

测试的普通条款

上海标检产品检测有限公司（以下简称“本公司”）替客户进行所需测试或检定时，当根据以下条款进行，惟本公司亦保留拒绝接受任何客户有关测试或检定的委托，并毋须给予任何理由：

1. 本公司只为给予本公司指示的某客户或机构（以下简称“该客户”）提供服务。除非获得该客户的授权，任何人士皆没有权利向本公司给予任何指示，尤其有关该测试的范围、报告及证书的送达方面。
2. 所有须接受测试或检定的物资、设备及其他财产皆须由该客户自资及根据本公司的规定送达至本公司。当有关的测试或检定完成后，该客户被本公司要求时，须自行提取有关物资或设备。无论在何种情况下该客户未能于测试报告的签发日期起计的30日内提取有关物资或设备（若该物资属于易消耗性质，例如食物及水的样本，有关时限则为7日），本公司可以酌情弃置该物资或设备及毋须赔偿该客户。
3. 该客户在本公司提供服务前或正在服务时，须遵守以下条款：
 - (a) 提供及时的指示和足够的资料，务求令本公司能提供有效的服务；
 - (b) 在本公司的要求下，提供任何设备及人员，让本公司能有效地提供服务；
 - (c) 采取所有必须的行动，以消除或补救任何会阻碍本公司提供服务的事物；
 - (d) 预先通知本公司有关该样本或进行测试时据涉及的真确或潜在危险；
 - (e) 为本公司的员工或代表提供所有必须的通行，令致本公司能有效地提供该客户所需的服务；
 - (f) 在本公司提供该服务期间，确保在本公司提供服务的有关环境、地点及其装置的安全措施已经执行；
 - (g) 无论本公司是否发出测试报告或证书，该客户须充分履行其与其他方所签订的合同（如销售合同）的责任，否则本公司毋须向该客户承担任何责任。
4. 在本公司接受该客户委托的前提下，本公司将会发出测试报告及证书，在该客户委托范围内呈报本公司的意见；惟本公司毋须在该客户的委托范围以外呈报任何事实。该客户须提交充足和准确的测试样本资料给本公司，否则本公司不会对证书和/或报告上的任何有关错误负上任何责任。
5. 本公司是被该客户不可撤换地授权以本公司的酌情方法送达测试报告或证书予该客户所指定的或由本公司根据实际情况、行业习惯、习性或是一般做法而决定的其他地方。
6. 本公司将以保密的方法处理及签发有关测试报告予客户。在未经本公司的同意下，该测试报告不得作全部或部分翻制，或作宣传或其他未经本公司许可的用途。当该客户从本公司收到有关测试报告后，可以展示或传送该测试报告或由本公司所制定该测试报告的核证版本予其顾客、供应商或其他直接有关人士。在不影响第7条款的前提下，除非被有关政府机构、法律或法庭命令所要求，本公司在未经客户的同意前，将不会与其他方就测试报告的内容进行任何讨论、书信的往来或透露。
7. 除非该客户在递交申请书时以书面反对，本公司将有权透露有关测试的文件及/或档案予任何第三者认证/认可机构作审核或其他相关用途。本公司无须因透露文件及/或档案的内容负上任何责任。
8. 在不影响第7条款的前提下，本公司承诺对在实验室活动中获得或产生的所有该客户信息承担管理责任：
 - (a) 本公司会将其准备公开的信息事先通知该客户。除该客户公开的信息，或本公司与该客户有约定（例如：为回应投诉的目的，或第7条款所述的情况），其他所有信息都被视为专有信息，会予保密。
 - (b) 当本公司依据法律要求或合同授权透露保密信息时，会将所提供的信息通知到相关该客户或个人，除非法律禁止。
 - (c) 本公司从该客户以外渠道（如投诉人、监管机构）获取有关该客户的信息时，会在该客户和本公司间保密。除非信息的提供方同意，本公司会为信息提供方（来源）保密，且不会告知该客户。
 - (d) 本公司人员，包括委员会委员、合同方、外部机构人员或代表本公司的人，会在实施实验室活动过程中获得或产生的所有信息保密，法律要求除外。
9. 假若该客户准备利用本公司所签发的测试报告在司法或仲裁程序上，该客户于呈交样本予本公司作测试前必须明确阐述此用途。
10. 除非本公司的确进行抽样测试及于有关测试报告中阐明此事实，该测试报告只适用于已被测试的样本，而不适用于大量额度的有关货品。
11. 当该客户要求针对检测作出与规范或标准符合性的声明时（如通过/未通过，在允许限内/超出允许限），除非规范或标准本身已包含判定规则或该客户另有指定，本公司将采用 ILAC-G8 指导文件（及/或在电工类测试领域时的 IEC Guide 115）作为判定规则。采用 ILAC-G8 文件时，如果测量值加/减覆盖率概率为95%的扩展不确定度与判定限值重叠，则不能进行符合性声明。有关该文件的资料可以从本公司取得。
12. 任何记载该客户与其他方相互关系的文件（如销售合同、信用状、运单证明书），本公司一概视为纯粹资料，将不会影响本公司接受该客户所委托的服务范围或责任。
13. 假若该客户并未指定该测试所应用的测试方法或标准，本公司将会自行选择适当的方法或标准；有关该测试方法的资料可以从本公司取得。
14. 在本公司或其他进行测试的地方或在往返本公司与该进行测试地方的期间，假若物资、设备或财物发生任何损失或损坏，无论是否由于本公司的雇员、职员、代理或独立承包商的任何行为、疏忽或失职所造成，本公司的雇员、职员、代理或独立承包商皆毋须负上任何责任及不会遭受任何追讨。
15. 本公司对于利用本公司所签发的任何测试报告或通讯内的资料而造成的损失，概不会承担任何责任。
16. 在不影响第14和第15条款的前提下，本公司就任何损失所承担的赔偿总额将不会超过与该追讨有关的本公司可收取服务费用的5倍；本公司的赔偿责任亦绝对不会包含任何该客户的间接、特殊或随后引致的损失（即并非由事故立刻造成，但其结果导致的破坏或损失）。
17. 假若本公司被任何非本公司能控制的因素导致未能提供该测试服务，而该测试服务亦已接受委托或有关协议已经协定，该客户仍须向本公司支持以下费用：
 - (i) 所有本公司已付的与该测试服务有关的费用及支出；
 - (ii) 与本公司已经提供的测试服务成比例的部分已协议的该测试服务费用或佣金；同时本公司毋须继续承担有关该测试服务中尚未完成的部分或全部责任。
18. 除非有关追讨是在与该追讨有关的本公司所提供服务的日期起计的一年内提出，或是由本公司应该提供服务的日期起计的一年内提出，本公司将毋须就该追讨负任何赔偿责任。
19. 该客户同意本公司并不纯因与该客户建立合约关系或提供测试服务而代替该客户承担向其他方的责任。此外，本公司并非是保险承保人或担保人，将不承担有关的任何责任。
20. 就其他方提出任何追讨本公司、雇员、代理或独立承包商有关本公司提供或未能提供测试服务的任何损失或支出，而与该测试服务有关的追讨总额超过第16条款所订的赔偿限额，该客户须赔偿予本公司上述追讨总额超出第16条款所订的赔偿限额的差额。
21. 假若该测试报告被不适当当地运用，本公司将会保留权利撤回该测试报告，及采取任何适当的措施。
22. 该客户同意其委托本公司进行测试所得之报告，并不能作为针对本公司法律行动的依据。
23. 本公司接纳及存档某样本是建基于肯定的基础，即该样本已经该客户投保或承担由于本公司在分析或处理该样本期间发生的火灾、盗窃或任何损失，并且不能向本公司或其职员、代理或独立承包商追讨任何损失。
24. 假若该客户的要求令致有关该样本的测试须于该客户或任何第三方的实验室进行，则本公司只会代为传送有关该测试的结果，对其准确性概不负任何责任。如本公司只可证明该客户或任何第三方的实验室已进行有关测试，则本公司只可确认某正确的样本已经被测试，而毋须为该测试的准确性负任何责任。
25. 假若本公司于提供测试服务的过程中需要未可预计的额外时间或支出，则本公司可以根据该基础向该客户收取额外的费用。
26. 本公司在提供测试服务期间所衍生的任何报告、证书或其他物资，其相关的所有法律产权（包括知识产权），皆由本公司所拥有。
27. 该客户应于本公司所发出的发票日期或由本公司以书面同意的特定日期内准时支持有关该测试的所有费用，否则该客户需要支付本公司发票日期起计至实际付款日期的利息（以每月3厘计）。该客户亦须支付本公司用于追讨该笔欠款的所有费用，包括法律费用。
28. 当本公司收到该客户的请求，本公司可以电子媒介传递有关测试服务的结果，但该客户应注意，电子媒介传递不能保证其所含资料不会流失、延缓或被其他方截取。对于电子媒介传递导致其所含的任何资料出现泄露、差错或遗漏，本公司将不会负任何责任。
29. 在有需要情况下，本公司可以将全部或部分测试服务向外承判予合格的承包商，该客户若在呈交测试服务的申请表时未有提出对上述的反对，该客户将被视作同意上述本公司的安排。
30. 本公司根据有关该客户所需的测试或检定服务的个别情况，保留在上列所有普通条款上再增加特别条款的权力（此条款在该客户接获本公司的有关通知方生效）。
31. 对于本公司和该客户因本协议所产生的任何争议或索赔或有关本协议之违反，终止或无效，这里的条款应优先于各方或其代理人先于口头或书面上已协议之任何其他条款。
32. 这里的条款适用于中华人民共和国法律，凡因它们产生的或与上述条款有关的任何争议应通过友好协商解决，如果协议不成，该争议应提交中国国际经济贸易仲裁委员会，按照申请仲裁时该会现行有效的仲裁规则进行仲裁。仲裁裁决是终局的，对双方均有约束力。仲裁费用应由败诉方承担。
33. 这里的条款若在英文或中文的版本上出现歧义，则以中文为准。

GENERAL CONDITIONS OF TESTING

STC (Shanghai) Co. Ltd. (the "Company"), while reserving the right to decline, without giving any reason whatsoever, any request for the undertaking of a test or investigation, will carry out at the request of the clients the required test or investigation subject always to the following conditions: -

1. The Company only acts for the person or body originating the instructions (the "Clients"). No other party is entitled to give instructions, particularly on the scope of testing or delivery of report or certificate, unless authorized by the Clients.
2. All materials, equipment and other property to be tested or investigated shall be delivered at the costs of the Clients and in accordance with the requirements of the Company. At the conclusion of the test or investigation, the Clients shall, if required by the Company, collect the materials or equipment. In any event, if the materials or equipment are not collected by the Clients within 30 days from the issuance date of the test report (for perishable items such as food and water samples, the relevant period shall be 7 days), the Company may at its discretion dispose of the same without any compensation to the Clients.
3. The Clients shall always comply with the followings before or during the Company providing its services:
 - (a) give timely instructions and adequate information to enable the Company to perform the services effectively;
 - (b) supply, when requested by the Company, any equipment and personnel for the performance of the services;
 - (c) take all necessary steps to eliminate or remedy any obstruction in the performance of the services;
 - (d) inform the Company in advance of any hazards or dangers, actual or potential, associated with any order of samples or testing;
 - (e) provide all necessary access for the Company's staff and/or representative(s) to enable the required services to be performed effectively;
 - (f) ensure all essential steps are taken for safety of working conditions, sites and installations during the performance of services;
 - (g) fully discharge all its liabilities under any contract like sales contract with a third party, whether or not a report or certificate has been issued by the Company, failing which the Company shall be under no obligation to the Clients.
4. Subject to the Company's accepting the Clients' instructions, the Company will issue reports and certificates which reflect statements of opinion made with due care within the scope of instructions but the Company is not obliged to report upon any facts outside the instructions. The Clients shall always render adequate and accurate information and particulars of the test sample to the Company, failing which the Company shall not be responsible for any faults and/or mistakes on the certificate and/or reports in relation thereto.
5. The Company is irrevocably authorized by the Clients to deliver at its discretion the report or the certificate to any third party when instructed by the Clients or where it implicitly follows from circumstances, trade custom, usage or practice as determined by the Company.
6. A test report will be issued in confidence to the Clients and it will be strictly treated as such by the Company. It may not be reproduced either in its entirety or in part and it may not be used for advertising or other unauthorized purposes without the written consent of the Company. The Clients to whom the Report is issued may, however, show or send it, or a certified copy thereof prepared by the Company, to his customer, supplier or other persons directly concerned. Subject to Clause 7, the Company will not, without the consent of the Clients, enter into any discussion or correspondence with nor disclose to any third party concerning the contents of the report unless required by the relevant governmental authorities, laws or court orders.
7. The Company shall be at liberty to disclose the testing-related documents and/or files anytime to any third-party accreditation and/or recognition bodies for audit or other related purposes unless disagreed with by the Clients in writing at the time of them submitting the applications. No liabilities whatsoever shall attach to the Company's act of disclosure.
8. Notwithstanding anything contained herein to the contrary, but subject to Clause 7, it is agreed that the Company will be responsible for the management of all confidential information of Client obtained or created during the performance of laboratory activities:
 - (a) The Company will inform the Client in advance, of the information it intends to place in the public domain. Except for information that the Client makes publicly available, or when agreed between the Company and the Client (e.g. for the purpose of responding to complaints, or situations set off in Clause 7), all other information is considered proprietary information and shall be regarded as confidential.
 - (b) When the Company is required by law or authorized by contractual arrangements to release confidential information, the Client or individual concerned will, unless prohibited by law, be notified of the information provided.
 - (c) Information about the Client obtained from sources other than the Client (e.g. complainant, regulators) shall be confidential between the Client and the Company. The provider (source) of this information will be confidential to the Company and will not be shared with the Client, unless agreed by the source.
 - (d) Personnel, including any committee members, contractors, personnel of external bodies, or individuals acting on the Company's behalf, will keep confidential all information obtained or created during the performance of laboratory activities, except as required by law.
9. The Clients wishing to use the Company's reports in court proceedings or arbitration shall inform the Company to that effect prior to submitting the sample for testing.
10. The report will refer only to the sample tested and will not apply to the bulk, unless the sampling has been carried out by the Company and is stated as such in the Report.
11. When the Client requests a statement of conformity to a specification or standard for the test (e.g. pass/fail, in-tolerance/out-of-tolerance), unless inherent in the requested specification or standard or otherwise instructed by the Client, the Company will adopt the ILAC-G8 Guidance document (and/or IEC Guide 115 in electro-technical sector) as the decision rule. When adopting ILAC-G8 document, if measured value plus/minus the expanded uncertainty with a 95% coverage probability overlaps the limit, no declaration of conformity can be made. Further information regarding the documents can be obtained by direct contact with the Company.
12. Any documents containing engagements between the Clients and third parties like contracts of sale, letters of credit, bills of lading, etc. are regarded as information for the Company only and do not affect the scope of the services or the obligations accepted by the Company.
13. If the Clients do not specify the methods / standards to be applied, the Company will choose the appropriate ones and further information regarding the methods can be obtained by direct contact with the Company.
14. No liability shall be incurred by and no claim shall be made against the Company or its servants, agents, employees or independent contractors in respect of any loss or damage to any such materials, equipments and property occurring whilst at the Company or any work places in which the testing is carried out, or in the course of transit to or from the Company or the said work places, whether or not resulting from any acts, neglect or default on the part of any such servants, agents, employees or independent contractors of the Company.
15. The Company will not be liable, or accept responsibility for any loss or damage howsoever arising from the use of information contained in any of its reports or in any communication whatsoever about its said tests or investigations.
16. Subject to Clauses 14 and 15, the total liability of the Company in respect of any claim of loss, damage or expense of whatsoever nature shall not exceed a total sum equal to five times the amount of the service fee payable in respect of the services directly related to such claim, and the Company's liability shall not include any indirect, special or consequential loss of the Clients.
17. In the event of the Company prevented by any cause outside the Company's control from performing any service for which an order has been given or an agreement made, the Clients shall pay to the Company:-
 - i) the amount of all abortive expenditure actually made or incurred; and
 - ii) a proportion of the agreed fee or commission equal to the proportion (if any) of the service actually carried out by the Company, and the Company shall be relieved of all responsibility whatsoever for the partial or total non-performance of the required service.
18. The Company shall be discharged from all liability for all claims for loss, damage or expense unless suit is brought within one calendar year after the date of the performance by the Company of the service relating to the claim or in the event of any alleged non-performance within one year of the date when such service should have been completed..
19. The Clients acknowledge that the Company does not, either by entering into a contract or by performing service, assume or undertake to discharge any duty of the Clients to any other persons. The Company is neither an insurer nor a guarantor and disclaims all liability in such capacity.
20. The Clients shall hold harmless and indemnify the Company and its servants, employees, agents or independent contractors against all claims made by any third party for loss, damage or expense of whatsoever nature including reasonable legal expenses relating to the performance or non-performance of any services to the extent that the aggregate of any such claims relating to any one service exceed the limits mentioned in Clause 16.
21. In the event of improper use of the report, the Company reserves the right to withdraw it, and to adopt any other measures which may be appropriate.
22. Samples submitted for testing are accepted on the understanding that the report issued cannot form the basis of, or be the instrument for, legal action against the Company.
23. Samples are deposited with and accepted by the Company on the basis that either they are insured by the Clients or the Clients assumes entire responsibility for loss through fire, theft, burglary or for damages arising in the course of analysis or handling, without recourse whatsoever to the Company or its servants, agent, employees or independent contractors.
24. If the requirements of the Clients require the analysis of samples by the Client's or any third party's laboratory, the Company will only convey the result of the analysis without responsibility for its accuracy. If the Company is only able to witness an analysis by the Client's or any third party's laboratory the Company will only confirm that the correct sample has been analyzed without responsibility for the accuracy of any analysis or results.
25. In the event of any unforeseen additional time or costs being incurred in the course of carrying out any of its services, the Company shall be entitled to charge the Clients additional fees to reflect the additional time and costs incurred.
26. All rights (including but not limited to copyright) in any reports, certificates or other materials produced by the Company in the course of providing its services shall remain vested in the Company.
27. The Clients shall punctually pay on the date of invoice or within such other period agreed in writing by the Company all charges rendered by the Company or interest will become due at the rate of three per cent per month from the date of invoice until actual payment. The Clients are also responsible for settling all the Company's costs of collecting the charges owed, including legal fees.
28. Test results may be transmitted by electronic means at the Client's request. However, it should be noted that electronic transmission cannot guarantee the information contained will not be lost, delayed or intercepted by third party. The Company is not liable for any disclosure, error or omission in the content of such messages as a result of electronic transmission.
29. If necessary, the Company may subcontract part of or all tests to competent subcontractors. If no objection is raised at the time of the Clients submitting the application, the Company shall assume the Clients have approved the foregoing.
30. The Company reserves the right to include Special Conditions in addition to the foregoing General Conditions if warranted by the particular circumstances of the required test or investigation [this clause is only effective when the other party has been informed].
31. For any dispute, controversy or claims arising out of relating to this agreement, or the breach, termination or invalidity thereof between the Company and the Clients, the conditions herein shall take precedence over any other terms and conditions, whether oral or written, previously agreed by the parties or the agents or representatives of either parties.
32. The conditions herein shall be governed and construed according to the laws of People's Republic of China. Any disputes arising out of or relating to them shall be settled through friendly negotiations. In case no settlement can be reached through negotiations, such disputes shall be submitted to China International Economic and Trade Arbitration Commission for arbitration which shall be conducted in accordance with the Commission's arbitration rules in effect at the time of applying for arbitration. The arbitral award rendered by the said Commission shall be final and binding upon both parties. The arbitration fee shall be borne by the losing party.
33. If there are differences between the English version and the Chinese version of the conditions herein, the Chinese version shall prevail.