

## General Terms and Conditions of Certification

This General Terms and Conditions for certification apply to agreements between the Organisations and MINSEN for the services and Certificate provided by MINSEN in connection with management system or production certification.

### 1. Definition

HKAS	The Hong Kong Accreditation Service
HKCAS	The Hong Kong Certification Body Accreditation Scheme
MINSEN	MINSEN Certification (Asia) Limited
Organisation	A party with an arrangement of responsibilities, authorities and relationships that contracts with MINSEN for management system or product certification.
Certification Agreement	Formal and binding agreement between MINSEN and the Organisation whereby MINSEN is to perform the certification work
Certificate	A document issued by MINSEN which defined the scope of certification and recognizes that the system operated by the identified Organisation meets the requirements of MINSEN and the applicable management system standard, or the products provided by the Organisation meets the requirements of MINSEN and associated Product Conformity Certification Scheme.
Certification Committee	Comprised of senior management of MINSEN and other individuals separate from MINSEN which enables the participation of all parties significantly concerned in the development of policies and principles regarding the content and functioning of the certification system.
Appeal Committee	Comprised of the Chairman and a minimum of two additional members from the Certification Committee who have not participated in the evaluation or certification of the Organisation making the appeal.
Management System	The organizational structure, planning activities, responsibilities, practices, procedures, processes, and resources used to direct and control an Organisation with regard to corresponding management system. The management system is documented in a manual along with related procedures and instructions.
Manual	A document describing how an Organisation meets specified commitments, including a description of the Organisation's structure, reporting, resources, and sequence of events relevant to corresponding system management.

Mark	MINSEN certification mark and other symbols (e.g. HKCAS symbol) which indicate that the Organisation is certified on management system or Product Conformity Certification Scheme.
Product Conformity Certification Scheme	Type 5 product conformity certification scheme in accordance with ISO 17067 that has been established for the certification of the manufacture and supply of the products to all the requirements presented in the Scheme.

## 2. General

- 2.1 MINSEN is responsible to ensure that the functioning of the certification body continuously meets HKAS criteria for accreditation and other HKAS documented requirements and that it complies with all of the program requirements for certification of management system and Product Conformity Certification Scheme.
- 2.2 MINSEN understands the importance of impartiality in carrying out its certification activities, manages conflict of interest and ensures the objectivity of its certification activities.
- 2.3 All certified Organisations shall operate in conformance with its certified management system or Product Conformity Certification Scheme, and to the applicable international standard or relevant normative documents.
- 2.4 Prior to MINSEN's acceptance of a certification application, the organization shall
  - (a) have a management system that has been operational for at least 2 months.
  - (b) have developed a Manual describing its management system in conformance with the applicable management system standard or Product Conformity Certification Scheme to be certified.
  - (c) have performed and documented an internal audit of the management system against the requirements of the relevant standard or Product Conformity Certification Scheme.
  - (d) have performed and documented a management review of its management system.
- 2.5 For management system certification, auditing conducted by MINSEN are designed only to verify conformance with the management system requirements and do not relieve the Organisation's responsibility to ensure the quality of its products and/or services in the marketplace or ensure that all of its products meet customer requirements.
- 2.6 The Organisations that, through the application and audit processes and satisfy MINSEN that the conditions of the certification program are being met, shall be granted a Certificate by MINSEN. The Certificate remains the property of MINSEN. Certificates are effective from the date of approval and valid for 3 years, providing the Organisation continually meets all the requirements of the certification program as described herein. If a certified Organisation does not wish to continue its certification, it must notify MINSEN in writing 3 months prior to the anniversary date of the Certificate.

- 2.7 If the certified Organisation fails to comply with the General Terms and Conditions of Certification, MINSEN shall take appropriate action which may include
- (a) suspending or withdrawing the Certificate.
  - (b) reducing its scope of certification.
  - (c) declining to reinstate, grant or extend the scope of a Certificate.
- 2.8 The certification program may be changed according to the requirements of the applicable international standards and accreditation body regulations. These changes shall not affect the right to use the Mark until the certified Organisation is notified in writing of these changes and granted a period by which compliance must be demonstrated.
- 2.9 A listing of all certified Organisations is available from MINSEN and will be provided when requested. A list of certified Organisations shall be provided to applicable accreditation bodies when requested.
- 2.10 The Organisation and MINSEN agree that the Certification Agreement is the complete and exclusive agreement between them. The Agreement shall be interpreted and governed by the law of Hong Kong and subject to the exclusive jurisdiction of the courts of Hong Kong.
- 2.11 In the event of any litigation between the parties arising under the Contract, the only proper venue for such litigation shall be Hong Kong.

### **3. Exclusion of Liability**

- 3.1 Subject to the Control of Exemption Clauses Ordinance (Cap.71) MINSEN shall not be liable to an Organisation for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the certification of an Organisation under the certification scheme or the sale of products or rendering of services to the public by an Organisation (whether or not by reference to the Mark) and notwithstanding the generality of the foregoing MINSEN expressly excludes liability for consequential loss or damage suffered by an Organisation including any loss or damage resulting from claims brought by any clients or customers of an Organisation, or for loss of profit, business, revenue, goodwill or anticipated savings.
- 3.2 Subject to Clause 3.1 above all conditions and warranties on the part of MINSEN implied by statute, Common Law or otherwise are expressly excluded.
- 3.3 Without prejudice to clauses 3.1 and 3.2 and in the event that the courts of Hong Kong consider a complete exclusion of liability hereunder to be unreasonable, MINSEN's liability in contract, tort or otherwise to an Organisation with respect to any claim arising in connection with its acts or omissions in assessing and/or certifying an Organisation and/or operating the certification scheme shall be limited to no more than ten times the fees received by MINSEN from an Organisation in the year in which the alleged liability arose or HK\$100,000 whichever is the less.

#### **4. Indemnity**

- 4.1 An Organisation shall be liable for and shall indemnify MINSEN against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by MINSEN in connection with the Organisation's Certification or Use of Certification Mark.

#### **5. Confidentiality**

- 5.1 MINSEN shall keep all information of the Organisation in confidence, except insofar as such information is in the public domain, unless the Organisation gives his permission for its release, or unless such information must be released by law or for the purpose of MINSEN's accreditation, or unless the certified Organisation's name is published on the MINSEN's list of certified Organisations which is open for public information.

#### **6. Obligation of Certified Organisation**

6.1 An MINSEN certified Organisation shall

- (a) comply with the MINSEN certification requirements and implement appropriate changes when communicated by MINSEN.
- (b) maintain and document a management system. The certified Organisation will make available a controlled copy of its documented management system manual when requested.
- (c) not make major revisions to the Manual which was accepted upon certification unless it has given MINSEN notice in writing of its intent to do so, and has received written confirmation from MINSEN that the proposed revisions have been accepted. Changes that require acceptance include any having a direct impact on the management system.
- (d) promptly inform MINSEN about any proposed changes to their management system or any other changes which may affect conformance to the requirements of certification. This excludes minor or editorial Manual revisions.
- (e) ensure the certified product continues to fulfill the product requirements for product certification.
- (f) agree to make all necessary arrangements during normal working hours for the performance of the audit, including the provision for reviewing documentation, and the access to all areas, records and personnel for the purposes of assessments and resolution of complaints.
- (g) provide MINSEN samples of materials and samples of products which are required by Product Conformity Certification Scheme to be tested by laboratory to verify their conformance to relevant technical standards.
- (h) agree, upon request, to provide access to HKAS assessment teams, trainee auditors or other MINSEN personnel as observer to witness MINSEN's audit team performing audit at the Organisation's sites.

- (i) agree to allow MINSEN and HKAS to have access to the Organisation's files pertaining to the certification activity. The right of MINSEN's representative to obtain access to these facilities shall not be conditioned upon the execution by him or MINSEN of any agreement, waiver or release which in any way purports to affect his legal rights or the rights or obligations of MINSEN. Any such document executed in contravention of this provision shall be without force or effect. However, MINSEN shall direct its representative to exercise due care in complying with any safety regulations which may be generally applicable to the Organisation's facility personnel.
- (j) upon suspension or termination of the certification (whether through the request of the certified Organisation or MINSEN), discontinue all use of the Mark, including use on web sites and all advertising, literature, or documents which contain any reference to the Mark or the status of being a certified Organisation, and return any Certificates as required by MINSEN. If the certification is terminated for cause, MINSEN shall not be obligated to refund any fees or payments made by the Organisation. MINSEN shall under no circumstances be liable for loss of profits, loss of income, loss of business opportunity, economic loss or other consequential loss or damages as a result of the termination of the certification.
- (k) investigate and keep record of all complaints and their resolution which shall include any corrective actions taken and any deficiency found in products, and make these records available to MINSEN when requested.
- (l) only make claims regarding certification consistent with the scope of certification.
- (m) not use its certification in such a manner as to bring MINSEN into dispute, and shall not make any statement regarding its certification which MINSEN may consider misleading or unauthorized.
- (n) use certification only to indicate that the management system is in conformity with specified management system standard or other normative documents, and shall not use its certification to imply that a product, process, system, person or service is approved by HKAS or certified by MINSEN for management system certification.
- (o) use certification only to indicate that the products are in conformity with the appropriate Product Conformity Certification Scheme and technical standards for product certification.
- (p) not use its certification in such a manner that brings MINSEN into defamation, and that it shall not make any statement about its certification that MINSEN may consider misleading and unauthorized.
- (q) ensure that its documents or reports under certification, or any part thereof, and the Mark are not used in a misleading manner.
- (r) ensure copies of the certification document shall be reproduced entirely or as specified in the certification scheme;
- (s) have procedures to ensure that the information supplied to MINSEN is kept up to date.

- (t) inform MINSSEN, without delay, of the occurrence of a serious incident or breach of regulation necessitating the involvement of the competent regulatory authority. Such information provided by the certified organisation or directly gathered by the audit team during the special audit, shall provide grounds for MINSSEN to decide on the actions to be taken, including a suspension or withdrawal of the certification, in cases where it can be demonstrated that the system seriously failed to meet the OH&S certification requirements.

## **7. Obligation of MINSSEN**

### 7.1 MINSSEN shall

- (a) schedule, perform and review audits.
- (b) notify a certified Organisation of any changes in the certification program requirements and give a practical period of time to revise their management system to meet the new requirements.
- (c) not disclose any information concerning the certified Organisation other than information which is
  - (i) in public domain, except to its accreditation bodies, whose requirements MINSSEN must meet, which shall not disclose the information.
  - (ii) disclosed to a third party with the written consent of the Organization.
  - (iii) disclosed to a third party required by the law. In such case the Organization shall be informed of the information provided, as permitted by the law.
- (d) provide to the certified Organisation of complaints relating to the certification program, quality of its products, processes or services.
- (e) review the proposed changes to the Organisation's management system or any other changes which may affect conformance to the requirements of certification. This includes changes relating to
  - (i) legal, commercial, ownership or organisational status.
  - (ii) organisation and management, e.g. key managerial, decision making, or technical staff.
  - (iii) contact address and major sites.
  - (iv) scope of certified management system.
  - (v) name of the certified product.

MINSSEN shall also decide to accept the changes, reject the changes or perform an audit or carry out further investigation with respect to the changes. The certified organization shall be notified of MINSSEN's decision concerning the acceptability of the proposed changes.

## **8. Suspension of Certification**

- 8.1 A certified Organisation's certification may be suspended for up to 6 months if any of the following conditions exist:

- (a) MINSEN identifies a major nonconformity that questions the implementation of the Organisation's management system, but is not serious enough to require withdrawal, and if the Organisation's corrective action plan results in improper or insufficient corrective action.
- (b) MINSEN identifies information of the occurrence of a serious incident or breach of regulation necessitating the involvement of the competent regulatory authority, in cases where it can be demonstrated that the system seriously failed to meet the OH&S certification requirements, but is not serious enough to require withdrawal.
- (c) The Organisation is found improperly using their Certificate or Mark and their corrective action regarding the improper use of the same is not acceptable to MINSEN.
- (d) The certified organisation does not allow surveillance or renewal audits to be conducted at the required frequencies.
- (e) The certified organisation has voluntarily a temporary suspension.
- (f) Any other violation of MINSEN's General Terms and Conditions of Certification.

## **9. Withdrawal of Certification**

9.1 A certified Organisation's certification may be withdrawn if any of the following conditions exist:

- (a) If the Organisation's certification is suspended and no corrective action is implemented.
- (b) If MINSEN identifies major nonconformities which may cause improper implementation of the management system standard or Product Conformity Certification Scheme requirements.
- (c) MINSEN identifies information of the occurrence of a serious incident or breach of regulation necessitating the involvement of the competent regulatory authority, in cases where it can be demonstrated that the system seriously failed to meet the OH&S certification requirements.
- (d) Formal request of the Organisation.
- (e) If the management system standard or Product Conformity Certification Scheme requirements change and the Organisation will not or cannot ensure conformance to the new requirements.
- (f) If the Organisation ceases to supply the defined product, process or service.
- (g) If the Organisation fails to pay fee in due time.
- (h) On any other grounds specifically provided for under the system rules or formally agreed to between MINSEN and the Organisation.

## 10. Termination of Certification

- 10.1 A certified Organisation may terminate the agreement between MINSEN and the Organisation by giving 3 months' written notice. Termination of the agreement shall lead automatically to termination of the Certificate.
- 10.2 On termination of the Certificate (whether through the request of the certified Organisation, withdrawal by MINSEN or Certificate expiry), the Organisation shall
- (a) immediately discontinue use of the Mark and the Certificate.
  - (b) remove all reference to such from all advertising, literature or documents which contain Mark or the status of being a certified Organisation.
  - (c) return the Certificate (and all copies) to MINSEN.
- 10.3 The Contract shall terminate immediately without notice if the Organisation files a petition in bankruptcy or is adjudicated a bankrupt or insolvent, or makes an assignment for the benefit of creditors, or an arrangement pursuant to any bankruptcy law, or if the Organisation discontinues its business or a receiver is appointed for the Organisation or for the Organisation's business and such receiver is not discharged within 30 days.

## 11. Appeal, Complaint and Dispute

- 11.1 In the event an applicant or certified Organisation wishes to appeal a decision made by MINSEN and based on this certification program, they shall do so in writing to the Managing Director of MINSEN within 30 days of being notified by MINSEN's decision to refuse to grant or continue a certification. The decision of MINSEN shall stand until such time that the Appeal Committee can meet and formally hear the Organisation's appeal.
- 11.2 The Organisation has a right to object to any member forming part of the Appeal Committee. The Certification Committee shall then select a different Appeal Committee constitution. A meeting of the Appeal Committee shall be held within 30 days of receipt of the appeal notice and the appellant shall be given at least 7 days notice of the time and place of the meeting. At the meeting the appellant is entitled to be heard in confidence.
- 11.3 A certified Organisation may appeal to MINSEN any decision to suspend or withdraw certification.
- 11.4 The Organisation filing the appeal shall be notified of the decision, including the reasons for the decision reached, within 14 days of the decision made by the Appeal Committee.
- 11.5 The Organisation may, at any time, make a complaint about the service provided by MINSEN. Complaints may be made orally, or in writing to MINSEN.
- 11.6 If a dispute arises during an audit, the Organisation may contact MINSEN orally or by writing on the dispute.



11.7 The senior management who has not been involved in the subject case is responsible for the investigation and conclusion of a complaint / dispute. The organization will be notified of the results by writing. If there is disagreement with the result, the Organisation may appeal to MINSSEN.

## **12. Fees**

12.1 MINSSEN shall charge the Organisation fees for the services and Certificate provided. The fee rates shall be according to MINSSEN's quoted prices for the service concerned.

12.2 The Organisation shall pay the application fee upon signing the Certification Agreement. The pre-assessment (optional), certification audit and follow up audit fees shall be payable in advance. For surveillance and renewal audits, fees shall be payable in 30 days from the date of invoice.

12.3 All audits shall be charged according to the actual mandays which is determined by MINSSEN to be fair and appropriate.

12.4 All fees are non-refundable.

12.5 For certification work outside Hong Kong, the fees of travel and accommodation will be charged at cost.

12.6 Fees may be revised from time to time by MINSSEN without prior notice.

## **13. Use of MINSSEN Mark and HKCAS Symbol**

13.1 The Organisation shall use the MINSSEN Mark and HKCAS Symbol in a manner which is not misleading and in compliance with MINSSEN requirements in Use of MINSSEN Certification Mark (Management System Certification) (Doc. No. 103) for management system certification or Use of MINSSEN Certification Mark (Product Certification) (Doc. No. 103-1) for product certification.

## **14. Revisions**

14.1 MINSSEN reserve the right to revise the General Terms and Conditions of Certification. Any such revisions will not immediately jeopardize the right of a certificated Organisation to use the Mark as they will be given 6 months to comply with any new revision.