflicts arising from or relating to the Service Agreement. In case with regard to such conflicts no amicable settlement is reached, all disputes which may arise between the Principal and the Company shall be brought before the competent court of jurisdiction in India, which shall have exclusive jurisdiction on the matter, unless the Parties agree between themselves upon another competent court.

11.8 The Service Agreement between the Principal and the Company shall be governed, construed, and enforced in accordance with the laws of the India, without regard to its conflict of laws rules.

11.9 In addition to the outstanding amounts and interests due to the Company, the Company is entitled to claim all costs with respect to the overdue payment, such as collection costs. The collection costs are fixed at 15% of the outstanding claim with a minimum of € 500.00.

11.10 The Company shall be discharged from all liability, damage or expenses unless suit is brought within six (6) months after the date of the performance by the Company of the Service which gives rise to such claim or in the event of any alleged non-performance within six (6) months of the date when such Service should have been completed.

12. Force Majeure

12.1 Neither Party shall be liable to the other Party for a delay in performing or failure to perform any of its obligations under the Service Agreement to the extent such delay or failure could not have been foreseen or provided against by the affected Party (hereinafter: the "Affected Party"), including, but not limited to:

i. act of God (including, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods);
ii. riot, (civil) war, hostilities (whether war be declared or not), invasion, act of terrorism, mobilisation, requisition, piracy, rebellion, revolution, insurrection of military or usurped power;
iii. epidemics;
iv. maritime or aviation disasters;
v. any nationwide or state-wide strikes, lockouts or other labour difficulties and shortage;
vi. shortage of or inability to obtain transportation;
vii. any government requisition, control or intervention, requirement or interference;
viii. failures of utilities companies (such as: providers of telecommunication, internet, gas or electricity services)

12.2 The Party whose performance is affected by an event described in Clause 13.1 shall:

i. promptly notify the other Party in writing of the Force Majeure event and the cause and the likely duration of any consequential delay or non-performance of its obligations; and
ii. use all reasonable endeavours to avoid or mitigate the effects of the Force Majeure event and continue to perform or resume performance of its affected obligations as soon as reasonably possible.

12.3 If the Force Majeure event continues for more than 60 days after the date of occurrence, each Party may terminate the Service Agreement by giving at least 10 day's written notice to the other Party.

13. Waiver

13.1 Except as otherwise provided in the Service Agreement, failure by either Party to exercise, or any delay in exercising, any of its rights or remedies provided under this Service Agreement (including these Terms and Conditions) or provided by the applicable laws shall not constitute a waiver of its rights or remedies or any other rights or remedies, nor shall it preclude or restrict any further exercise of its (other) rights or remedies.

14. Communication

14.1 All notices and other communications under the Service Agreement shall be effected in English.

14.2 All notices and other communications required or permitted under the Service Agreement shall be deemed to have been duly given if personally delivered, transmitted by nationally recognized overnight courier, facsimile or email.

14.3 Any notice or communication to be given under this Service Agreement shall be sent to the address set forth in the Service Agreement.

14.4 Any changes of address by either Party shall be communicated to the other Party.

14.5 Notwithstanding the above, the Company may provide any Documents in an electronic format (including its website).