



**FLOCERT**  
assuring fairness

LG CertificationContract: FO 47

# Certification Agreement

between

**FLOCERT GmbH**

Bonner Taiweg 177, 53129 Bonn, Germany,  
established and entered in the commercial register at the Local Court of  
Bonn, Germany, under company number HRB 12937 ("FLOCERT")

and

Nilmini Estates (Pvt) Ltd

(Customer's name)

Ithala Millawa,

Morawaka, Sri Lanka

(Customer's address)

PV 3779

(Customer's commercial register number)

FLOCERT and the customer shall hereinafter be jointly referred to as "**Parties**" and individually as "**Party**".

## Preamble

FLOCERT is a subsidiary of Fairtrade International e.V. As part of the Fairtrade organisation, the company has been charged to certify producers and traders acc. to Fairtrade standards including the FLOCERT Compliance Criteria and their review.

This agreement is aimed at governing the Customer's certification by FLOCERT and payment of a certification fee by the Customer to FLOCERT in acc. with the provisions hereof and the GTCs enclosed hereto. The Customer intends to engage FLOCERT to ensure such certification.

NOW, THEREFORE, the Parties agree upon the following:



## **Contractual Arrangements**

### **1 Purpose of the Agreement**

- 1.1 Upon conclusion hereof, FLOCERT undertakes to assess the Customer for a consideration based on the respective current Fairtrade standards, FLOCERT Compliance Criteria, FLOCERT Promotional Guidelines and certification standard operating procedures within the framework of audits (appendix 1) and to verify whether the Customer's goods and products comply with the aforementioned standards and criteria.
- 1.2 Following successful certification, FLOCERT shall issue a certificate to the Customer. With such certificate, the Customer shall be entitled to use the Fairtrade seal for the term hereof. The decision on whether any certificate will be issued shall be at FLOCERT's exclusive discretion.
- 1.3 Moreover, FLOCERT shall be entitled to also assess and review the Customer during the term of the certificate issued and without announcement as to its fulfilment of the aforementioned standard and to assess the Customer at the end of the term of the certificate issued acc. to the certification standard operating procedure on re-certification.
- 1.4 The Customer shall be obliged to contribute to the fulfilment hereof, especially to provide all information required and to cooperate with FLOCERT.

### **2 Inclusion of the GTCs**

The Parties are in agreement that the General Terms and Conditions enclosed hereto (hereinafter "GTCs") shall be part hereof and that the provisions specified therein have been effectively included herein and shall apply accordingly.

### **3 Certification Fees and Payment**

- 3.1 The Customer must pay to FLOCERT the fees, costs and expenses determined acc. to the respective current scale of fees, which may be consulted on the FLOCERT website at <https://www.flocert.net/flocert-documents/> and requested from FLOCERT, plus the respective applicable VAT.
- 3.2 The certification fees shall be due as of the date indicated in the invoice. In any case of payment default, the Customer, as an entrepreneur, shall owe default interest in the amount of nine percentage points above the basic rate of interest as from maturity, unless FLOCERT demonstrates any higher damage; otherwise, Section 288 BGB [German Civil Code] shall apply. Moreover, FLOCERT shall be entitled to charge a cost lump-sum of € 5 per reminder issued after any default occurred.





## **4 Agreement Start, Term**

- 4.1 This agreement shall enter into force upon signature and shall have an unlimited term. It shall replace all previous arrangements existing between the Parties.
- 4.2 The agreement may be terminated by both Parties by giving written notice vis-à-vis the respective other Party three (3) calendar months to the end of the month.

## **5 Agreement to Data Use and Data Transmission**

- 5.1 The Customer shall expressly agree that FLOCERT will collect and store confidential information during the term hereof to monitor compliance with the Fairtrade standards and to take decisions on the certification and may forward such information to Fairtrade organisations and subcontractors to meet the contractual obligations.
- 5.2 The Customer shall agree that FLOCERT may forward the result of its certification (non-conformities and approved corrective actions) to Fairtrade organisations and the following organisations following the final certification decision:
- a. organisations which are a Producer, Trader and/or licensee of the Fairtrade seal in the same, directly associated supply chain as the Customer; and
  - b. organisations maintaining a valid agreement and/or a valid licence agreement on the Fairtrade Seal with a Fairtrade Organisation.
- 5.3 The Customer shall agree that FLOCERT will gather and store personal data and business secrets to the extent required to render the contractual services.
- 5.4 The Customer shall agree to the publication of its corporate name, the corporate address and its Fairtrade products on the FLOCERT website: <http://www.FLOCERT.net>. Any further information shall be published only with the Customer's prior agreement.
- 5.5 The Customer shall be entitled at any time to revoke its agreement to the processing or transmission of any personal data not required to fulfil the agreement. It shall also be entitled to knowledge, correction, deletion and restriction of such processing.

## **6 Severability Clause**

If individual provisions hereof are or become ineffective in whole or in part or if this agreement shows any loophole, the effectiveness of the remaining provisions hereof shall remain unaffected.

Agreed and undersigned on

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\_\_\_\_\_



**FLOCERT**  
assuring fairness

19. JUNI 2020

LG Certification Contract FO 47

Date

Name, title and signature of  
FLOCERT's legal representative

Stamp

*Sugumar Raman*  
Director of Operations  
FLOCERT GmbH

**FLOCERT GmbH**  
Bonner Talweg 177  
53129 Bonn - Germany  
Phone: 0049 228 2493 0  
Fax: 0049 228 2493 120  
[www.flocert.net](http://www.flocert.net)

Date 02-06-2020

*P. Abeygunawardena*  
*P. Abeygunawardena*

Managing Director

Name, title and signature of the  
Customer's legal representative

Stamp

Managing Director  
Nirani Estates (Pvt) Limited





## Appendix 1

### List of Fairtrade Standards, FLOCERT Compliance Criteria and Certification Standard Operating Procedures

The Fairtrade standards to be applied by the Customer shall be:

General and product-specific Fairtrade standards, as made accessible by publication at:  
<http://www.fairtrade.net/sites/standards.html>

- FLOCERT compliance standards and complementing documentation  
The respective applicable version of all lists with compliance criteria, which are subject to continuous change, and the complementing documentation, reference to which is made in some specific requirements, is accessible and has been published on the FLOCERT resources website:  
<https://www.flocert.net/solutions/fairtrade-resources/compliance-criteria/>
- FLOCERT Promotional Guidelines: <https://www.flocert.net/wp-content/uploads/2018/03/Flocert-Promotional-Guidelines.pdf>
- The entire procedural documentation, which is property applied by FLOCERT and has been published on the FLOCERT resources website: <http://www.FLOCERT.net>, especially:
  - FLOCERT Standard Operating Procedure on Appeal & Review: <https://www.flocert.net/about-flocert/vision-values/quality-and-appeals/>
  - FLOCERT Standard Operating Procedure on Allegation: <https://www.flocert.net/about-flocert/vision-values/quality-and-appeals/>
  - FLOCERT Standard Operating Procedure on Complaints: <https://www.flocert.net/about-flocert/vision-values/quality-and-appeals/>
  - FLOCERT Standard Operating Procedure on Certification, including the List of Sanctions: <https://www.flocert.net/solutions/fairtrade-resources/how-it-works/>

According to the explanations above, the documents stated shall be included by dynamic reference and in their respective latest version, depending on the Customer's function.

Fairtrade International reserves the right to adapt the Fairtrade standards acc. to the Fairtrade International standard operating procedures. Requirements of the Fairtrade standards may be complemented, deleted or modified otherwise. All parties requested to comply with Fairtrade standards shall be obliged to track upcoming and completed audits influencing the certification on the FLOCERT website:  
<http://www.FLOCERT.net>.

Auditing Fairtrade standards may result in amendments to the certification requirements. All parties wishing to be certified or already having undergone the certification process shall be obliged to track the FLOCERT Compliance Criteria and the supplementing documentation on the FLOCERT website at <http://www.FLOCERT.net>, since they will enter into force after expiry of a reasonable transitional period of three (3) months, starting with their notification by FLOCERT.



## General Terms and Conditions of FLOCERT GmbH for Certification Services

### 1. General, Scope, Juristic Responsibility

- 1.1 Unless explicitly agreed otherwise in writing, these General Terms and Conditions (hereinafter "GTCs") shall apply to all offers, services and all resulting contractual relationships between FLOCERT GmbH (hereinafter "FLOCERT") and Producers and Traders ordering Certification services from FLOCERT (hereinafter "Customer").
- 1.2 These GTCs and the agreement, the Fairtrade Standards, the FLOCERT Compliance Criteria, the FLOCERT Promotional Guidelines and the Certification Standard Operating Procedures in their respective current version shall represent the entire arrangement (hereinafter "Agreement") between the Customer and FLOCERT regarding the subject matter hereof. Deviating, conflicting or complementing GTCs of the Customer shall become part hereof only if and to the extent that FLOCERT has given its written consent to their application. The legal provisions shall apply as a complement to the provisions of these GTCs.
- 1.3 Upon conclusion hereof, the Customer shall accept the terms of the respective Certification procedure. All Certification procedures in the current version are available for consultation at [www.flocert.net](http://www.flocert.net) and may be requested from FLOCERT.

### 2. Definitions

**Agreement:** the Certification Agreement.

**Audit:** process within the Certification to gather evidence, aimed at assessing fulfilment of certain standards by the Customer and/or a product manufactured or traded by the Customer. Audits can take place at the Customer's and externally as well as with and without announcement.

**Business Secrets:** recipes, production methods, charts, formulas, drafts and other information of economic value which are part of the manufacturing process and have been subjected to reasonable measures of secrecy by the Customer (or by another member of the group of companies to which the disclosing party belongs) in the prevailing circumstances.

**Certificate:** document issued by FLOCERT and stating the scope and period of the Certification of a customer by FLOCERT. A valid certificate serves as an approval for trading in Fairtrade Products.

**Certification Fee:** consideration to be paid by the Customer to FLOCERT for the Certification.

**Certification Standard Operating Procedure (Certification SOP):** describes the FLOCERT Certification system and the underlying rules and principles, e.g. the Certification cycle, the Compliance Criteria concept and the reasoning behind Certification sanctions. In addition, it provides an overview of the auditing and Certification process. It is available at <https://www.flocert.net/solutions/fairtrade-resources/how-it-works/> in its respective current version and can be requested from FLOCERT

**Certification:** process applied by FLOCERT to verify compliance with applicable Fairtrade Standards by the Customer including the FLOCERT Compliance Criteria.

**Confidential Information:** all information, documents, details and data associated with the company, transactions, customers, clients, suppliers and projects of the disclosing party (or of a member of the group of





companies to which the disclosing party belongs) which are received by one party from the other party within the framework of these GTCs and the Agreement.

**Expert:** person qualified to perform audits in the name of FLOCERT. An Expert can be a FLOCERT employee or a self-employed natural person or independent legal entity.

**Fairtrade International:** non-profit multi-stakeholder organisation focused on promoting Producers and providers in developing countries through trade. Fairtrade International offers the leadership, tools and services required to network Producers and consumers, promote fairer trading conditions and work towards sustainable livelihoods. Fairtrade Labelling Organizations International e. V. is the officially registered name of "Fairtrade International".

**Fairtrade Organisations:** Fairtrade International and all of its member organisations as well as 100% subsidiaries (e.g. FLOCERT). This currently includes Fairtrade International, FLOCERT, Fairtrade Producer Networks and National Fairtrade Organisations.

**Fairtrade Premium:** the Fairtrade Premium is an additional amount of money which flows into a municipal fund for workers and farmers and should be used, according to their preferences, to improve their social, economic and ecological conditions.

**Fairtrade Producer Information:** data required to work out basic marketing and impact information, e.g. Producer profiles for consumers. This includes, but is not limited to:

- a. data on the number of members/workers and gender distribution;
- b. overall production volume of the Fairtrade Products and breakdown by organic/conventional;
- c. land cultivated with Fairtrade Products;
- d. drawdown of the Fairtrade Premium;
- e. participation in the supply chain.

**Fairtrade Product:** products manufactured, processed and traded within the framework of a valid Certificate acc. to applicable Fairtrade Standards.

**Fairtrade Mark:** registered trademark and/or Certification mark owned by Fairtrade International which is sub-licensed to National Fairtrade Organisations. The Fairtrade Mark may be used by the licensees, certified operators and third parties only on such consumer products in the retail trade that meet the Fairtrade Standards and to promote such products.

**Fairtrade Standards:** Fairtrade Standards and product-specific Fairtrade Standards are the qualifications to be fulfilled by Producers and Traders to obtain the Fairtrade Product Certification. The Fairtrade Standards are set by Fairtrade International. A list of the current Fairtrade Standards is available at <http://www.fairtrade.net/standards.html>.

**Fairtrade Trader Standard:** this standard applies to Traders who purchase and sell Fairtrade Products and/or are in charge of the Fairtrade Price and Fairtrade Premium. It sets the rules on the product composition, traceability and use of the Fairtrade Mark, ensuring that the seal is used in a credible manner. Moreover, it includes requirements and voluntary best practices intended to guarantee that Fairtrade Products are traded fairly and sustainably, contributing thus to strengthen the Producers. It is available at <http://www.fairtrade.net/sites/standards.html> in its respective current version and can be requested from FLOCERT.

**Fairtrade:** 'Fairtrade' relates to all or part of the activities of Fairtrade International, FLOCERT, Fairtrade Producer Networks, National Fairtrade Organisations and Fairtrade marketing organisations. The term 'Fairtrade' also describes the product Certification system maintained by Fairtrade International.

**FLOCERT Audit SOP:** a document setting the composition of the audit teams, the number and nature of the interviews, the number of samples to be taken by the affiliated organisations and the documents to be audited.

**FLOCERT Compliance Criteria:** the FLOCERT Compliance Criteria are the transmission of the requirements of the Fairtrade Standards, binding guidelines and FLOCERT Certification directives into verifiable checkpoints. The FLOCERT Compliance Criteria are audited in the Certification process to establish compliance with the Fairtrade Standards and fulfilment of the Certification requirements. The FLOCERT Compliance Criteria correspond to the minimum and progress requirements of the Fairtrade Standards; therefore, each FLOCERT Compliance Criterion is linked to a specific time interval in which it must have been



met. FLOCERT Compliance Criteria are subdivided into important compliance criteria and normal compliance criteria. The FLOCERT Compliance Criteria in their respective current version are available at [www.flocert.net](http://www.flocert.net) and can be requested from FLOCERT.

**FLOCERT Promotional Guidelines:** define the manner in which the Customer is allowed to speak about FLOCERT. A list of the current FLOCERT Promotional Guidelines in their respective current version is available at <https://www.flocert.net/wp-content/uploads/2018/03/Flocert-Promotional-Guidelines.pdf> and can be requested from FLOCERT.

**National Fairtrade Organisation (NFO):** full member of Fairtrade International acc. to the definition laid down in the statutes of Fairtrade International. The NFO is responsible for licensing, marketing, business development and awareness raising in a specific geographic area. A NFO is entitled to sub-license the Fairtrade Mark to licensees and third parties within its area. A list of the current member organisations is available at [www.fairtrade.net](http://www.fairtrade.net).

**Observer:** any person who is not the Expert on record, an expert-in-training or a FLOCERT employee, but is subject to the same obligations of secrecy as an Expert.

**Personal Data:** all information associated with an identified or identifiable natural person.

**Producer Network (PN):** full member of Fairtrade International acc. to the definition laid down in the statutes of Fairtrade International. A PN represents the interest of the Producers and provides support for Producers within a defined geographic area in which Fairtrade Products are manufactured. The networks represent small farmers, workers and other stakeholders of Producers.

**Producer:** any customer who has been certified acc. to production-relevant Fairtrade Standards and other applicable product standards.

**Secrecy:** see section 7 of these GTCs.

**Trader:** any Customer who has been certified acc. to the Fairtrade Trader Standard and other applicable product standards and is not a Producer.

### 3. Services and Obligations of FLOCERT

- 3.1 FLOCERT shall provide the Customer with a current and detailed description of the assessment and Certification procedures as well as the documents with the Certification requirements and the rights and obligations of the Customer including the Certification Fees on the website at [www.flocert.net](http://www.flocert.net) or upon request.
- 3.2 FLOCERT shall maintain procedures for dealing with accusations, complaints, appeals and disputes asserted against it by customers or third parties in connection with the Certification. The current procedures can be consulted in the relevant documents in the respective current version on the website at [www.flocert.net](http://www.flocert.net) or requested from FLOCERT.
- 3.3 When performing the audits, FLOCERT shall exclusively cooperate with properly trained and qualified Experts.
- 3.4 FLOCERT shall notify the Customer within a reasonable period of any amendment to the Fairtrade Standards, FLOCERT Compliance Criteria and FLOCERT guidelines (e.g. by announcing the amendment on the FLOCERT website at [www.flocert.net](http://www.flocert.net)). The amendment shall enter into force after expiry of a reasonable transitional period of three (3) months, starting with their notification by FLOCERT.





#### **4. Obligations of the Customer**

- 4.1 The Customer shall take all measures required to obtain and ensure long-term maintenance of the Certification. This shall include continuous compliance with the applicable Fairtrade Standards and the FLOCERT Compliance Criteria and other documents which are available in full in their respective current version on the website at <https://www.flocert.net/solutions/fairtrade-resources/compliance-criteria/> or can be requested from the FLOCERT certification body.
- 4.2 If the Customer fails to meet the FLOCERT Promotional Guidelines or the FLOCERT Compliance Criteria, FLOCERT may impose sanctions in relation to the Customer's Certification status in acc. with the Certification Standard Operating Procedure based on the list of sanctions in the Certification Standard Operating Procedure. The Customer shall explicitly recognise the validity of the list of sanctions.
- 4.3 The Customer shall take all precautions required to
- a. perform the audit, assessment and monitoring, including provisioning of the documents and records to be audited, and access to the relevant devices, locations, areas, employees and the Customer's contractors required for the Certification;
  - b. review complaints or accusations;
  - c. call in Observers, where required.
- 4.4 The Customer shall agree that FLOCERT may cooperate with subcontractors and agents to perform audits. All subcontracted Experts shall be obliged by FLOCERT to keep the Customer's Confidential Information secret.
- 4.5 The Customer shall not use its Certification in any manner discrediting FLOCERT and shall not make any misleading or unauthorised statements in connection with its Certification.
- 4.6 The Customer shall not use its Certification beyond the scope defined in the Certificate and shall use the Certificate only for the Fairtrade Products indicated in the Certificate.
- 4.7 The Customer shall use the Certification only to point out that its products have been certified acc. to the Fairtrade Standards.
- 4.8 As an exception to no. 4.7, the Customer shall be permitted to exclusively refer to its product Certification in means of communication like documents, brochures or other advertising media in acc. with the FLOCERT Promotional Guidelines.



- 4.9 The Customer shall authorise FLOCERT to publish a list with the certified customers on the Customer's website, stating name, Fairtrade Product and function.
- 4.10 The Customer undertakes to provide FLOCERT with the following:
- a. a current list of the producing members of the group of companies;
  - b. a current list of the production sites;
  - c. a current list of all contractor locations;
  - d. regular reports on the purchase, sale and processing of Fairtrade Products, including information on sellers and purchasers of the Fairtrade Products, the acknowledgement of receipt of Fairtrade Premiums and their amounts and other reports described in the Fairtrade Standards, FLOCERT Compliance Criteria, FLOCERT Promotional Guidelines and in the Certification Standard Operating Procedure;
  - e. all information about amendments having a significant effect on the design or specification of Fairtrade Product, as well as any indication that a Fairtrade Product potentially no longer meets the FLOCERT Certification requirements;
  - f. all information about amendments associated with the Customer's organisation, e.g. switching from a Producer with one property to a Producer with several properties or switching from a first-tier Producer to a second-tier or third-tier Producer;
  - g. all information about a potential or actual conflict of interests between the Customer and an Expert or a FLOCERT employee who is in direct contact with the Customer; and
  - h. any information that results in an amendment to the fees charged by FLOCERT.
- 4.11 In case of any amendments to the Fairtrade Standards, FLOCERT Compliance Criteria and FLOCERT guidelines, the Customer shall be obliged to verify whether it still meets the Certification requirements. If this is not the case, it must inform FLOCERT thereof without delay.
- 4.12 The Customer shall inform FLOCERT without delay of any amendments to operational circumstances that may have an impact on the management system, the Certification services, the products, the processes or the nature and scope of the business activities of the Customer. Any violations of this obligation to inform may entail withdrawal of the Certificate. In addition, the Customer shall be obliged to inform FLOCERT of any deviations identified within the framework of internal audits by the Customer, its business partners or public authorities.
- 4.13 The Customer may reproduce or publish extracts from FLOCERT reports only if and to the extent that the Customer has obtained the prior written consent of FLOCERT. FLOCERT reserves the right to take legal action if any publication violates this provision. The Customer undertakes to not publish any details about the provisioning, implementation or execution of FLOCERT services.





- 4.14 If the Customer decides to disclose any copy of its Certificate or of other Certification documents vis-à-vis third parties, such documents must be disclosed in full to raise the third party's awareness of the exact scope of its Fairtrade Certification.
- 4.15 The Customer shall keep minutes of all complaints of which it becomes aware regarding fulfilment of the applicable standards by its Fairtrade Products. The Customer shall take and document appropriate measures in respect of such complaints and defects in products or Certification services likely to affect fulfilment of the Certification requirements. The Customer shall make such records accessible to FLOCERT upon request.

If the Customer transfers its business activities to any other company, transfer of the Certificate shall require the prior written consent of FLOCERT. If such consent is given, use of the Certificate by the new company shall be subject to the provisions of the Agreement.

## **5. Prices and Terms of Payment**

- 5.1 The prices specified by FLOCERT shall be exclusive of the respective applicable statutory VAT. Where accruing, the VAT shall be invoiced separately.
- 5.2 The prices specified to the Customer shall include all phases up to the conclusion of the Certification procedure or auditing activities, transmission and release of the report, the annual Certification Fee, the Certificate and the regular monitoring by FLOCERT as required to maintain the Certification.
- 5.3 Since the prices are based on the remuneration rates as of the date on which the quotation is submitted, FLOCERT reserves the right to price adjustments, i.e. both increases and decreases. In addition, FLOCERT may adjust the remuneration if the Customer's particulars change or if it turns out that the actual circumstances at the Customer's are not in line with the particulars initially provided to FLOCERT and based on which the respective quotation had been drawn up.
- 5.4 The Customer shall be notified of any increase in remuneration giving three months' notice. If the Customer does not agree to the intended amendment to the Certification Fees, it may terminate the Agreement in writing
- a. giving 30 days' notice from receipt of the written announcement of the increase in remuneration by FLOCERT and,
  - b. upon entry into force of the termination, on the day of the intended amendment.

If FLOCERT does not receive any such written termination of the Customer within 30 days after receipt of the written announcement by FLOCERT or if the Customer continues to pay the Certification Fees, the Customer shall be deemed to have accepted the fee increase.



- 5.5 The Certification Fees shall be due for payment on the maturity date acc. to the invoice sent by FLOCERT to the Customer once a year.
- 5.6 In any case of payment default, the Customer, as an entrepreneur, shall owe default interest in the amount of nine percentage points above the basic rate of interest as from maturity, unless FLOCERT demonstrates any higher damage; otherwise, Section 288 BGB [German Civil Code] shall apply. Moreover, FLOCERT shall be entitled to charge a cost lump-sum of € 5 per reminder issued after any default occurred.
- 5.7 Any set-off against the accounts receivable of FLOCERT shall be permitted only if the counterclaim is undisputed, has been recognised by us or has been legally established.

## **6. Ownership of Reports and Certificates as well as Intellectual Property**

FLOCERT shall remain the copyright owner and holder regarding all documents made available by it, especially of each report or Certificate. The Customer may not modify or misrepresent the content of these documents in any form. Duplicates of Certificates may be ordered from FLOCERT at any time.

## **7. Confidentiality and Data Protection**

- 7.1 "Confidential Information" within the framework of these GTCs and the Agreement shall include any oral or written information to be protected that is obtained by the Customer and FLOCERT from the respective other party based on the GTCS or the Agreement or Trade and Business Secrets of the respective other party. However, Confidential Information shall not include any information that
- a. was available to the receiving party prior to the date of disclosure by the disclosing party on a non-confidential basis;
  - b. is already public knowledge or becomes public knowledge at any later date without any misconduct by the disclosing party;
  - c. is specified in the Customer's Certificate, e.g. name, address and the Fairtrade Product(s);
  - d. is Fairtrade Producer Information;
  - e. has already been in the legitimate possession of both parties prior to the conclusion of these GTCs and the Agreement;
  - f. is obtained by either party from a third party by legal means and not subject to any disclosure limitation;
  - g. is independently developed by FLOCERT;
  - h. relates to the Certification status and associated data;
  - i. has already been known to the party receiving the Confidential Information within the framework of these GTCs and the Agreement otherwise than by violating a legal or contractual obligation of the disclosing party;
  - j. becomes subject to a written agreement of the parties on its confidential nature or permitted disclosure;





- k. must be disclosed by law based on a decision of a court of competent jurisdiction or by a supervisory or administrative authority.
- 7.2 The parties and their representatives or subcontractors may use Confidential Information only within the framework of these GTCs and the implementation of the Agreement. Any disclosure of Confidential Information of the respective other party vis-à-vis third parties, except for the explicit provisions of these GTCs, shall be permitted only after the other party has given its prior written consent. This provision shall not apply to any disclosures prescribed by law or ordered by courts or public authorities.
- 7.3 FLOCERT may process and store the Confidential Information communicated by the Customer to the extent that this is required to execute and implement the Agreement and as long as FLOCERT is obliged to retain such Confidential Information due to legal regulations. Any further use shall be made only if the Customer has given its approval.
- 7.4 The Customer shall agree that FLOCERT will forward Confidential Information to the Fairtrade Organisations for the following purposes:
- a. to fulfil the obligations within the framework of these GTCs and the Agreement;
  - b. to strengthen and improve Fairtrade activities in supporting Producers and Traders;
  - c. to verify data on the flow of goods and supply chains;
  - d. to analyse Fairtrade effects;
  - e. to perform research on issues relating to Fairtrade.
- 7.5 The Customer shall authorise FLOCERT, the agent or subcontractor to disclose all information required to render the Certification services transferred.
- 7.6 Unless agreed otherwise, either party may pass Confidential Information on to a third party only if it is passed on
- a. to its employees acc. to the need-to-know principle (access rights must be exclusively restricted to information, information systems and information processing facilities required to perform the agreed tasks);
  - b. to affiliated companies and contractors acc. to the need-to-know principle; or
  - c. with the aim of obtaining consultancy services from legal or financial advisors or project consultants subject to professional secrecy.
- 7.7 The party disclosing Confidential Information must ensure that the confidentiality of such Confidential Information will be secured by confidentiality agreements at any time; the recipients must destroy or return any Confidential Information no longer required by them without delay.



- 7.8 The Customer shall agree that FLOCERT may forward the result of the Customer's certification (non-conformities and approved corrective actions) to Fairtrade Organisations and the following organisations only following a final Certification decision:
- a. organisations which are a Producer, Trader and/or licensee of the Fairtrade Mark in the same, directly associated supply chain as the Customer; and
  - b. organisations maintaining a valid agreement and/or a valid licence agreement on the Fairtrade Mark with a Fairtrade Organisation.
- 7.9 In addition, FLOCERT may collect further information on behalf of other Fairtrade Organisations which will then be used by such organisations for impact reporting, marketing or research purposes. In these cases, FLOCERT shall inform the Customer of the purpose of the data gathering and shall obtain the Customer's approval before such information will be disclosed to third parties.
- 7.10 FLOCERT shall adhere to applicable data protection provisions on the gathering, use, processing and transmission of Personal Data and shall take reasonable measures to likewise oblige the recipients of such data to adhere to this clause.
- 7.11 The Customer shall agree that FLOCERT will gather and store Personal Data to the extent required to render the contractual services. Any further use shall be made only with the Customer's approval.
- 7.12 Personal Data shall be made accessible in an either aggregated or anonymised form, unless required otherwise to comply with the provisions of these GTCs and the Agreement.
- 7.13 The Customer shall be entitled at any time to revoke its agreement to the processing or transmission of any Personal Data not required to fulfil the Agreement. It shall also be entitled to knowledge, correction, deletion and restriction of such processing.

## **8. Term and Termination**

- 8.1 FLOCERT may terminate the Agreement without notice, especially if
- a. the Customer furnishes incorrect or no particulars during the Certification, makes faulty assertions in relation to the Certification system or uses licences, Certificates or the Fairtrade Mark in any misleading or unlawful manner; the rules on the Fairtrade Mark shall be subject to the licence agreements with National Fairtrade Organisations and may be obtained from them;
  - b. the Customer is a licensee of the Fairtrade Mark at the same time and the licence agreement is terminated for any reason;





- c. the Customer's Certificate is withdrawn as a result of the Customer not having met the Certification requirements;
- d. the Customer violates any provision in the Agreement and, in case of a remediable violation, fails to bring the violation to an end within 15 days after being requested by FLOCERT to correct the violation; this shall also include any omitted payment of the Certification Fees;
- e. bankruptcy proceedings are initiated in relation to the Customer or the Customer goes into liquidation;
- f. the Customer is and/or its assets are bought up by another company and the consent to transfer the Fairtrade Certificate is not given;
- g. the Customer violates the confidentiality arrangement in no. 7.

8.2 Following termination of the Agreement, FLOCERT shall announce that the Certificate has been withdrawn as a result of the Agreement being terminated. If the Customer is a Producer, FLOCERT shall be entitled to verify the use of the Fairtrade Premiums within three (3) years after termination of the Agreement.

8.3 Termination of the Agreement shall result in the Customer losing its status as Fairtrade Producer or Trader. Moreover, the Customer shall be obliged

- a. to cease using all advertising and packaging materials containing any reference to the Certification by FLOCERT upon termination of the Agreement;
- b. to inform its suppliers and customers of the change in its Certification status;
- c. in case of an ordinary termination, to still sell off its inventory of Fairtrade Products existing at the time of receipt of the notice of termination for an additional period of three (3) calendar months as from the date the termination becomes effective; all purchase agreements concluded before the notice of termination is received may still be fulfilled for the same period;
- d. in case of an extraordinary termination, to cease selling Fairtrade Products without delay;
- e. in case that it terminates the Agreement as a result of any adjustment of the Certification Fees, to still sell off its inventory of Fairtrade Products existing at the time of receipt of the price increase notice for an additional period of three (3) calendar months as from the date the termination becomes effective; all purchase agreements concluded before such termination may still be fulfilled for the same period.

## **9. Force Majeure**

9.1 Neither party shall be liable for any damage due to default or omission in any fulfilment hereunder if such default or omission is attributable to any circumstances of force majeure, especially natural disasters, officially imposed restrictions (including the rejection or annulment of any export or other licence required), war, riots and/or any other reason outside the reasonable sphere of control of the party affected in rendering its services. The right of termination shall remain unaffected thereby.



- 9.2 In case of any delay or prevention of either party in fulfilling any obligation within the framework of these GTCs and the Agreement, such party shall inform the contracting partner of the event, the affected obligation and the probable duration of the event without delay.
- 9.3 If any event of force majeure prevents or delays fulfilment of any obligation within the framework of the Agreement by more than sixty days, both parties shall be entitled to terminate the Agreement by ordinary termination.

#### **10. Warranty, Obligation to Give Notice of Defects**

- 10.1 FLOCERT undertakes to exercise its activity with the required care and competence and shall be exclusively liable for Certification services in acc. with these GTCs. FLOCERT shall not warrant that the Customer will actually obtain the Certificate.
- 10.2 The Customer shall be obliged to verify the deliverables immediately after transmission and to notify FLOCERT in writing of any defects identified without delay, after ten (10) workdays at the latest. Any defects subsequently asserted shall be excluded.
- 10.3 Any farther-reaching warranty rights, especially to redhibition, price reduction or damages (subject to clause 11 of the GTCs) shall be excluded to the extent permitted by law.

#### **11. Liability and Limitation**

- 11.1 Except for wilful intent and gross negligence, the liability of both parties and of their representatives and employees shall be excluded. This shall not apply, however, to violations of essential contractual obligations or for damage caused by any violation of life, body or health. Essential contractual obligations shall be any obligations that are crucial for the Agreement, fulfilment of which allows for the Agreement to be properly implemented and on the fulfilment of which the parties will and may regularly rely.
- 11.2 Where damage is exclusively based on ordinary negligence, liability for such damage shall be limited to the typically foreseeable damage. The typically foreseeable damage shall not exceed three times the annual invoice total in any case. Breach of duty by FLOCERT shall be equivalent to the one of by its legal representative or its auxiliary agents.
- 11.3 The Customer shall compensate FLOCERT for all accounts receivable asserted by third parties vis-à-vis FLOCERT due to death, personal injury or material damage by or in connection with faulty goods if such fault in the goods is attributable to any act or omission by the Customer, its employees, representatives or contractors.





- 11.4 The general legal obligation of both parties to minimise any damage likely to be caused by an event giving rise to a claim within the framework of this compensation stipulation shall not be restricted or limited by any stipulation under this clause.
- 11.5 For the rest, any liability for damages and reimbursement of expenses for any legal reason whatsoever shall be excluded.
- 11.6 The preceding provisions shall also apply for the benefit of our legal representatives and auxiliary agents if claims are directly asserted against them.

## **12. Written Form Requirement**

- 12.1 Side agreements, modifications and amendments to the mandate contract and these GTCs shall require written form. This shall also apply to any waiver of written form.
- 12.2 Besides the legal requirements of the Federal Republic of Germany on written form, this obligation shall be deemed met if
- a. the electronic scan of the original document is transmitted by e-mail in the PDF format;  
or
  - b. the original document is transmitted as a letter or by fax.

## **13. Assignment**

Neither party may assign, transfer or surrender in any other manner whatsoever its rights or obligations within the framework of these GTCs and the Agreement to any third party, unless the other party gives its written approval.

## **14. Applicable Law and Place of Jurisdiction**

- 14.1 Where applicable, the exclusive place of performance and arbitration for both contracting parties for all disputes from these GTCs and the Agreement shall be Bonn, Federal Republic of Germany. FLOCERT reserves the right to take legal action against the Customer at the latter's registered office.
- 14.2 All disputes from or in connection with these GTCs and the Agreement or its validity shall be finally settled in acc. with the arbitration rules and the Supplementary Rules for Expedited Proceedings of Deutsche Institution für Schiedsgerichtsbarkeit e. V. (DIS) to the exclusion of legal recourse. The place of arbitration shall be Bonn, Germany. Arbitration proceedings shall be conducted in English.



- 14.3 These GTCs and the Agreement and all issues related to fulfilment, validity and interpretation shall be subject to the laws of the Federal Republic of Germany to the exclusion of the UN Sales Law.

#### **15 Severability Clause**

If one or several provision(s) of these GTCs are found ineffective or unenforceable in whole or in part, this shall not affect or impair the effectiveness or enforceability of the remaining provisions.

Valid as from: 1 March 2018