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## TÜV SÜD America Inc. General Terms & Conditions for In-house Training

### 1. GENERAL.

1.1 **Services Provided.** TÜV SÜD America Inc. is a global provider of testing, inspection and certification services in accordance with the applicable standards / regulations. TÜV SÜD America Inc. also provides a variety of training services regarding these standards as well as personnel development. These services may be provided by TÜV SÜD America Inc., or by one of its subsidiaries or affiliates, all of which will be referred to herein collectively as “TÜV SÜD.”

1.2 As a global provider of testing, inspection, certification and training services, TÜV SÜD believes that independence, impartiality and integrity are a critical part of our mission and core values and therefore, we consider gifts to our staff as unnecessary and a practice that brings the potential of jeopardizing our impartiality as well as a cordial and mutually beneficial business relationship.

To uphold these values, we do not allow our staff to request or accept any gifts or benefits from our customers or their representatives. Examples can include but not be limited to expensive gifts, expensive hospitality (such as entertainment, accommodations, meals), or financial compensation or benefit of any kind.

For additional information, please refer to the TÜV SÜD Code of Ethics:

<http://www.tuv-sud.com/about-tuev-sued/code-of-ethics>

1.3 Customer is required to support TÜV SÜD in the performance of the services pursuant to the Order, to the extent required. In particular, Customer shall provide necessary information and materials in good time and free of charge, and shall make available the requisite rooms and technological environments free of charge. Customer's obligation to participate shall form a material part of these General Terms and Conditions for In-house Training.

### 2. QUOTATIONS; ORDERS; ACCEPTANCE OF ORDERS.

2.1 **Quotations; Orders.** Customers shall submit to TÜV SÜD all requests for training services in writing (a “Request for Services”). In response to a Request for Services, TÜV SÜD may issue to Customer a written quotation for services to be rendered (a “Quotation”). To order services from TÜV SÜD which are described in a Quotation, Customer shall sign and return the Quotation (an “Order”). These General Terms and Conditions for In-house Training shall apply to all Orders placed with TÜV SÜD or a subsidiary or affiliate of TÜV SÜD.

2.2. **Acceptance of Orders.** An Order shall be deemed accepted and binding on TÜV SÜD without further action if: (i) it is received in response to a Quotation within 90 days of the date of the Quotation and (ii) it contains no alteration of any term or condition stated in the Quotation. Notwithstanding any acceptance (deemed or otherwise) of an Order, TÜV SÜD may alter the terms and conditions of any Order at any time if Customer's creditworthiness fails to meet TÜV SÜD's requirements. Customer understands and agrees that all terms or conditions stated in a Quotation are material for this purpose. Oral or written statements made by TÜV SÜD or its representatives or agents which conflict with or add terms or conditions to an Order shall not constitute a part of an Order unless confirmed in writing by TÜV SÜD.

An Order which does not meet the above requirements shall only be deemed accepted and binding on TÜV SÜD if TÜV SÜD issues a new written Quotation stating the terms and conditions of the Order and Customer delivers an Order meeting the above requirements.

2.3 **Order Acceptance Without Initial Request for Services or Quotation.** Customer may submit an Order without first submitting a Request for Services and receiving a Quotation. TÜV SÜD has the right to accept or reject such an Order in whole or in part, and no such Order shall be deemed accepted and binding on TÜV SÜD unless TÜV SÜD expressly confirms its acceptance in writing. Any such Order so accepted by TÜV SÜD shall be subject to these General Terms and Conditions for In-house Training notwithstanding anything to the contrary in any such Order.

2.4 **Customer Affiliates.** Customer Affiliates may purchase Services under these General Terms and Conditions for In-house Training upon entering an Order with TÜV SÜD pursuant to this Section 2 of these General Terms and Conditions for In-house Training. In such event, (i) the Customer Affiliate entering into each such Order will, for

the purposes of such Order, be considered "Customer" as that term is used in these General Terms and Conditions for In-house Training, and (ii) the Order will incorporate all these General Terms and Conditions for In-house Training and be deemed to be a two-party agreement between TÜV SÜD on the one hand, and the applicable Customer Affiliate on the other hand. Customer will cause its Affiliates to comply with its obligations under these General Terms and Conditions for In-house Training. "Affiliate(s)" means a party's wholly-owned subsidiaries or a joint venture, partnership or corporation that directly or indirectly controls, is controlled by or is under common control of or with said party or the party's wholly-owned subsidiary. The word "control" as used in this definition will mean ownership of, or the right to acquire, not less than fifty percent (50%) of the stock of said corporation, the right to vote not less than fifty percent (50%) of the stock of said corporation, or not less than fifty percent (50%) ownership interest in a partnership or joint venture or corporation. Should TÜV SÜD question whether an entity is a Customer Affiliate, Customer will promptly confirm its status to TÜV SÜD.

### 3. FEES AND PAYMENTS.

- 3.1 Unless otherwise agreed in writing between the parties, fees charged by TÜV SÜD shall be calculated pursuant to the TÜV SÜD Quotation and any applicable price schedules of TÜV SÜD in effect at the time of acceptance of the Order. A schedule of hourly rates charged by TÜV SÜD shall be made available to Customer upon request. Required work done beyond the Quotation will be charged at an hourly rate. TÜV SÜD may change its fees without notice.
- 3.2 **Payment; Past Due Balance.** All invoices shall be due upon receipt. Customer agrees that a monthly administrative and finance charge of 1.5% of the outstanding account balance, but not in excess of the maximum allowed by law, will be payable by Customer for any account over 30 days past due. Customer also agrees to pay TÜV SÜD's costs of collection, including attorneys' fees, incurred in collecting any past due amounts. Any questions or concerns regarding an invoice must be submitted to TÜV SÜD in writing within 14 days of receipt of the invoice. Failure by Customer to submit any questions or concerns within that 14-day period shall constitute an agreement by Customer to pay the invoice in full.
- 3.3 **Advance Payment; Partial Payment.** TÜV SÜD reserves the right at any time to request full or partial payment in advance or in satisfaction of fees for services rendered through the date of the invoice. TÜV SÜD may suspend its performance until such payment is made.
- 3.4 **Cancellations / Postponements:** In the event that the customer cancels or postpones activities on less than 30 days' prior notice to TÜV SÜD, Customer shall pay TÜV SÜD a fee, with respect to the activities not done as originally scheduled, equal to 25% of the fees that would have been payable for those activities if they had been performed. This fee is in addition to Customer's obligation to pay TÜV SÜD for the services that are performed.

### 4. TAXATION.

The fees for TÜV SÜD's services do not include any taxes. Customer shall be responsible for paying any and all taxes which apply now or in the future to these services or to Customer's payments, other than taxes on TÜV SÜD's net income. In the event that TÜV SÜD may be required to collect or pay taxes for which Customer is responsible, TÜV SÜD may increase its charges to Customer by an equal amount.

### 5. IMPOSSIBILITY.

If TÜV SÜD's performance is prevented, restricted or interfered with by reason of a force majeure event (as defined below), then TÜV SÜD shall be excused from that performance to the extent of that prevention, restriction, or interference. TÜV SÜD shall resume its performance promptly whenever such causes are removed. "Force majeure events" shall be any cause or condition beyond the reasonable control of TÜV SÜD, including but not limited to illness of the speaker/trainer, natural catastrophes, acts or omissions of a government or its agencies or departments, labor strikes, lockouts or other disturbances, wars, riots or difficulties in procuring labor, energy shortages, shortage of suitable parts or materials, computer malfunctions, transportation problems, Customer's failure to fulfill its obligations or delays in delivery by TÜV SÜD's vendors.

### 6. LIMITED WARRANTY.

- 6.1 **Limited Warranty.** TÜV SÜD warrants that services performed by it shall be performed in a professional and workmanlike manner in accordance with the requirements of the applicable accepted and binding Order. There is no guarantee of any particular, measurable success, or for any specific result of the course, nor is there any entitlement to such. TÜV SÜD shall be entitled to determine and decide on the method or the type of any inhouse or consultancy assignments as TÜV SÜD sees fit in its own reasonable discretion, provided that nothing to the contrary was agreed in writing, and that there are no mandatory provisions that would demand



that a particular approach be taken. TÜV SÜD does not accept any responsibility for the correctness of the security programs or safety regulations, unless this is explicitly agreed in writing.

6.2 **DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH AND LIMITED ABOVE, TÜV SÜD MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING THE SERVICES PROVIDED HEREUNDER. TÜV SÜD SPECIFICALLY DISCLAIMS ANY WARRANTIES WITH REGARD TO THE GENERAL SAFETY, MERCHANTABILITY, NON-INFRINGEMENT OR EFFECTIVENESS OF PRODUCTS OR FACILITIES OR WITH REGARD TO THE MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OF TÜV SÜD'S SERVICES THEMSELVES. THE OBLIGATIONS OF TÜV SÜD UNDER THIS LIMITED WARRANTY ARE CUSTOMER'S EXCLUSIVE REMEDY AND TÜV SÜD'S SOLE LIABILITY FOR ANY BREACH OF WARRANTY. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR DETERMINING THE SUITABILITY OF ALL CONTENT OF TRAINING CONTENTS AND MATERIALS FOR CUSTOMER'S INTERNAL BUSINESS PURPOSES.

7. **LIMITATION OF LIABILITY; INDEMNIFICATION.**

7.1 **Damages.** TÜV SÜD SHALL NOT BE RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES IN CONNECTION WITH OR ARISING FROM ANY ACTION OR OMISSION OF TÜV SÜD RELATING IN ANY WAY TO THE SERVICES PROVIDED OR TO THESE GENERAL TERMS AND CONDITIONS FOR IN-HOUSE TRAINING OR AN ORDER, EVEN IF TÜV SÜD SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA OR INFORMATION OF ANY KIND, LOST PROFITS OR FAILURE TO REALIZE EXPECTED SAVING AND REGARDLESS OF WHETHER ANY CLAIM FOR SUCH RECOVERY IS BASED ON THEORIES OF CONTRACT, NEGLIGENCE OR TORT (INCLUDING STRICT LIABILITY). TÜV SÜD'S ENTIRE LIABILITY, FOR ANY CAUSE RELATED TO OR ARISING OUT OF THESE GENERAL TERMS AND CONDITIONS FOR IN-HOUSE TRAINING, REGARDLESS OF THE FORM OR NATURE OF THE ACTION, SHALL IN NO EVENT EXCEED THE FEES PAID BY CUSTOMER UNDER THE APPLICABLE ORDER. No claim may be asserted by either party against the other party with respect to any event, act or omission for which a claim accrued more than two (2) years prior to such claim being asserted.

7.2 **Indemnification.** Customer assumes and shall defend, indemnify and hold TÜV SÜD harmless from all responsibility to Customer and third parties for personal injury and property damage, relating in any way to the services provided by TÜV SÜD. Customer shall defend at its sole expense any action brought against TÜV SÜD as a result of any personal injury or property damage. Customer further agrees to indemnify TÜV SÜD for all costs (including reasonable attorneys' fees) incurred by TÜV SÜD in defending any such claims or in establishing its right to indemnification.

8. **CONFIDENTIALITY.**

Subject to the exceptions described below, "Confidential Information" will mean all of the information (whether in writing, orally, tangible or intangible, or by another means) that is disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") under an Order, which information is either in writing and marked "confidential", "restricted", or "proprietary", or if disclosed orally or through access to facilities, is identified as being confidential at the time of disclosure, or from all the relevant circumstances should reasonably be assumed to be confidential and proprietary whether or not such information is marked or identified as "confidential", "restricted" or "proprietary" at the time of disclosure. Confidential Information shall not include information which (a) is now in the public domain or subsequently enters the public domain through no action or fault of the Receiving Party; (b) is known by or available to the Receiving Party from its own independent sources prior to its receipt thereof under an Order; (c) the Receiving Party receives from any third party having a legal right to transmit such information without any obligation to the Disclosing Party to keep such information confidential; or (d) is independently developed by the Receiving Party's employees, agents, or contractors. The Receiving Party agrees to treat all of the Disclosing Party's Confidential Information with the same degree of care to avoid disclosure to any third party as the Receiving Party uses with respect to its own information of like importance which is to be kept secret, and in any event no less than reasonable care. The Receiving Party is permitted to disclose Confidential Information only to those of its and its affiliates respective employees, officers, directors, shareholders, advisors, and agents, including without limitation consultants, attorneys, and accountants (collectively "Representatives"), whom the Receiving Party, in its reasonable discretion, deems need to know such information in connection with the relationship of the parties and/or TÜV SÜD's performance of services for Customer. Prior to disclosing Confidential Information to any Representative, the Receiving Party shall advise Representative of the confidential nature of the Confidential Information and shall ensure that such



Representative is bound by the confidentiality obligations contained herein or such other confidentiality obligations substantially similar to those herein. Nevertheless, Customer agrees that TÜV SÜD may retain the required copies of Customer's Confidential Information and disclose same only to certification bodies and only as required for TÜV SÜD's performance of services for Customer. Unless otherwise mutually agreed in writing, the Receiving Party's obligations under this paragraph with respect to each item of Confidential Information shall terminate two (2) years after the date of the receipt of that item by the Receiving Party.

#### **9. INTELLECTUAL PROPERTY RIGHTS.**

Intellectual property rights embodied in Confidential Information shall at all times remain the property of the Disclosing Party.

Subject to the foregoing, the copyright in any and all materials, results, calculations, etc. provided by TÜV SÜD shall be explicitly reserved TÜV SÜD. Any reproduction, publication, passing onto third parties, or other use by Customer or its participants shall only be permissible with the prior, written consent of TÜV SÜD. To the extent of any transfer of rights of use and the granting of licenses, this must be expressly agreed in separate, mutually agreed upon and duly signed individual contracts. Where materials from third parties are used as part of performing a job, then the copyright in any such materials shall remain with those third parties.

Customer nor any third parties may amend the materials, even in excerpts, either as far as the content is concerned, or to make any editorial changes, or use any amended versions, reproduce the materials, make them publicly available, or forward them, upload them to the internet or other networks, whether for a fee or free of charge, imitate them, sell them, or use them for any other purposes than contractually agreed. Copyright notices, identifying markings, or trademarks must not be removed.

#### **10. ORDER OF PRECEDENCE; WAIVERS.**

To the extent of any conflict or inconsistency between the provisions in the body of these General Terms and Conditions for In-house Training and any Order, or any of Customer's other order documentation, the terms of these General Terms and Conditions for In-house Training shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated or referenced in Customer's Orders, purchase order, or other order documentation, shall be incorporated into or form any part of or otherwise be effective to vary these General Terms and Conditions for In-house Training, and all such other terms or conditions shall be null and void and not form or become part of these General Terms and Conditions for In-house Training for TÜV SÜD to provide services. No waiver of any rights, obligations, or defaults with respect to these General Terms and Conditions for In-house Training or any Order shall be effective unless in writing and signed by the party against which the same is sought to be enforced. One or more waivers of any right, obligation, or default shall not be construed as a waiver of any subsequent right, obligation, or default. No delay or failure of either party in exercising any right and no partial or single exercise thereof shall be deemed to constitute a waiver of that right or any other rights.

#### **11. RELATIONSHIP OF THE PARTIES; ASSIGNMENT.**

TÜV SÜD is an independent contractor for the provision of services, not an agent of the Customer. Customer has no authority to act on behalf of TÜV SÜD or to bind TÜV SÜD with respect to any promise or representation unless specifically authorized in writing to do so by TÜV SÜD. Customer may not, without TÜV SÜD's prior written consent, assign or transfer any Order, or any of its rights or obligations under these General Terms and Conditions for In-house Training or any Order, to any other person. TÜV SÜD may delegate its obligations to its affiliates, agents, suppliers, and contractors, and TÜV SÜD may disclose to any such persons any information required by them to perform the duties so delegated to them, but such delegation shall not relieve TÜV SÜD of its obligations under these General Terms and Conditions for In-house Training or the applicable Order.

#### **12. NOTICES.**

Any notice, request or demand required or desired to be given from one party to the other must be in writing and shall be effective upon receipt if delivered personally, seven days after mailing if sent by pre-paid registered or certified mail, and on the next business day if sent by reputable overnight courier. Notices shall be sent to the party's then-current principal mailing address, or as a party may otherwise specify in a notice to the other party.

#### **13. GOVERNING LAW AND CONSENT TO JURISDICTION.**

- 13.1 **Governing Law.** These General Terms and Conditions for In-house Training and any Order and all rights and duties of TÜV SÜD and Customer arising thereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without reference to its conflict-of-law rules.



**13.2 Jurisdiction.** Customer hereby irrevocably submits to the nonexclusive jurisdiction of any Massachusetts State court or any U.S. Federal court located in the Commonwealth of Massachusetts for any action or proceeding arising out of or relating to the provision by TÜV SÜD of services to Customer. Customer hereby irrevocably agrees that all claims with respect to such action or proceeding may be heard and determined in such court or courts, subject to paragraph 14 below. The foregoing shall not affect the right of TÜV SÜD to bring any action or proceeding against Customer or its property or assets in the courts of any other jurisdiction.

#### **14. DISPUTE RESOLUTION.**

**14.1 Informal Discussion.** In the event of any dispute or disagreement between Customer and TÜV SÜD with respect to the interpretation of any provision of any Order or these General Terms and Conditions for In-house Training, the performance of TÜV SÜD or Customer under any Order, or any other matter related to any Order, upon the written request of either party, authorized representatives of Customer and TÜV SÜD will meet for the purpose of resolving such dispute or disagreement. Those representatives will discuss the problem and negotiate in good faith without the necessity of any formal proceedings related thereto.

**14.2 Arbitration.** If a dispute or disagreement described in paragraph 14.1 above is not resolved as described in that paragraph, that dispute or disagreement shall be finally settled by binding arbitration held before a single arbitrator and according to the commercial Arbitration Rules of the American Arbitration Association (“AAA”), by which TÜV SÜD and Customer agree to be bound. The sole venue for any arbitration shall be the City of Boston in the Commonwealth of Massachusetts, unless the parties otherwise agree in writing. The Customer and TÜV SÜD shall jointly select the arbitrator, and failing agreement the arbitrator shall be selected in accordance with the AAA Rules. The arbitrator shall have no authority to add to, change, or disregard any lawful terms of any Order or these General Terms and Conditions for In-house Training, nor to award punitive damages. The decision of the arbitrator shall be final and binding, and judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy. Arbitration shall be the exclusive final remedy for any dispute between the parties; provided, however, that this provision shall not prevent either party from seeking injunctive relief for misuse or misappropriation of its confidential or proprietary information.

#### **15. TERM; TERMINATION.**

**15.1** The term of these General Terms and Conditions for In-house Training shall commence on the the last signature date set forth below and continue until terminated by either party with or without cause upon ninety (90) days prior written notice to the other party.

**15.2** In case of termination, of these General Terms and Conditions for In-House Training or any Order hereunder, however occurring, TÜV SÜD is entitled to demand and Customer shall be obligated to pay a proportion of the contractual remuneration equal to the proportion (if any) of the services/work actually carried out (including any applicable cancellation fee) up through and including the date of termination.

#### **16. MISCELLANEOUS.**

**16.1 Non-Solicitation.** Customer covenants and agrees that for a period of eighteen (18) months following the rendering of TÜV SÜD’s services under these General Terms and Conditions for In-house Training, Customer will not, directly or indirectly, by themselves or as a partner or in any relationship with any other person or entity, recruit from TÜV SÜD, or hire, any of TÜV SÜD’s employees or consultants, or induce, solicit, or influence any employee or consultant of TÜV SÜD to terminate or curtail his or her employment or engagement with TÜV SÜD, without TÜV SÜD prior written consent. The covenants and obligations of Customer in this Section 16.1 shall survive termination these General Terms and Conditions for In-house Training, however occurring, and shall be specifically enforceable in addition to and not in limitation of any other legal or equitable remedies, including monetary damages.

**16.2 Electronic Signatures.** The parties agree that the execution of these General Terms and Conditions for In-house Training is agreed by exchanging pdf signatures, and/or by industry standard electronic signature software, shall have the same legal force and effect as the exchange of original signatures. In any proceeding arising under or relating to these General Terms and Conditions for In-house Training, each party hereby waives any right to raise any defense or waiver based upon execution of these General Terms and Conditions for In-house Training by means of such electronic signatures or maintenance of the executed agreement electronically. These General Terms and Conditions for In-house Training may be executed in one or more counterparts, all of which when fully executed and delivered by all parties to these General Terms and



Conditions for In-house Training and taken together shall constitute a single agreement, binding against each of the parties.

16.3 **Severability.** The illegality, invalidity, or unenforceability of any provision of these General Terms and Conditions for In-house Training shall not in any manner affect or render illegal, invalid or unenforceable any other provision of these General Terms and Conditions for In-house Training, and that provision, and these General Terms and Conditions for In-house Training generally, shall be reformed, construed and enforced so as to most nearly give lawful effect to the intent of the parties as expressed in these General Terms and Conditions for In-house Training.

16.4 **Agreement.** Except as expressly set forth herein, these General Terms and Conditions for In-house Training and Orders entered into by the parties in accordance herewith constitutes the final, complete and exclusive statement of the General Terms and Conditions for In-house Training between the parties in respect of the subject matter hereof and supersede all prior and contemporaneous written and oral negotiations, understandings and agreements between the parties in respect to the subject matter hereof, including specifically any advertising or sales materials or any Customer purchase order or other ordering document. These General Terms and Conditions for In-house Training shall, without further action on either party's part, apply to Orders as described above, as well as to any other agreement between the parties if that agreement incorporates these General Terms and Conditions for In-house Training by reference or otherwise refers to them. The parties may also show their agreement to these General Terms and Conditions for In-house Training by causing one or more printed copies of this document to be executed and delivered by their authorized representatives, in which case these General Terms and Conditions for In-house Training shall be effective as of the date when both parties have so signed and delivered one or more counterparts, whether the parties sign the same counterparts or different counterparts.

_____	TÜV SÜD AMERICA INC.
Customer's legal name	
Signature _____	Signature _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

For more information on our services, see our website: <https://www.tuvsud.com/en-us/services/training>

Please forward any questions to:  
TÜV SÜD America Inc., Academy, 401 Edgewater Place, Suite 500, Wakefield, MA 01880

**Customer's Billing Address:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Customer's Billing Email:** \_\_\_\_\_