

# GENERAL CONDITIONS FOR GREENHOUSE GAS VALIDATION & VERIFICATION SERVICES

## 1. GENERAL

1.1 Unless otherwise agreed in writing, all offers or services and all resulting contractual relationship(s) between any affiliated companies of SGS SA or any of their agents (each "SGS"), and any organization or person requesting GHG validation or verification services (the "Client") shall be governed by these General Conditions. SGS and the Client are herein referred to individually as a "Party" and collectively, when the context so permits, as the "Parties".

1.2 These General Conditions and, as applicable, the Proposal and the Validation or Verification Service Agreement (the "Agreement") constitute the entire agreement (the "Contract") between the Parties with respect to the subject matter hereof. In the event of conflict between the terms of the Proposal, the Agreement, or these General Conditions, the latter shall prevail. Save as otherwise provided, no variation to the Contract shall be valid unless it is in writing and signed by or on behalf of all Parties.

## 2. DEFINITIONS

"Certificate" means any certificate, validation or verification opinion or statement issued by SGS certifying in writing

- (i) in case of validation of a GHG reduction project, the compliance of the project with the criteria agreed in the Proposal; or
- (ii) in case of verification of a GHG reduction project, the quantity of GHG emissions avoided or removed; or
- (iii) in case of a GHG inventory, the GHG emissions for the completed accounting period.

"GHG" means Greenhouse Gases as defined by the GHG Programme;

"GHG Programme" means the regulatory programme referenced in the Proposal and the Agreement

"Proposal" means a written document describing the Services to be rendered by SGS to the Client;

"Project" means a GHG reduction or removal project;

"Report" means a report issued by SGS to the Client or to any other recipients as required by the GHG Programme, indicating

whether or not SGS recommends that a Certificate shall be issued. If not required by the GHG Programme or by the Client at the signature of the Agreement, no separate Report will be issued in cases where a Certificate will be issued;

"Services" means the services of (i) validation of a Project; (ii) verification of GHG of a Project; or (iii) verification of a GHG emissions inventory, as defined in the Proposal.

## 3. PROVISION OF SERVICES

3.1 The decision to issue a Certificate is at the sole discretion of SGS. If issued, the Certificate will be provided to the Client or any other recipients as required by the GHG Programme.

3.2 The Client acknowledges that SGS, by entering into the Contract or 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 the Client to any third party or that of any third party to the Client.

3.3 If permitted by the applicable GHG Programme, SGS may delegate the performance of all or part of the Services to an agent or a contractor (which shall be herein referred to, together with SGS personnel, as "SGS Representative"). The Client authorises SGS to disclose all information necessary for such performance to the SGS Representatives.

## 4. OBLIGATIONS OF THE CLIENT

4.1 The Client shall take all necessary steps to eliminate or remedy any obstacles to or interruptions in the performance of the Services.

4.2 So far as it is permitted by law, the Client acknowledges that, it has not been induced to enter into the Contract in reliance upon, nor has it been given, any warranty, representation, statement, assurance, covenant, agreement, undertaking, indemnity or commitment of any nature whatsoever other than as are expressly set out in these General Conditions and, to the extent that it has been, it unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation thereto. Any conditions or stipulations included in the Client standard form documents which are inconsistent with,

or which purport to modify or add to, these General Conditions shall have no effect unless expressly accepted in writing by SGS.

4.3 The Client shall only communicate of any SGS Certificate and Report entirely. The Client may not reproduce or publish extracts of any SGS Certificate or Report if the name of SGS appears in any way. The Client shall not disclose details of the way in which SGS performs, conducts or executes its operations. SGS reserves its rights to take all appropriate legal measure for any breach of this clause.

4.4 If facts that could affect the accuracy of the Certificate, including draft versions thereof, issued by SGS are discovered by the Client, the GHG Programme Regulator, or by any third party, after the issuance of such Certificate, SGS shall be informed accordingly by the discovering Party and shall issue a new Certificate specifically addressing the reasons for its revision and declare the old Certificate as invalid. SGS shall invoice the Client for the additional costs incurred for the issuance of the new Certificate. If tradable emission reduction credits or emission allowances were issued based on the old SGS Certificate, or if the emission reductions verified were or were to be sold in any other way, it is the responsibility of the Client to:

- (i) inform all third parties concerned by the cancellation of the old Certificate and of the issuance of the new replacement Certificate;
- (ii) take all steps necessary for the sale transaction to reflect the accurate emission reductions verified as confirmed in the new Certificate issued; and
- (iii) cancel excess emission reduction units still in possession of the Client or any third party.

4.5 If SGS submits the Report or Certificate to a registry for issuance of emission reduction credits or emission allowances, the Client shall verify if there are discrepancies between the amount of credits or allowances issued by the registry and the amount stated in the SGS Report or Certificate within 48 hours of such issuance by the registry. The Client shall inform SGS and the registry operator of any over or under issuance of credits or allowances within 48 hours of such discovery. SGS shall not be liable for the selling of over issued credits or allowances, particularly if the Client did not perform the above required verification.

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## 5. FEES AND PAYMENT

5.1 Additional fees shall be charged for services that are not included in the Proposal, for repeats of any part, or all, of the assessment or Services, or for work required due to non-conformances being identified. The Client will be notified of the additional fees prior to the performance of such services or work.

5.2 Without prejudice to clause 5.1, additional fees will be payable at SGS' standard rate in respect of rush orders, cancellation or rescheduling of services or any partial or full repeats of the assessment which are required as set out in the Contract.

5.3 A copy of SGS' prevailing standard rates is available on request from SGS.

5.4 Unless otherwise stated, all fees quoted are exclusive of travel costs (which will be charged to the Client in accordance with SGS Travel Expense Policy). All fees and additional charges are exclusive of any applicable Value Added Tax, Sales Tax or similar tax in the country concerned.

5.5 Unless otherwise agreed, all invoices are payable within thirty (30) days of the date of each invoice (the "Due Date"), 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 including the date payment is actually received.

5.6 Any use by the Client of any Report or Certificate or the information contained therein is conditional to the payment of all invoiced fees and charges. SGS reserves the right to cease or suspend all work and/or cause the suspension or withdrawal of any Report or Certificate for reasons of unpaid fees.

5.7 The Client shall not be entitled to retain or defer payment of any sums due to SGS on account of any dispute, counter claim or set off which may be alleged against SGS.

5.8 SGS may elect to bring action for the collection of unpaid fees in any court having competent jurisdiction.

5.9 Client shall pay all of SGS' collection costs including reasonable attorney's fees and related costs.

## 6. REPORT AND CERTIFICATE OWNERSHIP AND INTELLECTUAL PROPERTY

6.1 Any document including, but not limited to, any Report or any Certificate provided by SGS and the copyright contained therein shall be and shall remain the property of SGS and the Client shall not alter or misrepresent the contents of such documents in any way. The Client shall be entitled to make copies for internal purposes only.

6.2 The use of SGS' corporate name or any other registered trademarks for advertising purposes is not permitted without SGS' prior written consent.

## 7. CONFIDENTIALITY

7.1 As used herein, "Confidential Information" shall mean any oral or written proprietary information disclosed to a Party by or on behalf of the other Party during the term of the Contract. Confidential Information shall not include any information which:

(a) is or subsequently becomes generally known to the public;

(b) was available to the receiving Party on a non-confidential basis prior to the time of its disclosure by the disclosing Party, or;

(c) is disclosed to a Party by an independent third party with a right to make such disclosure.

7.2 Unless (i) required by law or by a judicial, governmental or other regulatory body, or (ii) if the disclosure is made within judiciary or arbitral proceedings, neither Party nor their agents or subcontractors shall use the Confidential Information other than for the purpose of the Contract (this may include disclosure for public consultation in accordance with the GHG Programme guidelines), or disclose the Confidential Information to any person or entity without the prior written approval of the other party except as expressly provided for herein.

## 8. TERMINATION

8.1 SGS 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 (ten) days that notice of such failure has been notified to Client;

(b) any suspension of payment, arrangement with creditors, bankruptcy, insolvency, receivership or cessation of business by the Client;

(c) SGS not being given sufficient access to the books, record and information necessary in order to perform the required Services, or to the premises where the Services are to be performed; or,

(d) force majeure, including but not limited to, acts of god, war, terrorist activity, industrial action, illness, death or resignation of personnel, and failure to obtain permits licenses or registrations.

8.2 Upon the suspension or termination of the provision of the Services, SGS shall be nevertheless entitled to payment by Client of:

(a) the amount of all abortive expenditures actually made or incurred;

(b) a proportion of the agreed fees equal to the proportion (if any) of the services actually carried out, and;

(c) SGS shall be relieved of all responsibility for the partial or total nonconformance of the required Services.

8.3 Unless otherwise agreed in writing, the rights and obligations of the Parties defined in clauses 7, 9, 10, 11 and 12 shall apply notwithstanding the completion of the Services or termination of the Contract.

## 9. LIMITATION OF LIABILITY AND INDEMNITY

9.1 SGS undertakes to exercise due care and skill in the performance of the Services and accepts responsibility only in cases of proven negligence.

9.2 The liability of SGS to the Client in respect of any claim for loss, damage or expense of any nature and howsoever arising shall be limited, in respect of any one event or series of connected events, to an amount equal to the fees paid to SGS under the Contract (excluding Value Added Tax thereon) or EUR 20'000, whichever is the lesser.

9.3 SGS shall not be liable to the Client nor to any third party:

(a) for any loss, damage or expense arising from (i) a failure by the Client to comply with any of its obligations under the Contract, (ii) any actions taken or not taken on the basis of the Reports or the Certificates; and (iii) any

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incorrect results, Reports or Certificates arising from unclear, erroneous, incomplete, misleading or false information provided to SGS;

(b) for loss of profits, loss of production, loss of business or costs incurred from business interruption, loss of revenue, loss of opportunity, loss of contracts, loss of expectation, loss of use, loss of goodwill or damage to reputation, loss of anticipated savings, costs or expenses incurred in mitigating loss and loss or damage arising from the claims of any third party that may be suffered by the Client and

(c) any indirect or consequential loss or damage of any kind whatsoever (whether or not falling within the types of loss or damage identified in (b) above).

9.4 SGS shall be discharged from all liability for all claim for loss, damage or expense unless suit is brought within one year from:

(i) the date of the performance by SGS 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.

9.5 Except for cases of proven negligence or fraud by SGS, the Client further agrees to hold harmless and indemnify SGS and its officers, employees, agents or subcontractors against all claims (actual or potential) of 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 the Services.

9.6 Each Party shall take out adequate insurance to cover its liabilities under the Contract and in tort.

## 10. MISCELLANEOUS

10.1 If any one or more provisions of the Contract or 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.

10.2 The Client may not assign or transfer any of their rights hereunder without SGS' prior written consent. Any assignment shall not relieve the assignor from any liability or obligation under the Contract.

10.3 The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract.

10.4 Any law or regulation which provides that the language of a contract shall be construed against the drafter shall not apply to the Contract.

10.5 A Party giving notice under these General Conditions must do so in writing with such notice being hand delivered or sent by registered mail or facsimile to the address for the other Party as set out in the Application. A notice will be deemed received by the other Party: (a) if hand delivered, on the date of delivery; (b) if sent by registered mail, on the date of the delivery; (c) if sent by facsimile, the time indicated on the sending Party's facsimile transmission confirmation message.

10.6 The Parties acknowledge that SGS provides the Services to the Client as an independent contractor and that the Contract does not create any partnership, agency, employment or fiduciary relationship between SGS and the Client.

## 11. COMPLAINTS AND APPEALS

11.1 The Client or any third party may lodge a complaint at any time to SGS in order to express their dissatisfaction in relation to the validation, verification or certification activities of SGS.

11.2 The Client may appeal against any decision taken by SGS in relation to the validation, verification or certification activities of SGS in order for such decision to be reconsidered. The appeal must be submitted within 7 (seven) days of reception of the notification of the decision.

11.3 The GHG Programmes' country specific complaints-handling procedure and appeal-handling procedure are available online at [www.sgs.com/climatechange](http://www.sgs.com/climatechange).

## 12. DISPUTES

Unless specifically agreed otherwise, all disputes arising out or in connection with these General Conditions or the Contract shall be governed by the laws of England 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.

## 13. LANGUAGE

These General Conditions have been drafted in English. Should any discrepancies exist between the English version and its translation, the English version shall prevail.

## 14. SPECIAL CONDITION

Notwithstanding article 12 above, and provided that the Company and Client both have their registered offices in the same country, all disputes arising out of or in connection with Contractual Relationships hereunder shall be governed by and constructed in accordance with the substantive laws of such country and all disputes shall 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 Hong Kong and be conducted in the English language.