

# OMIC

## OVERSEAS MERCHANDISE INSPECTION CO., LTD.

### GENERAL CONDITIONS OF BUSINESS

1. Unless otherwise specifically agreed in writing OVERSEAS MERCHANDISE INSPECTION COMPANY LTD (hereinafter called OMIC) undertakes services in accordance with these General Conditions of Business (hereinafter called General Conditions) and as such all offers, tenders for services, all resulting contracts and agreements will be governed by these General Conditions.
2. OMIC is a business enterprise engaged in activities relating to the area of inspection and testing. As such, it:
  - 2.1 carries out inspections, verifications, examinations, sampling, tests, certification, laboratory analysis, measurements and similar operations;
  - 2.2 issues reports and/or certificates relating to the aforesaid operations;
  - 2.3 renders consulting services in connection with such matters.
3. OMIC acts for the person or bodies from whom the order and the instructions to act have originated (hereinafter called PRINCIPAL). No other party is entitled to give instructions, particularly on the scope of inspection or delivery of reports or certificates, unless so authorized by the PRINCIPAL.
4. OMIC will provide services in accordance with:
  - 4.1 the PRINCIPAL's specific instructions as confirmed by OMIC;
  - 4.2 terms of OMIC's specific inspection procedures where applicable;
  - 4.3 any relevant standard method, trade custom usage or practice;
  - 4.4 such methods as OMIC may consider suitable on technical and/or financial grounds;
5. Documents reflecting arrangements contracted between the PRINCIPAL and third parties, such as copies of contracts of sale, letters of credit, bills of lading, etc. are, if received by OMIC, considered to be for information only, without extending or restricting OMIC's mission and obligations, unless such documents form part and parcel of the PRINCIPAL's specific instructions.
6. OMIC's standard services are as follows:
  - 6.1 quantitative and/or qualitative inspection;
  - 6.2 laboratory analysis and / or other testing;
  - 6.3 inspection of the condition of goods, tanks, containers and transportation systems;
  - 6.4 supervision of loading and discharging;
  - 6.5 sampling;
  - 6.6 fumigation;
7. Special services where the same exceed the scope of standard services as referred to in Paragraph 6 will only be undertaken by OMIC on a specific case by case arrangement. Such special services include but are not limited to:
  - 7.1 qualitative and/or quantitative guarantees;
  - 7.2 supply of technicians or other personnel;
  - 7.3 supervision of full industrial project schemes, including consulting, expediting and progress reporting;
  - 7.4 checking of designs, drawings and calculations;
  - 7.5 quality assurance/certification services;
  - 7.6 litigation support services;
  - 7.7 advisory and consultancy services;
  - 7.8 collateral management services;
8. The PRINCIPAL agrees that :
  - 8.1 OMIC will charge for services rendered including personnel, equipment or materials supplied according to the rate of fees or other charges in OMIC's price guide, or quotation(s) or otherwise agreed prices at the time that the contract is entered into. In the event that no charge is agreed in advance, OMIC shall be entitled to a reasonable market price remuneration for work done, services rendered and for personnel, equipment or materials supplied.
  - 8.2 All quotations for fees and services are given on the basis that the services will be performed within the next 30 days unless otherwise specified. Thereafter the validity of the quotation will lapse.
9. Subject to the PRINCIPAL's instructions, OMIC will issue reports and/or certificates of inspection and/or test reports which reflect statements and opinions made with due care within the limitation of instructions received. OMIC, however, is under no obligation to refer to or report upon any facts or circumstances which are outside the specific instructions received, unless considered detrimental to the PRINCIPAL's interest.
10. The PRINCIPAL agrees that he will:
  - 10.1 ensure that complete instructions are given to OMIC along with all required specifications in due time to enable the required services to be performed effectively;
  - 10.2 arrange all necessary and timely access for OMIC's representatives to the goods, ships, premises, installations and transport;
  - 10.3 supply, if required, any special equipment necessary for the performance of the services;
  - 10.4 ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of the services;
  - 10.5 take all necessary steps to eliminate or remedy any obstructions to or interruptions in the performance of the services;
  - 10.6 fully exercise all his rights and discharge all his liabilities under any relevant contract of sale, whether or not a report or certificate has been issued by OMIC, failing which OMIC shall be under no obligation to the PRINCIPAL.
  - 10.7 advise OMIC, prior to the commencement of any inspection, sampling or testing work of any hazards or dangers, actual or potential associated with any such work including the presence or risk of radioactive, toxic or explosive material, defects,

environmental, health, safety, water, pollution or other causes, and of any legal requirements or other matters which may be applicable particularly in so far as they may affect employees or agents of OMIC and/or be relevant to work to be carried out by OMIC.

11. Indemnity:

- 11.1 OMIC undertakes to exercise due care and skill in the performance of its services and accepts responsibility only in cases of negligence proven by the PRINCIPAL. The liability of OMIC to the PRINCIPAL in respect of any claim for loss, damage or expense of whatsoever nature and howsoever arising whether directly or indirectly, in contract or in tort or otherwise in connection with the services, shall under no circumstances exceed ten (10) times the amount of the fee or commission payable in respect of the specific service required under the particular contract which gives rise to such claims.
- 11.2 Where the fee or commission payable relates to a number of services and a claim arises in respect of only one of those services, the fee or commission, and any resulting liability, shall be apportioned for the purposes of this paragraph by reference to an estimated time involved in the performance of each service.
- 11.3 OMIC shall not be liable for, and the PRINCIPAL waives, any and all other claims or causes of action against OMIC, its officers, employees, agents or subcontractors arising out of incidental, consequential, punitive, special or any other damage or loss, including but not limited to economic or profit loss.
- 11.4 OMIC makes no express warranties other than those specified in these General Conditions and excludes all implied warranties including but not limited to any warranty of fitness for a particular purpose, the warranty of merchantability and any warranty pertaining to the results of OMIC's inspection and testing procedures.
- 11.5 Recovery under this Paragraph shall constitute the sole and exclusive responsibility of the PRINCIPAL.
12. The PRINCIPAL shall guarantee, hold harmless and indemnify OMIC, its affiliates, agents or subcontractors as well as all their officers, directors and employees against all claims made by any third party for loss, damage or expense of whatsoever nature and howsoever arising relating to the performance, purported performance or non-performance of any service to the extent that the aggregate of any such claim relating to any one service exceed the limit mentioned in Paragraph 11.
13. Written notice of any claim against OMIC must be given to OMIC by the PRINCIPAL within sixty (60) days after the relevant report or certificate has been issued. If within six (6) months of the issue of a report or certificate any claim that has not been admitted by OMIC or suit filed in a court having jurisdiction in accordance with these General Conditions, then such a claim shall be deemed to be waived and absolutely barred.
14. The PRINCIPAL will punctually pay all fees or commissions not later than 30 days after the relevant invoice date or in such other manner as may have been agreed in writing. All proper charges rendered by OMIC but not settled by the agreed due date will accrue at the rate of 18 per cent per annum from the contractual payment date until actual date of payment receipt.

Any use of or reliance upon any information, reports or certificates by the PRINCIPAL is conditional upon the timely payment of all fees.

15. In the event that OMIC is prevented by reason of any cause whatsoever beyond its control from performing or completing any service for which an order has been given or an agreement made, the PRINCIPAL will pay to OMIC as follows:
- the amount of all abortive expenditure actually made or incurred.
  - a proportion of the agreed fee or commission equal to the proportion (if any) of the service actually carried out.
- In addition OMIC shall be relieved of all responsibility whatsoever for the partial or total non-performance of the required service.

16. Limitation of Liability:

- 16.1 OMIC does not, by performing services or by issuing a certificate or report, assume, abridge, abrogate or undertake to discharge any duty or responsibility of the PRINCIPAL to any other person or entity. OMIC undertakes to perform only the services agreed upon between OMIC and the PRINCIPAL even though there may be other material information available, which is not requested or reported.
- 16.2 Any certificate or report produced by OMIC is prepared for the PRINCIPAL's exclusive use only and not for the use of any other person or entity including any governmental agency.
- 16.3 If the PRINCIPAL requests that OMIC delivers any certificate or report to a third party or if delivery to a third party is a trade custom usage or practice, OMIC does not thereby assume any liability whatsoever to such third party. No person or entity other than the PRINCIPAL shall have any rights arising out of any such certificate or report against OMIC, its affiliates, agents, subcontractors, officers, directors and employees.

17. Liability for OMIC's Agents & Subcontractors:

- 17.1 OMIC shall be entitled at its discretion to delegate the performance of the whole or any part of the services contracted for with the PRINCIPAL to any agent or subcontractor. If a certificate or report produced by such agent or subcontractor is issued on behalf of OMIC, such delegation shall in no way derogate from the rights and obligations of OMIC under these General Conditions.
- 17.2 With regard to orders received by OMIC which will be forwarded by OMIC as agent on behalf of the PRINCIPAL to an appropriate associated company of OMIC or correspondent who will act directly for and report to the PRINCIPAL, such associated company or correspondent will be solely and fully responsible to the PRINCIPAL for execution of the order. OMIC and its officers, directors and employees will bear no responsibility for the performance of the services of the company to whom the order is forwarded.
18. OMIC is neither an insurer nor a guarantor of the quality or quantity of any inspected or analyzed goods, products or materials, and disclaims all liability in such capacity. A PRINCIPAL seeking greater protection from loss or damage than provided herein should obtain appropriate insurance.
19. These General Conditions and all agreements between OMIC and the PRINCIPAL shall be governed and construed in accordance with the law of Japan and shall be subject to the exclusive jurisdiction of the Japanese courts unless OMIC at its sole discretion elects to proceed with any other jurisdiction.