

Standard Terms and Conditions of TÜV SÜD Bangladesh Private Limited
-TÜV SÜD Group (hereinafter referred to as TÜV SÜD), for
Certification, Verification, Validation and Training Services



1. GENERAL

- 1.1 Unless otherwise agreed in writing TÜV SÜD, all offers or services and all resulting contractual relationship(s) between TÜV SÜD, any affiliated companies of TÜV SÜD or any of their agents to any person applying for certification and /or training services (the "client") shall be governed by these Standard Terms and Conditions.
- 1.2 These Standard Terms and Conditions, and, as applicable, the proposal, the application, the codes of practice, TÜV SÜD Auditing and Certification Regulations, the TÜV SÜD certification Marks License terms and conditions and quotation, which apply at the time when the order is placed constitute the entire agreement (**the "contract"**) between the client and TÜV SÜD with respect to the subject matter hereof. Save as otherwise provided no variation to the contract shall be valid unless it is in writing and signed by or on behalf of the client and TÜV SÜD.
- 1.3 Where a Certificate / Audit report is issued to the Client, TÜV SÜD will provide the services using reasonable care and skill and in accordance with the Codes of Practice then in force of the relevant Certification Body.
- 1.4 In the event that an order is placed, the client shall unconditionally accept these Standard Terms and Conditions, and, as applicable, the proposal, the application/quotation, the codes of practice, TÜV SÜD Testing, Certification, Validation, Verification Regulations (TCVVR), schemes specific requirements, which apply at the time when the order is placed, out of which the most stringent terms will be applied/ made applicable.
- 1.5 Additional terms and conditions may apply to services offered via an online store of TÜV SÜD or another TÜV SÜD group undertaking.

2. DEFINITIONS:

"Accreditation Body" means any organization (whether public or private) having the authorization to appoint Certification Bodies;
"Application" means the request for services by a Client;
"Certificate" means the Certificate issued by a competent Certification Body;
"Certification Body" means any TÜV SÜD Legal entity having the authorization to issue Certificates;
"Codes of Practice" means those codes of practice issued by a Certification Body in accordance with the relevant certification scheme;
"Proposal" means the outline of services to be rendered by TÜV SÜD to the Client.
"Report" a report issued by TÜV SÜD to the Client indicating whether or not a recommendation to issue a Certificate is to be made.

3. SCOPE OF SERVICES:

- 3.1 These Standard Terms and Conditions shall apply to the following services:
 - System certification services: quality, environmental, safety, health, social compliance and other management system certifications in accordance with international or national standards;
 - Product conformity certification services in accordance with EC Directives or national legislation and product certification services in accordance with non-mandatory normative documents, specifications or technical regulations;
 - Service certification services in accordance with non - mandatory normative documents, specifications or technical regulations;
 - Process certification services;
 - Skills certification services;
 - Technical and soft skill Training services;
- 3.2 The scope of the services to be rendered by TÜV SÜD shall be specified in writing when the order is placed. If there is any proposed change or extension in the specified scope of the order during execution of the order, then it shall be reduced to writing in advance.

- 3.3 Client acknowledges that TÜV SÜD, either by entering into the Contract or by providing the Services, neither takes the place of Client or any third party, nor releases them from any of their obligations, nor otherwise assumes, abridges, abrogates or undertakes to discharge any duty of Client to any third party or that of any third party to Client.
- 3.4 Certification, suspension, withdrawal or cancellation of a Certificate shall be in accordance with the applicable certification body and applicable accreditation requirements.
- 3.5 TÜV SÜD may outsource the performance of all or part of services to any third party and the client authorizes TÜV SÜD to disclose all necessary information for such performance to third party.
- 3.6 **Re – Audits:** Major Non-conformances in an audit may require a re-audit of the pertinent sections of the Quality system. Re-audits may cover the entire system if it is found necessary by the Lead Auditor. Re-audits will be conducted at prevalent daily rates at the time of occurrence.
- 3.7 **Special Audits/Unplanned Audits:** In case of Serious OH&S incident/s or breach of regulation by the certified client, such issues shall be investigated by conducting special audits other than normal cycle in order to investigate to ensure OH&S management system is not compromised and did function effectively. The audit team shall be formed, and appropriate audit time shall be given to investigate such issues. Such audit could be done with or without advance information to Client, depending on the incident on case to case basis.
- 3.8 **Extension of Audit:** Audits may get extended due to the nature of the findings of the Auditors. Such situations may result in extra charges. The Lead Auditor shall discuss such situations with the client before any action is taken.

4. OBLIGATIONS OF THE CLIENT:

- 4.1 The client shall ensure that auditors/representatives of the respective authorities (e.g. regulatory appointment body, accreditation body or certification scheme owner) are entitled to participate in so called observed and witness audits on the business premises of the client and/or their subcontractor/supplier.
- 4.2 Where on-site activities (e. g. audits, inspections) conducted by TÜV SÜD personnel require personal protective equipment, TÜV SÜD and the client shall agree upon supply of such in advance of any visit.
- 4.3 The Client shall ensure that all product samples if any, access, assistance, information, records, documentation and facilities are made available to TÜV SÜD when required by TÜV SÜD, including the assistance of authorized personnel of the Client.
- 4.4 So far as it is permitted by law, the Client acknowledges that, it has not been induced to enter into the Contract in reliance upon, nor has it given, any warranty, representation, statement, assurance, covenant, agreement, undertaking, indemnity or commitment of any nature whatsoever other than as are expressly set out in these General Conditions and, to the extent that it has been, it unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation thereto.
- 4.5 The Client shall take all necessary steps to eliminate or remedy any obstacles or interruptions in the performance of the Services.
- 4.6 In order to allow TÜV SÜD to comply with the applicable health and safety legislation the Client shall provide TÜV SÜD with all available information regarding known or potential hazards likely to be encountered by TÜV SÜD personnel during their visits. TÜV SÜD shall take all reasonable steps to ensure that whilst on the Client's premises, its personnel comply with all health and safety regulations of the Client, provided that the Client makes TÜV SÜD aware of the same.
- 4.7 The Client shall not publicize details of the way in which TÜV SÜD performs, conducts or executes its operations.
- 4.8 The Client shall immediately inform TÜV SÜD of any and all changes in their premises which may affect their management system, their service their products, their process or their skills. Even non conformity identified during internal audit has to be informed failing which withdrawal of certificate shall follow. Information on incidents such as a serious accident, or a serious breach of regulation necessitating the involvement of the competent regulatory authority, provided by the

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certified client or directly gathered by the audit team during the special audit, shall provide grounds for the Certification Body to decide on the actions to be taken, including a suspension or withdrawal of the certification, in cases where it can be demonstrated that the system seriously failed to meet the OH&S certification requirements.

4.9 **Working Conditions:** The client shall provide safe and unrestricted access to pertinent work area to TÜV SÜD auditors at all times. Failure to do so, and delay caused due to no fault of TÜV SÜD shall result in an "extension of audit "at the cost of the client.

4.10 **Scheduling and Rescheduling of Dates:** Dates for on-site audits must be scheduled at least 4 weeks prior to the audit. The dates cannot be rescheduled without minimum 3 weeks advance notice. If the client reschedules the audit without the requisite advance notice, then the client may be liable to compensate TÜV SÜD for any lost service charges. In case the services are cancelled or aborted by the client on the scheduled date, then client will be liable to pay the entire charges including man-day charges, travel and hotel fees (as maybe applicable) to TÜV SÜD.

5. TERMS OF PAYMENT & FEES:

5.1 Validity: Quotations are valid for 3 months. For continued validity of a quotation, execution of the work must begin within 3 months of order acceptance unless a specific waiver is granted by TÜV SÜD.

Validity of services: TÜV SÜD scope of Testing and/or Inspection services are valid for 3 months from the date of issue of Inspection and/or Testing report after which TÜV SÜD shall not be liable for any issues arising out of services rendered by it.

5.2 TÜV SÜD may increase its fees if the Client's instructions change or are found to be not in accordance with the initial details supplied to TÜV SÜD prior to it providing the relevant fee quotation. Clients will be notified of any increase in fees.

5.3 Additional fees shall be charged for services that are not included in the Proposal and for work required due to non-conformances being identified.

5.4 Without prejudice to clause 5.3, additional fees will be payable at TÜV SÜD's charging rates in force from time to time in respect of rush orders, cancellation or rescheduling of services. A copy of TÜV SÜD's prevailing charging rates is available upon request.

5.5 Unless otherwise stated all fees quoted are exclusive of travelling and lodging & boarding costs (which will be charged to the Client at actual). All efforts will be made to use local staff from TÜV SÜD branch office throughout the contract, in which case only conveyance costs will be charged at actual. Travel & Sojourn costs will be shown separately in the invoice. All fees and additional charges are exclusive of applicable service Tax.

5.6 Invoices shall be raised upon completion of each stage in the quotation. Invoices for additional and further work will be issued on completion of the relevant task. Following submission of the Report to the Client, TÜV SÜD shall issue final invoice to the Client. Unless advance payment has been agreed upon or special terms of payment are agreed upon by TÜV SÜD in writing, all invoices are payable within 10 days from the date of raising of each invoice or as per the terms of credit agreed in writing between the parties (the "Due Date") regardless of whether the Client's system or products qualify for certification failing which interest will become due at a rate of 2% per month (or such other rate as may be established in the invoice) from the Due Date up to including the date payment is actually received. All payments must be made by Cheque/Demand Draft drawn on "TUV SUD Bangladesh Pvt. Ltd.". Applicable Service tax, at the time of service shall be additional and shown separately in the invoice. In case of cheque bounce, an amount of BDT 500/- shall be charged.

5.7 Any objection to TÜV SÜD invoice shall be communicated and justified in writing within a period of 7 days from the date of raising of invoice; failing which, it shall be deemed that the invoice is correct and then invoices shall not be changed, altered or modified for any reason whatsoever.

5.8 Client shall mention TIN No. 257857339950 on all TDS certificates. Any TDS deducted will continue to accrue as a receivable to TÜV SÜD until the TDS certificate is received. Receivables shall not be credited if TDS certificates bear an incorrect name or TIN number. TDS certificate should be sent to registered office address only.

5.9 Client shall not be entitled to retain or defer payment of any sums due to TÜV SÜD on account of any dispute, counter claim or set off which may allege against TÜV SÜD.

5.10 Client shall mention the VAT registration number 000310689-0102 on VDS deduction certificate. Also, VAT certificate shall be provided as per the VAT Act of 2012.

6. CERTIFICATE OWNERSHIP AND COPYRIGHT/TRADEMARKS

6.1 Any document including, but not limited to any Report or any Certificate, provided by TÜV SÜD and the copyright contained therein shall be and remain the property of TÜV SÜD and the Client shall not alter or misrepresent the contents of such documents in any way. The Client shall be entitled to make copies for its internal purposes only.

6.2 The Client may promote its certification in accordance with the terms set out in the Regulations governing the use of the certification marks. Use of TÜV SÜD corporate name or any other registered trademarks for advertising purposes is not permitted without TÜV SÜD prior written consent.

7. SECRECY/CONFIDENTIALITY:

7.1 As used herein, "Confidential Information" shall mean any oral or written proprietary information that a party may acquire from the other party pursuant to the Contract or information as to the business of the other party provided, however, that Confidential Information shall not include any information which (1) is or hereafter becomes generally known to the public; (2) was available to the receiving party on a non-confidential basis prior to the time of its disclosure by the disclosing party; (3) is disclosed to a party by an independent third party with a right to make such disclosure.

7.2 Unless required by law or by a judicial, governmental or other regulatory body, neither party nor their agents or subcontractors shall use the Confidential Information other than for the purpose of the Contract nor disclose the other's Confidential Information to any person or entity without the prior written approval of the other party except as expressly provided for herein.

7.3 TÜV SÜD shall be authorized to make file copies of written documents, which have been made available to it for review and which are important for processing the order.

8. FORCE MAJEURE:

If TÜV SÜD is prevented from performing or completing any service for which the Contract has been made by reason of any cause whatsoever outside TÜV SÜD's control, including, but not limited to, acts of God, war, terrorist activity or industrial action; failure to obtain permits licenses or registrations; illness, death or resignation of personnel or failure by Client to comply with any of its obligations under the Contract, the Client will pay to TÜV SÜD:

- (a) The amount of all abortive expenditures actually made or incurred;
- (b) a proportion of the agreed fees equal to the proportion (if any) of the service actually carried out and TÜV SÜD shall be relieved of all responsibility whatsoever for the partial or total non-performance of the required Services.

9. LIABILITY AND INDEMNITY:

9.1 TÜV SÜD undertakes to exercise due care and skill in the performance of the Services and accepts responsibility only in cases of proven negligence.

9.2 Nothing in these Standard Terms and Conditions shall exclude or limit TÜV SÜD liability to the Client for death or personal injury or for fraud or any other matter resulting from TÜV SÜD negligence for which

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- it would be illegal to exclude or limit its liability.
- 9.3 Subject to clause 9.2, the total liability of TÜV SÜD to the Client in respect of any claim for loss, damage or expense of any nature and howsoever arising shall be limited, in respect of any one event or series of connected events, to an amount equal to the fees paid to TÜV SÜD under the Contract (excluding Goods and Service Tax thereon).
- 9.4 Subject to clause 9.2, TÜV SÜD shall have no liability to the Client for claim for loss, damage or expense unless arbitral proceedings are commenced within one year after the date of the performance by TÜV SÜD of the service which gives rise to the claim or in the event of any alleged non-performance within one year of the date when such service should have been completed.
- 9.5 TÜV SÜD shall not be liable to the Client nor to any third party:
(a) for any loss, damage or expense arising from (i) a failure by Client to comply with any of its obligations herein (ii) any actions taken or not taken on the basis of the Reports or the Certificates; and (iii) any incorrect results, Reports or Certificates arising from unclear, erroneous, incomplete, misleading or false information provided to TÜV SÜD.
- 9.6 Except for cases of proven negligence or fraud by TÜV SÜD, the Client further agrees to hold harmless and indemnify TÜV SÜD and its officers, employees, agents or subcontractors against all claims (actual or threatened) by any third party for loss, damage or expense of whatsoever nature including all legal expenses and related costs and howsoever arising (i) relating to the performance, purported performance or non-performance, of the Services or (ii) out of or in connection with the Client's product, process or service the subject of the certification (including, without limitation, product liability claims).
- 9.7 Each party shall take out adequate insurance to cover its liabilities under the Contract.

10. COMPLIANCE:

Client hereby declares that it is aware of and acknowledges the Company's Code of Conduct available at:
[tvsud_code_of_conduct_brochure_en_230308.pdf \(tuvsud.com\)](https://www.tuvsud.com/tvsud_code_of_conduct_brochure_en_230308.pdf)

11. EXPORT CONTROL AND EMBARGOES:

- 11.1 TÜV SÜD does not have the obligation to provide services in due time to the extent that and for as long as such provision of services would result in violations of export control and embargo restrictions. In such a case, TÜV SÜD agrees to notify the customer without undue delay in written form about the fact that services may not be provided (impediment to performance).
- 11.2 In the event that TÜV SÜD is prevented from timely provision of services because permits, licenses or other official procedures imposed by restrictions under export control and embargo law need to be obtained, the delivery and completion deadlines agreed by TÜV SÜD and the customer with binding effect shall be adequately extended by the duration of the delay caused thereby. In such a case, TÜV SÜD agrees to notify the customer without undue delay in textual form about the delay.
- 11.3 Where the impediment to performance pursuant to Section 11.1 or the delay pursuant to Section 11.2 lasts longer than six months beyond the date of initial notification of the customer by TÜV SÜD, either party has the right to rescind the contract. In case of contracts for the performance of continuing obligations, either party has the right to terminate the contract instead. The customer may not assert any additional claims based on Sections 11.1 and 11.2, including, but not limited to, claims for damages.
- 11.4 The customer has the obligation to observe the export control and embargo law restrictions, as applicable and in effect at the time, when making use of or passing on services provided by TÜV SÜD. The customer has the obligation to obtain any permits or licenses that may have to be obtained from the competent authorities, if and where

necessary. In case of a violation of export control and embargo restrictions by the customer, TÜV SÜD has the right to rescind the contract. In case of contracts for the performance of continuing obligations, TÜV SÜD has the right to terminate the contract instead.

- 11.5 To the extent requested to do so, the customer has the obligation to provide TÜV SÜD, without undue delay, with any and all information on the intended use, final recipient and end use of the services to be provided by TÜV SÜD, including, without limitation, the obligation to issue or provide what is referred to as end-user certificates (EUC).
- 11.6 The customer agrees to indemnify TÜV SÜD to the full extent against any and all claims that may be asserted against TÜV SÜD 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 TÜV SÜD for and against any and all losses sustained, damage suffered and expenses incurred as a result.
- 12. MISCELLANEOUS:**
- 12.1 If any one or more provisions of these Standard Terms and Conditions are found to be illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 12.2 Neither party shall assign the Contract without the prior written consent of the other Party such consent shall not be unreasonably withheld. Any assignment shall not relieve the assignor from any liability or obligation under the Contract.
- 12.3 The Parties acknowledge that TÜV SÜD provides the Services to the Client as an independent contractor and that the Contract does not create any partnership, agency, employment or fiduciary relationship between TÜV SÜD and the Client.

13. COMPLAINT:

Any complaint can be addressed to "The Complaint Manager, TÜV SÜD Bangladesh (Pvt.) Ltd. Update Tower, Level 7 & 8, 01 Shahjalal Avenue, Sector 6, Uttara Model Town, Dhaka - 1230, Bangladesh and at Feedback.Complaint@tuvsud.com

14. TERMINATION:

- 14.1. Termination of Contract for failure to become effective**
If this Contract has not become effective within 2 months after the date of Contract signature i.e. Effective Date, either Party may, by not less than twenty-two (22) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.
- 14.2 Expiration of Contract**
The contract shall expire when services have been completed and all payments have been made..
- 14.3 Termination by Client**
Client may terminate the Contract / Work with or without cause at any time by giving 30 days' written "notice of termination" to TÜV SÜD, such termination to be effective subject to making the payment for services satisfactorily performed prior to the effective date of termination.
- 14.4 Termination by TÜV SÜD**
TÜV SÜD may terminate this Contract, by not less than thirty (30) calendar days' written notice to the Client, in case, the Client fails to pay any money due to TÜV SÜD pursuant to this Contract within thirty (30) calendar days after receiving written notice from TÜV SÜD that such payment is overdue.
- 14.5. Payment upon Termination**
Upon termination of this Contract, the Client shall make the following payments to TÜV SÜD:
- remuneration for services satisfactorily performed prior to the effective date of termination, other expenses, provisional sums



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and contingency for expenditures actually incurred prior to the effective date of termination;

- in case of suspension of works by the client, the payments of works successfully completed by TÜV SÜD shall not be suspended due to client's default/ failure

contained or as to any other matter in any way relating to these presents or mutual rights, duties or liabilities under these presents shall, if agreed to, be referred to an independent arbitrator. The said arbitration shall be governed by the rules of Arbitration Act, 2001 or any amendment thereof, by one arbitrator appointed by TÜV SÜD. The arbitration shall take place in Dhaka and be conducted in the English language. The expenses of arbitration shall be borne by both the parties equally.

15. JURISDICTION, APPLICABLE LAW, DISPUTES & ARBITRATION:

Unless specifically agreed otherwise, all disputes arising out of or in connection with these Standard Terms and Conditions or the Contract shall be governed by the laws of Bangladesh and Courts at Dhaka shall have the jurisdiction over the same. All disputes, claims and questions whatsoever which shall arise during the continuance of the contract or construction or the application thereof or any clause or anything herein

16. ACKNOWLEDGEMENT:

Client acknowledges that it has received, read and understood these Standard Terms and Conditions of TÜV SÜD along with quotations/ invoices and agrees and undertakes to accept the same without any reservation/objection and also agrees to fully abide by the same.

Note: These Standard Terms and Conditions of TÜV SÜD are in addition to specific rules and regulation of relevant Accreditation Body/Certification Body and should be read in conjunction with them. Client acknowledges the same and agrees to accept the same without any reservation/objection.