



TUV SUD LIMITED

TERMS AND CONDITIONS OF CONTRACT FOR EMISSIONS SERVICES

1. GENERAL

- 1.1 These conditions, together with any special conditions set out by TUV SUD Limited t/a TÜV SÜD National Engineering Laboratory (hereinafter 'TUV SUD') in the quotation or other contract documents shall be deemed to comprise the sole conditions under which TUV SUD offers its services to the Customer.
- 1.2 Where any conflict arises between these conditions and any special conditions advised by TUV SUD the special conditions shall prevail to the extent that they are inconsistent with these conditions.

2. VALIDITY

- 2.1 TUV SUD's tender is made on the assumption that the services are reasonably capable of being carried out. If on inspection, this is found not to be the case, TUV SUD shall advise the Customer as soon as reasonably practicable and thereupon shall be freed from carrying out its obligations thereunder. No liability shall attach to TUV SUD for any loss occasioned by the services not being carried out and the cost of such inspection and all work connected therewith shall be borne by the Customer.
- 2.2 The scope of the services shall not be changed without the prior written agreement of both parties.
- 2.3 Except for agreed sub-contract work no rights or obligations arising between the parties as a result of this contract shall be assigned to any third party without the prior written agreement of both parties.

3. PRICE

- 3.1 Prices are exclusive of VAT and all other taxes and levies chargeable in respect of the provision of the services. Any such taxes and levies shall be charged at the rate effective at the date of invoice.
- 3.2 Where the parties agree to vary the scope of the services and/or delivery dates, such agreement shall be recorded in writing, signed by the parties and TUV SUD shall adjust the contract price to take account of such changes.
- 3.3 While TUV SUD shall endeavour to maintain prices it reserves the right to increase prices proportionately to increases in the cost of labour and/or materials arising between quotation and completion.
- 3.4 In the event of the suspension or delay of the services by any act or omission of the Customer, including but not limited to failure to provide any information or instructions necessary to allow TUV SUD to fulfil its obligations hereunder in a timely manner, any prices quoted will be increased by TUV SUD to cover any extra expenses incurred by it on this or any other contract by reason of such suspension.
- 3.5 In the event that any such suspension exceeds 30 days, TUV SUD reserves the right to terminate the contract and thereupon shall be freed from any further obligations hereunder. No liability shall attach to TUV SUD for any loss occasioned by such termination.

4. INVOICING & PAYMENT

- 4.1 The Customer shall make full payment to TUV SUD of the contract price (or the appropriate part thereof where payment is by instalments) within thirty days of date of invoice.
- 4.2 In the event of suspension of the services as described in clause 3.4 above for a period of 10 days or more, TUV SUD shall be entitled to invoice the Customer for work done prior to suspension of the services. Such invoicing shall not affect the remaining performance of the contract or liability of the parties, except as may be agreed in writing by them.
- 4.3 If any sum payable under this agreement is not paid by the Customer on the due date for such payment then without prejudice to TUV SUD's other rights and remedies TUV SUD reserves the right to charge interest on such sum on a daily basis at the rate of 3% per cent above the base rate of National Westminster Bank Plc. Such interest together with all TUV SUD's reasonable costs and expenses of recovering the late payment and interest shall be paid by the Customer on demand.

5. COMPLETION

Time shall not be of the essence in relation to completion. All time scales quoted are the best available estimates, based on the information available at the date of the quotation and are subject to revision during the course of the work.

6. LIABILITY FOR DELAY

- 6.1 For the purposes of this Contract, time shall not begin to run until TUV SUD has obtained access to the facilities to be tested and/or to all information or plant and equipment necessary to enable TUV SUD to carry out the services or until a written order to proceed, on the terms stated in the quotation, has been received by TUV SUD, whichever is the latest. Notwithstanding the provisions of this clause, TUV SUD reserves the right to reschedule any agreed test timescales in the event that testing is delayed due to any act or omission of the Customer.
- 6.2 TUV SUD shall not be liable for any failure to perform its obligations if such performance is prevented by any circumstance or event beyond its control, including but not limited to acts of God, industrial disputes, actions of Government or other competent authorities, war, riot or civil unrest.
- 6.3 Subject to 6.2 above, should the customer suffer material loss as a direct result of TUV SUD's delay, the Customer may give notice to TUV SUD to complete the work within a reasonable period and should TUV SUD fail so to complete the Customer's sole remedy shall be the right to terminate the Contract.
- 6.4 All delays or changes to the agreed contract commencement date may be subject to a rescheduling charge. Moreover, compliance with any revised schedule shall be at the sole discretion of TUV SUD, who shall reserve the right to increase the contract price to cover additional costs resulting from the revised contract schedule.
- 6.5 TUV SUD reserves the right to make a cancellation charge of 50% of the contract value if the Customer cancels an agreed test programme at less than 10 working days' notice before the agreed contract commencement date.

- 6.6 In the event that due to any act or omission by the Customer work does not commence within 12 (twelve) weeks of the original agreed contract commencement date, TUV SUD reserves the right to cancel the contract and the Customer shall immediately pay all reasonable costs or expenses accrued by TUV SUD up to the date of cancellation. TUV SUD shall thereupon be freed from carrying out its obligations thereunder, and no liability shall attach to TUV SUD for any loss occasioned by the work not being carried out.

7. LIABILITY FOR DAMAGE

- 7.1 TUV SUD shall only indemnify the Customer against direct damage to the Customer's property arising whilst on the Customer's premises and only where directly caused by the negligence of TUV SUD. All claims for damages by the Customer must be supported by full details of the actual costs incurred to the reasonable satisfaction of TUV SUD. For the avoidance of doubt, no claim or series of claims shall exceed the cover provided by the insurance policies held by TUV SUD.
- 7.2 TUV SUD accepts no liability to the Customer for any consequential or indirect losses or loss of revenue, profits or anticipated profits arising out of or in consequence of this contract.

8. LIMITATION OF LIABILITY

- 8.1 Excluding any claims in respect of which TUV SUD may not lawfully exclude or limit its liability, the cumulative liability of TUV SUD to the customer under or in connection with the contract shall not exceed (i) the fees payable under the contract, or (ii) £10,000, whichever shall be the greater.
- 8.2 Neither party shall be liable to the other for any consequential or indirect loss arising out of breach of contract.
- 8.3 Any legal proceedings arising from the contract between the parties must be brought within 12 months from the date when the party bringing the proceedings first becomes aware or ought reasonably to have become aware of the facts giving rise to the liability or alleged liability.

9. NOTIFICATION OF HAZARDOUS MATERIAL AND EQUIPMENT

- 9.1 The Customer shall, prior to TUV SUD undertaking the agreed test programme, provide 14 days written notice to TUV SUD of any actual or potential health and safety hazards whether inherent in, or arising from the present condition of material or equipment at the Customer's workplace, with particular reference to the proposed test programme.
- 9.2 All the Customer's electrical apparatus shall be suitably labelled to indicate that it complies with the requirements of the Electricity at Work regulations.

10. REPORTS

Any results or recommendations given in reports are correct to the best of TUV SUD's knowledge at the time and on the basis of the instructions and information provided by the Customer. TUV SUD shall not be liable for any claims, actions or consequential damages suffered by the Customer or any third party by use of such reports and the Customer hereby agrees to indemnify TUV SUD against such liability arising from the use of such reports.

11. COPYRIGHT

- 11.1 The rights either under Letters Patent, Registered Design, Copyright or otherwise to any inventions, designs, drawings or information produced or acquired in the performance of this contract shall vest in and shall remain the property of TUV SUD.
- 11.2 TUV SUD hereby grants to the Customer a non-transferable licence to use the information contained in any reports or certificates produced in the performance of this contract. In the event that the Customer is in breach of any of the provisions of this contract, including but not limited to failure to meet its obligations of payment under clause 4, this licence shall be revoked, and the Customer shall forthwith cease to have any rights to use the information.

12. CONFIDENTIALITY

- 12.1 TUV SUD agrees to keep confidential all matters relating to this contract. This covers every aspect of the relationship between the parties including but not limited to products tested, studies carried out, methods used, results of the work, the nature and contents of any reports and the existence of the Contract unless the Customer agrees otherwise.
- 12.2 The Customer shall not by virtue of this contract gain any rights in information wholly or partially owned by the TUV SUD Group of Companies or any third party and used in the execution of this work. All such information shall be treated as confidential by the Customer and shall not be divulged to any other party without the prior written consent of TUV SUD.
- 12.3 The above shall not apply to information required by a Court of Law or which:
- is known to the receiving party at the start of the contract negotiations
 - is in or comes into the public domain
 - is legitimately obtained from a third party.

13. EXPORT CONTROL AND EMBARGO REGULATIONS

- 13.1 TUV SUD is not obliged to provide the Services to the extent that and for as long as such provision of the Services would result in violations of export control and embargo restrictions. In such circumstances, TUV SUD agrees to notify the Customer, in writing, that Services may not be provided.
- 13.2 If TUV SUD is unable to provide the Services on time due to the need to obtain permits, licenses, or other official authorisations imposed under export control and embargo regulations, any binding delivery or completion deadlines contained within the Contract shall be reasonably extended by the duration of the resulting delay. In such circumstances, TUV SUD shall notify the customer in writing of the delay.
- 13.3 In the event that the performance of the Services ceases under clause 13.1, or the delay referred to in Clause 13.2 continues for more than six months from the date TUV SUD initially notifies the Customer, either party may terminate the contract. The Customer shall not be entitled to assert any further claims arising from Clauses 13.1 or 13.2, including, but not limited to, claims for damages.
- 13.4 The Customer is responsible for compliance with all applicable export control and embargo regulations in effect at the time of using or transferring any of the Services or Deliverables provided by TUV SUD. The Customer is solely responsible for obtaining any required permits or licenses required from the relevant authorities, where necessary. If the Customer violates any export control or embargo regulations, TUV SUD reserves the right to terminate the contract with immediate effect.
- 13.5 Upon request, the Customer shall provide TUV SUD with all necessary information regarding the intended use, final recipient, and end use of the Services or Deliverables provided by TUV SUD. This includes, but is not limited to, the obligation to issue or supply end-user certificates (EUC) as required.
- 13.6 The Customer agrees to indemnify TUV SUD against any and all claims that may be brought

against TUV SUD by authorities or other third parties on the grounds of intentional or negligent violations of export control and embargo restrictions by the Customer and undertakes to indemnify TUV SUD for and against any and all losses sustained, damage, suffered and expenses incurred as a result.

14. TERMINATION

If the Customer shall :

- a) break any provision of this or any other contract with TUV SUD or;
- b) suffer distress or commit an act of bankruptcy, make arrangements with creditors or go into liquidation or have a receiver appointed, then TUV SUD may, without prejudice to any other claim or remedy, suspend or terminate performance of this or any other contract by written notice and shall be entitled, without prejudice to any other claim or remedy, to payment for the services already completed or in progress, based on the contract price or the value of the work done.

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15. ARBITRATION

All differences between TUV SUD and the Customer arising from the Contract shall (except where, by its terms, TUV SUD's decision is to be final and binding) be referred to an arbitrator to be appointed, in default of agreement between the parties by the President of the Institute of Engineers and Technicians of England and Wales and acting in accordance with the Provisions of the Arbitration Act 1950 as amended or re-enacted.

16. LAW

The Contract shall be governed by English Law and the parties agree to submit to the exclusive jurisdiction of the English courts.

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