

1. General terms and conditions

The services described in clause 4 below provided by Cotecna Inspection SA and/or its affiliated companies (hereinafter “the Company”), directly or through their agents and/or subcontractors, are subject to the present General Terms and Conditions of Business for Fumigation and Pest Control Services (hereinafter “General Terms and Conditions for Fumigation and Pest Control Services”) unless overridden wholly or in part by (i) the imperative provisions of applicable law and regulations and/or (ii) express agreement by Company in writing.

2. The Company

The Company provides fumigation and pest control services (the “Services”) listed in article 4 below and issues reports and/or certificates as indicated under article 6 below.

3. The Principal

The Company acts for legal entities or individuals from whom it receives a mandate (hereinafter “the Principal”).

4. Services

The Company’s Services can include any of the following:

- 4.1 Fumigation of agricultural products loaded on any transportation means or stored in warehouses or industrial plants;
- 4.2 Services in relation with disinfection and pest control;
- 4.3 Sale and delivery of fumigants and pest control related products (together the “Fumigation Products”);

5. Execution of the Services

- 5.1 The Company undertakes to perform its Services according to i) the scope and methods agreed with the Principal, and/or ii) recognized international rules and standards, and/or iii) the performance standards deemed appropriate by the Company in view of the specific services required.
- 5.2 The Company has the right, at its discretion, to delegate all or part of the execution of the Services to an appointed agent and/or subcontractor.
- 5.3 The Principal is expected to provide sufficient information, specifications and instructions to enable the Company to evaluate and/or carry out the Services required. Documents reflecting undertakings entered into between the Principal and third parties or third party documents such as sales contracts, letters of credit, and bills of lading, when provided to the Company, shall only be part of the mandate if expressly specified by the Principal and acknowledged by the Company.
- 5.4 The Company does not make any representation or warranty regarding the quality of the Fumigation Products delivered or applied and the Company’s obligation to the Principal in this respect shall be limited to assigning to the Principal any rights the Company may have against the manufacturers.

6. Reports, certificates and results

- 6.1 Subject to the mandate agreed with the Principal, the Company will issue reports and/or certificates, describing the procedures performed by or attested to by the Company. The Company does not have the obligation to refer to, give an opinion upon, or announce facts or circumstances which go beyond the scope of the mandate received.
- 6.2 The reports and/or certificates delivered by the Company only reflect the Services performed and the facts as recorded by it at the time and place of its intervention.

7. Obligations of the Principal

The Principal undertakes:

- 7.1 To provide the necessary instructions and precise information in a timely manner to enable the Company to deliver the Services requested, notably, (i) the cargo or premises to be treated, (including but not limited to quantity, origin, conditions, nature of known infestation, past treatments) and (ii) technical specifications of the vessel or premises where the Services should be performed. The Principal represents and warrants to the Company that all information given to the Company is correct complete and accurate;
- 7.2 To provide the necessary access to buildings, warehouses, carriers of any kind, or any other place to enable the Company to deliver the requested services in a diligent way;
- 7.3 To provide, if required, special equipment and assistance, in particular personnel, necessary for the execution of the requested Services;
- 7.4 To provide all required assistance in order to ensure that all adequate measures will be taken for the health and safety of workers and representatives of the Principal and the Company during the execution of the Services;
- 7.5 To promptly take all necessary measures to ensure that no obstruction shall prevent the Company from carrying out the requested Services;
- 7.6 To inform the Company in advance of all the known and/or suspected risks or dangers of whatever nature, present or future, linked with, but not inherent to, the delivery of the services required from the Company, including but not limited to the presence or risk of radiation, toxic substances, harmful or explosive materials and pollution;
- 7.7 To fulfil all its obligations under the terms of any contract with third parties to whom the Services delivered by the Company relate, whether a report and/or certificate has been issued by the Company or not, failing which the Company will not incur any liability towards the Principal.

8. Third party intervention

- 8.1 When the Principal requests the Company to attest to the intervention of a third party, and the Company has accepted to do so, the Principal acknowledges that the sole responsibility of the Company consists of being present at the time of the intervention of the third party or, as the case may be, reviewing documents attesting to such third party intervention, and communicating the results of the intervention, or confirming that it took place. In such cases the Principal acknowledges that the Company shall not be responsible for the application, the dosage, the type of fumigant, the professional qualifications, the acts or omissions of the personnel of the third party, or of the results of the fumigation and/or pest control.

9. Liability and compensation

- 9.1 Liability for serious fault is according to the relevant provisions of Swiss law.
- 9.2 For all other cases, the Company’s liability for any claim for loss, damage or expenses of whatever kind or origin is limited to the lesser of the following amounts:
 - a) The equivalent of ten (10) times the fees paid or due for the specific service (or element thereof) challenged, covered by the terms of a particular contract or mandate with the Company, or
 - b) USD 25,000 (twenty-five thousand US Dollars), or
 - c) Any other amount expressly specified in the contract, agreement or other convention concluded between the Company and the Principal.
- 9.3 The liability of the Company’s subcontractors and agents (auxiliaries) involved in the performance of the services for light or serious faults shall be limited as stated in clause 9.2 above. The Company will not incur any liability for consequential or derivative damages including loss of profits, losses of future businesses, losses of production and/or cancellation of contracts concluded by the Principal.
- 9.4 When the Company has provided the Services in relation to the Goods loaded onto means of transportation and prior to a voyage, the Principal acknowledges and agrees that issues related to the elimination of gas and/or gas residues that may arise at destination are not related to the fumigation or other Services provided by the Company but to other variables outside the control of the Company such as, but not limited to, the laws of nature, ventilation processes, or measurement methods utilised by intervening authorities. The Company shall under no circumstances be held responsible for any loss or expense of any kind related of the gas and/or gas residues, such as, without limitation, delays and/or demurrage.

- 9.5 When fees are due to the Company in respect of two or more Services and the Principal puts forward a claim for one of such services, the fees will remain due for the non-contested part of the services rendered.
- 9.6 The Principal will release, guarantee and indemnify the Company and its managers, employees, agents or subcontractors against any claim raised by a third party for loss, damage or expenses of whatever nature relating to the execution or the alleged non-performance of services provided in accordance with the instructions of the Principal.
- 9.7 In the event that the Company is prevented for any reason whatsoever outside its control from carrying out or from bringing to a successful conclusion services for which an order was placed and accepted or an agreement concluded, the Company will be released from any liability for the partial or total non-performance of the services requested. Moreover, the Principal will pay the Company:
 - a) All the expenses actually incurred;
 - b) A proportional share of the fees agreed upon for the service actually rendered.

10. Price and invoicing

- 10.1 The Principal will pay at the latest within thirty (30) days from the date of the invoice, or within any other time limit which may have been agreed in writing with the Company, all the fees due to and/or any expenses incurred by the Company as a result of the performance of its Services, failing which interest on arrears will be due at the current LIBOR rates or minimum of zero percent + 1.5% per month as from the date when the payment was due until the actual date of payment.
- 10.2 The Principal will pay additional costs and shall bear the risks of delay in the event that the Principal requests the Services be supplied at a different location than that originally agreed or otherwise changes the instructions originally given to the Company.
- 10.3 In the event of a cancellation of the order for any reason by the Principal, the latter shall pay to the Company a portion of the agreed price equivalent to the Services actually performed by the Company prior to the cancellation of the order. In the event that such cancellation occurs after the Company has placed an order with a contractor or third party, then the Principal shall fully indemnify the Company for the related costs.
- 10.4 The Principal will not have the right to retain, defer or set-off the payment due to the Company by invoking a dispute, a counterclaim or compensation against the Company.
- 10.5 The Principal will also have to pay the Company all the expenses incurred in recovering arrears due to the Principal’s late payment, including lawyer’s fees and other legal expenses.
- 10.6 If unforeseen problems arise or if the Company incurs extraordinary expenses for the execution of the services, the Company will have the right to invoice the amounts necessary to cover the time and the additional expenses of bringing the contract or mandate to a conclusion.
- 10.7 The Company reserves the right to suspend its Services in case the payment of invoices from the Company exceed 1 (one) month from due date for Services hereunder or under other mandates or contracts. Such suspension of Services shall not be regarded as a breach of the Company’s contractual obligations, or relieve the Principal from its payment obligations to the Company.
- 10.8 The Company reserves the right to modify the terms of payment provided for in clause 10.1 if it considers the financial standing of the Principal materially altered.

11. Claim

- 11.1 The Principal must notify any claim for loss, damage or costs (“Loss”) to the Company at **58, rue de la Terrassière, CH 1207 Geneva, Switzerland**, in writing, immediately after the discovery of the facts causing the Loss, but in any case no later than 48 hours after completion of the discharge.
- 11.2 In addition, the Principal may initiate legal action as per Article 14 below, no later than three (3) months from such discovery and no later than six (6) months after (a) the date of execution of the Service giving rise to the Principal’s claim; or (b) the date on which the aforesaid service should have been carried out in the case of an alleged non-performance, failing which the Company will be released from any liability towards the Principal.

12. Amendments and modifications

- 12.1 No modification or amendment of any of the clauses of these General Terms and Conditions for Fumigation and Pest Control Services will have effect unless made in writing and signed by a person(s) duly authorized by the Company for this purpose.
- 12.2 If one or more provisions of these General Terms and Conditions for Fumigation and Pest Control Services should prove to be illegal or inapplicable for whatever reason, the validity and application of the other provisions will not be affected by it.

13. Disclaimers

- 13.1 The Company does not guarantee nor make any representation about i) the accuracy and authenticity of the documents, titles and pledges presented to it in the process of carrying out its mandate and ii) quantity, qualities and fitness for purpose of the goods treated beyond the scope of the intervention mandate received.
- 13.2 Neither the Company nor any of its officers, employees, agents or subcontractors shall liable to the Principal nor any third party for any actions taken or not taken on the basis of the reports and/or certificates issued by the Company nor for any incorrect results arising from unclear, erroneous, incomplete, misleading or false information provided to the Company. An mandate for Services does not imply an obligation to examine the title/ownership of goods to be treated.
- 13.3 Unless specifically agreed in writing by the Company, the Company does not make any representation or warranty that the cargo or premises treated will be free from live insects or infestation after the provision of the Services. The Principal acknowledges and agrees that insects sometimes become resistant and are not affected by the fumigation or that the cargo can be infested at a later stage, post fumigation, by other insects. The Company does not perform the services of a guarantor or insurer and cannot be held liable if considered as such.
- 13.4 Services provided do not include verification of origin nor of third party IP rights attached to the treated goods.

14. Applicable law, jurisdiction and settlement of disputes

- 14.1 These General Terms and Conditions for Fumigation and Pest Control Services are governed and construed according to Swiss law unless otherwise expressly agreed in writing by the Company and the Principal.
- 14.2 Parties may agree to submit any dispute, controversy or claim related to these General Terms and Conditions for Fumigation and Pest Control Services to mediation. A request to mediate shall be sent by the aggrieved party to the other party within 30 days from the date of notification of a dispute, controversy or claim. Any of the parties shall proceed to arbitration within 30 days from the date the request to mediate is made, should the mediation process be unsuccessful, not expressly extended or should either of the parties decline mediation.
- 14.3 If such dispute, controversy or claim is referred to arbitration, it shall be finally settled in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers’ Arbitration Institution in force on the date when the notice of arbitration was submitted in accordance with said Rules. The number of arbitrators shall be three (3), unless the litigious value is below 1 million CHF, in which case there will be one (1) arbitrator only. The seat of the arbitration shall be Geneva, Switzerland. The arbitral proceedings shall be conducted in English language.

15. Communication and Languages

- 15.1 Communications between the Principal and the Company shall be deemed to be properly given only when sent by post, courier, hand delivery or email to the other party’s company email address, to the exclusion of all other communication means. Any communication sent via an instant messaging application shall have to be confirmed by email to be considered as effectively made.