

# OMIC

OVERSEAS MERCHANDISE INSPECTION CO., LTD.

## GENERAL CONDITION OF BUSINESS

1. Unless otherwise specifically agreed in writing OVERSEAS MERCHANDISE INSPECTION COMPANY LTD (hereinafter called OMIC) undertakes services in accordance with these General Condition of Business (hereinafter called General Conditions) and accordingly all offers or tenders of service are made subject to the same and all resulting contracts, agreements or other agreements will be governed by these General Conditions.
2. OMIC is a business enterprise engaged in the trade of inspection and testing. As such, it:
  - 2.1 carries out inspections, verifications, examinations, samplings, tests, certification, and 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 persons or bodies from whom the order and the instructions to act have originated (hereinafter called PRINCIPALS). No other party is entitled to give instructions, particularly on the scope of inspection or delivery of report or certificate, unless so authorized by 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 shall consider suitable on technical and/or financial grounds.
5. Documents reflecting engagements contracted between 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.
6. OMIC's standard services are as follows:
  - 6.1 quantitative and/or qualitative inspection;
  - 6.2 fumigation
  - 6.3 inspection of conditions of goods, tanks, containers and transportation;
  - 6.4 supervision of loading or discharging;
  - 6.5 sampling;
  - 6.6 laboratory analysis or other testing.
7. Special services where the same exceed the scope of standard services as referred to in Paragraph 6 will only be undertaken by OMIC by particular 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.
8. Principal agrees that :
  - 8.1 OMIC will charge for services rendered and 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 reasonable 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 quotation will lapse.
9. Subject to the PRINCIPAL's instructions, OMIC will issue reports and/or certificates of inspection and/or testing which reflect statements of opinions made with due care within the limitation of instructions received but OMIC is under no obligation to refer to or report upon any facts or circumstances which are outside specific instructions received.
10. PRINCIPAL agrees that he will:
  - 10.1 ensure that instructions to OMIC are given and with required specification in due time to enable the required services to be performed effectively;
  - 10.2 procure all necessary and timely access for OMIC's representatives to goods, ships, premises, installations and transport;
  - 10.3 supply, if required, any special instrument 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 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 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 codes, and of any legal requirements or other matters which may be applicable particularly in so far as they may affect employees or agents or 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 PRINCIPALS. The liability of OMIC to PRINCIPAL in respect of any claims 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 in no circumstances exceed a total aggregate sum equal to 10 (ten) 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 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.
- 11.3 OMIC shall not be liable for, and 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 loss and loss profit.
- 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 remedy of the PRINCIPAL.
12. 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 services to the extent that the aggregate of any such claims 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 PRINCIPAL within 60 (sixty) days after the report or certificate is issued. If within 6 (six) months of the issue of a report or certificate any claim shall not have been admitted by OMIC or suit filed in a court having jurisdiction in accordance with these General Conditions, then such claim shall be deemed to be waived and absolutely barred.
14. PRINCIPAL will punctually pay not later than 30 days after the relevant invoice date in such other manner as may have been agreed in writing. All proper charges rendered by OMIC failing which interest will become due at the rate of 18 per cent per annum from the date of invoice until payment.

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

15. In the event 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, PRINCIPAL will pay to OMIC as follows:
- (a) the amount of all abortive expenditure actually made or incurred;
  - (b) a proportion of the agreed fee or commission equal to the proportion (if any) of the service actually carried out;

and 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 PRINCIPAL and there may be other material information not requested or reported.
- 16.2 Any certificate or report produced by OMIC is prepared for PRINCIPAL's exclusive use only and not for the use of any other person or entity including if appropriate and any governmental agency.
- 16.3 If PRINCIPAL requests that OMIC delivers any certificate or report to a third party or if delivery to the 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 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 Agent & Subcontractor:

- 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 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 agents on behalf of PRINCIPAL to an appropriate associated company of OMIC or correspondent who will act directly for and report to PRINCIPAL, such associated company or correspondent will be solely and fully responsible to 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. PRINCIPALS seeking greater protection from loss or damage than provided herein should obtain appropriate insurance.
19. These General Conditions and all agreements between OMIC and 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 in any other jurisdiction.