



Terms and Conditions of Service

All work and services performed and all obligations assumed by INTERTEK U.S.A., Inc., d/b/a Intertek Caleb Brett, its parent, subsidiaries and affiliated companies, its agents, representatives, contractors and subcontractors (hereinafter "Intertek") are undertaken and the rates and charges of Intertek are based upon the following Terms and Conditions:

1. Intertek warrants exclusively to the person or entity ordering work or services (hereinafter called "Customer") that its services shall be performed in a manner consistent with that level of care and skill ordinarily exercised by other companies providing like services under similar circumstances. This warranty shall become null and void in the event Customer's account becomes DELINQUENT. All invoices are due and payable upon receipt and become DELINQUENT after thirty (30) days from the date of the invoice.
Intertek makes no other express warranties. Intertek excludes and disclaims all implied warranties including but not limited to any warranty of fitness for a particular purpose, warranty of merchantability, warranty of workmanlike performance and warranty of results.
2. **Customer's exclusive remedy for Intertek's breach of its express warranty and the total liability of Intertek, its officers, employees, agents, representatives, contractors and subcontractors for any loss or damage claimed, either directly or indirectly, in contract, tort, or otherwise, including, but not limited to, breach of contract, breach of warranty, negligence, gross negligence, strict liability, and negligent and intentional misrepresentation, in connection with the performance of the work, services or obligations involved shall be either ten times the fee paid or payable for such work or services or Fifteen Thousand Dollars (\$15,000.00) whichever is less.**
3. Customer waives any and all other claims or causes of action against Intertek, its officers, employees, agents, representatives, contractors and subcontractors for incidental, consequential, punitive, special damages or lost profits, resulting from Intertek, its officers, employees, agents, representatives, contractors and subcontractors work, services or goods.
4. **INDEMNITY: Customer shall defend, indemnify and hold harmless Intertek, its officers, employees, agents, representatives, contractors and subcontractors from and against all claims, suits and liabilities (including but not limited to cost of litigation and attorneys fees) arising, directly or indirectly, in connection with (1) claims or suits by any governmental authority or others for any actual or asserted failure of the Customer to comply with any law, ordinance, regulation, rule or order of any governmental or judicial body; (2) claims or suits arising from information supplied by Customer and relied upon by Intertek; and/or (3) claims or suits for personal injuries, loss of or damage to property, economic loss, and loss of or damage to intellectual property incurred by or occurring to any person or entity and arising in connection with or related to the work or services performed or obligations assumed by Intertek, its officers, employees, agents, representatives, contractors and subcontractors. This indemnity shall apply even if the claims, suits and liabilities arise or are alleged to arise from the negligence, breach of contract or other legal fault of Intertek, its officers, employees, agents, representatives, contractors and subcontractors.**
5. Written notice of claim against Intertek must be made within ninety (90) days after delivery of the report covering such work. Failure to give such written notice of claim within such ninety (90) days shall constitute a bar or irrevocable waiver to any claim, either directly or indirectly, in contract, tort or otherwise in connection with the performance of the work or services involved.
6. Intertek expressly disclaims liability as an insurer or guarantor. Customer agrees to obtain all risks insurance coverage on its products for full market value, with waiver of subrogation against Intertek. Any deductible under said policy is to be for Customer's account. Further, Customer agrees to obtain commercial general liability insurance including broad form contractual liability coverage covering all contractual obligations and indemnities assumed by Customer under this contract, with Intertek being named as an additional insured.
7. The work or services performed by Intertek for Customer and the reports and other documents generated from the work or services are not intended by Intertek to be for the benefit of any person or entity other than the Customer. Reports are based, and the work conducted, under the Customer's specific instructions, and there may be other relevant information not requested nor reported. Delivery of any report to any person or entity does not constitute a representation by Intertek of any matter stated in the report to anyone other than its Customer. The Customer acknowledges that Intertek does not, either by entering into a contract or by performing services, assume, abridge, abrogate or undertake to discharge any duty of the Customer to any other person. No person or entity, other than the Customer, in whose possession a copy of a report shall come, shall have any right against Intertek, its parent, subsidiaries or affiliated companies, their officers, employees, agents, contractors or subcontractors.
8. Orders received by an officer or employee of Intertek for assignments outside the U.S.A. will be forwarded on behalf of the Customer to the appropriate foreign based associated Intertek company or correspondent who will be solely and fully responsible for all matters in connection with the order received, including directly acting for and reporting to the Customer. As a condition of Intertek forwarding such assignment on the Customer's behalf, it is understood that Intertek, its officers, directors, agents and employees will bear no responsibility with regard to the work or services rendered by the Company to whom the assignment is forwarded.
9. ALL CLAIMS MADE AGAINST INTERTEK, EITHER DIRECTLY OR INDIRECTLY, IN CONTRACT, TORT OR OTHERWISE, SHALL BE GOVERNED BY THE MARITIME LAW OF THE UNITED STATES, EXCLUSIVE OF RULES FOR CHOICE OF APPLICABLE LAW. ANY SUIT BROUGHT AGAINST INTERTEK SHALL BE FILED EXCLUSIVELY IN EITHER THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION, OR THE DISTRICT COURTS OF HARRIS COUNTY, TEXAS.
10. No officer, employee, agent, or subcontractor of Intertek (other than the Chief Executive Officer) has authority to alter or waive any of the foregoing provisions or to make any representation which will in any way conflict with or override any of the foregoing terms; and no such alteration, waiver, or representation shall be binding upon Intertek unless in writing and signed by the Chief Executive Officer of Intertek.
11. The Provisions and payment terms listed overleaf or attached hereto are to be considered part of these Terms and Conditions.
12. If any term, condition or provision, or part thereof, is deemed unenforceable, then that term, condition or provision, or part thereof, shall stand void and all other terms, conditions or provisions shall have the same effect as if the voided term, condition or provision, or part thereof, had not existed.
13. Intertek's acceptance of Customer's request for work or services is limited to the Terms and Conditions of Service on this page and the attached Provisions and Payment Terms. Any terms proposed or submitted by Customer at any time (including, but not limited to, provisions or terms in Customer's purchase order, instruction, nomination or other document) are objected to and rejected, and shall be deemed a material alteration hereof, and shall be of no force or effect.



PROVISIONS

1. Basic Services, as outlined in this fee schedule, are performed under the operational guidelines of the International Federation of Inspection Agencies (IFIA) available at ifia-federation.org. Additional services are provided under specific agreement with the Customer. All services are governed by the Intertek USA, Inc., d//b/a Intertek Caleb Brett (hereinafter "Intertek") Terms and conditions of Service.
2. If the Customer requests the analysis of samples by the Customer's or a third party's laboratory, Intertek will pass on the results but without any responsibility for their accuracy. Likewise, when requested to "Witness Analysis", our responsibility is solely to witness that the analysis is conducted on the correct sample. Customer agrees that Intertek is not responsible for the condition or operation of apparatus, instrumentation and measuring devices, and that Intertek accepts calibration data, reagents, etc. as presented, and will not be responsible for the accuracy of any results.
3. Stated product identification in any Intertek Quality or Quantity Report is, by necessity, based solely on information supplied by the Customer, and Intertek disclaims any responsibility for the accuracy of this information. Testing is performed against Customer supplied instructions and not to determine the identity or merchantability of the product.
4. If requested, we perform "Stop Gauge Calculations" for comparison purposes only. The terminal and/or vessel is responsible for the calculation and observation of "Stop Gauge" measurement, pumping, stopping, and valve setting.
5. Our staff is available to assist in blending operations. Volumetric or weighted composites can be prepared from components and tested in our laboratories. However, Customer should note that due to the inherent difficulty in achieving a homogeneous stable blend in shore and ship tanks, the laboratory composite sample may offer different test results to samples drawn from the final blend.
6. If Intertek personnel are required to testify in any legal proceeding regarding any services performed by Intertek, Customer agrees to pay to Intertek, while complying with such legal process, an hourly rate and expenses as provided by the prevailing rate schedule.
7. Intertek does not release or detain vessels or act as an intermediary for any party in this regard. The responsibility is that of the terminal, charterers and other interested parties.
8. For quality control and conformance to specifications, samples are tested by standard laboratory test methods. Multiple measurements of the same property of a specific sample by a given test method rarely give identical results. However, each result obtained has equal validity and cannot be arbitrarily discarded.

If more than one test result is obtained for the same property of a specific sample by a given test method, then Intertek will apply sound scientific principles, regulatory standards, international standards, or prevailing industry protocol in order to determine the reportable result.

International standards such as ISO 4259, ASTM D3244, IP 367, etc. can also be used in a case of dispute between buyer and seller should the process be agreed to by the parties.
9. All reports will be maintained on file for a period of five (5) years.
10. Samples are retained for forty-five (45) days, unless otherwise requested in writing by our principals.
11. Letters of Credit - Customers are advised that specific Letter of Credit documentation requirements should be addressed with Intertek and resolved during the nomination process under IFIA guidelines to ensure they can be made consistent with standard Intertek documentation and procedures. Requests for retroactive alterations to inspection reports to conform to unusual Letter of Credit requirements will result in delays and the possibility that Intertek will be unable to comply on ethical grounds.

Documents reflecting agreements between Customer and third parties, or third parties' documents, such as sale contracts, letters of credit, etc., are (if received by the Company) considered for information only, and do not change the scope of the services or the responsibilities of Intertek.