

## **CARB ATCM 93120 CERTIFICATION SERVICE TERMS**

These Service Terms shall govern the California Air Resources Board Airborne Toxic Control Measure (ATCM) To Reduce Formaldehyde Emissions From Composite Wood Products, Section 93120-93120.12, Title 17 of the California Code of Regulations (collectively referred to as, "CARB ATCM 93120") Certification Services performed by UL Contracting Party ("we", "our", or "us" as the context requires) as identified in the Quotation or Project Confirmation and set out the responsibilities and obligations of the Client ("you" or "your" as the context requires). These Service Terms and the terms of the Global Services Agreement ("GSA") are incorporated by reference into and are an integral part of each Service Agreement entered into by the Parties for CARB ATCM 93120 Certification. The capitalized terms in these Service Terms which are not defined herein shall have the same meaning as in the GSA.

### **1. SCOPE OF SERVICE.**

These Service Terms govern Client's relationship with us as: (a) an "Applicant," who submits a product or product category ("Product[s]") to us for CARB ATCM 93120 Certification Services and the eligibility of such Product(s) to receive CARB ATCM 93120 Certification Services (as defined below); and/or (b) a "Manufacturer," who carries out control in such stages of the manufacture, assessment, verification, handling and storage of a Product and has responsibility for continued compliance of the Product.

Before we establish Certification Service for any Product, the Applicant must provide us with the name and address of the Product Manufacturer(s) where the Product is to be manufactured or assembled. No Certification Services will be established or maintained unless all necessary and appropriate Applicant and Manufacturer have entered into, and comply with, the terms of all applicable agreements with us.

The Services requested by you for specific projects shall be set out in individual Quotations or Project Confirmations.

### **2. CERTIFICATION SERVICES**

**2.1** We will perform the auditing, verification, surveillance, testing, inspection, and reporting services ("Certification Services") requested by you on your product and/or product category desired ("Product[s]") in accordance with the specifications in CARB's ATCM 93120 certification program requirements which can be found at <http://www.arb.ca.gov/toxics/compwood/certifiers.htm>. You acknowledge and agree that any Certification Services performed by us on a Product will be valid only for the specified model of that Product. Certified mills may produce CARB compliant and non-compliant products. All CARB compliant products must be identified with their ARB-approved third party certifier number.

**2.2** If we determine that your Product(s) comply with current CARB ATCM 93120 certification program requirements ("Certification Standards"), you may request further Certification Services and seek CARB ATCM 93120 Certification of such Products from us. All forms, standards and procedural documents referenced in these Service Terms are available to you at the CARB website <http://www.arb.ca.gov/toxics/compwood/compwood.htm>. Such documents may be amended from time to time at the sole discretion of CARB, which changes shall become part of the requirement under any Service Agreement thirty (30) days after notice to you via e-mail or pursuant to the notice procedures set forth in the GSA.

**2.3** Upon satisfactory completion of additional Certification Services and appropriate documentation, you will be granted a certification certificate per Product for CARB ATCM 93120 compliance. Such Product(s) will be considered Certified Product(s). The certificates for Certified Products are contingent on your continued compliance with Ongoing Inspections as defined in section 3.3 of these Service Terms and reporting obligations, among others.

**2.4 Data.** You consent to the internal use by us and our affiliates of the information, data, or findings obtained in the performance of the Certification Services or other services conducted on your samples, Products and information ("Data") for research and to improve and provide its services to others. We and our affiliates may publish the Data aggregated within a product category once they have obtained testing results for at least three (3) manufacturers in your industry but may not do so in a manner that identifies such Data with you.

### **3. OFFER AND ACCEPTANCE**

**3.1** The terms of CARB ATCM 93120 Service requested by the Applicant, and to be provided by us, including the amount of the Certification fee, will be set forth in a Quotation or Project Confirmation from us to the Applicant. The Quotation will be our offer to provide CARB ATCM 93120 Certification Service on the terms set forth or incorporated by reference therein, provided that if the Quotation is issued before Applicant's acceptance of the GSA, the offer contained in the Quotation is contingent upon Applicant's acceptance of the GSA.

**3.2** The Applicant's acceptance of the Quotation will create a separate binding Service Agreement for Product Investigation Service between us and the Applicant ("Product Investigation Service Agreement").

**3.3** Unless otherwise expressly stated in the Quotation or Project Confirmation, as applicable, each Quotation or Project Confirmation covers the examination and the tests judged appropriate for the Product(s).

**3.4** To the extent Applicant subcontracts all or a part of the manufacture or assembly of its Product(s) to a third party manufacturer ("Manufacturer"), Applicant shall cause such Manufacturer to comply with our requirements, including without limitation, the terms of any Service Agreement.

**3.5** On-site audits will be conducted by our representatives, and may be in the presence of third-party observers that will not influence or interfere with the conduct of the inspection.

### **4. CERTIFICATION**

**4.1 Certification Term.** Unless earlier terminated in accordance with these Service Terms, the term of any Service Agreement shall begin on the Certification Date as defined in 3.2 below. If you desire to maintain certification, our representatives must perform quality control testing and ongoing quarterly primary or secondary method tests as determined by the provisions in CARB ATCM 93120. The parties agree to negotiate in good faith to enter into a new Service Agreement using the then current CARB Service Terms which may have changed during the Certification Term.

**4.2 Assignment of Certification Date.** We will notify you in writing of the date of our written notice to you that the applicable Product(s) complies(y) with the CARB ATCM 93120 Standards ("Certification Date") and the schedule of dates for Ongoing Certification Compliance

Auditing (as defined in section 3.3 of these Service Terms), for each Certified Product, by providing to you a completed Notification of Certification Date form which is available through the CARB website at <http://www.arb.ca.gov/toxics/compwood/tpc/listofmills.htm>. If you share any certification documents with third parties in accordance with Section 14 of the GSA, all such certification documents must be reproduced in their entirety.

**4.3 Ongoing Certification Inspections/Testing.** In accordance with the CARB ATCM 93120 program requirements we will conduct at least quarterly unannounced surveillance audits that will cover the provisions in CARB's ATCM 93120.12 Appendix 3. All certified CARB compliant product types are subject to random selection straight from the production line for ongoing testing.

**4.4 Misuse of Certification Status.** You will not use your product certification status in such a manner as to bring us into disrepute. You will not make any statement regarding your product certification status that we may consider misleading or unauthorized.

**5. USE OF THE CERTIFICATION ASSIGNED NUMBER.** We do not offer any marks associated with CARB ATCM 93120 certification but instead a letter of compliance with their assigned ARB-approved third party certifier number, as referenced in this document as the 'assigned certification number'. Subject to the terms and conditions of any Service Agreement, you will be permitted to display your assigned ARB-approved third party certifier number on the product certified.

## **6. CERTIFIED PRODUCT QUALITY STANDARDS AND MAINTENANCE**

**6.1 Quality Obligations of Client.** You covenant that: (i) all products sold as Certified Products will comply with the Certification Standards upon which the Certified Product(s) were approved in the most recent Confirmation Evaluation; (ii) you and/or the Manufacturer of the Certified Products will maintain a quality control system that covers all Certified Products at all times while you (or Manufacturer) manufactures and distributes products as Certified Products, and will follow such quality control system with respect to all such Products. You acknowledge and agree that (i) you are responsible for the design and operation of your quality control system and (ii) we will rely on such system to ensure consistent quality of any products that become Certified Products. You agree to immediately notify us of any complaints that you receive that relate to a Certified Product's compliance with the Certification Standards and, together with the notification of the complaint, indicate what responsive action has been or will be taken with respect to the complaint. Depending on our assessment of the validity of the complaint, we may invoke any and all relevant remedial provisions of this Section, including Section 5.2, 5.3 and 5.4, and may consider the complaint in structuring and conducting further on-site investigations.

**6.2 Improper Use.** If at any time we determine that you have misused the assigned certification number on, or in connection with, products or materials that are not Certified Product(s), we may notify you in writing of the mislabeling or misuse of the assigned certification number. You must correct the labeling or usage of the assigned certification number as we request, and notify us of the corrective actions it has taken within thirty (30) days of your receipt of notice.

**6.3 Change in Ability to Conform.** You agree to inform us immediately of any changes that may affect your ability to conform with the Certification Standards, including changes to:

(i) ownership or status; (ii) managerial organization; (iii) product or production method; (iv) contact address or production sites; and, (v) quality management system.

**6.4 Right to Communicate Certification Status.** We shall have the right at all times, whether or not any Service Agreement is in effect, to communicate to the public accurately your current and past certification status and any impending action that we may take with respect to such certification status, including, but not limited to, publication on our website. We shall have no liability to you whatsoever for any harm caused by our communication thereof.

**6.5 Corrective Action.** You agree to take reasonable corrective actions, as instructed by us and in our sole discretion, including but not limited to re-labeling, public notification and recall of mislabeled product(s), to remedy any misuse of the assigned certification number or failure of Certified Product(s) to comply with the Certification Standards. All corrective actions shall be at your sole expense.

## **7. PROMOTIONAL USE OF MARKS**

**7.1 Public Statements.** You agree that we may use your name and display the Certified Products in publications such as CARB's List of Mills Producing CARB Compliant Composite Wood Products. Except as expressly provided in any Service Agreement, each party agrees that it may not use or permit a third party to use the other party's name, logo, or marks without the prior written consent of such other party. Without the prior written consent of the other party, neither party may make any press release or other public announcement of, or otherwise disclose any Service Agreement or any provision thereof to any third party, except as may be required by applicable law.

**8. Product Certification Fees.** We will bill Applicant for all Certification and Inspection fees. These fees will cover the examination and such tests as we determine are appropriate for the Product (not including conformity assessment of additional samples, conformity assessment of the Product or a modified sample of the Product, separate investigations of components of a Product, or reimbursable expenses), as well as the preparation of a report.

**9. Expenses.** Unless we expressly agree in writing otherwise, we will bill Applicant for all reimbursable expenses associated with Certification and Inspection Services, which may include, without limitation: travel expenses; carrier, communications, and special equipment charges; materials, energy, and fuel; services of outside contractors or facilities; and charges for preparation of extra copies of our reports and other documents.

## **10. EFFECT OF TERMINATION, EXPIRATION, OR SUSPENSION**

**10.1 Voluntary Termination Upon Written Notice.** Except as set forth in Section 9.2 below, any Service Agreement will continue in effect until terminated by either the Applicant or by us, without cause, upon provision of thirty (30) days prior written notice to the other. Upon termination or expiration of the certification with respect to certain Certified Products, formerly Certified Products that are de-certified pursuant to the Certification Program shall be deemed "**De-Certified Products**" and all De-Certified Products that were manufactured after the De-certification Date shall be deemed "**Non-Compliant Product(s)**". You agree:

- (i) To cease marking Non-Compliant Products with the assigned certification number immediately and to remove the Marks from any Non-Compliant Products previously marked, and to cause its agents and distributors to do the same;

- (ii) To amend all marketing and promotional materials so as to reflect accurately the certification status of the De-certified Products and Non-Compliant Products, and to cause its agents and distributors to do the same; and
- (iii) That we may take any and all actions necessary so as to communicate to the public the certification status of Client products.

**10.2 Immediate Termination of Agreement.** If Applicant defaults on any of its obligations under the GSA or any Service Agreement in effect between Applicant and either us or another UL Company, we may, in our sole discretion, immediately terminate or suspend, in whole or in part, the Product Investigation Service Agreement, any other Service Agreement between Applicant and us. Upon termination or expiration of this Service Agreement, you agrees, in addition to that set forth in Section 8.1 above:

- (i) To destroy all printed materials, including marketing and promotional materials, advertising and packaging, bearing Certification, and use its best efforts to cause its agents and distributors to do the same, as soon as no Certified or De-Certified Products remain in inventory, but no later than six (6) months of such expiration or termination, and provide written notice of such destruction to us; and
- (ii) To cooperate with us or our appointed agent to apply to the appropriate authorities to cancel any recording of this Agreement from all government records;

In the event that we default on any of our obligations under the Product Investigation Service Agreement, the Applicant may, in its sole discretion, immediately terminate the Product Investigation Service Agreement. Such termination will be without prejudice to any other rights or remedies that Applicant might have for default, subject to any limitations under the GSA.

**10.3 Suspension of Certification.** Upon failure of a Primary or Secondary Method Test during verification due to exceeding the emission value of standards, the certification for the failed product type shall be suspended until re-qualification. Re-qualification of certification will be granted upon a successful primary or secondary method test of the same product type that failed.

**10.4 Disclaimer; Compliance with Laws and Regulations; and Indemnity.** WE EXPRESSLY DISCLAIM ALL REPRESENTATIONS AND WARRANTIES THAT ANY TRADEMARKS, SERVICE MARKS, CERTIFICATION MARKS, LABELS, TEXT, GUIDANCE OR OTHER MATERIALS OR SERVICES PROVIDED TO YOU OR THE USE THEREOF WILL COMPLY WITH THE GREEN GUIDES, 15 USC SEC 45, OR OTHER APPLICABLE LAWS AND REGULATIONS, AND IN NO EVENT SHALL WE HAVE ANY LIABILITY IN CONNECTION THEREWITH. WE DO NOT PROVIDE LEGAL ADVICE, AND NONE OF THE SERVICES OR DELIVERABLES THAT WE PROVIDE TO YOU SHALL BE CONSTRUED OR INTERPRETED AS LEGAL ADVICE. IT IS YOUR SOLE RESPONSIBILITY TO COMPLY WITH THE US FTC ACT, THE GREEN GUIDES AND ALL OTHER APPLICABLE LAWS AND REGULATIONS REGARDING ENVIRONMENTAL MARKETING CLAIMS AND PRACTICES, AND YOU SHOULD CONSULT LEGAL COUNSEL FOR ADVICE ON THIS TOPIC. YOU AGREE TO INDEMNIFY AND HOLD HARMLESS THE UL CONTRACTING PARTY AND ANY UL COMPANIES AND THEIR TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, MEMBERS, AFFILIATES, AGENTS AND SUBCONTRACTORS FROM ALL LOSSES AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF, OR

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RELATED TO, CLAIMS ASSERTED BY THIRD PARTIES THAT RELATE TO UNFAIR OR DECEPTIVE MARKETING CLAIMS INVOLVING YOUR PRODUCTS, SERVICES OR YOUR USE OF THE MARKS, INCLUDING ANY VIOLATION(S) OF 15 USC SEC 45, THE GREEN GUIDES OR OTHER APPLICABLE LAWS OR REGULATIONS.