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HONG KONG QUALITY ASSURANCE AGENCY 香港品質保證局

REGULATIONS 規章

15 OCTOBER 2008 2008年10月15日

REGULATIONS

1. Introduction

1.1 The Regulations (defined below) govern the rules for the Scheme (defined below) operated by the HKQAA (defined below) for the certification of companies and businesses with approved Management Systems (defined below) and Products (defined below).

2. Interpretation

2.1 For the purpose of these Regulations;

"Appeals Panel" means a panel established for the purpose of hearing appeals relating to the Scheme. The panel appointed in respect of each

appeal shall consist of the Chairman of the Council (or his appointed deputy) and at least two other members drawn from the Council.

"Business" means a person, firm, body corporate or unincorporate which has

applied for but has not yet been granted a Certificate and/or a person, firm, body corporate or unincorporate which has been

granted a Certificate, as the context so admits.

"Certificate" means a certificate issued by the HKQAA endorsed by a director

(being one of the Council Members) and the Executive Director of the HKQAA that recognises that having been audited by HKQAA the Management System operated by the Business and/or the Products manufactured and/or supplied by the Business are in accordance

with these Regulations.

"Certification Mark" means the trade mark of HKQAA that a certified Business will be

permitted to use to signify certification.

"Council" means the governing body of the HKQAA.

"Executive Director" means the member of the permanent staff of HKQAA appointed for

the time being by the Council to be in charge of the HKQAA. The Executive Director also takes the role of the secretary of the HKQAA.

"Guide 65" means the general requirements and standards published by ISO

and IEC in relation to the testing and certification of Products by

certification bodies.

"HKQAA" means the Hong Kong Quality Assurance Agency, a non-profit

distributing organisation, established for operating the Scheme.

"IEC" means the International Electrotechnical Commission.

"ISO" means the International Organisation for Standardization.

"ISO/IEC 17021" means the general requirements and standards published by ISO

and IEC in relation to the audit and certification of Management Systems by certification bodies, the observance of which is intended to ensure that certification bodies operate third-party management systems certification schemes in a competent, consistent and impartial manner, thereby facilitating the recognition of certification bodies and the acceptance of their certification schemes on an

national and international basis.

"Management System" means the organisational structure, responsibilities, procedures,

processes and resources for implementing a management system.

"Management System means documents setting out the specific practices, resources and

Documents" sequence of activities relevant to a particular product, service,

contract or project in relation to the Management System, which may

include a System Manual.

"Management System

Standards"

means the various applicable standards that a Business's Management System must comply with in order to be certified under these Regulations, as published by ISO and/or other relevant

organisations from time to time.

"Product" means the products and/or the particular design or specifications of

products and/or the process of manufacture of products in respect of

which HKQAA is offering certification services to a Business.

"Product Standards" means the applicable technical and other standards that a Product

must comply with in order to be certified under these Regulations as published by ISO and/or other relevant organisations from time to

time.

"Regulations" means the regulations of the Scheme set out herein.

"Sectoral Scheme" means a scheme which has been established for the certification of

organisations operating within certain areas of technology and which require special procedures and regulations to supplement the

Regulations.

"System Manual" means the main document used in drawing up and implementing a

Management System; its prime purpose is to describe the Management System adequately while serving as a permanent reference in the implementation and maintenance of that

Management System.

"the Scheme" means a scheme (including a Sectoral Scheme) to be operated by

HKQAA for certifying Businesses as having a Management System and/or Products that are in accordance with the Management

System Standards and Product Standards respectively.

"TM Guidance Document"

means a trade mark user document setting out the required terms and conditions under which a certified Business may use the

Certification Mark.

3. Authority

3.1 The HKQAA is recognised by the Government of Hong Kong SAR to operate the Scheme and award certification rights under the Scheme and acts through the Executive Director who, for the purpose of conducting audits and other activities under these Regulations, may from time to time delegate his functions or any of them to individuals whom he may appoint or remove as he may deem necessary, subject to such conditions as the HKQAA may from time to time impose.

3.2 The HKQAA shall operate the Scheme under the accreditation of relevant accreditation bodies using normative accreditation guidelines such as ISO/IEC 17021 and Guide 65.

4. Application

- 4.1 A Business who desires to be certified under the Scheme must make an application in writing to HKQAA and otherwise complete and submit the required application form requesting certification under the Scheme and provide all information and documents required by HKQAA. In relation to an application for certification of a Product the Business must clearly specify the Product and qualities thereof to be certified.
- 4.2 Following the making of an application for certification, HKQAA shall as soon as practicable

review the application to ensure that all required information has been provided, the requirements for certification have been clearly defined and the Business is prepared and ready to be assessed. HKQAA shall also determine that it has the capability to perform the certification service with respect to the scope of certification sought.

5. Audits

- 5.1 Following the submission of an application for certification, a Business being properly prepared and ready to be assessed and HKQAA determining that it has the required expertise to carry out the certification, HKQAA shall convene an audit team and conduct a full audit and assessment of the Business's Management Systems and/or evaluate the Product(s) of the Business in respect of the applied for certification.
- 5.2 All Businesses that are subsequently certified shall be subject to ongoing monitoring including on-site audits, and certified Businesses acknowledge that surveillance audits will be conducted at least once every year of certification. Prior to the end of each certification period a full recertification audit will be conducted of a Business and HKQAA shall make its decision on renewing certification based on the results of such recertification audit, as well as the results of the monitoring and surveillance that have taken place over the certification period.
- 5.3 All audits and decisions consequent to audits will be carried out by HKQAA in accordance with practices and policies determined and notified by HKQAA from time to time including the practices and policies set out in ISO/IEC 17021 and Guide 65. Businesses hereby acknowledge and agree to such practices and policies including those set out in ISO/IEC 17021 and Guide 65.
- 5.4 Without limitation to Clause 5.3:
 - 5.4.1 All audits and evaluations will be carried out by qualified and experienced personnel, either employed by HKQAA or contracted by HKQAA. HKQAA shall provide a Business with the names of all personnel who will form part of an audit team, and when requested will make available background information on each member of an audit team. Where possible, this will be done in sufficient time to permit a Business to object to any particular personnel, and for HKQAA to reconstitute an audit team in response to any valid objection.
 - 5.4.2 HKQAA agrees that it will in its reasonable judgment audit and evaluate sufficient objective evidence upon which to base a decision on whether to certify or re-certify a Management System.
 - 5.4.3 All Businesses acknowledge that they have the responsibility to ensure that the Management Systems and/or Products conform with the requirements of certification and that HKQAA will merely carry out an objective assessment and evaluation.
 - 5.4.4 HKQAA shall inform a Business of all the required arrangements for the conduct of an audit of a Management System and/or the evaluation of a Product, including provision for examining documentation, the required access to all processes and areas, records and personnel and testing of Products, all for the purposes of assessing certification, as well as in respect of future ongoing surveillance and recertification.
 - 5.4.5 The dates for an audit and/or evaluation shall as far as possible be agreed in advance.
- 5.5 It may be necessary for the HKQAA to conduct audits of certified Businesses or to further evaluate certified Products at short notice to investigate complaints, or in response to changes, or as follow up on Businesses whose certification has been suspended. In such cases;
 - 5.5.1 a Business will allow the audit and/or evaluation to proceed and will cooperate fully;
 - 5.5.2 HKQAA shall describe and make known in advance to the certified Business the conditions under which these short notice visits are to be conducted; and
 - 5.5.3 HKQAA shall exercise additional care in the assignment of the audit team, as a Business acknowledges that it will not have the opportunity to object to audit team members.

5.6 Additionally, in so far as the Management System Standards or Product Standards applicable to a certified Business require periodic unannounced audits or evaluations, then a Business agrees that it will allow such audits and evaluations to take place and will cooperate fully with HKQAA and its audit team at the time of the audit and/or evaluation.

6. Certification

- A Business who satisfies the HKQAA that it is capable of complying with these Regulations and the Scheme and that it carries on a bona fide business, and who gives to the HKQAA such undertakings and proof of the Business's legal status as it may require, shall, subject to the conditions of these Regulations, be entitled to be certified under the Scheme and obtain a Certificate which shall nevertheless remain the property of HKQAA. A separate Certificate will be issued in respect of each certification for which an application is made.
- 6.2 HKQAA shall certify a Business under the Scheme for an initial period of 3 years from the date of acceptance and thereafter certification under the Scheme shall be renewable (subject to compliance with these Regulations) every 3 years.
- 6.3 Certification is subject to the terms of these Regulations and HKQAA's rights hereunder. If a Business does not intend to renew its certification under the Scheme in respect of a certification pursuant to Clause 6.2 above, it must notify HKQAA in writing four months in advance of the end of the relevant 3 year term. If a Business wishes to terminate certification, it must give HKQAA at least 4 months notice in writing.
- 6.4 From the date of application, a Business shall be given a period of three years to put in place Management Systems and/or Products that are in accordance with the Scheme. A Business must submit a new application if the Business has not been certified within the said period unless otherwise agreed by HKQAA.

7. Information

- 7.1 HKQAA confirms that it will provide all interested parties with full information about the Scheme including the criteria for certification and the audit and certification process. Without limitation to the foregoing HKQAA shall on request provide a Business details or copies of all Management System Standards and Product Standards at reasonable charges and on reasonable terms to be decided by HKQAA from time to time. HKQAA shall also on request provide Businesses with all information reasonably requested relating to certification including information relating to the application process and the initial auditing of a Business, as well as information regarding the granting, maintenance, renewal, extension, suspension, reduction of and/or withdrawal of certification under the Scheme.
- 7.2 In addition, but subject always to Clause 13, HKQAA agrees to provide Businesses and other interested parties information regarding specific audits, including audits conducted in response to complaints.
- 7.3 HKQAA shall make available information about certifications granted, suspended or withdrawn in response to requests for such information from members of the public, and a Business acknowledges that its certification status will be publicly available information. HKQAA shall maintain a directory of certified Businesses that shall show amongst other things the name, scope and territory of each certified Business.

8. Impartiality

- 8.1 HKQAA recognises the importance of impartiality, the active management of conflicts and objectivity in operating the Scheme and HKQAA agrees to use all reasonable efforts to run the Scheme in a fair and impartial manner. Without limitation HKQAA shall not;
 - 8.1.1 provide and shall not offer consultancy services as to how to achieve certification under the Scheme;

- 8.1.2 provide and shall not offer information or internal audits to a Business;
- 8.1.3 contract out or outsource audits to any entity that provides consultancy services in relation to certification under the Scheme.

9. Assignment and Subcontracting

- 9.1 A Business may not sub-licence nor assign or otherwise transfer the right to use the Certificate or it's certification under the Scheme without the prior written permission of the HKQAA.
- 9.2 HKQAA may sub-contract out or outsource the auditing of a Business, the evaluation of a Product or other certification activities provided under the Scheme to a third party provided always;
 - 9.2.1 the ultimate decision as to whether to grant, renew, suspend or withdraw certification shall remain with HKQAA;
 - 9.2.2 HKQAA shall be fully responsible for all activities outsourced and such outsourced activities shall be provided in accordance with these Regulations.

10. Obligations of a Business

- 10.1 A Business warrants that it shall:
 - 10.1.1 at all times comply with these Regulations;
 - 10.1.2 claim compliance with the Scheme and certification rights with respect only to those activities and Products which are the subject of a Business's certification under the Scheme.
 - 10.1.3 establish, document and at all times maintain a Management System in accordance with the appropriate Management System Standards and/or other normative documents as agreed with HKQAA from time to time in respect of all business activities certified, and make available copies of all or any part of the Management System Documents on the request of HKQAA and/or if required lodge copies of the same with the HKQAA for reference purposes;
 - 10.1.4 manufacture and/or supply certified Products in accordance with the appropriate Product Standards and/or other normative documents as agreed with HKQAA from time to time.
 - 10.1.5 notify the HKQAA promptly of any intended changes to the Management System or Products or other changes which may affect conformity with a Business's certification pursuant to the Scheme.
 - 10.1.6 not use its certification in such a manner as to bring the HKQAA into disrepute, and a Business shall not make any statement regarding its certification which the HKQAA may consider misleading or unauthorized.
 - 10.1.7 ensure that its certification documents including the Certificate, or any report, or any part thereof, and the Certification Mark and the trade marks and trade names of HKQAA are not used in a misleading manner.
 - 10.1.8 give the representatives of HKQAA access (without prior notice if required by HKQAA) during normal working hours (including shift operating hours) to the premises or sites in which work or services the subject of the certification under the Scheme is being carried out or provided and/or Certified Products are being manufactured or stored, for the purpose of, inter alia;
 - (a) examining materials, processes, finished articles, methods of testing, methods of operation, records and systems, Management System Documents, verifying that the Management System in place and/or certified Products being produced or

- supplied are in accordance with the Business's certification under the Scheme; and
- (b) undertaking audits or establishing that a Business has carried out its obligations on withdrawal of certification under the Scheme as described in Clause 20.
- 10.1.9 provide the HKQAA on request samples of brochures and promotional materials and samples of goods (including certified Products) which may be tested by an accredited laboratory to confirm conformance to standards claimed directly or by inference by a Business in its Management System Documents.
- 10.1.10 nominate a management representative and one or more deputies authorised to act in the nominee's absence and replacement nominees as may be necessary (such nominations to be subject to HKQAA's approval) who shall be responsible for all matters in connection with the requirements of a Business's certification under the Scheme.
- 10.1.11 maintain the required Management System Documents and operate its Management System in accordance with the Management System Documents, and in all respects to the standards applicable to the particular trade or industry of a Business.
- 10.1.12 use certification only to indicate that the Business's Management Systems and/or Products are in conformity with the appropriate Management System Standards and/or Product Standards and/or other normative documents, and not use the Business's certification to imply that a product or service is approved or certified by the HKQAA when it is not.
- 10.1.13 make available to the HKQAA, when requested, the records of all complaints and corrective action taken in accordance with the appropriate Management System Standards and/or Product Standards and/or other normative documents.
- 10.1.14 ensure that all its goods (including any certified Products) of the Business are of merchantable quality and fit for their proper purpose and that all its services are provided to customers and clients with all reasonable care and skill.
- 10.2 A Business acknowledges that the certification of its Management System and/or Products by HKQAA in accordance with the Scheme and any continuing certification has or will in part be based upon documentation, records and samples which the Business has or will provide HKQAA, and the Business hereby warrants that all such documents and records have in the past and will in the future be entirely accurate and genuine and all samples have in the past and will in the future be properly representative of Products and will not in any way be amended or created for the purposes of certification and that the Business's continuing certification hereunder is conditional on the Business complying strictly with this warranty.
- 10.3 A Business warrants that any English or Chinese translation provided of its official name in the application for certification is true and accurate and solely indicates and represents the Business and not any non-certified entity.
- 10.4 A Business warrants that it shall only use its certification in relation to its own business and will not imply that any parent, subsidiary, affiliate, partner or other entity is certified when this is not the case including by the use of any misleading English, Chinese or other translation or version of the name of the certified company specified in the certified companies application and proof of legal status as provided under Clause 4.

11. Charges

- 11.1 The HKQAA shall charge and a Business shall pay;
 - 11.1.1 an application and documentation assessment fee;
 - 11.1.2 a fee for each Certificate granted payable annually. The first annual fee shall be payable by a Business upon award of a Certificate and subsequent annual fees shall be due on the anniversary of certification. There shall be no refund of the annual fee

- notwithstanding that a Business has its certification rights suspended or withdrawn or upon a Business terminating certification;
- 11.1.3 audit fees for first stage assessment, pre-audit (optional), certification audit visit, Product evaluation, follow up visit, surveillance visit and renewal audit and/or evaluation shall be charged according to the actual mandays and the prevailing manday unit rate agreed by both parties;
- 11.1.4 other fees for any use of any additional accreditation marks permitted by HKQAA from time to time. Overseas travelling expenses including meals, transportation and accommodation costs as may be incurred by HKQAA in respect of a Business shall be subject to mutually agreement between HKQAA and a Business; and
- 11.1.5 any additional costs incurred by HKQAA due to a Business's non-compliance with these Regulations, and activities related to Clause 10.1.8.
- 11.2 All fees to be charged to and payable by a Business in accordance with Clause 11.1 shall be those fees that the HKQAA believe in its discretion to be fair and reasonable, and the rate or amount of such fees may be increased from time to time by the HKQAA without notice to a Business. HKQAA shall provide a Business full details and information concerning all relevant fees relating to the Scheme on request.
- 11.3 The application and documentation assessment fee (non-refundable) shall be payable by a Business upon submission of an application for certification. Fees for first stage assessments, pre-audits (optional), certification audits and Product evaluations and follow up visits shall be payable in advance before the required work is undertaken by the HKQAA. Surveillance visits, renewal audits and evaluations, overseas travelling expenses reimbursement and annual fees (non-refundable) shall be payable within 30 days from date of invoice. All fees paid shall be non-refundable and shall not be subject to set-off, deduction or refund.
- 11.4 If a Business fails to pay any fees on their respective due dates the HKQAA shall be entitled to charge a Business interest on the outstanding fee at the rate of 4% per annum above the Hong Kong and Shanghai Banking Corporation Limited's Prime Rate in force from time to time from the date the payment became due until actual payment is made.

12. Obligations of HKQAA

12.1 Without prejudice to Clause 5 the HKQAA shall use its best endeavours to send a representative to a Business not less than twice in any 12 month period in which a Business is manufacturing Products or operating processes or rendering services for which it is certified for the purpose of verifying that the obligations imposed by the certification under the Scheme and these Regulations are being carried out.

13. Confidentiality

- 13.1 All information of a technical or business nature disclosed by a Business to HKQAA in the certification process shall be regarded as confidential and shall only be disclosed by HKQAA to its employees and sub-contractors as is necessary and HKQAA shall ensure that such personnel treat such information as confidential. Such information shall only be used by HKQAA for the purposes of auditing and certification and shall not without the prior written consent of the disclosing entity be disclosed by HKQAA to any third party, provided always the foregoing obligations of confidence shall not apply to information which is:
 - 13.1.1 in the public domain;
 - 13.1.2 already in the possession of the HKQAA or later comes into the possession of the HKQAA without any obligations of confidence from an independent third party who has not derived it from the Business in question;
 - 13.1.3 disclosed to a third party pursuant to the written consent of the Business in question;

- 13.1.4 disclosed to a third party pursuant to statutory, regulatory or other legal requirements including any Order of court; or
- 13.1.5 disclosed for the purpose of accreditation or recognition assessment.
- 13.2 HKQAA shall prior to disclosure of information under Clause 13.1.4 or 13.1.5 above inform the Business of the intended disclosure (unless prohibited by law).
- 13.3 HKQAA may disclose confidential information of a Business to its subcontractors and auditors. HKQAA confirms that it shall inform all of its employees (including committee members) and all sub-contractors acting on its behalf of the confidentiality obligations of HKQAA as specified above, and HKQAA shall be responsible for ensuring that such employees and subcontractors keep all relevant information confidential.
- 13.4 For the purposes of Clause 13.1 confidential information of a Business shall include information concerning a Business received from third party sources, under conditions of confidentiality.

14. Exclusion of liability

- 14.1 Subject to the Control of Exemption Clauses Ordinance (Cap.71) HKQAA shall not be liable to a Business for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the certification of a Business or its Products under the Scheme or the sale of goods (including certified Products) or rendering of services to the public by a Business (whether or not by reference to the Certification Mark), and notwithstanding the generality of the foregoing the HKQAA expressly excludes liability for consequential loss or damage suffered by a Business including any loss or damage resulting from claims brought by any clients or customers of a Business, or for loss of profit, business, revenue, goodwill or anticipated savings.
- 14.2 Subject to Clause 14.1 above all conditions and warranties on the part of the HKQAA implied by statute, common law or otherwise are expressly excluded.
- 14.3 Without prejudice to Clauses 14.1 and 14.2, and in the event that the courts of Hong Kong consider a complete exclusion of liability hereunder to be unreasonable, HKQAA's liability in contract, tort or otherwise to a Business with respect to any claim arising in connection with its acts or omissions in assessing and/or certifying a Business and/or operating the Scheme shall be limited to no more than ten times the fees received by HKQAA from a Business in the year in which the alleged liability arose or HK\$200,000 whichever is less.

15. Indemnity

- 15.1 A Business shall be liable for and will indemnify the HKQAA against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the HKQAA whether direct or consequential (including but without limitation any economic loss or other loss of profits, business or goodwill) arising out of any dispute or contractual, tortious or other claims or proceedings brought against the HKQAA by a third party claiming relief against the HKQAA by reason of;
 - 15.1.1 the certification of a Business under the Scheme and/or the breach of these Regulations by a Business;
 - 15.1.2 the manufacture, use or sale of any goods (including certified Products) or the provision of any services by reference to the Certification Mark or a Business's certification under the Scheme.

16. Records

- 16.1 HKQAA shall maintain full records on the audit and other certification activities for all Businesses.
- 16.2 Businesses recognise that records on Businesses shall without limitation include the following;

- 16.2.1 application information and initial audit, evaluation, surveillance and recertification reports;
- 16.2.2 records of complaints and appeals, and any subsequent correction or corrective actions;
- 16.2.3 documentation of certification decisions;
- 16.2.4 certification documents, including the scope of certification with respect to Products, processes or services, as applicable;
- 16.2.5 related records necessary to establish the credibility of certification, such as evidence of the competence of auditors and technical experts.
- 16.3 HKQAA shall keep the records on Businesses secure to ensure that the information is kept confidential. Records shall be transported, transmitted or transferred in a way that ensures that confidentiality is maintained.

17. Ownership and use of Certification Mark

- 17.1 The HKQAA is the beneficial owner of the Certification Mark and is not aware that the use of the Certification Mark will infringe the rights of any third party in Hong Kong or elsewhere but gives no warranty as to whether any such third party rights will be infringed in Hong Kong or elsewhere.
- 17.2 A Business will not make any representation or do any act which may be taken to indicate that it has any right, title or interest in or to the ownership or use of the Certification Mark except under the terms of its certification under the Scheme, and acknowledges that nothing contained in these Regulations shall give a Business any right, title or interest in or to the Certification Mark save as granted hereby.
- 17.3 Upon certification a Business may use the Certification Mark. A Business undertakes only to use the Certification Mark in accordance with the TM Guidance Document, that will be provided to a Business on or_before certification. A Business will on request give to the HKQAA any information as to its use of the Certification Mark.

18. Temporarily suspending or amending certification rights

- 18.1 If a Business is temporarily unable to comply with the requirements of certification and/or fails to comply with these Regulations including any failure to permit surveillance or recertification audits, the HKQAA may require the Business in question to discontinue use of the Certification Mark or any claim to certification under the Scheme with immediate effect until it is satisfied that the conditions of certification are again achieved, and the Business in question has remedied any breach of these Regulations.
- 18.2 Alternatively HKQAA may temporarily amend the scope of certification in circumstances where a Business is unable to comply with these Regulations in respect of the full scope of its original certification.
- 18.3 HKQAA will on the request of a Business suspend a Business's certification.

19. Reducing and withdrawing certification rights

- 19.1 The HKQAA may forthwith withdraw a Business's certification under the Scheme or permanently reduce the scope of such certification or refuse to grant or renew certification or extend its scope by notice in writing if a Business;
 - 19.1.1 is unable to comply with the requirements of certification and/or commits a breach of these Regulations including any failure to permit surveillance or recertification audits, provided that if the breach is capable of remedy the notice shall only be given if a Business shall not have remedied the same within one month of having been given notice in writing specifying the breach and requiring it to be remedied.

- 19.1.2 is subject to a suspension order or an amendment order under Clause 18 for more than 6 months.
- 19.1.3 becomes subject to the bankruptcy laws or makes any arrangements or composition with its creditors, or enters into liquidation, whether compulsory or voluntary (but not including liquidation for the purpose of reconstruction), or has a Receiver of its business appointed, or an officer of a Business is convicted of an offence tending to discredit the reputation and good faith of the Business as a trader.
- 19.2 The decision to withdraw or reduce the certification rights of a Business shall (subject to Clause 23) be at HKQAA's absolute discretion and such decisions or grounds shall be notified to a Business in writing.

20. Consequence of Suspension or Withdrawal

- 20.1 Upon suspension or withdrawal of a Business's certification under the Scheme (for whatever reason) a Business agrees and warrants that it shall forthwith;
 - 20.1.1 cease using the Certificate and/or Certification Mark in any manner whatsoever and shall cease using any advertising or other material that may imply that a Business and/or its Products are certified under the Scheme.
 - 20.1.2 cease carrying on business or operating in a manner which may imply that a Business and/or its Products are certified under the Scheme and cease holding out any present connection or association with the HKQAA.
 - 20.1.3 at HKQAA's option either deliver up to the HKQAA or destroy in the presence of a representative of the HKQAA (if HKQAA wish a representative to be present) the Certificate, all materials and items bearing the Certification Mark and other material contemplated by sub-clause 20.1.1
 - 20.1.4 notify all customers of the suspension or termination of certification rights where certification is a condition of contract with a customer and where business is active or likely to be active with that customer within one year of suspension or termination.
- 20.2 In circumstances where a certification is amended, a Business shall only claim certification in its reduced form and shall amend all use of the Certification Mark and advertising material accordingly.

21. Duration

21.1 These Regulations (as amended from time to time) shall remain in force for so long as any Business is certified under the Scheme.

22. Complaints

- 22.1 HKQAA agrees to investigate in its reasonable discretion all complaints received in respect of the Scheme including in respect of the audit and certification process and the certification of Businesses.
- 22.2 Upon receipt of a complaint, HKQAA shall confirm whether the complaint relates to the Scheme and, if so, HKQAA shall use reasonable efforts appropriately to address and resolve the same. Such complaints shall be addressed and investigated in accordance with the HKQAA documented complaint handling procedure.
- 22.3 Without limitation a Business acknowledges that if a complaint relates to its certification, the examination of the complaint shall consider the effectiveness of its certified Management System and/or the quality of its certified Products, as appropriate.

23. Appeal

- 23.1 In the event of a Business wishing to appeal against any decision of the HKQAA under these Regulations it shall within 21 clear days after having been officially informed of such a decision give notice in writing to the secretary of the HKQAA of its desire to appeal against that decision. A meeting of the Appeals Panel shall be held within 30 clear days of receipt of such notice and the appellant shall be given at least 7 clear days notice of the time and place of such a meeting. The original decision of the HKQAA shall stand (and its effect take place) pending any meeting of the Appeals Panel. At such a meeting both the appellant and the HKQAA executives shall be entitled to be heard in confidence. The decision of the majority of the Appeals Panel as declared by its chairman shall be final. The chairman may exercise a casting vote. The chairman shall provide the appellant a written statement of the appeal findings; including the reason for the decision reached, within 21 clear days after the decision of the Appeals Panel is made.
- 23.2 No member of an Appeals Panel may have any direct interest in the subject of the appeal. Nevertheless, an appellant shall have the right to state objections to the constitution of the Appeals Panel. Following receipt of any objection the Council shall consider the objection and decide whether to change or retain the constitution of the Appeals Panel. The Council's decision in relation to the objection and constitution of the Appeals Panels shall be final.

24. Alterations

24.1 These Regulations and/or Scheme may from time to time be altered by the HKQAA. No such alterations shall affect the right of a Business to use the Certification Mark or claim to be certified under the Scheme unless or until it shall have been given notice in writing of such alterations by the HKQAA who will notify a Business of the date by which it must comply with the altered Regulations and/or Scheme, which shall not normally be less than six months from the date of notification of the alteration. Following the date of effectiveness of the altered Regulations and/or Scheme HKQAA shall use its best efforts to verify that each Business carries out any necessary adjustments to its procedures and/or Management System and/or Products within such time as HKQAA considers reasonable.

25 Notice

Any notice given under these Regulations shall be in writing and signed by or on behalf of the party giving it and may be served by leaving it or sending it by post, in the case of HKQAA or a Business, at or to its address for the time being (registered office where applicable). Any notice so served by post shall (unless the contrary is proved) be deemed to have been served forty eight hours from the time of posting; and in proving such service it shall be sufficient to prove that the notice was properly addressed and posted in accordance with this clause.

26. Waiver

26.1 No failure or delay on the part of the HKQAA to exercise any right or remedy under these Regulations shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy as the case may be. The rights and remedies provided under these Regulations are cumulative and are not exclusive of any rights or remedies provided by law.

27. Governing Law

27.1 The Regulations shall be construed in accordance with the laws of Hong Kong and shall be subject to the exclusive jurisdiction of the courts of Hong Kong.

香港品質保證局

規章

2008年10月15日

規章

1. 導言

1.1 本規章(定義見下文)列出香港品質保證局(定義見下文)爲提供認證計劃 (定義見下文)而制訂的規則,供認證雙方遵守。認證計劃旨在爲擁有認可管 理體系(定義見下文)及產品的公司及商戶提供認證服務。

2. 釋義

2.1 就本規章而言:

"上訴委員會" 指爲了聽取與認證計劃有關的上訴而成立的委員會。就每

次上訴所成立的委員會須由董事局主席(或其委任的代

表)和至少兩名其他董事局成員組成。

"商戶" 指已經申請但尚未獲取證書的個人、商號、法人團體或非

屬法團的團體,和/或已經獲頒證書的個人、商號、法人團

體或非屬法團的團體,依上下文而定。

"證書" 指香港品質保證局所發出、經**香港品質保證局**一名董事

(為董事局成員之一)及總裁加簽的證書,確認**香港品質保證局**在審核商戶所使用的管理體系和/或商戶所制造和/或提供的產品後,認爲該商戶的管理體系和/或產品符合本規

章的要求。

"認證標誌" 指獲得認證的商戶將獲准用來證明其認證資格的香港品

質保證局已經註冊爲商標的標誌。

"董事局" 指香港品質保證局的管治機構。

"總裁" 指董事局所委任、目前掌管日常管理香港品質保證局事務

的香港品質保證局全職職員。總裁亦兼任香港品質保證局

公司秘書一職。

"指南65" 指與認證機構對產品進行檢測和認證有關的、由ISO和IEC

頒布的一般要求和標準。

"香港品質保證局" 指香港品質保證局,該局是爲提供認證計劃而成立的非牟

利機構。

"IEC" 指 "國際電工技術委員會"。

"ISO" 指 "國際標準化組織"。

"ISO/IEC 17021" 指由ISO和IEC就認證機構對管理體系進行審核及認證所

頒布的一般要求和標準;認證機構須遵守上述要求和標準,以確保認證機構以適當、統一且公平的方式實施第三方管理體系認證計劃,從而在國家和國際層面上提高認證

機構的認可度及其認證計劃的接受度。

"管理體系" 指爲了實施管理體系而需要的組織架構、職責、程序、工

序和資源。

"管理體系文件" 指列出具體產品、服務、合同或項目有關的、涉及管理體

系的特定做法、資源和活動順序的文件,可能包括一份

"體系手冊"。

"管理體系標準" 指爲了按本規章獲得認證、商戶管理體系必須遵守的、由

ISO和/或其他相關組織不時頒布的各種適用標準。

"產品" 指就香港品質保證局向商戶提供認證服務時,所涉及的產

品和/或產品的具體設計或規格,和/或產品的製造工序。

"產品標準" 指爲了按本規章獲得認證、產品必須符合的、由ISO和/或

其他相關組織不時頒布的、適用的技術標準和其他標準。

"本規章" 指本文件內就認證計劃所列的各項規例。

"行業計劃" 指為某些技術領域內的機構進行認證而建立的、須設立特

殊程序及規則以補充本規章的計劃。

"體系手冊" 指用於制訂並實施管理體系的主要文件;該文件旨在就管

理體系作出充分描述,並爲實施及維持該管理體系提供永

久參考。

"認證計劃" 指由香港品質保證局提供的、用來對擁有分別符合於管理

體系標準和產品標準的管理體系和/或產品的商戶進行認

證的計劃(包括行業計劃)。

"商標標誌 指陳述經過認證的商戶使用認證標誌時須遵守的條款與

指導文件"條件的商標使用者文件。

3. 權限

3.1 香港品質保證局是香港特別行政區政府承認為提供認證計劃並在認證計劃下授權 頒發證書的機構,通過總裁來行使權力。總裁按本規章進行審核或其他活動時,總裁可以不時將其職能或其中任何職能授予視乎需要而委任或罷免的人士。

3.2 香港品質保證局也按照諸如ISO/IEC 17021、指南65規範性、認可性要求下提供認 證計劃。

4. 申請

- 4.1 商戶若希望通過認證計劃獲得認證,必須向香港品質保證局提出書面申請或填寫 並提交申請認證計劃的指定申請表,同時提供香港品質保證局的所有資料和文 件。關於申請產品認證,商戶必須明確指出要認證的產品及有關品質。
- 4.2 商戶提出認證申請後,香港品質保證局須在切實可行範圍內盡快審視申請,以確保所有指定資料已經提供,認證要求已得到明確規定,而商戶的審核也準備好接受評審。香港品質保證局還須確定,本身有能力在所要求的認證範圍內,履行認證服務。

5. 審核

5.1 商戶在提交認證申請後,已經準備就緒接受評審,而香港品質保證局也確定本身

具備進行有關認證的必要專門知識,香港品質保證局便須組織審核小組,針對申請的認證內容對商戶的管理體系進行全面審核與評審,和/或對商戶的產品進行評核。

- 5.2 所有通過認證的商戶,須接受包括現場審核在內的持續監督,而通過認證的商戶 也必須承認將至少每年接受一次的監督審核。在每個認證期結束之前,將對商戶 進行一次全面覆核,香港品質保證局須根據再覆核的結果以及在認證期內所進行 的監控與監督結果,決定是否續發商戶的認證。
- 5.3 所有審核以及由此而做出的決定,將由香港品質保證局根據香港品質保證局不時制定和通告的規範做法和方針來完成,包括ISO/IEC 17021和指南65中所列出的規範做法和方針。商戶必須承認並認可此類規範做法和方針,包括ISO/IEC17021和指南65中所列出的規範做法和方針。
- 5.4 不限於條款5.3的各方權利:
 - 5.4.1 所有審核與評審將由合格且富有經驗的人員完成,可以是香港品質保證局的僱員或是香港品質保證局的分包人員。香港品質保證局須將審核小組全體人員的姓名提供給商戶,並在商戶要求時提供審核小組各成員的背景資料。在可行的情况下,應當預留充份時間,讓商戶就任何特定成員提出反對,並讓香港品質保證局在出現任何有效拒絕的情況下,可以重新組織審核小組。
 - 5.4.2 香港品質保證局同意將根據其合理判斷,對充分客觀的證據給予審核與評核,並根據該等證據決定是否對管理體系進行認證或續認。
 - 5.4.3 所有商戶承認有責任確保管理體系和/或產品符合認證的要求,而香港品質保 證局只須進行客觀的評審與評核即可。
 - 5.4.4 香港品質保證局須就進行管理體系審核和/或產品評核有關的所有必需安排通知商戶,包括提供考核文件、探視所有工序和工區、記錄和人員以及產品檢測的必須機會。所有安排是爲了進行認證評審和將來的持續監督審核與覆審。
 - 5.4.5 審核和/或評核的日期須盡量預先商定。
- 5.5 香港品質保證局在必要時會向獲認證的商戶提出短期內進行審核或進一步評核經 過檢定的產品,以便調查投訴、對變更做出反饋或者對暫停認證資格的商戶進行 跟進審核。在此類情况下:
 - 5.5.1 商戶須允許審核和/或評核工作展開並給予通力合作;
 - 5.5.2 香港品質保證局須預先向獲認證的商戶描述並知會要進行臨時巡視的條件;以及
 - 5.5.3 香港品質保證局在指派審核小組時必須格外謹慎,因為商戶須確認不會有機會就審核小組成員提出反對。

5.6 另外,若適用於認證商戶的管理體系標準或產品標準規定進行定期突擊審核或評核,商戶須同意允許此類審核與評核展開,並在審核和/或評核時與香港品質保證局及其審核小組誦力合作。

6. 認證

- 6.1 商戶若能使香港品質保證局確信,該商戶能遵守本規章和認證計劃,誠實地進行 其業務,並按香港品質保證局要求提供有關其法律地位的保證及證明,在服從本 規章各項條件的前提下,商戶將有權按認證計劃獲得認證和取得認證證書,但此 證書仍是香港品質保證局的資產。就每次申請而進行的每次認證,將單獨頒發一 份證書。
- 6.2 香港品質保證局須按認證計劃爲商戶認證,初步期限爲三年(從接受日期起算), 此後按認證計劃進行的認證須每三年續期一次(取決於是否符合本規章)。
- 6.3 認證受本規章條款和下文提及的香港品質保證局權利的約束。商戶若無意根據上 述條款6.2為某項認證資格按認證計劃進行覆審,便須在有關的三年期限結束之 前,提前四個月以書面形式通知香港品質保證局。如果商戶希望終止認證資格, 則必須至少提前四個月以書面形式通知香港品質保證局。
- 6.4 從申請日開始,必須給予商戶三年期限,讓商戶使其管理體系和/或產品符合認證計劃。商戶若未能在上述期限內通過認證,便須提交新的申請,除非香港品質保證局同意無須如此。

7. 資料

- 7.1 香港品質保證局確認將爲相關各方提供關於認證計劃的全面資料,包括認證標準以及審核與認證程序。不僅如此,香港品質保證局還須按其不時釐定的合理費用與合理條款,應商戶要求提供所有管理體系標準和產品標準的細節或副本。香港品質保證局還須應商戶的合理要求,向商戶提供與認證的所有資料,包括關於申請程序和商戶初步審核有關的資料,以及按認證計劃授予、維持、續發、延長、暫停、縮减和/或撤銷認證資格的資料。
- 7.2 另外,在始終受條款13的約束下,香港品質保證局同意向商戶和其他相關各方提 供有關具體審核的資料,包括針對投訴而進行的審核。
- 7.3 香港品質保證局須應公眾要求,披露關於授予、暫停或撤銷認證資格的資料,商戶也須承認其認證狀況屬於公開資料。香港品質保證局須保留一份認證商戶的名錄,名錄須包括各個認證商戶的名稱、認證範圍和業務領域。

8. 公正性

- 8.1 香港品質保證局認為,在提供認證計劃的過程中,保持公正積極解決衝突和保持 客觀重要;香港品質保證局同意按公正不阿的方式提供認證計劃。在任何情況下, 香港品質保證局均不得:
 - 8.1.1 提供或表示願意提供關於如何按認證計劃取得認證資格的諮詢服務;
 - 8.1.2 向商戶提供信息或內部審核服務;

8.1.3 將審核工作分包或外判給任何提供關於按認證計劃認證的諮詢服務的單位。

9. 轉讓與分包

- 9.1 未經香港品質保證局書面同意,商戶不得將認證計劃的證書使用權或認證資格分 授許可權、轉讓或以其他方式轉移。
- 9.2 只有當以下條件獲得滿足,香港品質保證局方可將商戶的審核、產品的評核或屬 於認證計劃的其他認證活動分包或外判給第三方:
 - 9.2.1 香港品質保證局須保留關於授予、續發、暫停或撤銷認證資格的最終決定權;
 - 9.2.2 香港品質保證局須對所有分包活動完全負責,而此類分包活動須按本規章 提供。

10. 商戶的責任

- - 10.1.1 無論何時均遵守本規章;
 - 10.1.2 只聲稱其認證範圍內的業務及產品符合認證計劃及認證權利。
 - 10.1.3 根據相關的管理體系標準和/或不時與香港品質保證局商定的其他規範文件,爲獲得認證的所有業務建立並且無論何時均維持有關的管理體系並制訂該管理體系的文件資料,以及在香港品質保證局要求下,將該等管理體系文件的全部或任何部分的副本披露和/或複印件提交給香港品質保證局參考。
 - **10.1.4** 按適當的產品標準和/或不時與香港品質保證局商定的其他規範文件,製造和/或供應獲認證的產品。
 - **10.1.5** 就任何對管理體系或產品的意圖更改或有可能影響商戶認證資格對認證 計劃的符合性的更改,須盡快通知香港品質保證局;
 - 10.1.6 其使用證書的方式不會使**香港品質保證局**的聲譽受損,商戶也不得作出**香港品質保證局**可能認爲誤導或未經授權的有關認證的任何言論。
 - **10.1.7** 確保不以誤導方式使用其認證文件,包括其證書、任何報告或其任何部分、認證標誌以及**香港品質保證局**的商標及商名。
 - 10.1.8 允許**香港品質保證局**的代表(若香港品質保證局要求則無須事先通知)於正常工作時間(包括輪班操作時間)內,進入正在進行或提供認證範圍內的工作或服務的處所或場地,和/或進入正在製造或儲存認證產品的處所或場地,其主要目的是:
 - (a) 檢查物料、工序、製成品、測試方法、操作方法、記錄及系統、 管理體系文件,核實管理體系是否到位和/或正在生產或供應的 認證產品是否符合認證要求;並

- (b) 進行審核,或確定商戶已經如條款20所述,履行了有關撤銷認證 資格的義務。
- 10.1.9 應**香港品質保證局**的要求提供產品資料樣本和宣傳材料,並提供產品樣本(包括認證產品),由認可實驗室測試,獲核實商戶是否與其管理體系文件中直接聲稱或藉推論聲稱所達到的標準一致。
- 10.1.10 指派一名管理者代表和在該管理者代表缺席時授權行事的一名或多名代理,以及可能需要代替該管理者代表的替代人(此類指派須得到香港品質保證局的認可)。上述人士負責與認證計劃下對商戶的認證要求有關的一切事務。
- 10.1.11 維持指定的管理體系文件並根據管理體系文件來運用管理體系,同時在 各個方面都符合適用於商戶具體行業或工業的標準。
- 10.1.12 認證資格只用來表明商戶的管理體系和/或產品符合適當的管理體系標準和/或產品標準和/或其他的規範文件。商戶在認證資格實際上並未獲通過的情况下,不得暗示某產品或服務已經獲得香港品質保證局的審批。
- 10.1.13 應香港品質保證局要求披露所有投訴記錄以及根據適當的管理體系標準、產品標準和/或其他規範文件而採取的糾正措施的記錄。
- **10.1.14** 確保其所有貨品(包括任何認證產品)具備可商售品質和適用於適當的 用途,並確保以合理的謹慎態度和技術水平向客戶和顧客提供服務。
- 10.2 商戶須承認香港品質保證局是根據認證計劃對其管理體系和/或產品進行的認證 或任何持續認證是/或將部分建立在商戶已經或將要提供給香港品質保證局的文 件、記錄和樣本的基礎之上。商戶須特此保證,所有此類文件和紀錄,無論是過 去的還是將來的均完全準確及真實而以往和將來提供的所有產品樣本,都能恰如 其分地代表產品,不會爲了認證而做出任何形式的修改或創造,而該商戶在本規 章下的持續認證,取決於商戶是否能嚴格履行上述保證。
- **10.3** 商戶須保證在申請認證時提供的中英文正式名稱是真實、準確的,而且只指稱並 代表該商戶而非任何非認證的單位。
- 10.4 商戶須保證認證資格只用於本身的業務,不會在不屬實的條件下,用來暗指任何 母公司、分公司、附屬公司、夥伴或其他單位已經通過認證,包括使用認證公司 在按條款4提出申請和提供法律身份證明時所指明的認證公司名稱的任何具誤導 性的英文、中文或其它翻譯或版本的名稱。

11. 費用

- 11.1 香港品質保證局須收取而商戶須繳付的費用包括;
 - 11.1.1 申請和文件評審費;

- 11.1.2 就每份獲頒發的證書每年應繳納費。商戶在獲頒發證書時必須支付第一年 的年費。後續年費須不遲於認證每一周年到期日繳付。即使商戶的認證權 利被暫停,又或撤銷或商戶終止認證資格,年費也不予退還;
- 11.1.3 第一階段評價、預審(可選)、認證審核、產品評核、跟進審核、監督審核和續期覆審和/或評審均須按照實際人日計算,而每人日單位收費則根據雙方同意的標準收費。
- 11.1.4 使用香港品質保證局不時准許的任何額外認可標誌的其他費用。香港品質保證局可能因商戶而發生的海外旅費,包括膳食、交通費和住宿費,須受香港品質保證局和商戶之間達成的相互協議的約束;以及
- 11.1.5 由於商戶不遵守本規章以及與條款10.1.8有關的活動而讓香港品質保證局 負擔的任何額外費用。
- 11.2 根據條款11.1,向商戶收取並須由商戶支付的所有費用,須爲是香港品質保證局酌情認爲公平且合理的費用。此類費用的收費率和金額,香港品質保證局可能會不時調整而無須通知商戶。關於與認證計劃相關的所有費用,香港品質保證局須應商戶要求提供完備的細節和資料。
- 11.3 商戶須在提交認證申請時繳付申請與文件評審費(不會退還)。第一階段評價、 預審(可選)、認證審核、產品評核和跟進審核的費用須繳付,然後才由香港品 質保證局開展規定的工作。監督審核、續期覆審與評審、海外旅費的付還以及年 費(不會退還),須在發票開具日期的30日內繳付。所有已付費用均不會退還, 並且不予扣除或抵銷。
- 11.4 如果商戶未能在相應的到期日繳付任何費用,那麽對於未清繳的費用,從付款到期日起算直到實際支付期間,香港品質保證局有權向商戶收取利息,而年利率為香港滙豐銀行現行最優惠利率另加4%。
- 12. 香港品質保證局的責任
- 12.1 在不影響條款5的原則下,香港品質保證局須盡力在任何12個月的期間內不少於兩次向商戶派遣一名代表,以核實商戶正在按認證計劃要求及本規章所規定的責任製造產品、實施工序或提供服務(均屬認證範圍)。
- 13. 保密
- 13.1 商戶在認證過程中向香港品質保證局披露的所有技術或商業性質的資料,均被視 爲機密資料,香港品質保證局只能在必要時向僱員和分包商披露,而香港品質保 證局也須確保此類人員將資料保密。香港品質保證局只能將此類資料用於審核和 認證,事先未得披露單位的書面同意,香港品質保證局不得將此類資料向任何第 三方披露,但上述保密責任應當不適用於下列情况:
 - 13.1.1 屬於公共範疇的資料;
 - 13.1.2 香港品質保證局已經擁有,或者香港品質保證局日後在無任何保密責任的 情况下從獨立的第三方獲得的資料,而該第三方並不是從有關商戶獲取該 資料的;

- 13.1.3 依據有關商戶的書面同意而向第三方披露的資料;
- **13.1.4** 依據法例規定、規管性質的規定或其他法律規定(包括任何法院命令)而向 第三方披露的資料;或者
- 13.1.5 爲了認可評審或承認評估而披露的資料。
- 13.2 香港品質保證局若有意披露上述條款13.1.4或13.1.5所述的資料,須在披露前通知商戶(除非法律禁止)。
- 13.3 香港品質保證局可將商戶的機密資料向分包商和審核員披露。香港品質保證局確認該局須通知所有僱員(包括董事局成員)和所有分包商代表其履行上述香港品質保證局的保密責任。香港品質保證局須負責確保上述僱員和分包商能爲所有相關資料保密。
- 13.4 就條款13.1而言,商戶的機密資料,須包括在保密條件下從第三方來源取得的有關 商戶的資料。

- 14.1 根據《免責條例管理規劃(第71條)》的規定,對於商戶的認證、商戶在認證計 劃範圍內的產品、或者商戶向公眾銷售貨品(包括認證產品)或提供服務(無論 有沒有引用認證標誌)而直接或間接以任何方式對商戶造成的任何損失或損害, 香港品質保證局概不負責。儘管上述規定具有一般性的原則,對於商戶遭受相應 性的損失或損害,包括商戶的客戶或顧客索賠造成的損失或損害,或者利潤、業 務、收入、信譽或預期節省額的損失,香港品質保證局明確排除任何責任。
- 14.2 根據上述條款14.1的規定,本規章明確排除成文法、普通法或其他法律所隱含的香港品質保證局方面的所有條件及保證。
- 14.3 在不影響條款14.1和14.2的原則下,以及在香港法院認爲本規章所載的完全免責條款不合理的情况下,對於香港品質保證局在爲商戶進行評審和/或認證提供和/或實施認證計劃過程中的行動或疏忽而引起的任何索賠,香港品質保證局在合同、侵權或其他方面對商戶擔負的責任,應當不超過在所指稱責任出現的年份中香港品質保證局從商戶收到的費用的十倍,或者爲港幣200,000元,以較低者爲準。

15. 賠償

- 15.1 由於下列原因而引起任何爭端或者、合同、侵權或其他方面的索賠或者第三方向 香港品質保證局提出訴訟以索取寬免,從而為香港品質保證局帶來的任何或所有 的直接或相應損失,如任何法律責任、損失、損害、費用、法律支出、專業和任 何性質的其他費用,(包括但不限於任何經濟損失或者其他的利潤、業務或信譽 損失),商戶應予以負責並對香港品質保證局給予賠償。
 - 15.1.1 根據認證計劃進行商戶認證和/或商戶違反本規章;
 - **15.1.2** 引用認證標誌或商戶的認證資格來製造、使用或銷售任何貨品(包括 認證 產品)或提供任何服務。

16. 記錄

- 16.1 香港品質保證局須保留所有商戶的審核與其他認證活動的全面記錄。
- 16.2 商戶須承認,關於商戶的記錄須包括但不限於下列內容:
 - 16.2.1 申請資料和初步審核、評核、監督和覆審報告;
 - 16.2.2 投訴和上訴記錄,以及其後的任何改正或糾正措施;
 - 16.2.3 認證決定方面的文件;
 - 16.2.4 認證文件,包括產品、工序或服務(視乎何者適用)的認證範圍。
 - **16.2.5** 樹立認證可信性所需的相關記錄,例如證明審核員與技術專家能力的證據。
- **16.3** 香港品質保證局須穩安保存關於商戶的記錄,以確保資料保密。記錄在運送、傳 送或轉移時,須以確保資料保密的方式進行。

17. 認證標誌的所有權與使用

- 17.1 香港品質保證局是認證標誌的實益擁有人,並不知曉認證標誌的使用會否侵犯香港或其他地方任何第三方的權利,但香港品質保證局並不擔保上述第三方權利會否在香港或其他地方受到侵犯。
- 17.2 除了相關認證計劃的認證條款所指明的範圍以外,商戶不得以任何陳述或行爲表 示自己對認證標誌的所有權和使用擁有任何權利、產權或權益。商戶並須承認, 除本條款所批准範圍以外,本規章的任何內容均不會給予商戶對認證標誌的任何 權利、產權或權益。
- 17.3 商戶一旦通過認證,即可使用認證標誌。商戶須保證只會根據<u>商標</u>指導文件來使用認證標誌,該文件將在獲發證書之日或之前提供給商戶。商戶須應香港品質保證局要求提供任何關於其使用認證標誌的資料。

18. 暫停或修改認證權利

- 18.1 如果商戶暫時不能符合認證要求和/或未能遵守本規章,包括沒有允許進行監督審核或覆審,香港品質保證局可要求有關商戶即時停止使用認證標誌或停止聲稱按認證計劃獲得認證,直至該局確信認證條件已經重新達到,而有關商戶也已經對本規章的任何違反情況做出補救。
- **18.2** 又或在商戶不能在原本認證範圍內滿足本規章要求的情况下,香港品質保證局可 暫時修改商戶的認證範圍。
- 18.3 香港品質保證局將應商戶要求暫停商戶的認證資格。

19. 縮減或撤銷認證權利

19.1 如果商戶出現下列問題,香港品質保證局可立即用書面通知形式撤銷商戶按認證 計劃所獲得的認證資格,或者縮減此認證資格的範圍,或者拒絕授予或續發認證 資格或擴大其認證範圍:

- 19.1.1 不能符合認證要求和/或違反本規章,包括沒有允許進行監督審核或覆審,但如果該違反行爲可以補救,則只有當發出書面通知說明該項違反並要求加以補救之後一個月內商戶並未對違反行爲作出補救,上述關於認證權利的通知方可發出。
- 19.1.2 收到根據條款18發出的暫停通知或修改通知超過6個月。
- 19.1.3 變爲受破產法規限,或與債權人達成任何債務安排或債務重整協議,或者 進入清算程序-無論是强制還是自願的(但不包括爲了重整而進行的清 算),或者指定了業務接管人,或者商戶的高級人員被裁定有罪,而該罪 行可能使該商戶的商業聲譽及誠信受損。
- 19.2 香港品質保證局有全權決定在不抵觸條款23的情況下撤銷或縮减商戶的認證權 利,而此類決定或依據須以書面形式通知商戶。

20. 暫停或撤銷的後果

- **20.1** 商戶的認證計劃下的認證資格一旦被暫停或撤銷(無論出於何種原因),商戶均同意並保證立即:
 - **20.1.1** 停止以任何方式使用證書和/或認證標誌,並須停止使用有可能暗示商戶和/或其產品按認證計劃獲得認證的任何廣告或其他材料。
 - **20.1.2** 停止以可能暗示商戶和/或其產品按認證計劃獲得認證的方式營運業務或經營,並停止表示現時與香港品質保證局有任何關係或聯繫。
 - 20.1.3 按香港品質保證局的選擇,交出或在香港品質保證局一名代表在場的情况下(如果香港品質保證局希望有一名代表在場)銷毀證書、帶有認證標誌的所有材料和物品以及符合條款20.1.1所設想的其它材料。
 - 20.1.4 把其認證資格被暫停或終止的消息,通知所有以認證爲合約條件的客戶,以及在認證資格暫停或終止起算的一年內,仍有或相當可能會有業務往來的所有客戶。
- **20.2** 在認證資格被修改的情况下,商戶只可聲稱自己擁縮減了的認證資格,並須就認證標誌的使用和廣告宣傳材料作出相應的修改。

21. 期限

21.1 任何商戶按認證計劃獲得認證後,本規章(將不時加以修訂)會在該計劃下保持 生效。

22. 投訴

- 22.1 香港品質保證局同意在合理的酌情決定權下,會就有關認證計劃所接獲的投訴展開調查,包括有關審核與認證程序,以及獲認證資格商戶的投訴。
- 22.2 接獲投訴後,香港品質保證局須確認該投訴是否與認證計劃有關。如是,香港品質保證局便須適當地付出合理的努力處理該投訴,而該投訴須根據香港品質保證局制定的投訴處理程序進行調查和處理。

22.3 商戶承認,若投訴與其認證資格有關,投訴審查應考慮其認證管理體系的效能, 和/或其認證產品的質量,上述規定沒有時效期限。

23. 上訴

- 23.1 若商戶欲意對香港品質保證局在本規章下作出的任何決定提出上訴時,該商戶須在接獲該項決定的正式通知後二十一整天內,書面通知香港品質保證局秘書,陳述就該決定提出上訴的要求。上訴委員會須在收到此通知的三十整天內舉行會議,而上訴方應在會議舉行前的最少七整天,獲通知有關會議的舉行時間及地點。在上訴委員會舉行任何會議前,香港品質保證局的原來決定必須保持不變(並且生效)。上訴方和香港品質保證局行政人員均在會議上獲得機密聆訊。會議主席宣布的最終決定乃上訴委員會的大多數決定。會議主席可以行使決定性投票權。會議主席須在上訴委員會作出決定後的二十一整天內,向上訴方提供達成決定的原因的上訴結果陳述書。
- 23.2 上訴委員會的成員不得與該上訴有任何直接的利益關係。不過,上訴方有權對上 訴委員會的裁決提出異議。接獲任何異議後,董事局須考慮並決定應否更改或保 留上訴委員會的裁決。董事局就該異議和上訴委員會的裁決作出的決定爲最終決 定。

24. 修改

24.1 香港品質保證局可能會不時修改本規章和/或認證計劃。此類修改不會影響商戶使用認證標誌的權利,也不會影響按認證計劃進行認證的權利,除非或直至商戶獲香港品質保證局書面通知有關修改,香港品質保證局將通知商戶必須遵照修改的規則和/或認證計劃的日期,該日期通常自修改書面通知那天起不少於六個月。修改後的規章和/或認證計劃生效後,香港品質保證局須作出最大努力核實各商戶有否在合理的時間內,對其程序和/或管理體系和/或產品進行任何必需的調整。

25 通知

25.1 按本規章發出的任何通知須爲書面形式,並由發出方簽名或發出方代表簽名,按香港品質保證局或商戶當時的地址(註冊辦事處,如適用)以親自遞交或郵局寄送的方式送達。任何以上述方式郵寄送達的通知須(除非證明情況相反)被視爲自郵寄起四十八小時內送達;而要證明某通知已正確適當地址並按本條款郵寄即可。

26. 棄權聲明

26.1 香港品質保證局沒有或延遲行使本規章內任何權利或補救方法時,不得被詮釋爲或構成對該權利或補救方法的棄權,而單獨或部份行使任何權利或補救方法時,不代表排除按情況進一步行使該權利或補救方法。本規章內的權利和補救方法是累積性的,並不排除法律規定的任何權利或補救方法。

27. 管轄法律

27.1 本規章須按照香港法律詮釋並受香港法院的專有審判權管轄。

香港品质保证局

规章

2008年10月15日

规章

1. 导言

1.1 本规章(定义见下文)列出香港品质保证局(定义见下文)为提供认证计划 (定义见下文)而制订的规则,供认证双方遵守。认证计划旨在为拥有认可 管理体系(定义见下文)及产品的公司及商户提供认证服务。

2. 释义

2.1 就本规章而言:

"上诉委员会" 指为了听取与认证计划有关的上诉而成立的委员会。就每

次上诉所成立的委员会须由董事局主席(或其委任的代

表)和至少两名其他董事局成员组成。

"商户" 指已经申请但尚未获取证书的个人、商号、法人团体或非

属法团的团体,和/或已经获颁证书的个人、商号、法人

团体或非属法团的团体, 依上下文而定。

"证书" 指香港品质保证局所发出、经香港品质保证局一名董事(为

董事局成员之一)及总裁加签的证书,确认香港品质保证局在审核商户所使用的管理体系和/或商户所制造和/或提供的产品后,认为该商户的管理体系和/或产品符合本

规章的要求。

"认证标志" 指获得认证的商户将获准用来证明其认证资格的香港品

质保证局已经注册为商标的标志。

"董事局" 指香港品质保证局的管治机构。

"总裁" 指董事局所委任、目前掌管日常管理香港品质保证局事务

的香港品质保证局全职职员。总裁亦兼任香港品质保证局

公司秘书一职。

"指南65" 指与认证机构对产品进行检测和认证有关的、由ISO和IEC

颁布的一般要求和标准。

"香港品质保证局" 指香港品质保证局,该局是为提供认证计划而成立的非牟

利机构。

"IEC" 指"国际电工技术委员会"。

"ISO" 指"国际标准化组织"。

"ISO/IEC 17021" 指由ISO和IEC就认证机构对管理体系进行审核及认证所

颁布的一般要求和标准;认证机构须遵守上述要求和标准,以确保认证机构以适当、统一且公平的方式实施第三方管理体系认证计划,从而在国家和国际层面上提高认证

机构的认可度及其认证计划的接受度。

"管理体系" 指为了实施管理体系而需要的组织架构、职责、程序、工

序和资源。

"管理体系文件" 指列出具体产品、服务、合同或项目有关的、涉及管理体

系的特定做法、资源和活动顺序的文件,可能包括一份

"体系手册"。

"管理体系标准" 指为了按本规章获得认证、商户管理体系必须遵守的、由

ISO和/或其他相关组织不时颁布的各种适用标准。

"产品" 指就香港品质保证局向商户提供认证服务时,所涉及的产

品和/或产品的具体设计或规格,和/或产品的制造工序。

"产品标准" 指为了按本规章获得认证、产品必须符合的、由ISO和/或

其他相关组织不时颁布的、适用的技术标准和其他标准。

"本规章" 指本文件内就认证计划所列的各项规例。

"行业计划" 指为某些技术领域内的机构进行认证而建立的、须设立特

殊程序及规则以补充本规章的计划。

"体系手册" 指用于制订并实施管理体系的主要文件:该文件旨在就管

理体系作出充分描述, 并为实施及维持该管理体系提供永

久参考。

"认证计划" 指由香港品质保证局提供的、用来对拥有分别符合于管理

体系标准和产品标准的管理体系和/或产品的商户进行认

证的计划(包括行业计划)。

"商标标志 指陈述经过认证的商户使用认证标志时须遵守的条款与

指导文件"条件的商标使用者文件。

3. 权限

3.1 香港品质保证局是香港特别行政区政府承认为提供认证计划并在认证计划下授权 颁发证书的机构,通过总裁来行使权力。总裁按本规章进行审核或其他活动时, 总裁可以不时将其职能或其中任何职能授予视乎需要而委任或罢免的人士。

3.2 香港品质保证局也按照诸如ISO/IEC 17021、指南65规范性、认可性要求下提供认证计划。

4. 申请

- 4.1 商户若希望通过认证计划获得认证,必须向香港品质保证局提出书面申请或填写并提交申请认证计划的指定申请表,同时提供香港品质保证局的所有资料和文件。关于申请产品认证,商户必须明确指出要认证的产品及有关品质。
- 4.2 商户提出认证申请后,香港品质保证局须在切实可行范围内尽快审视申请,以确保所有指定资料已经提供,认证要求已得到明确规定,而商户的审核也准备好接受评审。香港品质保证局还须确定,本身有能力在所要求的认证范围内,履行认

证服务。

5. 审核

- 5.1 商户在提交认证申请后,已经准备就绪接受评审,而香港品质保证局也确定本身 具备进行有关认证的必要专门知识,香港品质保证局便须组织审核小组,针对申 请的认证内容对商户的管理体系进行全面审核与评审,和/或对商户的产品进行评 核。
- 5.2 所有通过认证的商户,须接受包括现场审核在内的持续监督,而通过认证的商户 也必须承认将至少每年接受一次的监督审核。在每个认证期结束之前,将对商户 进行一次全面覆核,香港品质保证局须根据再覆核的结果以及在认证期内所进行 的监控与监督结果,决定是否续发商户的认证。
- 5.3 所有审核以及由此而做出的决定,将由香港品质保证局根据香港品质保证局不时制定和通告的规范做法和方针来完成,包括ISO/IEC 17021和指南65中所列出的规范做法和方针。商户必须承认并认可此类规范做法和方针,包括ISO/IEC17021和指南65中所列出的规范做法和方针。
- 5.4 不限于条款5.3的各方权利:
 - 5.4.1 所有审核与评审将由合格且富有经验的人员完成,可以是香港品质保证局的雇员或是香港品质保证局的分包人员。香港品质保证局须将审核小组全体人员的姓名提供给商户,并在商户要求时提供审核小组各成员的背景资料。在可行的情况下,应当预留充份时间,让商户就任何特定成员提出反对,并让香港品质保证局在出现任何有效拒绝的情况下,可以重新组织审核小组。
 - 5.4.2 香港品质保证局同意将根据其合理判断,对充分客观的证据给予审核与评核,并根据该等证据决定是否对管理体系进行认证或续认。
 - 5.4.3 所有商户承认有责任确保管理体系和/或产品符合认证的要求,而香港品质保证局只须进行客观的评审与评核即可。
 - 5.4.4 香港品质保证局须就进行管理体系审核和/或产品评核有关的所有必需安排通知商户,包括提供考核文件、探视所有工序和工区、记录和人员以及产品检测的必须机会。所有安排是为了进行认证评审和将来的持续监督审核与覆审。
 - 5.4.5 审核和/或评核的日期须尽量预先商定。
- 5.5 香港品质保证局在必要时会向获认证的商户提出短期内进行审核或进一步评核经过检定的产品,以便调查投诉、对变更做出反馈或者对暂停认证资格的商户进行跟进审核。在此类情况下:
 - 5.5.1 商户须允许审核和/或评核工作展开并给予通力合作;
 - 5.5.2 香港品质保证局须预先向获认证的商户描述并知会要进行临时巡视的条件;以及
 - 5.5.3 香港品质保证局在指派审核小组时必须格外谨慎,因为商户须确认不会有机会就审核小组成员提出反对。

5.6 另外,若适用于认证商户的管理体系标准或产品标准规定进行定期突击审核或评核,商户须同意允许此类审核与评核展开,并在审核和/或评核时与香港品质保证局及其审核小组通力合作。

6. 认证

- 6.1 商户若能使香港品质保证局确信,该商户能遵守本规章和认证计划,诚实地进行 其业务,并按香港品质保证局要求提供有关其法律地位的保证及证明,在服从本 规章各项条件的前提下,商户将有权按认证计划获得认证和取得认证证书,但此 证书仍是香港品质保证局的资产。就每次申请而进行的每次认证,将单独颁发一 份证书。
- 6.2 香港品质保证局须按认证计划为商户认证,初步期限为三年(从接受日期起算), 此后按认证计划进行的认证须每三年续期一次(取决于是否符合本规章)。
- 6.3 认证受本规章条款和下文提及的香港品质保证局权利的约束。商户若无意根据上 述条款6.2为某项认证资格按认证计划进行覆审,便须在有关的三年期限结束之 前,提前四个月以书面形式通知香港品质保证局。如果商户希望终止认证资格, 则必须至少提前四个月以书面形式通知香港品质保证局。
- 6.4 从申请日开始,必须给予商户三年期限,让商户使其管理体系和/或产品符合认证 计划。商户若未能在上述期限内通过认证,便须提交新的申请,除非香港品质保证局同意无须如此。

7. 资料

- 7.1 香港品质保证局确认将为相关各方提供关于认证计划的全面资料,包括认证标准以及审核与认证程序。不仅如此,香港品质保证局还须按其不时厘定的合理费用与合理条款,应商户要求提供所有管理体系标准和产品标准的细节或副本。香港品质保证局还须应商户的合理要求,向商户提供与认证的所有资料,包括关于申请程序和商户初步审核有关的资料,以及按认证计划授予、维持、续发、延长、暂停、缩减和/或撤销认证资格的资料。
- 7.2 另外,在始终受条款13的约束下,香港品质保证局同意向商户和其他相关各方提供有关具体审核的资料,包括针对投诉而进行的审核。
- 7.3 香港品质保证局须应公众要求,披露关于授予、暂停或撤销认证资格的资料,商户也须承认其认证状况属于公开资料。香港品质保证局须保留一份认证商户的名录,名录须包括各个认证商户的名称、认证范围和业务领域。

8. 公正性

- 8.1 香港品质保证局认为,在提供认证计划的过程中,保持公正积极解决冲突和保持客观重要;香港品质保证局同意按公正不阿的方式提供认证计划。在任何情况下,香港品质保证局均不得:
 - 8.1.1 提供或表示愿意提供关于如何按认证计划取得认证资格的谘询服务;
 - 8.1.2 向商户提供信息或内部审核服务;

8.1.3 将审核工作分包或外判给任何提供关于按认证计划认证的谘询服务的单位。

9. 转让与分包

- 9.1 未经香港品质保证局书面同意,商户不得将认证计划的证书使用权或认证资格分 授许可权、转让或以其他方式转移。
- 9.2 只有当以下条件获得满足,香港品质保证局方可将商户的审核、产品的评核或属于认证计划的其他认证活动分包或外判给第三方:
 - 9.2.1 香港品质保证局须保留关于授予、续发、暂停或撤销认证资格的最终决定权:
 - 9.2.2 香港品质保证局须对所有分包活动完全负责,而此类分包活动须按本规章提供。

10. 商户的责任

- 10.1 商户须保证:
 - 10.1.1 无论何时均遵守本规章:
 - 10.1.2 只声称其认证范围内的业务及产品符合认证计划及认证权利。
 - 10.1.3 根据相关的管理体系标准和/或不时与香港品质保证局商定的其他规范文件,为获得认证的所有业务建立并且无论何时均维持有关的管理体系并制订该管理体系的文件资料,以及在香港品质保证局要求下,将该等管理体系文件的全部或任何部分的副本披露和/或复印件提交给香港品质保证局参考。
 - 10.1.4 按适当的产品标准和/或不时与香港品质保证局商定的其他规范文件,制造和/或供应获认证的产品。
 - 10.1.5就任何对管理体系或产品的意图更改或有可能影响商户认证资格对认证 计划的符合性的更改,须尽快通知香港品质保证局:
 - 10.1.6 其使用证书的方式不会使香港品质保证局的声誉受损,商户也不得作出香港品质保证局可能认为误导或未经授权的有关认证的任何言论。
 - 10.1.7 确保不以误导方式使用其认证文件,包括其证书、任何报告或其任何部分、认证标志以及香港品质保证局的商标及商名。
 - 10.1.8 允许香港品质保证局的代表(若香港品质保证局要求则无须事先通知) 于正常工作时间(包括轮班操作时间)内,进入正在进行或提供认证范围内 的工作或服务的处所或场地,和/或进入正在制造或储存认证产品的处所或 场地,其主要目的是:
 - (a) 检查物料、工序、制成品、测试方法、操作方法、记录及系统、 管理体系文件,核实管理体系是否到位和/或正在生产或供应的 认证产品是否符合认证要求:并

- (b) 进行审核,或确定商户已经如条款20所述,履行了有关撤销认证 资格的义务。
- 10.1.9 应香港品质保证局的要求提供产品资料样本和宣传材料,并提供产品样本(包括认证产品),由认可实验室测试,获核实商户是否与其管理体系文件中直接声称或藉推论声称所达到的标准一致。
- 10.1.10指派一名管理者代表和在该管理者代表缺席时授权行事的一名或多名代理,以及可能需要代替该管理者代表的替代人(此类指派须得到香港品质保证局的认可)。上述人士负责与认证计划下对商户的认证要求有关的一切事务。
- 10.1.11维持指定的管理体系文件并根据管理体系文件来运用管理体系,同时在 各个方面都符合适用于商户具体行业或工业的标准。
- 10.1.12认证资格只用来表明商户的管理体系和/或产品符合适当的管理体系标准和/或产品标准和/或其他的规范文件。商户在认证资格实际上并未获通过的情况下,不得暗示某产品或服务已经获得香港品质保证局的审批。
- 10.1.13应香港品质保证局要求披露所有投诉记录以及根据适当的管理体系标准、产品标准和/或其他规范文件而采取的纠正措施的记录。
- 10.1.14确保其所有货品(包括任何认证产品)具备可商售品质和适用于适当的 用途,并确保以合理的谨慎态度和技术水平向客户和顾客提供服务。
- 10.2 商户须承认香港品质保证局是根据认证计划对其管理体系和/或产品进行的认证或任何持续认证是/或将部分建立在商户已经或将要提供给香港品质保证局的文件、记录和样本的基础之上。商户须特此保证,所有此类文件和纪录,无论是过去的还是将来的均完全准确及真实而以往和将来提供的所有产品样本,都能恰如其分地代表产品,不会为了认证而做出任何形式的修改或创造,而该商户在本规章下的持续认证,取决于商户是否能严格履行上述保证。
- 10.3 商户须保证在申请认证时提供的中英文正式名称是真实、准确的,而且只指称并代表该商户而非任何非认证的单位。
- 10.4 商户须保证认证资格只用于本身的业务,不会在不属实的条件下,用来暗指任何 母公司、分公司、附属公司、伙伴或其他单位已经通过认证,包括使用认证公司 在按条款4提出申请和提供法律身份证明时所指明的认证公司名称的任何具误导 性的英文、中文或其它翻译或版本的名称。

11. 费用

- 11.1 香港品质保证局须收取而商户须缴付的费用包括;
 - 11.1.1 申请和文件评审费:

- 11.1.2 就每份获颁发的证书每年应缴纳费。商户在获颁发证书时必须支付第一年的年费。后续年费须不迟于认证每一周年到期日缴付。即使商户的认证权利被暂停,又或撤销或商户终止认证资格,年费也不予退还;
- 11.1.3 第一阶段评价、预审(可选)、认证审核、产品评核、跟进审核、 监督审核和续期覆审和/或评审均须按照实际人日计算,而每人日单位收费 则根据双方同意的标准收费。
- 11.1.4 使用香港品质保证局不时准许的任何额外认可标志的其他费用。香港品质保证局可能因商户而发生的海外旅费,包括膳食、交通费和住宿费,须受香港品质保证局和商户之间达成的相互协议的约束,以及
- 11.1.5 由于商户不遵守本规章以及与条款10.1.8有关的活动而让香港品质保证局负担的任何额外费用。
- 11.2 根据条款11.1,向商户收取并须由商户支付的所有费用,须为是香港品质保证局 酌情认为公平且合理的费用。此类费用的收费率和金额,香港品质保证局可能会 不时调整而无须通知商户。关于与认证计划相关的所有费用,香港品质保证局须 应商户要求提供完备的细节和资料。
- 11.3 商户须在提交认证申请时缴付申请与文件评审费(不会退还)。第一阶段评价、 预审(可选)、认证审核、产品评核和跟进审核的费用须缴付,然后才由香港品 质保证局开展规定的工作。监督审核、续期覆审与评审、海外旅费的付还以及年 费(不会退还),须在发票开具日期的30日内缴付。所有已付费用均不会退还, 并且不予扣除或抵销。
- 11.4 如果商户未能在相应的到期日缴付任何费用,那么对于未清缴的费用,从付款到期日起算直到实际支付期间,香港品质保证局有权向商户收取利息,而年利率为香港汇丰银行现行最优惠利率另加4%。

12. 香港品质保证局的责任

12.1 在不影响条款5的原则下,香港品质保证局须尽力在任何12个月的期间内不少于两次向商户派遣一名代表,以核实商户正在按认证计划要求及本规章所规定的责任制造产品、实施工序或提供服务(均属认证范围)。

13. 保密

- 13.1 商户在认证过程中向香港品质保证局披露的所有技术或商业性质的资料,均被视为机密资料,香港品质保证局只能在必要时向雇员和分包商披露,而香港品质保证局也须确保此类人员将资料保密。香港品质保证局只能将此类资料用于审核和认证,事先未得披露单位的书面同意,香港品质保证局不得将此类资料向任何第三方披露,但上述保密责任应当不适用于下列情况:
 - 13.1.1 属于公共范畴的资料:
 - 13.1.2 香港品质保证局已经拥有,或者香港品质保证局日后在无任何保密责任的情况下从独立的第三方获得的资料,而该第三方并不是从有关商户获取该资料的:

- 13.1.3 依据有关商户的书面同意而向第三方披露的资料:
- 13.1.4 依据法例规定、规管性质的规定或其他法律规定(包括任何法院命令)而向第三方披露的资料,或者
- 13.1.5 为了认可评审或承认评估而披露的资料。
- 13.2 香港品质保证局若有意披露上述条款13.1.4或13.1.5所述的资料,须在披露前通知商户(除非法律禁止)。
- 13.3 香港品质保证局可将商户的机密资料向分包商和审核员披露。香港品质保证局确认该局须通知所有雇员(包括董事局成员)和所有分包商代表其履行上述香港品质保证局的保密责任。香港品质保证局须负责确保上述雇员和分包商能为所有相关资料保密。
- 13.4 就条款13.1而言,商户的机密资料,须包括在保密条件下从第三方来源取得的有关商户的资料。

14. 免责

- 14.1 根据《免责条例管理规划(第71条)》的规定,对于商户的认证、商户在认证计划范围内的产品、或者商户向公众销售货品(包括认证产品)或提供服务(无论有没有引用认证标志)而直接或间接以任何方式对商户造成的任何损失或损害,香港品质保证局概不负责。尽管上述规定具有一般性的原则,对于商户遭受相应性的损失或损害,包括商户的客户或顾客索赔造成的损失或损害,或者利润、业务、收入、信誉或预期节省额的损失,香港品质保证局明确排除任何责任。
- 14.2 根据上述条款14.1的规定,本规章明确排除成文法、普通法或其他法律所隐含的 香港品质保证局方面的所有条件及保证。
- 14.3 在不影响条款14.1和14.2的原则下,以及在香港法院认为本规章所载的完全免责条款不合理的情况下,对于香港品质保证局在为商户进行评审和/或认证提供和/或实施认证计划过程中的行动或疏忽而引起的任何索赔,香港品质保证局在合同、侵权或其他方面对商户担负的责任,应当不超过在所指称责任出现的年份中香港品质保证局从商户收到的费用的十倍,或者为港币200,000元,以较低者为准。

15. 赔偿

- 15.1 由于下列原因而引起任何争端或者、合同、侵权或其他方面的索赔或者第三方向 香港品质保证局提出诉讼以索取宽免,从而为香港品质保证局带来的任何或所有 的直接或相应损失,如任何法律责任、损失、损害、费用、法律支出、专业和任 何性质的其他费用,(包括但不限于任何经济损失或者其他的利润、业务或信誉 损失),商户应予以负责并对香港品质保证局给予赔偿。
 - 15.1.1 根据认证计划进行商户认证和/或商户违反本规章:
 - 15.1.2 引用认证标志或商户的认证资格来制造、使用或销售任何货品 (包括认证产品)或提供任何服务。

16. 记录

- 16.1 香港品质保证局须保留所有商户的审核与其他认证活动的全面记录。
- 16.2 商户须承认,关于商户的记录须包括但不限于下列内容:
 - 16.2.1 申请资料和初步审核、评核、监督和覆审报告;
 - 16.2.2 投诉和上诉记录,以及其后的任何改正或纠正措施;
 - 16.2.3 认证决定方面的文件;
 - 16.2.4 认证文件,包括产品、工序或服务(视乎何者适用)的认证范围。
 - 16.2.5 树立认证可信性所需的相关记录,例如证明审核员与技术专家能力的证据。
- 16.3 香港品质保证局须稳妥保存关于商户的记录,以确保资料保密。记录在运送、传送或转移时,须以确保资料保密的方式进行。

17. 认证标志的所有权与使用

- 17.1 香港品质保证局是认证标志的实益拥有人,并不知晓认证标志的使用会否侵犯香港或其他地方任何第三方的权利,但香港品质保证局并不担保上述第三方权利会 否在香港或其他地方受到侵犯。
- 17.2 除了相关认证计划的认证条款所指明的范围以外,商户不得以任何陈述或行为表示自己对认证标志的所有权和使用拥有任何权利、产权或权益。商户并须承认,除本条款所批准范围以外,本规章的任何内容均不会给予商户对认证标志的任何权利、产权或权益。
- 17.3 商户一旦通过认证,即可使用认证标志。商户须保证只会根据商标指导文件来使用认证标志,该文件将在获发证书之日或之前提供给商户。商户须应香港品质保证局要求提供任何关于其使用认证标志的资料。

18. 暂停或修改认证权利

- 18.1 如果商户暂时不能符合认证要求和/或未能遵守本规章,包括没有允许进行监督审核或覆审,香港品质保证局可要求有关商户即时停止使用认证标志或停止声称按认证计划获得认证,直至该局确信认证条件已经重新达到,而有关商户也已经对本规章的任何违反情况做出补救。
- 18.2 又或在商户不能在原本认证范围内满足本规章要求的情况下,香港品质保证局可 暂时修改商户的认证范围。
- 18.3 香港品质保证局将应商户要求暂停商户的认证资格。

19. 缩减或撤销认证权利

- 19. 1 如果商户出现下列问题,香港品质保证局可立即用书面通知形式撤销商户按认证 计划所获得的认证资格,或者缩减此认证资格的范围,或者拒绝授予或续发认证 资格或扩大其认证范围:
 - 19.1.1 不能符合认证要求和/或违反本规章,包括没有允许进行监督审核或覆审,但如果该违反行为可以补救,则只有当发出书面通知说明该项违反并

要求加以补救之后一个月内商户并未对违反行为作出补救,上述关于认证权利的通知方可发出。

- 19.1.2 收到根据条款18发出的暂停通知或修改通知超过6个月。
- 19.1.3 变为受破产法规限,或与债权人达成任何债务安排或债务重整协议,或者进入清算程序一无论是强制还是自愿的(但不包括为了重整而进行的清算),或者指定了业务接管人,或者商户的高级人员被裁定有罪,而该罪行可能使该商户的商业声誉及诚信受损。
- 19.2 香港品质保证局有全权决定在不抵触条款23的情况下撤销或缩减商户的认证权利,而此类决定或依据须以书面形式通知商户。

20. 暂停或撤销的后果

- 20.1 商户的认证计划下的认证资格一旦被暂停或撤销(无论出于何种原因),商户均同意并保证立即:
 - 20.1.1 停止以任何方式使用证书和/或认证标志,并须停止使用有可能暗示商户和/或其产品按认证计划获得认证的任何广告或其他材料。
 - 20.1.2 停止以可能暗示商户和/或其产品按认证计划获得认证的方式营运业务或经营,并停止表示现时与香港品质保证局有任何关系或联系。
 - 20.1.3 按香港品质保证局的选择,交出或在香港品质保证局一名代表在场的情况下(如果香港品质保证局希望有一名代表在场)销毁证书、带有认证标志的所有材料和物品以及符合条款20.1.1所设想的其它材料。
 - 20.1.4 把其认证资格被暂停或终止的消息,通知所有以认证为合约条件的客户,以及在认证资格暂停或终止起算的一年内,仍有或相当可能会有业务往来的所有客户。
- 20.2 在认证资格被修改的情况下,商户只可声称自己拥缩减了的认证资格,并须就认证标志的使用和广告宣传材料作出相应的修改。

21. 期限

21.1 任何商户按认证计划获得认证后,本规章(将不时加以修订)会在该计划下保持生效。

22. 投诉

- 22.1 香港品质保证局同意在合理的酌情决定权下,会就有关认证计划所接获的投诉展 开调查,包括有关审核与认证程序,以及获认证资格商户的投诉。
- 22.2 接获投诉后,香港品质保证局须确认该投诉是否与认证计划有关。如是,香港品质保证局便须适当地付出合理的努力处理该投诉,而该投诉须根据香港品质保证局制定的投诉处理程序进行调查和处理。

22.3 商户承认,若投诉与其认证资格有关,投诉审查应考虑其认证管理体系的效能,和/或其认证产品的质量,上述规定没有时效期限。

23. 上诉

- 23.1 若商户欲意对香港品质保证局在本规章下作出的任何决定提出上诉时,该商户须在接获该项决定的正式通知后二十一整天内,书面通知香港品质保证局秘书,陈述就该决定提出上诉的要求。上诉委员会须在收到此通知的三十整天内举行会议,而上诉方应在会议举行前的最少七整天,获通知有关会议的举行时间及地点。在上诉委员会举行任何会议前,香港品质保证局的原来决定必须保持不变(并且生效)。上诉方和香港品质保证局行政人员均在会议上获得机密聆讯。会议主席宣布的最终决定乃上诉委员会的大多数决定。会议主席可以行使决定性投票权。会议主席须在上诉委员会作出决定后的二十一整天内,向上诉方提供达成决定的原因的上诉结果陈述书。
- 23.2 上诉委员会的成员不得与该上诉有任何直接的利益关系。不过,上诉方有权对上 诉委员会的裁决提出异议。接获任何异议后,董事局须考虑并决定应否更改或保 留上诉委员会的裁决。董事局就该异议和上诉委员会的裁决作出的决定为最终决 定。

24. 修改

24.1 香港品质保证局可能会不时修改本规章和/或认证计划。此类修改不会影响商户使用认证标志的权利,也不会影响按认证计划进行认证的权利,除非或直至商户获香港品质保证局书面通知有关修改,香港品质保证局将通知商户必须遵照修改的规则和/或认证计划的日期,该日期通常自修改书面通知那天起不少于六个月。修改后的规章和/或认证计划生效后,香港品质保证局须作出最大努力核实各商户有否在合理的时间内,对其程序和/或管理体系和/或产品进行任何必需的调整。

25 通知

25.1 按本规章发出的任何通知须为书面形式,并由发出方签名或发出方代表签名,按 香港品质保证局或商户当时的地址(注册办事处,如适用)以亲自递交或邮局寄 送的方式送达。任何以上述方式邮寄送达的通知须(除非证明情况相反)被视为 自邮寄起四十八小时内送达;而要证明某通知已正确适当地址并按本条款邮寄即 可。

26. 弃权声明

26.1 香港品质保证局没有或延迟行使本规章内任何权利或补救方法时,不得被诠释为 或构成对该权利或补救方法的弃权,而单独或部份行使任何权利或补救方法时, 不代表排除按情况进一步行使该权利或补救方法。本规章内的权利和补救方法是 累积性的,并不排除法律规定的任何权利或补救方法。

27. 管辖法律

27.1 本规章须按照香港法律诠釋並受香港法院的專有審判權管轄。
