



# GENERAL TERMS AND CONDITIONS OF BUSINESS PCN(GCL)



## **General Terms and Conditions of Business (hereinafter “GTC”)**

of PCN (Product Certificate Network) Limited – GCL (Global Compliance Laboratory) Co., Limited (hereinafter “**PCN(GCL)**”) effective: June 03<sup>th</sup>, 2021

In the event any terms and conditions (including without limitation a quotation) have been offered by PCN(GCL) to the client, the acceptance of such terms and conditions implies in fact acceptance of the GTC as an integral part of the contractual relationship between PCN(GCL) and the client (hereinafter “**Parties**”), unless otherwise agreed in writing. The Parties hereby expressly agree that no variation of the GTC shall be effective unless it is made in writing and signed by the Parties and the GTC shall be deemed as a final, complete agreement substituting any/all prior written, verbal agreement, correspondence between the Parties.

### **1. General**

1.1 These GTC are applicable to all Product Testing / Inspection / Certification / Consulting / Training Services (collectively “**Technical Services**”) provided by PCN(GCL).

1.2 The client shall accept PCN(GCL)’s GTC and the prices valid at the time of the respective placement of order. Deviating terms and conditions of business of the clients cannot be recognized as a matter of principle.

1.3 Sub-contract, promises and other statements by PCN(GCL) employees or officially authorized experts called in by PCN(GCL) shall only be considered binding if expressly confirmed by PCN(GCL) and in writing. This shall also apply to any amendments to these terms and conditions.

### **2. Contractual Performance and Clients’ Responsibilities**

2.1 Unless otherwise agreed, the Technical Services will be rendered in accordance with the statute law applicable at the time of entry into force of the contract. PCN(GCL) shall be entitled to exercise its reasonable discretion in determining the method or type of investigation or assessment, provided that no conflicting written agreements have been made or that no specific course of action is required by mandatory law.

PCN(GCL) shall perform the Technical Services in accordance with PCN(GCL)’ s customary manner unless otherwise agreed in writing. Unless otherwise explicitly agreed in writing, no responsibility shall be assumed for the correctness of the safety programs and safety regulation on which the tests and inspections have been based.

2.2 The scope of the Technical Services to be performed by PCN(GCL) shall be defined in writing on the respective placement of order. If any modification or extension of the scope prove necessary within the context of due performance of the underlying agreement between PCN(GCL) and the client (hereinafter “**Technical Service Agreement**” ), they shall be additionally agreed upon in advance and in writing.



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2.3 The client shall use its best efforts to cause the Technical Service Agreement to be consummated. Without limiting the generality of the foregoing, the client shall supply PCN(GCL) and its counsels, subsidiaries, affiliates, agents and other related party if any the necessary accessories, information and / or documents, for the Technical Services including any foreign test reports, company test reports, product specifications, catalogues and instruction manuals. Until all necessary accessories, information or documents are both supplied and reasonably satisfactory to PCN(GCL), PCN(GCL) has no obligation to commence the Technical Services. The client shall give PCN(GCL) and its counsels, subsidiaries, affiliates, agents and other related party if any, all necessary consents and authorizations to perform the Technical Services prior to PCN(GCL)'s providing services to the client.

2.4 PCN(GCL) may validly terminate the Technical Service Agreement in writing with immediate effect in case the client fails to comply with any terms and conditions set out herein and such breach has not been cured within 10 working days after the receipt of the notice thereof. If the client fails to pay any monies due to PCN(GCL) pursuant to the Technical Services agreement without prior written approval of PCN(GCL), PCN(GCL) may immediately stop providing the Technical Services.

2.5 Without limiting the generality of Section 2.7 of the GTC, if the client terminates the Technical Service Agreement for whatsoever reason, the client should explicitly notify and deliver to PCN(GCL) its intention to terminate the Technical Service Agreement in writing. In absence of such notice, PCN(GCL) may continue the Technical Service and retain the right to the agreed price in proportion to the Technical Service provided.

2.6 Without limiting the generality of Section 2.7 of the GTC, if the client terminates the Technical Service Agreement without justifiable cause, the client shall be responsible for minimum 10 percent of the agreed price under the Technical Service Agreement as liquidated damages.

2.7 In no event, any termination of Technical Service Agreement whether it is caused by PCN(GCL) or the client, shall prejudice either party's rights, liabilities and obligations, including the right of PCN(GCL) to any monies due for the performance which has been completed under the Technical Service Agreement, to the extent accrued up to and including the effective date of termination or any loss, costs, expenses, damages incurred due to such termination.

2.8 PCN(GCL) shall be entitled to make use of sub-contractors in the implementation of the order.



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### 3. Delay or Failure of Performance

3.1 The deadlines for contractual performance quoted by PCN(GCL) shall be binding only if this has been explicitly agreed upon in writing. PCN(GCL) shall not be liable for any delay or failure in respect of its contractual performance arising from any cause outside its control.

3.2 In the event that PCN(GCL)'s contractual performance is delayed due to any cause outside its control, PCN(GCL) shall have the option to extend the period for performance in accordance to the period of delay.

3.3 Without limiting the generality of any/all provisions in this GTC, in case the performance of the Technical Service Agreement is delayed for the following reasons, PCN(GCL) shall not be liable for such delays:

- a) When the client requests additional services which are not within the scope of the Technical Service Agreement.
- b) When the client requests revisions or improvements to any Technical Services provided in accordance with the manner and standard agreed in the Technical Service Agreement.
- c) For any other reasons caused by the client's unreasonable request.

3.4 Should PCN(GCL), for reasons for which it is to blame, have exceeded a binding deadline for contractual performance and thus be in default of its contractual obligations, the client shall have the right to claim compensation for any damage due to delayed performance. Maximum compensation for delay shall not exceed five (5) % of the value of the contract whose performance is delayed under the terms of the contract. Any further claims for damages shall be governed by the provisions set out in Section 5.

### 4. Warranty

4.1 PCN(GCL) warrants that it will exercise reasonable care and diligence in performing the Technical Services. Save as provided herein, all other warranties by PCN(GCL), whether expressed or implied, are hereby expressly excluded.

4.2 The client warrants that all information and/or documents supplied to PCN(GCL) are accurate and correct in all aspects and shall indemnify PCN(GCL) for all loss and damages arising from the Technical Services herein caused by incorrect information and/or documents supplied by the client.

**4.3 Warranty by PCN(GCL) only covers contractual services with which it has been explicitly commissioned as per each Technical Service Agreement. Warranty regarding the proper condition and overall functioning of the plants or products to which the inspected or tested parts belong shall therefore be excluded. In particular, PCN(GCL) shall not assume any responsibility for the design, materials and**



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**construction of the examined plants or products unless these issues have been explicitly included in the contract. Even if the latter is the case, the warranty and the legal responsibility of the manufacturer shall be neither restricted nor assumed.**

**4.4 Any warranty given by PCN(GCL) shall exclusively be restricted to supplementary performance to be completed within a reasonable time limit. Unless otherwise stipulated under any applicable law(s), any claims for supplementary performance, reduction of price or rescission of the contract, shall be time-barred after one year following initial acceptance of the Technical Services provided, unless PCN(GCL) has maliciously concealed the defect.**

### **5. Liability**

5.1 Whilst all reasonable care will be taken where the product / equipment is in PCN(GCL)'s custody, PCN(GCL) shall not under any circumstances be responsible for any loss or damage to the product / equipment during transit or while in the custody of PCN(GCL). The client shall arrange for all necessary insurance against accidental loss or damage to the product / equipment, either in transit or at PCN(GCL) premises.

5.2 PCN(GCL) shall only be liable for damages if PCN(GCL) has caused any damage as a result of an intentional or grossly negligent act or if PCN(GCL) has negligently breached a substantial contractual obligation ("material obligation"). In the event that PCN(GCL) is in breach of any substantial contractual obligations, PCN(GCL) shall only be liable for the damage related to and typically foreseeable under the particular contract at the time of entering into the Technical Service Agreement. PCN(GCL) shall not be liable for any damages caused as a result of a negligent breach of a non-substantial contractual obligation.

5.3 "Substantial contractual obligations" are those obligations that protect the client's legal interests deemed to be substantial to the contract, which the Technical Service Agreement, based on its content and purpose, must specifically grant to the client; further, such contractual obligations are substantial which are deemed to be prerequisites for proper performance of a contract and upon the observance of which the client has generally relied and may rely.

5.4 If claims for damages against PCN(GCL) are excluded or limited, this shall also apply and extend to any and all personal liability of any statutory organs, experts, miscellaneous employees, vicarious agents or any other auxiliary personnel of PCN(GCL).

5.5 Save for the instances governed by applicable laws which are not subject to the limitation periods, any claims for damages shall be time-barred after one year following the beginning of the statutory limitation period.



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5.6 PCN(GCL) shall not be liable for any incidental, indirect, special or consequential loss or damage whatsoever, including, but not limited to, loss of revenue, profits, contracts, business or anticipated savings, or loss of goodwill or reputation subject to the governing law.

5.7 PCN(GCL)'s maximum aggregate limit of liability for any and all claims arising or allegedly arising out of, as a result of or in any way related to the Technical Service Agreement, whether by statute, at law or in equity, and whether based on contract, including without limitation non-disclosure/confidentiality agreement thereof, shall not exceed the amount of fees received from the client by PCN(GCL) in respect of the Technical Services;

5.8 In no event, PCN(GCL)'s maximum liquidated damages for delay shall exceed five (5) percent of the agreed price.

5.9 In case of a breach of any provision of any agreements in connection with the Technical Service, whether such provision expressly requires mitigation or not, a non-breaching party shall use its best efforts to avoid any/all reasonably foreseeable damages resulting from any foreseeable breach by the other party, including without limitation, obtaining all adequate insurance the client may consider to be reasonably necessary in light of the risks relating to performance of the Technical Services.

### **6. Terms of Payment, Prices**

6.1 Unless a fixed price or other calculation basis has been explicitly agreed upon, Technical Services shall be billed in accordance with the prices of PCN(GCL) valid at the time of the conclusion of the Technical Service Agreement. In the absence of a valid schedule of prices, contractual provisions must be agreed on a case-by-case basis.

6.2 Reasonable advance payments may be requested and/or partial invoices covering services already rendered may be made out before the final completion of the Technical Services. Partial invoices need not be designated as such. The receipt of an invoice does not mean that the order has been billed completely by PCN(GCL).

**6.3 If PCN(GCL), on account of the client, incurs any fees, costs and expenses for PCN(GCL)'s performance of services, duties, and responsibilities under and in connection with the Technical Services, other than the fees and costs particularly specified in the Technical Service Agreement, PCN(GCL) shall be entitled to the service fees for such additional performance in full at the PCN(GCL)'s prevailing rates at the time of the performance, unless a fixed price or other calculation basis has been explicitly agreed upon between the Parties. As an exception, in case of direct expenses, such as traveling expenses, PCN(GCL) shall only be entitled to the actual costs or expenses incurred.**

Without limiting the generality of the foregoing, if there is any significant adverse change in the market condition which was not anticipated at the time of the Technical Service



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Agreement was signed, including but without limitation, inflation, price fluctuation, PCN(GCL) may subsequently charge such increase to the client in addition to the contract price in order to duly perform the Technical Services, and the client shall not unreasonably withdraw such request.

6.4 Without limiting the generality of any provisions in this GTC, unless otherwise agreed in a signed writing, the price, scope of work and schedule set forth in a quotation offered by PCN(GCL) is not legally binding and subject to change at PCN(GCL)' s discretion in the event there is a substantial change of circumstances which was not anticipated at the time the quotation was offered.

6.5 Companies who are not given any credit terms by PCN(GCL) have to pay in advance. For companies who are given credit terms by PCN(GCL), an invoice will be issued when a job is completed and the fees shall be remitted to PCN(GCL) within thirty (30) calendar days (unless otherwise noted) of presentation of the invoice. All payments for the Technical Service provided shall be made by the client by telegraphic transfer in immediately available funds and in the invoiced currency to PCN(GCL)'s designated bank account without any withholding, deduction, set-off or counterclaim, so that the net payments to PCN(GCL) shall be equal to the aggregate price as calculated in the applicable invoice amount.

6.6 In the event the client does not pay within thirty (30) calendar days (unless otherwise noted) after the receipt of the invoice, an interest charge of 0.04% of the unpaid amount will be charged per day of delay. PCN(GCL) reserves the right to claim for any additional cost incurred due to such delay.

6.7 The client agrees to indemnify and pay PCN(GCL) for value added tax, goods and services tax or withholding tax, etc. which PCN(GCL) may be liable to pay as a result of providing the Technical Services to the client herein.

6.8 Any objection to invoices must be made in writing to PCN(GCL) within a preclusion period of fourteen (14) calendar days after receipt of invoice, with reasons stated.

6.9 When a client decides to withdraw his request for the Technical Services, he may only do so by giving a notice in writing to PCN(GCL) within five (5) working days after his submission of the request for Technical Services. The client will be charged for all Technical Services performed prior to such withdrawal. If PCN(GCL) does not receive any written notice of such withdrawal within this period, the full fee for the Technical Services will be charged.

6.10 In cases involving short-term cancellation (postponement of audit date) within five (5) weeks in advance of the scheduled audit date, PCN(GCL) reserves the right to charge the client any additional costs incurred by PCN(GCL) in connection with such cancellation/postponement.



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6.11 In any case, PCN(GCL) shall be paid fees in full for work which has been performed based on the Technical Service Agreement. The payment would be a proportion of the finally agreed service fee between the Parties and this proportion shall be calculated based on the costs incurred by PCN(GCL) on the total planned costs for the project. The total cost including without limitation, the amount of accrued time spent for the Technical Services will be exclusively calculated based on the records of PCN(GCL). Unless otherwise explicitly agreed in writing, PCN(GCL) shall have right to determine the completeness of the Technical Services, PCN(GCL)'s determination or interpretation shall prevail.

Without limiting the generality of the foregoing, if PCN(GCL) performs the Technical Services including but not limited to the certification process for the client's service or good, but does not certify for the reason that the client's service or good failed to conform to the applicable standards, PCN(GCL) retains the right to the whole contract price for the Technical Services and the client shall be charged for the contract price for the Technical Services performed.

6.12 In case of delay not attributable to PCN(GCL), including but without limitation not attributable to the client, PCN(GCL) shall not be liable for such delay of Technical Services and/or any loss or damages caused by such delay.

### **7. Secrecy, Copyright, Data Protection**

7.1 PCN(GCL) shall have the right to copy and file any written documents submitted for perusal which are necessary for performance of the Technical Services.

7.2 In as far as expert opinions, audit reports and the like that are protected by copyright are prepared within the scope of contractual performance, PCN(GCL) shall grant the client a simple, non-transferable right of use, if this is required by the underlying purpose of the Technical Service Agreement. This transfer of copyright explicitly shall not include the transfer of any other rights; the client shall, in particular, not be entitled to change process or use expert opinions, audit reports, test results, calculations and the like outside its business.

7.3 PCN(GCL) and its employees shall not, without authorization, disclose or use any confidential information belonging to the client which they become cognizant during their activities provided that this clause shall not apply to information that is already known to PCN(GCL) prior to such disclosure; passes into the public domain otherwise than as a result of a breach of this confidentiality obligation on the part of PCN(GCL); was received from a third party who is not under any confidentiality obligations or who did not acquire the information in confidence; or was independently conceived or developed by PCN(GCL) without reference to the disclosed confidential information.



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### **8. Lien**

In addition to any right of lien to which PCN(GCL) may be entitled by law, PCN(GCL) shall be entitled to a lien on all product / equipment submitted for the Technical Services.

### **9. Litigation Expenses**

In the event of any litigation arising from breach of agreement in connection with the Technical Services, PCN(GCL) or/and other related parties shall be entitled to recover from the client all reasonable costs incurred including staff time, court costs, attorney's fees, and all other related expenses incurred in such litigation.

### **10. Indemnity**

The client shall indemnify PCN(GCL) fully against all loss or damages suffered and cost and expenses incurred by PCN(GCL) and all claims by any third parties as a result of provision of the Technical Services (including but not limited to the improper use of the test reports, supply of inaccurate information and/or documents to PCN(GCL) or any claim by third party for infringement or intellectual property rights and/or for discovery of information and/or for delivery of documents or products / equipment) which are attributable to the client.

The client shall accept and actively assume the defense of PCN(GCL) against claims encompassed by this provision. If PCN(GCL) decides to defend a third party's claim or lawsuit directly, the client shall actively cooperate with it and shall be responsible for paying PCN(GCL) all costs it has spent to defend the third party's claim or lawsuit.

### **11. Trademark**

11.1 The client may use trade names or trademarks of PCN(GCL) only as may be approved by PCN(GCL) in writing. Unless approved in writing, the client hereby waives any right, title, or interest in or any trade names or trademarks of PCN(GCL).

11.2 The client recognizes PCN(GCL)'s right, title, and interest in and to all service marks, trademarks, and trade names used by PCN(GCL) and agrees not to engage in any activities or commit any acts, directly or indirectly, that may contest, dispute, or otherwise impair PCN(GCL)'s right, title, and interest therein, nor shall the client cause diminishment of value of said trademarks or trade names through any act, omission of act, or representation. Any goodwill generated from the client's use of PCN(GCL)'s service marks, trademarks and trade names shall inure to the sole benefit of PCN(GCL).

11.3 Effective as of the specified date of termination for use in the Technical Services Agreement, the client shall cease to use all of PCN(GCL)'s trademarks, marks, trade names and the given title under the Technical Service Agreement. For further use beyond the period specified in the Technical Service Agreement, the Parties shall negotiate in good faith for further use and fees.





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### **12. Court Appearance**

In the event any of the employees of PCN(GCL) is requested by the client or summoned by the court upon application by the client or any other parties for his attendance in court as an expert witness on the subject of the Technical Services provided, the client agrees and shall pay PCN(GCL) for such attendance in court based on PCN(GCL)'s prevailing rates for court attendance. PCN(GCL) may revise its rates for court attendance from time to time upon agreement with the client.

### **13. Notice**

All notices, consents, demands, requests, approvals and other communications which are required or may be given hereunder shall be deemed to have been duly given if it is in writing and signed for and/or on behalf of the concerned party and delivered under acknowledgement due at the address given at the beginning of each Technical Service Agreement or as advised from time to time hereafter in writing.

### **14. Enforceability and Good Standing**

The client of the Technical Services represents and warrants to PCN(GCL) that:

- (a) this GTC has been duly executed, delivered, and noticed by it and constitutes legal, valid and binding obligation of it, enforceable against it in accordance with the terms hereof and the person executing the Technical Service Agreement has authority to do so;
- (b) the client is a validly existing corporation with all requisite power and authority to execute and deliver the Technical Service Agreement and to perform its obligations hereunder. The client represents and warrants that, there is no suit, action or litigation, administrative, arbitration, or other proceeding or governmental investigation pending or, to the knowledge of the officers of the client, threatened which might, severally or in the aggregate materially and adversely affect the financial condition or prospects of the client.

### **15. Entirety, Modification, and Non-waiver**

This GTC, integrated with the terms and conditions offered by PCN(GCL) and signed by the both Parties, constitutes the entire agreement between PCN(GCL) and the client with respect to the subject matter hereof, and supersedes any and all prior agreements, understanding, promises and representations concerning the subject matter hereof, including without limitation the client's terms and conditions, and shall also be deemed as a complete exclusive statement of the terms and conditions. No modification of, addition to or waiver of any of the terms of this GTC shall be effective unless contained in writing signed by both PCN(GCL) and the client. This GTC shall not be waived, modified or added by the printed terms and conditions of the client's order, acknowledgement, (general) terms or



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conditions of the client, confirmation, or by any other means of similar nature. PCN(GCL)'s failure to exercise or delay in exercising any right, power or privilege under this GTC shall not operate as a waiver; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof. In this GTC, clause headings are for convenience only and are not to be used in the interpretation of the GTC.

### **16. Severability**

In case any part(s) of the Technical Service Agreement of this GTC is found by a court of competent jurisdiction to be invalid, unlawful or unenforceable then such part and only such part will be severed from the remainder of the Technical Service Agreement the GTC, whilst the remainder will continue to be valid and enforceable to the fullest extent permitted by law.

### **17. Governing Law & Language**

17.1 The Technical Service Agreement shall be governed by and construed in accordance with the laws of the Republic of South Korea.

17.2 PCN(GCL) and the client agree to submit to the non-exclusive jurisdiction of the Seoul Central District Court.

17.3 This GTC has been drafted in overseas countries language. In cases of conflict, the English language shall be ruling. Also, in any/all contract made between PCN(GCL) and client, in cases of conflict, the English language shall be ruling.

### **18. Arbitration**

All disputes arising out of or in connection with the Technical Service Agreement shall be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by the arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Seoul. The procedural law of this place shall apply where the Rules of Arbitration of the International Chamber of Commerce are silent. The language to be used in the arbitral proceeding shall be English. The number of arbitrators shall be three.