



## **Terms and Conditions for services of Freelance Experts for TÜV SÜD (MALAYSIA) SDN BHD**

### **Section 1. Assignment**

The assignment will take place in accordance with the terms and conditions set out here and in the respective order. This agreement shall not give rise to a right on the part of the Agent to be commissioned by the Principal.

### **Section 2. Project execution**

1. All documents handed over to the Agent by the Principal or the customer in conjunction with an order shall remain the property of the Principal or the customer and may only be used for the respective order and shall be handed back to the Principal after the audit without delay.

Where it is not necessary to carry out the work on the customer's premises, the Agent shall be free to choose when and where it carries out the work. The Principal shall not have managerial authority over the Agent on the choice of location.

Any deadlines stipulated for the work to be performed for the Principal must be observed, however. The Agent shall be available for discussions by arrangement. Furthermore, the Agent undertakes to adhere to the Principal's quality standards when providing the contractual services.

If devices or other equipment are required, the Agent is responsible for providing these itself.

The Agent shall receive a separate assignment in writing from the Principal for every expert service which is to be performed. The Principal is entitled to cancel assignments. Cancellation of assignments has to take place at least 10 (ten) days before the audit date.

2. The Agent may not have advised or trained a customer when installing, developing and maintaining its management system or in connection with the contractual services within two years before the expert services to be carried out; this includes in particular carrying out in-house training courses and internal audits. In-house training courses are only permitted when the contents are limited to general information available to the general public and no solutions specific to the particular company/customer will be taught.



3. The Principal's duty of neutrality also requires that no business is initiated as regards consultancy and/or training in direct connection with the expert services. The Agent therefore undertakes to offer the respective client neither training courses, consultancy nor internal auditing within a fair and reasonable time limit after the completed audit. The earliest that the Agent is permitted to render consultancy, training or internal audit services to the client he/she performed expert services under contract to the Principal is when the regular follow-up audit, in which he/she or his/her organisation is no longer involved, is completed (usually two years later).

4. If the Agent is assigned to customers by the Principal for providing expert services, the following rule shall apply: During the term of this agreement and for the duration of two years after this agreement has expired, the Agent shall not be permitted to directly or indirectly work as a consultant or auditor for customers for which they have conducted expert services as part of this agreement, or support other auditors/consultants in this matter.

5. The Agent is obliged to inform the Principal if it anticipates a possible conflict of interest.

6. The Agent has an obligation to the customer to remain neutral and objective as well as independent of economic or other interests.

7. The Agent shall be obliged to maintain strict secrecy with regard to any business and operational secrets and all other business-related and operational facts (of the Principal as well as of the Principal's customers) of which he/she has gained knowledge in conjunction with the Agent's activities for the Principal, even after termination of contractual relations and not to make use thereof for his/her own purposes.

The Agent is aware of the fact that he/she may be held liable by the customer(s) for violation of the duty to observe secrecy.

8. Furthermore, the Agent shall be obliged to observe the pertinent data protection regulations. The declaration of confidentiality shall be deemed to be a major integral part of the present agreement and is appended hereto as an **Annex**. The secrecy provision under this clause shall survive the termination or expiry of its appointment.

9. The Agent shall furnish the Principal with any necessary documents pertaining to its qualification and the upholding and extension of its appointment.



10. The Agent undertakes to carry out the expert services in compliance with the requirements of the Principal's management systems applicable in each case, which are described in greater detail in the management handbook and in the Principal's jointly applicable supporting documents. The Principal's technical specifications within the scope of the management system must be observed to the extent that this is required for the orderly carrying out the expert services. The Agent will receive all relevant documents (including electronic versions) with the confirmed assignment. In other respects, the Agent shall be free with regard to the manner of carrying out the expert services as an appointed expert within the framework of the principles of his profession.

11. If the Agent provides an incomplete service and/or incomplete documentation on the agreed date, he/she shall be obliged to pay the costs incurred without further provision of evidence in the event of rejection. After three reminders from the Principal to no avail, the agreed daily rate for the corresponding experts service will be reduced by 25%. The amount will be set off against the remuneration.

12. The Agent shall be responsible for observing all applicable safety regulations and traffic safety measures when providing its expert services for the Principal. If it or a third party suffers damage of any kind as a result of its failure to observe such provisions, the Principal shall not be held liable for this.

### **Section 3. Warranty / Liability**

1. The Agent guarantees that he/she will comply with the applicable regulations for the expert services, in case of certifications in particular standards ISO 17021 and ISO 17065 including the applicable documents, as well as statutory and other pertinent provisions.

2. In cases of wilful misconduct the Agent shall be completely liable for any damage which he/she causes the Principal or the client within the scope of his/her activity in accordance to the general principles of law applicable in Malaysia. In cases of negligence the liability of the Agent shall be limited to an amount of RM10,000,000 (10 million Ringgit Malaysia) per calendar year.

3. The Agent's warranty extends to free replacement by way of subsequent improvement or, where this is not possible, new execution of the defective work.



4. Rights of the Principal resulting from delay or improper performance shall remain unaffected.
5. The Agent shall take out at his/her own cost a professional indemnity insurance and a general liability insurance to cover property loss and damage to person and material with a sufficient level of coverage in respect of the expertise provided under the terms of the present Agreement. The cover note of the insurance is to be submitted to the principal as proof.
6. The Agent guarantees that the expert services provided on behalf of the Principal do not conflict with other agreements entered into with third parties (e.g. employers).

#### **Section 4. Place of work**

To the extent that such is not required for performance of the tasks assigned to it, the Agent shall, as a rule, perform the tasks assigned outside of the business premises of the Principal. Performance of the tasks may also require that the assignments be performed on the business premises of the customer.

#### **Section 5. Remuneration**

1. A lump-sum fee shall be paid as remuneration based on daily rates of RM\_\_ (8 hours). Payment of the remuneration shall be effected after the Agent submits a corresponding order-related invoice within 10 days of completion of an order, and after release of the documents by the Principal. The invoice has to be in accordance with statutory provisions as well as the Principal's special provisions for invoices (inter alia invoices shall include the order number and the name of the audited customer). The proof of order completion is to be attached to the invoice. This must contain the dates on which the services were provided.
2. The Principal shall also pay the respective, legally valid Sales & Service Tax when stated in the invoice.
3. All of the work performed by the Agent shall be completely covered by the fee agreed upon. Any non-personnel costs and disbursements incurred in the performance of such work shall be borne solely by the Agent.
4. Expenses, e.g. overnight accommodations and travel expenses, shall be separately invoiced and shall be reimbursed on submission of the corresponding receipts. Order-related travel costs may be calculated according to the statutory valid tax guidelines



(currently RM 0.60 per vehicle/km), railway and air travel (second class/economy) shall be reimbursed on submission of receipts. The principle of economy shall apply for reimbursable expenditure.

5. The Agent shall ensure proper taxation of earnings and shall pay all social insurance contributions and other charges himself/herself. The Agent shall be responsible for taking out his/her own sickness and accident insurance policies, pension policy and any other necessary insurance cover. Any failure of the Agent to pay the necessary contribution amounts shall entitle the Principal to curtail the Agent's fee in those cases in which the Principal can be committed to render payment in place of the Agent.

## **Section 6. Data storage**

1. The Agent shall agree to have its personal data, (e.g. name, title, date of birth, special qualifications, training courses attended within the scope of expert services) stored in electronic form as proof of fulfillment of the quality requirements specified by the respective accreditation body.

2. On the basis of an approved qualification profile created by the Agent, the Principal shall be allowed to use the personal data submitted for job assignments and to forward it to customers for assignment purposes.

## **Section 7. Commencement / Termination**

1. This framework agreement shall come into effect upon being executed by the parties and may be terminated by giving three months' notice to the other party.

2. The right to immediate termination for cause remains unaffected.

3. This framework agreement shall lapse automatically upon expiry of the appointment as Freelance Expert.

4. Any notice of termination shall be made in writing.

## **Section 8. Compliance**

1. The Agent hereby confirms its awareness of the TÜV SÜD Code of Ethics available online at: <https://www.tuvsud.com/code-of-ethics>



2. The Agent hereby undertakes all necessary actions in order to ensure that any of its employees comply with all applicable laws and refrain from any illegal activities within their professional activity. The Agent represents to TÜV SÜD that neither it nor any of its employees have committed any act in connection with this agreement that may constitute bribery, nor shall the Agent or its employees commit such acts in the future. The Agent hereby represents to TÜV SÜD that it shall refrain from all activities, which could constitute a criminal act of fraud, fraudulent breach of trust, criminal offence under insolvency law, criminal offence under unfair competition law, granting of an undue advantage or bribery.

3. The Agent hereby represents and warrants to TÜV SÜD that all necessary consents and authorizations have been obtained prior to providing services to TÜV SÜD.

4. In the event of any violation of the provisions in this clause attributable to the Agent's fault, TÜV SÜD shall be entitled to terminate all negotiations with the Agent, and to terminate all contractual agreements with the Agent or withdraw from such agreements. In the event that TÜV SÜD is held liable by any third party based on a violation of any undertaking in this section by the Agent, the Agent hereby agrees to indemnify TÜV SÜD from any such claims. In addition, the Agent hereby agrees to reimburse TÜV SÜD for all damages related to such third party claim.

## **Section 9. Issuance of business cards and name badges**

1. The Agent may ask the Principal for issuance of business cards and name badges for freelance auditors. The Agent is only allowed to use the business cards / name badges for customer visits following an assignment from the Principal based on the Framework Agreement. The Agent may use the business cards / name badges only in the form as provided by the Principal. The Agent is not allowed to make any changes to the business cards / name badges and he shall not reproduce it or provide it to third parties for their use.

2. The Agent is not entitled to use the TÜV SÜD company logo or any other TÜV SÜD trademark. If the Agent gets an assignment from the Principal, the Agent is only allowed to refer verbally or in written form to the contractual relationship with the principal by saying "contract partner of TÜV SÜD (Malaysia) Sdn Bhd". This reference to the contractual relationship shall not be used in any misleading manner and especially not in mandatory business information sections on business letters.



## **Section 11. Final provisions**

1. No additional agreements to this framework agreement shall exist. This agreement supersedes all previous oral communication of the parties.
  
2. Additional agreements, supplements and amendments to the framework agreement shall only be valid if made in writing; this shall also apply to the revocation of the requirement of written form itself.
  
3. Should one provision of this framework agreement be or become invalid, this shall not affect the framework agreement in other respects. The invalid provision must be replaced by a valid provision that is equivalent as far as possible economically and corresponds to the same purpose.
  
4. Assignments under the present framework agreement shall also be subject to the Principal's General Terms of Purchase (see [www.tuev-sued.de/AEB](http://www.tuev-sued.de/AEB)).
  
5. The governing law of this framework agreement is Malaysian law and place of jurisdiction for any dispute resolution shall be the Malaysian courts.



## Appendix: Declaration of Confidentiality