

# GENERAL CONDITIONS OF SERVICE

## 1. General

(a) Unless otherwise agreed to in writing or except where they are at variance with (i) the regulations governing services performed on behalf of governments, government bodies or any other public entity or (ii) the mandatory provisions of local law, all offers of services and all resulting contractual relationship(s) between *SAI Gulf, LLC*, its affiliates, or any of their respective agents (each a "Company") and Client (the "Contractual Relationship(s)") shall be solely governed by these general conditions of service (hereinafter the "General Conditions"). Client's rights, liabilities, responsibilities, and remedies of whatsoever nature, including, but not limited to, contract, tort, or otherwise, shall be exclusively those expressly set forth in these General Conditions. Any instructions to Company by Client regarding Company's services to Client shall constitute complete acceptance of these General Conditions. Company hereby objects to and rejects any terms proposed in the Client's instructions, documents, or communications which add to, vary from, or conflict in any way with these General Conditions. Any such proposed terms shall be void, and these General Conditions shall constitute the complete and exclusive statement of the terms and conditions governing the relationship between the Client and Company. Any changes, modifications, amendments to, or waivers of, these General Conditions shall be effective only if reduced to writing and signed by the president of the Company.

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

(c) Unless the Company receives prior written instructions to the contrary from Client, no other party is entitled to give instructions to Company, particularly as to the scope of the services or the delivery of reports or certificates resulting therefrom (the "Reports of Findings"). Client hereby irrevocably authorizes the Company to deliver Reports of Findings to a third party where so instructed by Client. If Company's fees are being split between more than one party, Client authorizes delivery of Reports of Findings to all parties for whom Company is working.

## 2. Provision of Services

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

1. the terms of any standard order form or standard specification sheet of the Company; and/or
2. any relevant trade custom, usage or practice; and/or
3. such methods as the Company shall consider appropriate on technical, operational and/or financial grounds.



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(b) Information set out by Company in Reports of Findings is derived from the results of sampling, inspection or testing procedures carried out in accordance with the instructions of Client, and/or Company's assessment of such results based upon applicable technical standards, trade custom(s) or practice(s), or other circumstances which, in Company's professional opinion should be taken into account.

(c) All Reports of Findings based upon and following the sample collection, inspection or testing of samples contain the Company's opinion as to those samples only and do not express any opinion(s) as to the entire lot from which the samples were drawn.

(d) If the requirements of the Client necessitate the sampling, inspection, testing or provision of services by any party other than Company, the Company expressly disclaims any responsibility for any such sampling, inspection, testing, or services provided by any party other than Company. Where the Company is only able to witness a testing by the Client or by any third party, the Company will only provide confirmation that the correct sample has been tested but will not otherwise bear responsibility for the accuracy of any test or results. The Company expressly disclaims any responsibility for the condition or calibration of apparatus, instruments and measuring devices used, the testing methods applied, the qualifications of, or the actions or omissions of third-party personnel or the results of any third-party analysis.

(e) Reports of Findings issued by the Company will reflect the facts as recorded at the time of Company's provision of services only and within the limits of the instructions received or, in the absence of such instructions, within the limits of the alternative parameters applicable as provided for in clause 2(a), above. The Company expressly disclaims any obligation to refer to, or report upon, any facts or circumstances which are outside the specific instructions received or alternative parameters applied.

(f) The Company acts solely as an independent contractor in the performance of the services. The Client acknowledges that the Company may, upon notice to Client, delegate the performance of all or part of the services to an agent or subcontractor, and Client authorizes Company to disclose all information necessary for such performance to the agent or subcontractor. In the event Client directs Company to utilize a certain agent or subcontractor, the Company shall act as agent of the Client and shall bear no liability in regard to the services procured or provided by such agent or subcontractor. The Client agrees that all such delegated or subcontracted Services shall be governed by these General Conditions.

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

(h) Client acknowledges that the Company, by providing the services, neither takes the place of Client or any third party, nor releases them from any of their obligations, nor otherwise assumes, abridges, abrogates or undertakes to discharge any duty of Client to any third party or that of any third party to Client.



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(i) Unless specific arrangements are made in advance between the Client and the Company, prepared samples for quality testing shall be retained for a maximum of sixty (60) calendar days (or such other shorter time period as the nature of the sample permits) and then disposed of at the Company's discretion, after which time Company shall cease to have any responsibility for such samples.

(j) Company shall be entitled to use any and all Client information, including, but not limited to, records, instructions, samples or other related documents, within Company's control, for the purpose of offering any necessary defense against any legal or administrative controversy that a Client or any other third-party may be a party to when the Client or third party relies on or uses Company's work product or report as part of their claim.

(k) TO THE MAXIMUM EXTENT PERMITTED BY LAW, COMPANY NEGATES AND DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, CONDITION, DURABILITY, DESIGN, CAPACITY, OPERABILITY, WORKMANLIKE PERFORMANCE, RESULTS, OR FITNESS FOR A PARTICULAR PURPOSE.

### 3. Obligations of Client

The Client shall

(a) ensure that sufficient information, instructions and documents are given in due time (and, in any event not later than 48 hours prior to the desired services to enable the required services to be performed;

(b) procure all necessary access for the Company's representatives to the premises where the services are to be performed and take all necessary steps to eliminate or remedy any obstacles to, or interruptions in, the performance of the services;

(c) inform Company in advance of any unusual 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; and

(d) fully exercise all its rights and discharge all its liabilities under any relevant sales or other contract with a third party and at law.

### 4. Fees and Payment

(a) Fees not established between the Company and Client at the time the order is placed or a contract is negotiated shall be at the Company's standard rates (which are subject to change) and all applicable fees, taxes, and surcharges (if any) shall be to the account of and payable by Client.



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(b) Unless a different period is established in the invoice or agreed to in advance of the provision of services by Company, Client will promptly pay all fees due to the Company not later than 30 days from the relevant invoice date or within such other period as may be established by the Company in the invoice (the "Due Date"). In the event that payments are made by wire transfer, Client is also responsible for fees incurred or assessed by Client's bank or other wire transferring entity. In the event that Client were to fail to timely make payments, interest on any unpaid balances shall accrue at a rate of 1.5% per month (or such other rate as may be established in the invoice) from the Due Date up to and including the date payment is actually received.

(e) Client shall not be entitled to retain or defer payment of any sums due to the Company on account of any dispute, counter-claim or set off which it may allege against the Company.

(d) Company may elect to bring action for the collection of unpaid fees in any court having competent jurisdiction.

(e) Client shall pay all of the Company's collection costs, including reasonable attorney's fees and all related costs.

(f) The Company reserves the right to withhold reports, certificates of analysis, test results or collected samples in the case where the Client has not paid its invoices in accordance with these General Conditions, or other agreement. Company will provide three (3) business day notice in writing of its intent to exercise this right in order to allow Client to make any necessary arrangements to avoid its implementation.

(f) In the event that any unforeseen problems or expenses arise in the course of carrying out the services, the Company shall endeavor to inform Client of such problems or expenses as quickly as is reasonably possible, and Company shall be entitled to charge additional fees to cover extra time and costs necessarily incurred to complete the services.

(g) If the Company is unable to perform all or part of the services for any cause whatsoever outside the Company's control, including failure by Client to comply with any of its obligations provided for in clause 3, above, the Company shall nevertheless be entitled to payment of:

1. the amount of all non-refundable expenses incurred by the Company; and
2. a proportion of the agreed fee equal to the proportion of the services actually carried out.

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

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



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1. failure by the Client to comply with any of its obligations hereunder and such failure is not remedied within ten business (10) days of Company's providing notice of such failure to Client; or
2. any suspension of payment, bankruptcy, insolvency, receivership or cessation of business by Client.

(b) In the event of termination by Company, Client shall be responsible to the Company for immediate payment of all of the Company's outstanding invoices plus interest, if any. In addition to any payment owed for services already invoiced, the Client shall also be responsible to Company for all services performed by the Company for which an invoice has not yet been issued.

### **6. Liability and Indemnification**

#### (a) Limitation of Liability:

1. The Company is neither an insurer nor a guarantor and disclaims all liability in such capacities. Any Client seeking greater protection from loss or damage than is provided for in these General Conditions should obtain appropriate insurance at Client's sole expense and discretion.
2. Reports of Findings are issued on the basis of information, documents and/or samples provided by, or on behalf of, Client and solely for the benefit of Client who is responsible for taking whatsoever actions it sees fit on the basis of such Reports of Findings. Neither the Company nor any of its officers, employees, agents or subcontractors shall be liable to Client or any third party for any actions or omissions taken by Client on the basis of and in response to such Reports of Findings nor for any incorrect results arising from unclear, erroneous, incomplete, misleading or false information provided to the Company.
3. The Company shall not be liable for any delayed, partial or total non-performance of the services arising directly or indirectly from any event outside the Company's control including failure by Client to comply with any of its obligations hereunder.
4. The liability of the Company, if any, in respect of any claim for loss, damage or expense of any nature and howsoever arising shall under no circumstances exceed a total aggregate sum equal to ten (10) times the amount of the fee paid by Client in respect of the specific service which gives rise to such claim or US \$40,000 (or its equivalent in local currency), whichever is the lesser.
5. The Company shall have no liability for any indirect, punitive, special, or consequential damages including, without limitation, and solely by way of example, loss of profits, loss of business, delay, loss of opportunity, loss of goodwill, cancellation of future or existing contracts, storage charges, business



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charges, demurrage charges, business interruption, and cost of product recall. The Company shall further have no liability for any loss, damage, or expense arising from the claims of any third party (including, without limitation, product liability claims) that may be incurred by the Client. Company shall have no liability for litigation expenses or other fees, including without limitation, attorney's fees, court costs, and/or pre-judgment interest, post-judgment interest, or any other expenses or costs incurred by Client or any other party in litigation against or involving Company, even if the Client is the prevailing party.

6. In the event of any claim, Client must give written notice to the Company within 30 days of discovery of the facts alleged to justify such claim and, in any case, the Company shall be discharged from all liability for all claims for loss, damage or expense unless suit is brought or arbitration is commenced within one year from:
  - i. the date of performance by the Company of the service which gives rise to the claim; or
  - ii. the date when the service should have been completed in the event of any alleged non-performance.

(b) Indemnification: Client shall indemnify, defend, and hold harmless Company, its parent and/or affiliated companies, and their respective officers, directors, employees, contractors, subcontractors, vendors, invitees, licensees and agents, except any of the foregoing which are the Client, (hereinafter collectively called "Company Group"), from and against any and all claims, demands, causes of action, suits, liabilities and costs (including attorneys' fees, expert witnesses fees, investigative expenses, penalties, fines and third party claims of whatever nature) asserted against Company Group for their acts or omissions, whether or not such acts or omissions are alleged to be negligent, and which arise out of or in connection with Contractual Relationship(s) or the performance of services by Company (as well as any such expenses incurred by Company in enforcing these General Conditions), to the extent that they exceed, in the aggregate, the applicable limitation amounts set forth in Paragraph 6(a)(4) above. Client expressly agrees that its defense obligation in favor of Company includes responsibility for Company's attorneys' fees, court costs, expert witness fees, and investigative expenses. The parties intend for Client's indemnity obligations to apply in all instances to the fullest extent of the applicable law including, without limitation, personal injury and death claims, contamination claims, third party claims, fines or penalty assessments of any nature, whether or not caused or contributed to by the sole, concurrent, joint, comparative, active or passive negligence or fault of Company Group or any member thereof.

(c) Insurance: At all times while these General Conditions remain in force, Client shall maintain sufficient and adequate insurance coverage, including general liability insurance (CGL), Worker's Compensation, Employer's Liability, cargo, and pollution coverage, to comply with all applicable laws and to respond for any losses arising out of or connected in any way with the Contractual Relationship(s), with all rights of subrogation for losses under said insurances waived as to Company Group, and with Company Group entitled to all benefits under said insurances of a named assured or joint member, as applicable. The limit of such insurance shall



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not be less than US \$1M per occurrence. All deductibles under such insurance policies of Client shall be for the account of Client. All policies of insurance (except Worker's Compensation and Employer's Liability) of Client shall be endorsed to provide that all such insurances are primary and non-contributing with any other insurance maintained Company Group and any member thereof.

### 7. Miscellaneous

(a) If any one or more provisions of these General Conditions were to be found or determined to be illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(b) During the course of providing the services and for a period of one year after Company last provides services to Client, Client shall not directly or indirectly entice, encourage, recruit (directly or indirectly) or make any offer to any of Company's employees to leave their employment with the Company.

(c) Use of the Company's corporate name or registered marks for advertising purposes is not permitted without the Company's prior written authorization.

(d) Company shall not be responsible to Client for any delay, cost, damage or failure resulting from Acts of God, action of the elements, warlike action, insurrection, revolution or civil strife, piracy, civil war or hostile action, strikes, acts of public enemies, application of federal or state laws, or rules and regulations of any governmental authorities having jurisdiction in the premises; acute and unusual labor, material or equipment shortages, or any other causes beyond the control of either party.

(e) Should Company or any member of Company Group be called to testify (whether at a trial, deposition, administrative proceeding, or other use), participate in discovery, or otherwise assist in any dispute between Client and any third party with respect to Company's work or services, and whether or not any member of Company Group have been subpoenaed to testify or assist, Client shall pay Company's then current applicable rates, charges and other fees for such services.

### 8. Governing Law, Jurisdiction and Dispute Resolution

(a) The parties shall attempt in good faith to resolve any dispute arising between them promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within



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30 days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place.

- (b) Unless otherwise agreed in writing by the negotiating parties, the above-described negotiation shall end at the close of the first meeting of executives described above ("First Meeting"). Such closure shall not preclude continuing or later negotiations, if desired.
- (c) All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

At no time prior to the First Meeting shall either side initiate an arbitration or litigation related to this Agreement except to pursue a provisional remedy that is authorized by law or by the Rules of Arbitration of the International Chamber of Commerce or by agreement of the parties. However, this limitation is inapplicable to a party if the other party refuses to comply with the requirements of Paragraph 8(a).

- (d) All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in Paragraphs 8(a) and (b) are pending and for 15 calendar days thereafter. The parties will take such action, if any, required to effectuate such tolling.
- (e) Except for Company's right to bring a collection suit pursuant to Paragraph 4(d) above, all disputes arising out of or in connection with Contractual Relationship(s) hereunder shall be governed by the substantive laws of Texas, exclusive of any rules with respect to conflicts of laws, and be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules, each party to bear its own costs and attorney's fees, except as provided elsewhere in these General Conditions. All arbitrators shall have operational experience in the sampling, inspection, and testing of minerals, or shall be a member of The Minerals, Metals & Materials Society (TMS), or shall be a member of the American Society for Testing and Materials (ASTM). Any arbitration shall take place in Houston, Texas.

