

# TERMS AND CONDITIONS OF SALE



## AGREEMENT

### 1. PARTIES

This Agreement is made and entered between VDH Industrial Hygiene cc, ck 1996/06757/23 (an Approved Inspection Authority nr CI0300H) number 14 C.P. Hoogenhout Street, Langenhoven Park, Bloemfontein, South Africa.

herein represented by

**Dr. Dawid J. van den Heever**

In his duly authorised designation as Technical Manager of VDH Industrial Hygiene cc  
(hereinafter "VDH")

**AND**

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(Client full name, registration number and physical address of the organisation)  
Trading name if different from the registered name

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(Print Full names and Surname of duly Authorised or Person on behalf of the Client )  
(Designation of duly Authorised Person) (Hereinafter "the Client")

### 2. SCOPE OF SERVICES

- 1.1 VDH in its capacity as an Approved Inspection Authority for regulated and voluntary workplace stressor surveys in terms of the Occupational Health and Safety act, Act 85 of 1993, as amended, will survey facilities of the Client to determine compliance against requirements of said Act, including relevant national or international Guides and or Standards.
- 1.2 Refer to the official quotation for details of location and type of survey. Standards and Guides applied during the survey are reflected in the Quotation from VDH. Where the client elects different Standards than those referenced from the Act, VDH must be notified in writing.
- 1.3 Likewise, VDH will notify the Client in writing where the scope of the original service is insufficient to produce acceptable results because of circumstances which emerged as a result of the survey or any other reason.

- 1.4 VDH undertakes to conduct the survey in a professional and competent manner, from its own staff, or likewise and suitably qualified Contractors to perform the service(s) in Clause 1.1 above. The Client will be notified in advance when a Contractor is considered. Objections to contractors will, wherever possible, be accommodated.
- 1.5 Once the survey is completed, VDH will issue a Report to the Client.
- 1.6 The authority of VDH or contents of the Report does not substitute the authority of a Chief Executive Officer as intended in the Occupational Health and Safety Act, Act 85 of 1993, as amended, or in regulations promulgated in terms of the Act, nor does a report issued by VDH in any way imply that any product, service or management system is approved or otherwise condoned by VDH.
- 1.7 VDH undertakes to conduct the survey independently and fairly, free from conflict of interest or prejudice and impartially by acting in the interest of the client and the objective of the survey.
- 1.8 All samples shall be retained for a maximum of 3 months or such other shorter time period as the nature of the sample permits and then returned to the Client or otherwise disposed of at VDH's discretion after which time VDH shall cease to have any responsibility for such samples. Storage of samples for more than 3 months shall incur a storage charge payable by the Client.

### **3. ACCREDITATION STATUS**

- 3.1 VDH commits to SANS 17020-2012; *Conformity Assessment - Requirements for the Operation of various types of bodies performing inspection*, initiated by the Department of Labour as a means of implementing control over regulated inspections. The competence of VDH is confirmed through third party accreditation by the South African National Accreditation System (SANAS) as the sole national accreditation body for conformity assessments in South Africa (Act No. 19 of 2006).
- 3.2 In terms of the accreditation agreement between VDH and SANAS, a SANAS representative may accompany VDH during surveys for the purpose of audit and verification.

### **4. SERVICE REQUIREMENTS**

The Client undertakes to:

- 4.1 Surveys: The client is responsible to ensure that plants and machinery to be surveyed is accessible to conduct the survey. All areas that are not accessible will not be surveyed and no claim for not surveying the said areas will be accepted.
- 4.2 Cancellations: In the event of any cancellation or postponement of a service by the client within 14 days from the confirmed date of testing or examination, the client is liable for payment equal to the minimum amount of examinations as specified on the official quotation.
- 4.3 To supply VDH with all information and to afford VDH such reasonable access and co-operation as, in each case, is necessary to enable it to provide the service(s), including access to documented Inspections history and involvement of authorised personnel for the purpose of reporting and response to outcomes of such reports.
- 4.4 Not to use the Report or assumed compliance in such a manner as to bring VDH into disrepute, and to take appropriate steps to correct any statement used by itself which could objectively be deemed to be misleading.
- 4.5 To take all reasonable steps to ensure that compliance with conditions in the Report is enforced. This includes complying with all relevant National and International standard(s) and/or Guides to complete the survey.
- 4.6 Procure all necessary access for the VDH 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
- 4.7 Supply, if required, any special equipment, access to key personnel and items of inspection necessary for the performance of the survey or monitoring activities.

- 4.8 Ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of services and will not rely, in this respect, rely on the advice of VDH whether required or not;
- 4.9 Inform VDH in advance of any known 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;
- 4.10 Fully exercise all its rights and discharge all its liabilities under any relevant sales or other contract with a third party and at law.
- 4.11 VDH is under no obligation to refer to, or report upon, any facts or circumstances which are outside the specific instructions received or alternative parameters applied.
- 4.12 VDH may delegate the performance of all or part of the services to an agent or subcontractor and Client authorises VDH to disclose all information necessary for such performance to the agent or subcontractor.
- 4.13 At all times to comply with the terms of this Agreement and with the relevant standards.

## **5. CONFIDENTIALITY**

- 5.1 VDH, its Employees and Contractor appointed by VDH agree to maintain as confidential and not to use or disclose to any third party, any information derived from the Client in connection with the services, without the written consent of the Client, any information which otherwise may be required to be made available to any court, fiscal or regulatory authority.
- 5.2 The Client hereby irrevocably authorises VDH Industrial Hygiene cc to deliver the Report to a third party where so instructed by Client or, at its discretion, where it implicitly follows from contractual obligations or Regulation.
- 5.3 The Client takes note that VDH is under obligation to submit a periodic inventory of client names where it conducted surveys, to the Chief Inspector of the Department of Labour.
- 5.4 So long as and to the extent that such data and other information is reduced to writing and denominated "confidential" by the Client, VDH shall apply reasonable efforts to keep such data and information from being disclosed to others except to the extent necessary to enable VDH to perform its services hereunder. VDH shall similarly obligate any and all others, to whom such data and information is released. Irrespective of whether the Client designates the data or information as "confidential." VDH shall have no obligation of confidence with respect to any portions thereof which;
  - 5.4.1 were previously known to VDH in the absence of a prior obligation to the Client,
  - 5.4.2 are in the public domain,
  - 5.4.3 hereafter become part of the public domain through no fault of VDH,
  - 5.4.4 are later obtained by VDH from others who owe no obligation of confidence to the Client with respect thereto, or
  - 5.4.5 are later independently developed by VDH without use of the Client's confidential information.

## **6. HEALTH & SAFETY**

The Client shall ensure that VDH's Employees and Contractors, when attending sites for inspections, are provided with such personal protective equipment (PPE) as may be necessary to reduce risks to an acceptable level and meet any applicable legal requirements.

## **7. LIABILITY**

- 7.1 VDH is neither an insurer nor a guarantor and disclaims all liability in such capacity.
- 7.2 VDH shall not be liable for any delayed, partial or total non-performance of the services arising directly or indirectly from any event outside VDH's control including failure by the Client to comply with any of its obligations hereunder.

- 7.3 VDH shall have no liability for any indirect or consequential loss including without limitation loss of profits, loss of business, loss of opportunity and loss of goodwill. It shall further have no liability for any loss, damage or expenses arising from the claims of any third party (including, without limitation, personal compensation or other liability claims) that may be incurred by the Client.
- 7.4 The liability of VDH in respect of any claim for loss, damage or expense of any nature and howsoever arising shall in no circumstances exceed a total aggregate sum equal to remuneration of the human hours of the fee paid in respect of the specific service which gives rise to such claim or R100 000.00, whichever is the lesser.
- 7.5 Where rework results from unavailability of information, spoiled samples or any act on behalf of a Client representative, such rework may invariably influence the outcome of the survey, or part thereof and such additional work will be for the account of the Client.
- 7.6 In providing the service(s), information or advice, neither VDH, its Contractors appointed by VDH shall be liable to the Client for any loss of profit or any indirect, special or consequential loss, damage, costs or expenses or other claims which arise out of or in connection with the provision of the services.
- 7.7 All advice, recommendations, findings and conclusions made by VDH will be made to the best of VDH's judgement, based upon information made available to VDH at the time of the survey and upon a variety of factors which include, but are not limited to, laws, rules, codes, regulations and market conditions; energy costs; wage rates; and political climate. A change in any of the factors upon which the survey is based may adversely affect the advice, recommendations, findings, and conclusions expressed by VDH.

## **8. INDEMNITY**

- 8.1 Upon receipt of each service, the customer must notify us in writing within thirty (30) days after such receipt of any claims reasonably discernible in relation with the service, within such thirty (30)-day period. All claims not reasonably discernible within thirty (30) days must be made in writing within one (1) year after receipt of the shipment or service. Any claim not timely made shall be waived. This limited warranty expires one year after delivery to the end user. This limited warranty is exclusive and in lieu of all other warranties, expressed, implied or statutory. VDH's entire obligation and the exclusive remedy to any party for breach of this limited warranty shall be limited to replacement or refund of the original fee of the service, at VDH's option. VDH's limited warranty shall not apply, however, to services or information subject to misuse, accident or negligence during the service.
- 8.2 The Client undertakes to indemnify VDH against any losses suffered by or claims made against VDH as a result of misuse by the Client of any report by VDH or as a result of any breach by the Client of the terms of this Agreement.
- 8.3 The Client shall hold harmless and indemnify VDH and its officers, employees, agents or subcontractors against all claims (actual or threatened) by any third party for loss, damage or expense of whatsoever nature including all legal expenses and related costs and howsoever arising relating to the performance, purported performance or non-performance, of any services.
- 8.4 The data, information, Reports and other materials provided by VDH to the Client in connection with the survey shall be utilized by Client only for the purposes contemplated by this Agreement and shall not be disseminated or provided to third parties for their use. Risk assessments, training documents and recommendations may be provided to the client in the form of either printed or electronic media. The material is for the benefit and use of the Client only and cannot be resold or distributed in any form.
- 8.5 VDH makes no representation or warranty that its advice, recommendations, findings or conclusions, will result in compliance with any law or provide any predicted or expressed result.
- 8.6 VDH's recommendations regarding safety and health risks arise from observations made at the time of the survey and do not reflect any or all hazards that may arise later, or that may occur outside of the surveillance of VDH. Recommendations or findings are submitted for approval and implementation by the Client. The test results are described and a recommended action may be suggested. Recommendations are developed from conditions observed at the time of our visit. They do not necessarily include every possible loss potential, code violation, or exception to good practice.

8.7 Reports apply only to the sample, or samples, investigated and is not necessarily indicative of the quality or condition of apparently identical or similar products or conditions. As a mutual protection to clients, the public and VDH, all reports, findings and opinion is submitted by VDH and accepted by the client for the exclusive use of the Client to whom it is addressed and upon the condition that it is not to be used, in whole or in part, in any advertising or publicity matter without prior written authorization from VDH.

## **9. COMPLAINTS AND APPEALS**

9.1 Complaints and Appeals will be considered against surveys, findings and report conclusions made by VDH. Complaints and Appeals will be processed in accordance with the VDH Complaints and Appeals Procedure. The detailed Complaints and Appeals Procedure is available on request.

9.2 Complaints should be directed at Dr DJ van den Heever. Tel 051 - 446 1358 Fax 051 - 446 1401 or email vdhih@iafrica.com.

9.3 Conclusions from Report by VDH shall stand pending hearing of any appeal.

## **10. FEES AND PAYMENT**

10.1 Unless a shorter period is established in the invoice, the Client will promptly pay not later than 30 days from the relevant invoice date or within such other period as may be established by VDH in the invoice (the "Due Date") all fees due to VDH failing which interest will become due at a rate of 2% 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.

10.2 The Client is responsible for all costs other than that which are described in the official quotation.

10.3 Until the full price has been paid for the services, VDH reserves a purchase money security interest in the services and if required by VDH, you will execute and deliver one or more financing statements that we may file to record our security interest.

10.4 The Client shall not be entitled to retain or defer payment of any sums due to VDH on account of any dispute, counter claim or set off which it may allege against VDH.

10.5 All orders are subject to acceptance at our Bloemfontein office. Any order may be declined. Prices, terms, quantities and products are subject to change without notice. Orders for immediate execution will be billed at the price in effect on the date the order is received. Orders designated for future delivery or execution will be invoiced at the prices effective at the time of shipment.

10.6 Our minimum unit of order is specified on the official quotation. No service will be provided in quantities less than the specified quantity of a particular product or service.

10.7 VDH may elect to bring action for the collection of unpaid fees in any court having competent jurisdiction.

10.8 The Client shall pay all of VDH's collection costs, including attorney's fees and related costs.

10.9 In the event any unforeseen problems or expenses arise in the course of carrying out the services, VDH shall endeavour to inform Client and shall be entitled to charge additional fees to cover extra time and cost necessarily incurred to complete the services.

10.10 If VDH is unable to perform all or part of the services for any cause whatsoever outside the Client's control including failure by Client to comply with any of its obligations provided for, VDH shall nevertheless be entitled to payment of:

10.10.1 the amount of all non-refundable expenses incurred by VDH; and

10.10.2 a proportion of the agreed fee equal to the proportion of the services actually carried out.

10.10.3 all reasonable out-of-pocket expenses incurred in connection with the survey, including the following:

a) reasonable travel and living expenses:

- b) reasonable cost of reproduction services required by VDH;
- c) long distance telephone calls; and
- d) delivery or express mail charges.
- e) costs of report preparation, including, if requested, the costs incurred in reviewing the draft of the report with the Client.
- f) VDH's direct charges from others, subcontractors and independent contractors, e.g., laboratory, testing, etc. at VDH's actual cost plus standard handling fees.

## **11. TERMINATION**

- 11.1 Either Client or VDH may terminate any and all Agreements, at any time on not less than thirty (30) days prior written notice. Within ten (10) days after receipt of the notice of termination, VDH shall furnish the Client a written invoice of services performed and within thirty (30) days after receipt of such invoice, the Client shall pay VDH for the invoiced services and VDH shall promptly deliver to Client the originals and all copies of all data prepared or obtained by VDH in connection with the survey.
- 11.2 Any termination of this Agreement however caused shall be without prejudice to any rights or liabilities of the parties which have been accrued on or before the date of termination, but neither party shall have any rights to require performance of or liabilities to perform this Agreement after such date. Upon termination of this Agreement for any reason:
- 11.2.1 notwithstanding any other provisions of this Agreement, the terms of this clause 8 and clauses 3 (confidentiality), 5 (liability) and 6 (indemnity) shall continue in force in accordance with their terms; and
- 11.2.2 all fees and charges accrued until date of termination (but unpaid) pursuant to this Agreement shall forthwith become due and payable.

## **12. FORCE MAJEURE**

- 12.1 VDH shall not be liable for delay in or failure to perform any of its obligations if the delay or failure results directly or indirectly from force majeure, including response to adverse weather conditions
- 12.2 "Force Majeure" as used herein, means any law, order, regulation, or governmental action; failure or delay of transportation; suspension or cancellation of any required licence(s); insurrection, riots, national emergencies; war, acts of public enemies, strikes or other labour difficulties; inability to obtain necessary labour, manufacturing facilities, materials or components from the manufacturer's usual sources; fires, floods, or other catastrophes; acts of God, or any causes of like or different kind beyond our control.

## **13. ASSIGNMENT**

Except as otherwise agreed by the parties in writing, this Agreement shall not be assigned in whole or part.

## **14. LAW AND JURISDICTION**

- 14.1 These terms and conditions of sale constitute a binding contract between VDH and the customer, and the contract shall be construed and enforced under the laws of the Republic of South Africa.
- 14.2 Should a dispute arise from this Agreement, such dispute shall be settled by a competent court with jurisdiction to hear the matter, unless otherwise agreed to between the parties at the time by means of an Arbitration or other agreement.
- 14.3 Notices shall be personally delivered, mailed, certified or registered mail, or send by overnight courier to customer at the address shown on VDH's records, or on the customer's purchase order or other customer documentation and to VDH at 14 CP Hoogenhout Street, Langenhovenpark, 9330,

South Africa or P.O. Box 26792, Langenhoven Park, 9330, South Africa. Notice shall be effective from the date of receipt by addressee.

- 14.4 This express the entire intent and understanding of the parties with reference to the subject matter hereof, and there is no understanding, agreement, representation or warranty, express or implied, written or oral, statutory or otherwise, in any way limiting, extending, defining or relating the provisions hereof or creating other obligations.
- 14.5 Notwithstanding any different or additional terms that may be embodied in your order, VDH's acceptance is expressly made conditional on your assent to these terms and conditions. VDH expressly objects to and shall not be bound by any terms, conditions or provisions additional to or at variance with the terms hereof that may appear in your purchase order or any prior or later communications. If these terms and conditions are not acceptable, you must notify us at once. VDH shall be deemed to have assented to any such additional or different terms only by signing a writing which specifically assents to such additional or different terms. No agent, distributor or representative of VDH, except an officer of VDH, shall have authority to agree to any term or provision inconsistent herewith or not contained herein.
- 14.6 This document, consisting of seven (7) pages, is the only policy document that describes the VDH Industrial Hygiene cc. conditions of sale for services to clients.

We hereby agree to the terms and conditions as set in these terms and conditions of sale document.

Signed at ..... on this ..... day of ..... 20...

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**Dr. Dawid J. van den Heever**  
**Chief Executive Officer: VDH**

\_\_\_\_\_  
**Client (Full representation)**

**Witness:**

- 1. ....
- 2. ....

- 1. ....
- 2. ....