



**1 TERMS AND CONDITIONS**

- 1.1 These General Terms and Conditions of Services, together with the related written quotation issued by TUV SUD Limited (the "Quotation") and accepted unconditionally in writing by the customer to whom the Quotation is addressed (the "Customer"), shall constitute the entire binding contract (the "Contract") under which TUV SUD Limited ("TÜV SÜD") shall perform the services specified in the Quotation (the "Services").
- 1.2 In the event of any conflict between the provisions of the Quotation and these terms and conditions, the provisions of the Quotation shall prevail.
- 1.3 No other terms and conditions proposed by the Customer, even if included in its acceptance of the Quotation, shall apply to the Contract between TÜV SÜD and the Customer, unless expressly incorporated within the Contract. This Contract shall replace all previous negotiations, arrangements, statements, understandings, course of dealings or agreements made between the parties in relation to its subject matter, whether written or verbal, and shall supersede and prevail over any terms or conditions contained in or referred to in the Customer's purchase order or acceptance of the Quotation or specification or the Customer's confirmation of order or implied by law. The Customer warrants and represents that its signatory is duly authorised and has the necessary right to execute this Contract and bind the Customer. Delivery of the Customer equipment to TÜV SÜD's premises with a relevant request for a service shall constitute an offer to TÜV SÜD and commencement of that service by TÜV SÜD shall constitute an acceptance of that offer, at which point the binding Contract based on these terms and conditions shall be formed.  
"Claim(s)" shall mean all claims, damages, liabilities, losses, demands, liens, encumbrances, causes of action of any kind (including, without limitation, actions in rem or in person), obligations, costs, judgments, interest, and awards (including, without limitation, legal counsel fees and costs of litigation if awarded as part of the judgment in favour of the person asserting the Claim), whether created by law, contract, tort, voluntary settlement, or otherwise, arising out of, related to, or in any way connected with this Contract or the performance of the Services.  
Where a reference in the Contract is made to days or months, such reference shall be to consecutive calendar days or months unless expressly stated otherwise.

**2 PRICE**

- 2.1 All prices stated in the Quotation are exclusive of VAT and any other sales taxes and levies chargeable in respect of the provision of goods or services.
- 2.2 Where the period of time between the date of the Quotation and completion of the Services exceeds 6 (six) months, TÜV SÜD shall increase its prices commensurately with increases in the costs of labour, storage, consumables, equipment and/or materials arising during this period. For the purposes of this sub-clause, any periods of delay solely attributable to TÜV SÜD's default shall be excluded.
- 2.3 If any scheduled Services are cancelled, rescheduled, suspended or the specification or scope of work is amended for reasons not solely attributable to TÜV SÜD, unless TÜV SÜD is given at least 14 (fourteen) days advance notice in writing (notwithstanding the above, for any audit services, such notice shall be at least 60 (sixty) days), the Customer shall pay all charges payable for the originally scheduled Services in addition to any other losses, expenses and costs incurred or committed to by TÜV SÜD as a result of the cancellation, re-scheduling, suspension or amendment.

**3 INVOICING AND PAYMENT**

- 3.1 Where the Services are performed in stages, TÜV SÜD shall invoice the Customer upon completion of each stage but in any case, each month for the Services performed in the previous month. In all other cases, TÜV SÜD shall invoice upon the completion of all Services.
- 3.2 The Customer shall pay every TÜV SÜD invoice in accordance with clause 3.1 and requirements of the invoice, in the currency specified in the invoice, and within 30 (thirty) days of invoice date. Should full payment not be made within 30 days, TÜV SÜD shall be entitled to charge interest on the outstanding balance at the rate of 5% above the base rate of the Bank of England at the time of the charging the interest.
- 3.3 If any invoice is disputed, the Customer shall pay any undisputed part in accordance with the provisions of clause 3.1.
- 3.4 If any invoice becomes overdue by 14 (fourteen) days, TÜV SÜD may, by written notice to the Customer and without liability, immediately suspend further performance of the Services until full payment is made.

**4 PERFORMANCE OF SERVICES**

- 4.1 In performing the Services TÜV SÜD shall exercise the level of skill, care and diligence reasonably expected of a supplier of technical services of a similar nature, type, and complexity as the Services. The Customer expressly acknowledges and agrees that TÜV SÜD gives no warranty that any result or objective can be achieved through the Services and that, where results are based on smaller scale tests and theoretical studies, results may require careful validation to be extrapolated to a production scale.
- 4.2 Any time is of the essence provisions in relation to the completion of the Services are hereby waived by all parties to the Contract.
- 4.3 Any timescales for performance of the Services shall not begin and/or continue to run until TÜV SÜD has received all instructions, items and equipment, samples, access, information and data reasonably required by TÜV SÜD to enable it to perform the Services. TÜV SÜD shall not be liable for any delays caused by or attributable to the Customer's late approval(s), late or interrupted provision of access, information, data, equipment and machinery, materials or instructions, and in any of such cases the Contract shall be amended accordingly to adjust the performance/delivery date(s) and resulting costs and expenses.
- 4.4 Provided it notifies the Customer promptly in writing, TÜV SÜD shall not be liable for delay or non-performance of any part of the Services which is attributable to force majeure, ie, any circumstances beyond reasonable control of a party to the Contract, the adverse effects of which could not have been avoided by the exercise of reasonable foresight or diligence. During any force majeure period, TÜV SÜD's obligation to perform the affected Services shall be suspended without any liability and any timescales or delivery dates of the Services and if required, compensation shall be adjusted accordingly.
- 4.5 Any changes to the agreed Services (their scope, total compensation, rates, delivery dates, hazardous conditions as per clause 5) shall



constitute an amendment to the Contract to be issued by TÜV SÜD and accepted in writing by all parties to the Contract.

TÜV SÜD reserves the right to review and amend any rates and prices where the Customer's documentation, specification or other materials relating to the Contract have changed since the original Quotation was given or where additional services not envisaged by the Quotation are requested (eg. producing written descriptions of detailed procedures undertaken as part of the Services). For the avoidance of doubt, acceptance of such additional requests shall remain at TÜV SÜD's discretion.

- 4.6 TÜV SÜD warrants that its Services and reports and other deliverables shall be performed (a) as per clause 4.1, (b) in accordance with good industry practice, (c) in compliance with all applicable laws, rules, regulations, codes, (d) in accordance with the Contract and all the Customer's safety and other requirements communicated to TÜV SÜD in writing prior to the Contract, and (e) in accordance with clause 7.4. This warranty shall be effective during the Acceptance Period as specified by clause 7.1.

This warranty is exclusive and, except as stated herein, TÜV SÜD makes no express or implied warranties as to any matter whatsoever, including, without limitation, the warranty of merchantability and fitness for a particular purpose, which exceed the above warranty. The Customer's sole remedies and TÜV SÜD's sole obligations arising out of or in connection with defects in materials, workmanship or services which are based on warranty, negligence, strict liability or otherwise shall be those stated in this clause 4.6.

## **5 NOTIFICATION OF HAZARDOUS CONDITIONS**

- 5.1 The Customer shall inform TÜV SÜD in writing prior to carrying out any Services on a Customer or TÜV SÜD site(s) or sample(s) that is of a dangerous or unstable nature, as well as notify TÜV SÜD of any actual or potential health & safety hazards relating to a sample and arising from TÜV SÜD's performance of the Services and shall provide instruction on the safe visiting of the site or safe handling of the sample. The Customer shall be fully responsible for appropriate safety labelling pertaining to the sample and any equipment provided by the Customer.

The Customer confirms that it is fully aware that the testing may damage or destroy its items, samples and equipment provided for the Services, and by entering into the Contract the Customer provides its unconditional consent to such damage, destruction and their consequences.

- 5.2 In the event TÜV SÜD becomes aware of potential health and safety hazards associated with the provision of the Services which were not disclosed by the Customer or reasonably contemplated before issuance of the Quotation, in accordance with clause 4.5 TÜV SÜD shall be entitled to an equitable adjustment of its compensation (including additional costs and expenses) and timescale(s) for performance of the Services commensurate to the extent of any actions or safeguards undertaken by TÜV SÜD or the Customer to address any additional risks.

## **6 RETURN OR DISPOSAL OF CUSTOMER SUPPLIED ITEMS**

- 6.1 Unless otherwise expressly stipulated in the Quotation, delivery and collection of any Customer supplied items (including without limitation, samples) following the completion of the Services (or earlier termination of the Contract) shall be the responsibility and expense of the Customer. TÜV SÜD shall not be obliged to return any packaging with which the items were delivered.
- 6.2 In the event the Customer supplied items are not collected within 14 (fourteen) days of the Customer being notified of their readiness for collection, TÜV SÜD may arrange for their return at the Customer's expense or, if TÜV SÜD has reasonable cause to believe that the cost of returning any Customer supplied items exceeds their value, TÜV SÜD may proceed to dispose of such items in the most cost-effective manner it deems appropriate.
- 6.3 In the event of disposal of the Customer supplied items under clause 6.2, the Customer shall be liable for any costs incurred and shall indemnify, save and hold TÜV SÜD harmless in respect of any Claims arising out of disposal of the items.

## **7 DELIVERABLES**

- 7.1 Upon completion of each stage of the Services or the entire Services as the case may be, TÜV SÜD shall issue its report on the completed Services, and the Customer shall confirm its acceptance of or objections to the report within 14 (fourteen) days (the "Acceptance Period"). Upon the expiry of the Acceptance Period and provided the Customer has not raised any objections, the report shall be considered accepted and the Services completed fully.
- 7.2 TÜV SÜD shall not be responsible for errors in its deliverables attributable to inaccuracies or omissions in information or data provided by or on behalf of the Customer.
- 7.3 Ownership of any deliverables such as, without limitation, reports or certificates issued by TÜV SÜD shall remain with TÜV SÜD until all outstanding invoices have been paid in full whereupon ownership shall vest in the Customer, unless stated otherwise in the Quotation. Until ownership vests in the Customer, the Customer shall not copy any part of the deliverables or share their contents with other parties without TÜV SÜD's express written permission.
- TÜV SÜD shall retain all intellectual property rights to its deliverables and hereby grants to the Customer a non-exclusive, perpetual, royalty-free, worldwide, irrevocable, sub-licensable licence to use such deliverables as whole for the purpose of the Contract.
- 7.4 Subject to clause 7.5, TÜV SÜD shall indemnify and defend the Customer from the Claims for any patent or copyright infringement by TÜV SÜD's services and/or documents except where such infringement necessarily arises from the Customer's materials, information, equipment, samples and other items and/or a result of the Customer's instructions; should TÜV SÜD become aware of such infringement or possible infringement, it shall inform the Customer immediately. In the event TÜV SÜD's services and/or documents are held to be infringing patents and/or copyright solely due to TÜV SÜD's breach, TÜV SÜD shall, at its own expense and option, either procure for the Customer the right to continue using the services and/or documents or replace the same with non-infringing services and/or documents, or modify the services and/or documents so that they become non-infringing.
- 7.5 Notwithstanding clause 7.4, the Customer acknowledges and agrees and that TÜV SÜD does not warrant that any of its Services and/or



**Services**

deliverables, if used or sold in combination with others' equipment, documents or services, or used in the Customer's methods or processes, will not, by virtue of such combination or use, infringe others' intellectual property rights, and TÜV SÜD shall not be liable for any IPR infringement arising solely from or by reason of any such use or sale.

**8 CONFIDENTIALITY**

- 8.1 TÜV SÜD and the Customer both undertake to keep confidential all matters relating to the provision of the Services and any information obtained while on the other's premises to the extent a reasonable person would ordinarily regard these as being commercially sensitive or confidential. For the avoidance of doubt, matters relating to the provision of the Services include every material aspect of the contractual relationship between TÜV SÜD and the Customer, including without limitation products tested, studies carried out, methods and processes used, and the nature and contents of any reports and other deliverables.
- 8.2 In fulfilling their obligations under this clause, TÜV SÜD and the Customer shall safeguard each other's information by exercising at least the level of care and diligence it applies to their own similar information and, in any event, no less than a reasonable level of skill and care, and shall enter into a non-disclosure agreement, if required.

**9 TERMINATION**

- 9.1 If any period of suspension under clause 3.4 exceeds 30 days, without prejudice to its rights to receive payment of any unpaid invoices for the performed Services and any incurred and committed costs and expenses, TÜV SÜD may by written notice terminate the Contract with immediate effect.
- 9.2 If any period of delay under clause 4.3 or clause 4.4 exceeds 60 days, either party may by written notice terminate the Contract with immediate effect.
- 9.3 If either party become insolvent or ceases to trade, the other party may by written notice terminate the Contract with immediate effect.
- 9.4 In the event of termination of the Contract for any reason (including the Customer's breach of the Contract), TÜV SÜD shall stop the performance of all Services and provide the Customer with a full report of the Services performed until the termination and a respective final invoice; the Customer shall pay the full amount for the Services carried out partially or completely and costs, charges and expenses incurred and committed to up to the date of termination insofar as not already invoiced.
- 9.5 Nothing in this clause 9 shall affect or restrict the rights of either party at common law to terminate and/or claim damages for breach of contract.

**10 LIMITATION OF LIABILITY**

- 10.1 Neither party shall be liable to the other for any consequential or indirect losses or damages, including without limitation, loss of revenue or production, loss of profit, goodwill or business opportunity, loss of value or decrease in earnings from any goods or property, business interruption or downtime attributed to or associated with the performance or non-performance of the Services.
- 10.2 Subject to clause 10.4, TÜV SÜD shall be solely responsible for and shall indemnify, save and hold the Customer harmless from and against any and all Claims arising out of personal injury, illness, death, or loss of or damage to property (whether owned, hired, leased or borrowed) suffered by TÜV SÜD.
- 10.3 Irrespective of the cause, the Customer shall be solely responsible for and shall indemnify, save and hold TÜV SÜD harmless from and against any and all Claims arising out of personal injury, illness, death of a person suffered by the Customer.
- 10.4 Irrespective of the cause, the Customer shall indemnify, save and hold TÜV SÜD harmless from and against any Claims arising from pollution, contamination or loss of or damage to any property, including without limitation any spills, leakage, fire, blow-up, the control and removal thereof, clean-up costs and any disposal and removal of resulting debris, trash and wreckage, reinstallation, retrieval and refurbishment costs and expenses caused by, or attributable to, the hazardous condition of any Customer supplied items not previously disclosed or otherwise reasonably apparent to TÜV SÜD.
- 10.5 The total liability of TÜV SÜD to the Customer under the Contract arising out of or associated with the performance or non-performance of the Services, whether arising in contract, tort (including negligence) or breach of statutory duty), shall not exceed the greater of TÜV SÜD's total compensation received under the Contract or £10,000.
- 10.6 Nothing in this clause 10 shall operate to exclude or limit the liability of a party for fraud or fraudulent misrepresentation, or any claim in respect of which liability cannot be limited by law.
- 10.7 The Customer shall obtain industry standard insurance for loss or damage to the Customer's property (including its facilities and equipment) for the duration of the Contract. Prior to commencement of any Services at the Customer's site, the Customer shall provide appropriate documentary evidence to TÜV SÜD in this regard.

**11 GENERAL**

- 11.1 The provisions of the Contract shall not be varied without the written agreement of each party. No party to the Contract can assign the Contract or any rights and obligations hereunder without the other party's express prior consent in writing.
- 11.2 A waiver of any right or remedy under the Contract or at law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. Unless otherwise agreed, all notices and correspondence under or in respect of the Contract shall be in the English language.
- 11.3 If any provision of the Contract is or becomes invalid, illegal or unenforceable, the relevant provision shall be deemed deleted and of no effect. Any deletion of a provision shall not affect the validity and enforceability of the rest of the Contract.
- 11.4 Unless expressly stated otherwise, the Contract shall not give rise to any rights of any other parties under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of the Contract.
- 11.5 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any



party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of the other party.  
11.6 Any provision of the Contract that expressly or by implication is intended to continue in force on or after expiry or termination of the Contract, in particular rights and obligations in clauses 2.3, 4.2, 4.4, 4.6, 6.3, 7.4-7.5, 8, 10, 11.5, 12, shall remain in force and full effect.

**12 LAW AND DISPUTE RESOLUTION**

- 12.1 The Contract shall be governed by the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction in respect of any dispute that arises under or in connection with the Contract.
- 12.2 Any disputes between the parties relating to the Contract shall be referred to an arbitrator to be appointed by agreement between the parties (or failing such agreement by the President of the Institution of Engineering and Technology) acting in accordance with the provisions of the Arbitration Act 1950 as amended or re-enacted.

**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.