

General Terms and Conditions of Purchase for Deliveries and Services of Third Parties to Companies of TÜV SÜD Group located in the USA



The phrase “**Terms and Conditions**” means these General Terms and Conditions for the Purchase of Deliveries and Services. The word “**Order**” means any written Purchase Order, Release, Contract or Agreement which attaches, incorporates, or otherwise references these Terms and Conditions. The word “**Contract**” means these Terms and Conditions, together with any order. The word “**Customer**” means the companies of TÜV SÜD Group executing the order. The word “**Contractor**” means any individual, corporation or other entity who is to supply deliveries and services purchased by TÜV SÜD Group pursuant to this contract. The phrase “**Deliveries and Services**” means the items described on an order and purchased by Customer under this contract.

1. Contract, cancellation, written form, secrecy, prohibition of sub-contracting, changes to the object of the Order

1.1 The legal relationships between contractor and customer are based exclusively on these terms of purchase, together with the Purchase Order and any other documents specifically adopted by reference in any such documents. The Contractor's standard Terms and Conditions shall not apply and are hereby rejected. Acceptance by the Customer of the delivery/service without an explicit objection shall not be deemed as acceptance by the Customer of the Contractor's terms of delivery. Deliveries within the meaning of these terms of purchase shall include both deliveries of goods and contracts for work and services.

1.2 Until withdrawn by the Customer, these terms of purchase shall apply to all future contractual relationships with the Contractor. Agreed deviations shall apply only to the Order for which they were confirmed in writing.

1.3 Only Orders that are issued or confirmed in writing shall be legally binding. This shall also apply to oral side agreements or subsequent amendments to the contract.

1.4 If the Contractor does not accept the Order in writing within ten working days of receipt, the Customer may cancel the Order.

1.5 The Contractor shall not be entitled to sub-contract the Order or essential parts of it to third parties without the Customer's prior approval in writing.

1.6 The Customer may request changes to the object of the Order even after the conclusion of the contract insofar as this is acceptable to the Contractor. The provisions of the contract shall be amended appropriately in such cases.

1.7 Upon acceptance, this Contract shall constitute the entire agreement between TÜV SÜD Group and Contractor, and shall supersede all prior negotiations, discussions and dealings. Said Contract may not be modified or rescinded except in writing which requires signatures of both Contractor and Customer.

2. Confidentiality. Subject to the exceptions described below, “**Confidential Information**” will mean all of the information (be it in writing, orally, tangible or intangible, and/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 affiliate's 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 a need to know basis of such information in connection with the relationship of the parties. 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. 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.

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3. Prices, shipping, packaging

3.1 The agreed prices are fixed prices as set forth in the Order or such other documentation that Contractor may use to see the price. Prices shall be inclusive of all delivery costs. If prices are not shown in the Order, the Contractor's list prices, valid at the time of the Order, shall apply with the standard deductions.

3.2 No payments shall be made for visits, specimens/samples or preparing offers, projects.

3.3 Contractor shall give written notice of shipment to Customer when the goods are delivered to a carrier for transportation. Contractor shall provide Customer all shipping documents, including the commercial invoice, packing list, bill of lading and any other documents necessary to release the goods to Customer within five (5) business days after Contractor delivers the goods to the transportation carrier. The Order number must appear on all shipping documents, shipping labels, bills of lading, invoices, correspondence and any other documents pertaining to the Order. Unless otherwise provided in this Order, no charge shall be made by Contractor to Customer for shipping.

3.4 If any of the items Ordered constitute or contain "hazardous or toxic chemicals" or "hazardous substances" or flammable or hazardous "petroleum products" as defined by any applicable Federal, State or local law, rule or regulation, Contractor shall provide at the time of delivery all required notices and information, including without limitation, notices and information for OSHA, MSHA and Material Safety Data Sheets. Contractor agrees to maintain such information current and shall provide Customer with any amended, altered or revised information on a timely basis. Contractor warrants that the goods supplied under this Agreement do not contain any substance whose use is prohibited under Federal, State, or local law, including, but not limited to the Clean Air Act, the Toxic Substance Control Act, or the Federal Insecticide Fungicide and Rodenticide Act, and that any applicable requirements under these laws have been satisfied by Contractor. If requested by Customer, Contractor shall promptly furnish to Customer in such form and detail as Customer may direct: (a) a list of all ingredients in the goods purchased; (b) the amount of one or more ingredients; and (c) information concerning any changes in or additions to such ingredients. Prior to and with the shipment of the goods purchased, Contractor agrees to furnish to Customer sufficient warning and notice in writing (including appropriate placarding and labels on goods, containers, packing and vehicles used for shipment) of any "hazardous substance" which is an ingredient or a part of any of the goods, together with such special handling instructions as may be necessary to advise Customer and third parties, including transportation carriers and Customer's employees, as to the degree of care and precaution that will best prevent bodily injury or property damage in the handling, transportation, processing, use, recycling or disposal of the goods.

3.5 Deliveries ahead of schedule, excess deliveries, deliveries of less than the full amount or partial deliveries shall require the Customer's prior approval in writing. In the case of agreed partial deliveries, the remaining balance of the delivery must be shown. Customer is not obligated to accept early deliveries, late deliveries, partial deliveries or excess deliveries. Contractor shall not procure, produce or ship any goods unless authorized in writing by Customer or as necessary to meet specific delivery dates. Shipments in excess of those authorized by Customer or shipments received by Customer in advance of the scheduled delivery date may be returned to Contractor at Contractor's expense, and such determination shall be at the sole discretion of Customer.

3.6 The risk of loss or damage in transit shall be upon Contractor.

3.7 The delivery shall be properly packaged. Any packaging which is superfluous as well as not environmentally friendly must be avoided. Customer shall be entitled, as it so chooses, either to return the packaging to the Contractor at the Contractor's expense, to use it or to dispose of it. For any packaging which is separately invoiced, the Contractor shall reimburse the Customer, upon its return, at 2/3 of the invoiced value providing it is in good condition.

4. Documents, safety devices, industrial property rights

4.1 Storage, assembly and operating instructions and any necessary safety devices shall be provided free of charge. This shall also apply to documents that are required for the maintenance and repair of the delivery item.

4.2 The Contractor shall furnish documentary evidence of origin requested by the Customer with all the necessary data, duly sign it and make it available free of charge without delay.

4.3 Implementation records, in particular drawings, jigs and fixtures, tools, models, etc., which the Customer provided to the Contractor for the implementation of the Order, or which were made in accordance with the Customer's instructions or paid for by the Customer, shall remain the property of the Customer. The Contractor may only use such items for the contractually agreed purposes and may only make such items accessible to third parties with the Customer's written approval. After completion of the Order, all of the above-mentioned items shall be returned to the Customer without exception.

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4.4 The Contractor guarantees that all products and services provided and delivered are free of the proprietary rights of third parties and that the industrial property rights, licenses and copyrights or other patent rights of third parties (“IP Rights”) are not infringed by the products and services provided and delivered.

4.5 The Contractor shall indemnify the Customer and its customers from all claims by third parties arising from any infringements of IP Rights and shall bear all the costs, including reasonable attorneys’ fees, that accrue to the Customer in this context. Contractor’s obligations under this Section are in addition to Contractor’s warranty obligations and all other rights or remedies of Customer and will survive acceptance and use of, and payment for, the Deliveries and Services, and completion, termination, or cancellation of this Contract.

4.6 The Customer shall have the right to obtain from the rightful owner at the Contractor’s cost the approval to use the delivery items concerned.

4.7 The Contractor shall not be entitled to make use of the Customer’s trade name, logos or trademarks for its own benefit or that of third parties. Without the Customer’s prior written approval, the Contractor may not use these either individually or in combination with its own trade name, trademarks or logos.

5. Time is of the essence, contractual penalty, withdrawal, substitute performance

5.1 Agreed delivery dates and periods are binding and delivery must be affected within the time specified herein. All articles sold and materials and work applied hereunder shall be of good quality and free from any defects and at all times be subject to inspection and rejection; but neither Customer’s inspection nor failure to inspect or reject shall relieve Customer of any obligations hereunder.

5.2 In the event that Contractor fails to perform in accordance with the deadlines set forth herein or in an Order, Contract shall be subject to a contractual penalty in the amount of 0.2 % of the net value of the Order per calendar day of the delay, but not to exceed 5 % of the net value of the Order. Multiple claims to contractual penalties shall be aggregated. Such penalty shall be in addition to any and all other rights and remedies the Customer may have hereunder. The contractual penalty shall be set off against the actual damages resulting from such delay. If, on acceptance of the goods or services, the Customer did not reserve the right to claim a contractual penalty, the contractual penalty may be claimed until the final payment has been made.

5.3 Notwithstanding the above, in the event of default by the Contractor, the rights of the Customer shall otherwise be governed by applicable law. The acceptance of a late delivery or services shall not constitute a waiver of claims for compensation or any other rights or remedies provided hereunder. In addition to any other rights or remedies, the Customer shall also be entitled, in lieu of withdrawing from the contract, to have the Order carried out by a third party at the expense of the Contractor.

5.4 Whenever any actual or potential delays may occur which threatens to delay the timely performance of Contractor, Contractor shall immediately give written notice (but in no event later than fifteen (15) days prior to the agreed upon delivery date) thereof to Customer. Contractor will endeavor at its cost to mitigate the effects of such delay including expediting delivery. Customer has the right, at any time, to change the place and/or time of delivery. Any claim by Contractor for adjustment because of a change in place and/or time of delivery will be deemed waived unless asserted in writing within ten (10) days after receipt by Contractor of the request for change. Contractor understands and agrees that if Contractor makes any commitments or production arrangements in excess of the amounts set forth herein or in advance of the time necessary to meet Customer’s delivery schedule, it does so at its own risk, and Customer shall have no liability to Contractor or any other party relating to same. Contractor may only plead non-compliance with a time limit that is beyond its control if it has notified the Customer without delay of the reason for this. The Contractor may only rely on the lack of necessary documents to be supplied by the Customer if it had sent a written reminder for the documents and did not receive them within an acceptable period.

5.5 Neither party shall be liable for any delay or failure to perform its obligations under this Contract arising out of circumstances beyond its reasonable control, including acts of God, fires, pandemic, war, insurrection or riot, or acts of military authority, provided that the party provides notice to the other in writing of the delay or non-performance event within five (5) days of its commencement. Customer may extend the delivery schedule to accommodate the delay or non-performance; however, should said event continue during the term of the Order for a cumulative total of thirty (30) days or more, Customer may cancel the Order effective immediately upon written notice to Contractor, and Customer’s only obligation to Contractor shall be to pay the actual cost of the deliveries or services actually completed and delivered to Customer.

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6. Termination and Change

6.1 Customer may terminate this Agreement or any Order under this Agreement for cause in the event of any default by Contractor. The following are causes, among others, allowing Customer to terminate this Order: (i) late delivery, (ii) delivery of goods that are defective or that do not conform to this Agreement, or (iii) failure upon request to provide Customer with reasonable assurances of future performance. Additionally, Customer may forthwith cancel this Agreement in the event of any of the following: (i) insolvency of Contractor; (ii) the filing of an involuntary or voluntary petition of bankruptcy against Contractor; (iii) the execution by Contractor of an assignment for the benefit of creditors; or (iv) the appointment of a receiver over Contractor's assets. Subject to the requirements of any legal proceeding.

6.2 Customer reserves the right to terminate this Agreement or any Order under this Agreement for its sole convenience, without reason or cause. In the event of such termination, Contractor immediately shall stop all work, and shall forthwith apprise all its suppliers and subcontractors to cease work. Upon approval by Customer, Contractor shall be paid a reasonable termination charge consisting solely of a percentage of the Order price reflecting the percentage of the work performed prior to the notice of termination. Within 30 days after receipt of a termination notice, Contractor shall submit its claim. Customer reserves the right to verify the claim by auditing all relevant records. Contractor shall not be paid for any work performed after receipt of the notice of termination, nor for any costs incurred by Contractor's suppliers or subcontractors which Contractor could reasonably have avoided. In no event shall Customer be liable for loss of profits or other cancellation charges.

6.3 Customer shall have the right to make any changes, additions or alterations in the items, quantities, destination, specifications, drawings, designs or delivery schedules. The parties will commence to negotiate an appropriate adjustment in price and terms where the Contractor's direct costs are materially affected by such changes. Any request by Contractor for an adjustment in price or terms must be made within 30 days of any such change. All changes and adjustments, if any, must be in writing and signed by a duly authorized representative(s) of Customer.

7. Warranty, guarantee, claims under liability for defects, damages, periods for giving notice of defects, warranty period, suspension

7.1 With respect to the goods or services purchased under this Agreement, and all other goods or services purchased from Contractor, Contractor expressly warrants for the Warranty Period as follows: (a) the goods shall strictly conform to all specifications, drawings, instructions, advertisements, statements on containers or labels, descriptions and samples; (b) the goods shall be free from defects in workmanship and material and shall be new and of the highest quality; (c) Customer shall receive title to the goods that is free and clear of any liens, encumbrances and any actual or claimed patent, copyright or trademark infringement; (d) the goods shall be merchantable, safe and fit for the Customer's intended purposes, which purposes have been communicated to Contractor; (e) the goods shall be adequately contained, packaged, marked and labeled; and (f) the goods shall be manufactured in compliance with all applicable federal, state and local laws, regulations or Orders, and agency or association standards or other standards applicable to the manufacture, labeling, transporting, licensing, approval or certification, including by way of illustration and not by way of limitation, the Occupational Health and Safety Act, the Fair Labor Standards Act, and any law or Order pertaining to discrimination. These warranties shall be in addition to all other warranties, whether express, implied or statutory.

7.2 In the event that services are provided in connection with the supply of goods, Contractor expressly warrants that the services will be performed: (a) with due professional care; (b) in a workmanlike, professional, timely and diligent manner; (c) in accordance with all applicable industry standards and industry best practices; (d) by qualified workers experienced in performing the work specified; (e) in strict conformance with applicable specifications and industry accepted performance criteria; and (f) in strict conformance with this Agreement, including but limited to any statement of work issued by Customer.

7.3 These warranties shall survive inspection, test, delivery, acceptance, use and payment by Customer and shall inure to the benefit of Customer, its successors, assigns, customers and the users of Customer's products. These warranties may not be limited or disclaimed by Contractor. Customer's approval of Contractor's design, material, process, drawing, specifications or the like shall not be construed to relieve Contractor of the warranties set forth herein, nor shall a waiver by Customer of any drawing or specification request for one or more articles constitute a waiver of any such requirements for the remaining articles to be delivered hereunder unless so stated by Customer in writing.

7.4 For purposes of these Terms and Conditions, "Warranty Period" shall mean 12 months from the date of first use of the goods by Customer or 12 months from the date of acceptance by Customer, whichever occurs later. Notwithstanding the foregoing, Contractor agrees to waive the expiration of the Warranty Period in the event there are failures or defects discovered after the Warranty Period of a material nature or in a significant portion of the goods, or a defect is discovered which, in Customer's opinion, constitutes a threat of damage to property or to the health and safety of any person.

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7.5 The Contractor agrees, to the extent that this is economically and technically possible, to use environmentally friendly products and processes for its deliveries and also for the deliveries or ancillary services of third parties. At the request of the Customer, the Contractor shall issue a certificate of inspection for the delivered goods free of charge.

7.6 The Customer shall notify Contractor in writing of all obvious defects of the shipment/service/work without delay as soon as they are detected in accordance with the conditions of ordinary business, but not later than within 5 working days of receipt by the Customer of the shipment / acceptance. In the case of hidden defects, this notification period shall be 3 working days after detection.

7.7 If Customer experiences any defect, failure or non-conformity during the Warranty Period, Customer shall have the right to take the following actions, at Customer's option: (1) retain the defective goods in whole or in part with an appropriate adjustment in the price for the goods; (2) require Contractor to cure defects in the goods within a reasonable period of time, determined by Customer in its sole discretion given the urgency of the given situation; (3) require Contractor to repair or replace the defective goods in whole or in part at Contractor's sole expense, including all shipping, transportation and installation costs; (4) correct or replace the defective items with similar items from a third-party and recover the total cost from Contractor, including the cost of product recalls; and (5) exercise all other rights under the Uniform Commercial Code and any other applicable statutes. Contractor shall be responsible for any increased expenses due to the delivery of an item to a location other than the place of performance. After the second unsuccessful expiry of a reasonable time limit set by the Customer for repair or a replacement delivery, the Customer shall be entitled to invoke the statutory rights of withdrawal or price reduction. An agreed period for the replacement delivery shall have the same legal effects as a time limit set by the Customer. If the non-fulfilment or defective performance is limited to a definable part of the service, the withdrawal may be limited to this part; insofar as the Customer has the right to withdraw from the contract and the remainder of the contract remains in force. The Customer reserves the right to claim damages in all cases, in addition to the remedies provided hereunder.

7.8 In the event of material defects, the Customer shall also be entitled to render the performance itself and to obtain an advance payment from the Contractor. If the Contractor fails to comply with its obligations under liability for defect within a reasonable time limit set by the Customer, the Customer may carry out the necessary measures itself or have them carried out by third parties. The Customer may remedy minor defects without prior agreement in fulfilment of its obligation to minimize loss without waiving Contractor's obligations arising from liability for defects. The Customer may charge the Contractor for such necessary expenditure. This shall also apply if unusually severe damage or heavy losses are imminent.

7.9 As regards installations, machinery and plants the applicable warranty periods shall commence on the date of the acceptance inspection referred to in the written acceptance declaration by the Customer. If the acceptance is delayed for reasons beyond the Contractor's control as per Section 5.5, the applicable warranty period shall commence upon the provision of the delivery item for the acceptance inspection.

7.10 For deliveries or parts thereof which cannot be used by the Customer during the period in which the defect is examined and/or remedied the current Warranty Period shall be extended by the period of interruption of use. For repairs or replacement deliveries or parts thereof the Warranty Period shall commence again after transfer of the risk.

8. Quality assurance, product liability

8.1 Contractor will maintain a quality assurance system which is adequate to detect and prevent shipment of nonconforming deliveries or services. Customer reserves the right to evaluate the adequacy of Contractor's quality assurance system. Upon request, Contractor shall provide Customer with appropriate quality assurance documentation, manuals or certifications. The Contractor shall conclude an appropriate quality assurance agreement with the Customer where the latter regards this as necessary.

8.2 The factory inspections carried out by the Contractor shall ensure that the deliveries conform to the Customer's technical specifications. The Contractor agrees to keep records of all inspections and tests carried out and to file all test, measuring and inspection results for ten years. The Customer may inspect these documents at any time and make copies.

8.3 Unless otherwise agreed, the Contractor shall mark the delivery items in such a way that they are permanently recognizable as its products.

8.4 If claims are made against the Customer for a breach of official safety regulations or under product liability law, regulations or statutes because of defects in its product that is attributed to the Contractor's goods, the Customer shall be entitled to recover from the Contractor for costs, expenses, and damages, including reasonable attorneys' fees, insofar as this was caused by, or the result of, products supplied by the Contractor.

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9. Insurance

9.1 Prior to the commencement of any labor, work, or services hereunder or on the premises of the Customer, the Contractor shall obtain and provide evidence of adequate insurance AM Best Company's or similar which have with carriers doing business in the state in which the work is performed, and acceptable to the Customer, which shall include:

- (a) Workers' Compensation and Employers Liability with limits of not less than \$1 million, which shall provide for a waiver of all subrogation rights by Contractor and its insurers;
- (b) Automobile liability insurance, including coverage for owned and non-owned and hired automobiles with combined bodily injury and property damage limits of not less than \$1 million;
- (c) Commercial general liability insurance written on an "occurrence" basis with combined bodily injury and property damage limits of not less than \$1 million per occurrence and \$2 million in the aggregate. Contractor shall furnish to Customer certificates of insurance demonstrating compliance with these requirements and noting expiration dates of policies, and providing that such insurance will not be cancelled or changed with less than 30 days' prior notice to Customer.

9.2 The certificates will also indicate: (1) that Customer has been named as an additional insured under the Contractor's commercial general liability policy; (2) that the commercial general liability policy includes broad form contractual liability coverage which will include coverage for performance under this Order.

9.3 All insurance shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. The Contractor's insurance coverage is primary and non-contributory to that of Customer's. The Contractor must cover Customer, its parent, subsidiaries and affiliates and their respective officers, directors, and employees as additional insureds and listed on the executed Certificate of Insurance. If Contractor fails to furnish said certificates or maintain said insurance, Customer shall have the right to cancel an Order for breach of these conditions. Contractor, for itself and its insurers, hereby waives subrogation against Customer.

10. Invoicing, payment, certificates, rights to withhold, prohibition of assignment, set-off, insolvency of the Contractor

10.1 Invoices shall be submitted separately to the Customer with all the appropriate documentation and data after the delivery/service or works and services. Invoices that are not correctly submitted shall be deemed to be received by the Customer on the date they are corrected.

10.2 Payments shall be made in the usual form within 14 days less a discount of 3% of the amount invoiced or 30 days without deduction calculated after complete delivery or acceptance inspection of the works and services and receipt of a proper and verifiable invoice. Discounts shall also apply if the Customer sets off or retains payments because of defects; the discount period shall commence after the complete elimination of the defect. Deliveries made ahead of schedule shall not affect an agreed date for payment.

10.3 Insofar as certificates of material tests are part of the agreed deliverable, they shall form an essential part of the delivery or works and services and shall be sent to the Customer together with the invoice. However, the Customer must receive them not later than ten days after receipt of the invoice. In these cases, the period for payment shall commence with the receipt of the agreed certificate.

10.4 If Contractor fails to ship the deliverables or perform the services in accordance with the times stipulated in the Order, Customer may delay payment equal to the number of days the deliverables or services were delayed by the Contractor as an equitable adjustment.

10.5 The Contractor may not assign its claims against the Customer or have them collected by third parties without the approval of the Customer. Notwithstanding the foregoing, in the event that the Contractor assigns its claims to third parties or has them collected by third parties, the Customer shall have the option of paying the Contractor or the third party with the effect of a discharge.

10.6 With the exception of the Contractor being the subject of insolvency proceedings, the Customer shall have the right at all times to set off any amount owing from Contractor to Customer or TÜV SÜD Group against any amount payable by Customer to Contractor.

11. Compliance

11.1 The Contractor hereby assumes the obligation to undertake all necessary action in Order to ensure that any of its employees comply with all applicable laws and refrain from any illegal activities within their professional activity. In addition, Contractor undertakes to comply with:

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(a) Customer's Supplier Code of Conduct and to take all necessary steps to ensure that the obligations contained therein are observed both within its company as well as its supply chain.

The Supplier Code of Conduct is available online at

<https://www.tuvsud.com/en/tuev-sued-sourcing>. The Customer reserves the right to change the Supplier Code of Conduct with a notification period of 6 weeks.

(b) the TÜV SÜD Code of Ethics available online at <http://www.tuv-sud.com/code-of-ethics>.

(c) anti-bribery laws such as the U.S. Foreign Corrupt Practices Act and the UK Bribery Act 2010;

(c) technology export, use, and transfer laws of the United States and other countries. Contractor shall provide documentation and assistance Customer reasonably requests in connection with securing government authorizations or providing required reports. Contractor shall not use Customer export/re-export authorizations to secure its own activities.

(d) maintenance of accurate and complete Contractor Records of all transactions under these purchase Order terms in accordance with applicable regulatory and generally accepted industry standards, including maintenance of records pertaining to the import and export/re-export of Customer technology in compliance with applicable law; provided, Contractor shall maintain all such Contractor Records for not less than five years. For purposes of these Purchase Order terms, "Contractor Records" means all information (whether stored electronically or in other media) relating to the services or deliveries, including information pertaining to inventory, import/export and shipping, legal documents and notices, account records necessary to document the basis of charges billed to Customer, and all other documents and materials created or used in the performance of Contractor's obligations under these purchase Order terms.

(e) occupational health and safety laws, regulations, and requirements, including applicable job hazard analysis, risk assessments, exposure assessments, training, and injury reporting and tracking; and

(f) environmental laws, regulations, and requirements, including applicable management and training requirements relating to waste, air emissions, wastewater, and stormwater. Customer shall comply with all property and site access restrictions and requirements.

11.2 Contractor shall also comply with the terms of any master data protection agreement to which Customer and Contractor are parties. If Contractor has access to Customer data and Customer and Contractor are not parties to a master data protection agreement, then Contractor shall comply with Customer's master data protection agreement.

11.3 The Contractor hereby confirms to the Customer that neither it nor any of its employees have committed any act in connection with these Terms and Conditions that may constitute bribery, nor shall the Contractor or its employees commit such acts in the future. The Contractor hereby represents to the Customer 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 offense under unfair competition law, granting of an undue advantage or bribery.

11.4 In the event that the Contractor has demonstrably and consciously entered into an agreement in connection with the placement of an Order, which represents an impermissible restraint of competition, it shall be liable to pay to TÜV SÜD 10% of the respective net Order value. Both contract parties shall be entitled to prove that a higher or lesser amount of damage has been caused. This payment obligation shall also arise if the contract has been terminated or fulfilled.

11.5 The Contractor hereby represents and warrants to the Customer that all necessary consents and authorizations have been obtained prior to providing services to the Customer.

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

11.7 The contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that the contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations

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require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status

12. Foreign trade

Contractor shall comply with all applicable export control, customs and foreign trade regulations (“Foreign Trade Regulations”). Contractor shall advise Customer in writing within two weeks of receipt of an Order, and in case of any changes without undue delay, of any information and data required by Customer to comply with all Foreign Trade Regulations in case of export and import as well as re-export, including, without limitation, all applicable export list numbers, including the Export Control Classification Number according to the U.S. Commerce Control List ECCN); and the statistical commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) coding; and classification for foreign trade statistics and the HS (Harmonized System) coding; and the country of origin (non-preferential origin); and upon request of Customer, Contractor’s declaration of preferential origin (in case of European Contractors) or preferential certificates (in case of non-European Contractors). Contractor shall be liable and indemnify Customer for any expenses and/or damages incurred by Customer due to Contractor’s breach of its obligations as stated in this Section 12. The deliveries or services purchased under this Contract must be in conformance with national and international foreign trade and customs requirements, including any embargos, sanctions or directives, or this Contract may be subject to immediate termination by Customer.

13. Indemnification

13.1 Contractor agrees to defend, indemnify and hold harmless the Customer, its customers and users of its products, against any claim, demand, suit damage, loss, expense, royalty, award, fees and costs (including court costs and reasonable attorneys’ fees) arising from the actual or alleged infringement of any patent, copyright, or trademark by reason of sale or use of the goods covered hereby. In the case of actual infringement, Contractor shall, at its sole expense, procure for Customer the right to continue using such goods under license or otherwise, or replace the infringing goods with a non-infringing substitute of equal quality, or modify such goods to Customer’s satisfaction, in order that they become non-infringing.

13.2 With respect to goods furnished pursuant to an Order, Contractor agrees to defend, indemnify and hold harmless Customer, its affiliates, agents, servants, employees, officers, directors, parents, and subsidiaries against any loss, damage, expense (including court costs and reasonable attorneys’ fees) or claim whatsoever for any injury or death of any person (including without limitation any injury or death of any employee of Contractor or Customer) or damage to property arising from or relating to the undertaking of Contractor hereunder, or any defects in the goods or services furnished, regardless of the negligence or fault of the Customer.

13.3 Contractor agrees to defend, indemnify and hold harmless Customer, its agents, servants, employees, officers, directors, parents, subsidiaries, affiliates and insurers against any loss, damage, expense (including court costs and reasonable attorneys’ fees) or claims whatsoever for any injury to or death of any person (including without limitation injury or death of any employee of Contractor or Customer) or damage to property arising from or relating to the performance of any labor, work or services or the use of any materials, tools, equipment, scaffolding, machinery or property of Customer undertaken or in connection with an Order, including without limitation, labor, work or services in connection with or collateral to a contract or agreement relative to the construction, alteration, repair or maintenance of a building, structure appurtenance, or appliance of Customer, including moving, demolition and excavation connected therewith, whether the same arise under statutes (including without limitation Workers’ Compensation Laws) the common law, or otherwise and whether or not such loss, damage, expense or claim is caused in part by the negligence or other fault of Customer, its agents, servants, or employees; provided, however, that this indemnity shall not apply to the extent that any such loss, damage, expense or claim results from the sole negligence of Customer. This indemnity expressly includes damages, losses and expenses arising out of fines or penalties, including for violation of applicable laws and regulations, and including those governing the costs of environmental cleanup necessitated thereby. Contractor’s indemnity obligations under this clause shall not be limited by applicable Workers Compensation laws and as respects these indemnity obligations, Contractor expressly waives all immunities and defenses it may have under such laws.

13.3 Customer shall promptly notify Contractor of any such claim or proceeding. However, delay in notifying Contractor will not relieve Contractor from any obligation except to the extent the delay harmed Contractor. Contractor may assume the defense of such claim or proceeding, and Customer shall provide reasonable cooperation with Contractor, at Contractor’s expense, in the investigation of any such claim or proceeding. Contractor shall not settle or otherwise consent

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to a judgment that diminishes Customer's rights or interests without Customer's express written consent. If Contractor fails to assume such defense, Customer may defend or settle such claim on Contractor's behalf, at Contractor's expense.

14. Severability

If any parts of these Terms and Conditions are held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

15. Place of performance

Unless otherwise agreed in writing the place of performance for the obligation to deliver is the delivery location indicated by the Customer and the registered office of the Customer for all other obligations of both parties.

16. Contract language

The contract language is English. Insofar as the parties to the contract use another language in addition, the English wording shall prevail.

17. Choice of law, arbitration

17.1 The validity, interpretation, and performance of this Contract shall be governed by the laws of the Commonwealth of Massachusetts. The provisions of the United Nations Convention on Contracts for the International Sale of Goods are expressly disclaimed and shall not apply.

17.2 All disputes arising out of this agreement shall be resolved by final and binding arbitration, to be conducted by a single arbitrator under the Commercial Arbitration Rules of the American Arbitration Association at its Boston, Massachusetts office, or such other arbitration service in the same locale as the parties may agree upon. The parties shall bear their own legal fees but shall otherwise split the costs and fees charged by the arbitrator. To the extent that the parties seek injunctive relief, that may be sought in either a federal or state court within the Commonwealth of Massachusetts. 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 Contractor 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 Terms and Conditions, 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.

18. Nonwaiver; Remedies

Any waiver or failure of TÜV SÜD Group to require strict compliance with the provisions of the terms of this Order in any respect must be in writing and shall not be deemed a waiver of TÜV SÜD Group's right to insist upon strict compliance thereafter. TÜV SÜD Group retains all rights and remedies granted to it by operation of law, or in equity, in addition to those set forth herein.

19. Assignment

Neither this Contract, nor Contractor's rights and obligations hereunder, are assignable by Contractor without the prior written consent of Customer. No such consent or assignment will release Contractor or change Contractor's liability to perform all of its obligations under this Contract. Any attempted assignment without the prior written consent of TÜV SÜD Group will be declared null and void.

20. Limitation on Customer's Liability

In no event shall Customer be liable to Contractor for anticipated profits or for incidental, special or consequential damages. Customer's liability for a claim of any kind or for any loss or damage arising out of or in connection with or resulting from this Agreement, or from any performance or breach, shall in no case exceed the price allocable to the goods or services or unit which directly gives rise to the claim.

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21. Relationship of the Parties

Contractor and Customer are independent contracting parties and nothing in this Agreement shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.