

## **General Terms and Conditions of TUV Rheinland Malaysia Sdn. Bhd. (hereinafter "TUV")**

### **1. Scope**

- 1.1. The following General Terms and Conditions of TUV (hereinafter "GTC") apply to the services agreed between TUV and the client (hereinafter the "Parties") and include the ancillary services and other ancillary obligations provided within the framework of the execution of the contract (hereinafter jointly referred to as "Services").
- 1.2. Both consumers and entrepreneurs may be clients within the meaning of GTC.
- 1.3. Conflicting or deviating terms and conditions of the client do not apply and are hereby excluded. General terms and conditions of the client shall not become part of the contract even if TUV does not expressly object to them, accepts payments of the client without reservation, or performs the Services without reservation.
- 1.4. In the context of an ongoing business relationship with the client, these GTC shall also apply to future contracts with these clients without TUV having to refer to them separately in each individual case.
- 1.5. Insofar as these GTC refer to the term "accreditor", this also includes authorization and recognition organizations; the terms "accreditation specifications", "accreditation requirements" and "accreditation procedures" apply accordingly to the specifications and procedures of the authorization or recognition organizations.
- 1.6. Insofar as these GTC refer to a written form requirement, text form is sufficient to observe the written form requirement.
- 1.7. Individual agreements made with the client in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GTC. Subject to evidence to the contrary, a written contract or written confirmation from TUV is authoritative for the content of such agreements.

### **2. Quotations and conclusion of contract; term of contract**

- 2.1. The contract is concluded by signing of the offer letter from TUV or a separate contract document by both contracting Parties or by TUV providing the Services requested by the client. If the client commissions TUV without a prior offer from TUV, TUV is entitled, at its sole discretion, to accept the order by a written declaration of acceptance or by rendering the Services ordered.
- 2.2. Insofar as a certain term of the contract has been agreed upon, this shall be based on what has been agreed in the offer of TUV or in the contract. An agreed term shall be extended by the term provided for in the offer or in the contract if the contract is not terminated in writing by one of the contracting Parties three (3) months prior to its expiration date.

### **3. Service provision and scope of Services**

- 3.1. Scope and type of Services to be provided by TUV are specified in the contractually agreed service description of TUV. If no separate service description of TUV is available, the last offer of TUV governs for the Services to be provided. The Parties can only agree on changes to the service description in writing. Unless otherwise agreed, Services beyond the scope of the service description (e.g. checking the correctness and functionality of parts, products, processes, installations, organizations not listed in the service description, as well as the intended use and application of such) are not owed. In particular, no responsibility is assumed for the design, selection of materials, construction or intended use of an examined part, product, process or plant, unless this is expressly stated in the order.
- 3.2. TUV is entitled to determine the method of service provision including examinations or tests carried out at its own discretion if not otherwise agreed in writing or mandatory regulations require a certain procedure.

- 3.3. If mandatory legal regulations and standards or official requirements for the agreed Services change after conclusion of the contract, TUV shall be entitled to additional remuneration for expenses required to address any such required changes.
- 3.4. Unless contractually agreed, when testing, TUV does not guarantee the accuracy of the safety programs or safety regulations on which the tests are based, which have been made available by the client or by third Parties.
- 3.5. The Services owed under the contract are agreed exclusively with the client. A contact of third Parties with the Services of TUV, as well as making available and reliance on the performance results by any third party, is not part of the agreed Services. This also applies if the client passes on performance results - in full or in extracts - to third Parties in accordance with Clause 10.4.
- 3.6. The Parties shall not include any third Parties in the scope of protection of the contract, unless the Parties have expressly agreed to such inclusion in writing, naming the third Party.

#### **4. Performance periods/dates**

- 4.1. The performance periods and dates specified in the contract are non-binding, unless the performance periods and dates are expressly marked as binding in the contract.
- 4.2. If performance is delayed, the client may only withdraw from the contract in accordance with the statutory provisions if TUV is responsible for the delay in performance. Any statutory rights of termination remain unaffected. TUV is not responsible for a delay in performance, in particular if the client has not fulfilled its duties to cooperate in accordance with Clause 5.1 or has not done so in time and, in particular, has not provided TUV with all documents and information required for the performance of the service as specified in the contract.
- 4.3. If the client is obliged to comply with legal, officially prescribed and/or by the accreditor prescribed deadlines, it is the client's responsibility to agree on performance dates with TUV, which enable the client to comply with the legal and/or officially prescribed deadlines. TUV assumes no responsibility in this respect unless TUV expressly agreed in writing specifically stating that ensuring the deadlines is the contractual obligation of TUV.

#### **5. Cooperation obligation of the client**

- 5.1. The client shall carry out or provide all necessary cooperation and/or supporting information or documents, and shall provide information which enable TUV to render the contractual Services in conformity with the contract. The client is responsible for ensuring that all necessary cooperation actions, documents and information on its part, its agents or other third Parties assigned to its sphere are provided in good time and free of charge for TUV.
- 5.2. All cooperation, documents and information mentioned under Clause 5.1 must comply with the relevant statutory regulations, standards, safety regulations and accident prevention regulations.
- 5.3. The client shall bear any additional costs incurred because of Services having to be repeated or being delayed due to delayed, incorrect or incomplete information or improper cooperation attributable to client. Even if a lump sum or a maximum price has been agreed, TUV is entitled to invoice these additional costs.
- 5.4. The client shall ensure TUV Rheinland employee is provided with a safe work environment for executing the work assignments at client's premises and also provide necessary HSE inductions on workplace hazards, additional activity specific personnel protective equipment as applicable.

#### **6. Prices; accounting of Services**

- 6.1. Insofar as TUV and the client have agreed a fixed lump sum price in the contract, this shall be invoiced. If the scope of Services is not completely defined in writing when the contract is concluded, the Services provided by TUV are invoiced according to the expenditure of time and the fee agreed in the contract.

If the amount of the fee has not been agreed in writing in the contract, invoicing shall be based on the TUV price list valid at the time the service is provided, which will be made available to the client upon request.

- 6.2. Unless otherwise agreed in writing, the applicable value added tax must be added to the agreed upon price. Partial acceptance is possible. In the event of partial acceptance, the partial remuneration is due after successful acceptance of individual work parts.
- 6.3. TUV is entitled to demand down payments for Services already provided in accordance with the contract in the amount of the value of the Services provided and owed under the contract.

## **7. Payment terms/costs/offsetting**

- 7.1. All invoice amounts are due for payment within thirty (30) days of the invoice date.
- 7.2. Payments shall be made to the bank account of TUV stated in the invoice, indicating the invoice number and client number.
- 7.3. In the event of default, TUV is entitled to charge default interest at a rate of 8% per annum above the prevailing base interest rate as determined by Bank Negara Malaysia from time to time, calculated on a daily basis from the due date until full payment. TUV reserves the right to claim further damages.
- 7.4. If the client is in default with the payment of the invoice, TUV is entitled to withdraw from the contract with the client after expiry of a reasonable grace period (a) to withdraw an already issued certificate or test mark, to demand back work results, such as test reports, and to declare declarations of conformity invalid and (b) to terminate the contract without notice in the event that the contract is a continuing obligation or a contract with an agreed term.
- 7.5. Insofar as TUV becomes aware of circumstances after conclusion of the contract from which insolvency or other significant deterioration of the client's financial circumstances occurs or threatens to occur and the fulfilment of the contractual obligations is thereby endangered, TUV is entitled to refuse the corresponding Services under the contract. The right to refuse performance shall cease to apply if the client affects the contractual obligations or provides security in the amount of the endangered payment claim. If the client does not provide its services owed or adequate security within a reasonable period of time, TUV is entitled to terminate the contract while maintaining its claims for compensation.
- 7.6. Objections regarding TUV's invoices must be made in writing within two (2) weeks of receipt of the invoice. TUV will make special reference to the aforementioned payment deadline in its invoices.
- 7.7. TUV is entitled to demand an appropriate advance payment, insofar as this is reasonable for the client taking into account the order value and the scope of the service owed by TUV.
- 7.8. Only legally established or undisputed claims may be offset against claims of TUV. This limitation of set-off does not apply if the claims and counterclaims of TUV and the client are based on the same legal relationship. The same applies to the assertion of rights of retention by the client.

## **8. Acceptance**

- 8.1. In the case of agreed contractual Services or if acceptance of the work has been contractually agreed, the client is obliged to accept immediately after notification of completion, even in the case of partial performance or completion of self-contained parts. The costs of acceptance shall be borne by the client.
- 8.2. If the client does not meet its acceptance obligation without delay, acceptance shall be deemed to have taken place four (4) calendar weeks after the performance of the service if TUV specifically refers the client to the aforementioned period when the service is performed.
- 8.3. The client is not entitled to refuse acceptance due to insignificant defects.

## 9. Confidentiality

9.1. "Confidential Information" means all information, documents, pictures, drawings, know-how, data, samples and project documents handed over by one Party (hereinafter "Disclosing Party") to the other Party (hereinafter "Receiving Party") or otherwise disclosed from the beginning of the contract. This also includes copies of this information in paper and electronic form. When provided in writing or in any other physical form, Confidential Information must be identified by the words "confidential" or a similar wording indicating the confidential nature of the information.

In the case of Confidential Information that is passed on orally, appropriate prior notice of the confidentiality of such information must be provided and later memorialized in writing.

Confidential Information is expressly not the data and know-how collected, compiled or otherwise obtained by TUV (non-personal) within the scope of the provision of Services by TUV. TUV is entitled to store, use, further develop and pass on the data obtained in connection with the provision of Services for the purposes of developing new Services, improving Services and analyzing the provision of Services.

### 9.2. Confidential Information:

(a) may only be used by the Receiving Party to fulfil the purpose of the contract, unless otherwise expressly agreed in writing with the Disclosing Party,

(b) may not be duplicated, distributed, published or passed on in any other form by the receiving Party, with the exception of such Confidential Information necessary to fulfil the purpose of the contract or such Confidential Information which the Receiving Party must pass on the basis of judicial instructions or legal or governmental regulations; this concerns in particular the Confidential Information to be passed on to supervisory authorities and/or accreditors of TUV within the framework of an accreditation procedure or, within the framework of the provision of Services, to Affiliated Companies of TUV or subcontractors or their respective employees. "Affiliated Companies" shall mean all companies, directly or indirectly, owned or controlled by, or owning or controlling, or under common control with a Party. For purposes of this definition "control" of a company shall mean to have, directly or indirectly, (i) the ownership of the majority of shares or voting rights or (ii) the right to elect or appoint, directly or indirectly, the majority of the managing directors, the board of directors, or a similar managing body or (iii) the power to direct or cause the direction of the management and policies of a corporation, company or other entity.

(c) must be treated confidential by the Receiving Party in the same way as it treats its own Confidential Information, but in no case less carefully than with reasonable care and attention.

9.3. The Receiving Party shall make the Confidential Information received from the Disclosing Party available only to those persons who need it to provide Services under these GTC. These persons include advisors to the receiving Party and its Affiliates and subcontractors.

9.4. The term "Confidential Information" does not include information which

(a) was already generally known at the time of publication or becomes known to the general public without a violation of these GTC, or

(b) was demonstrably known to the Receiving Party at the time of conclusion of the contract or are thereafter disclosed in a justified manner by a third Party; or

(c) was already in the possession of the Receiving Party prior to transmission by the Disclosing Party; or

(d) the Receiving Party has independently developed irrespective of the transmission by the Disclosing Party.

9.5. Confidential Information remains the property of the respective Disclosing Party. The Receiving Party hereby agrees to immediately (i) return all Confidential Information, including all copies thereof, to the Disclosing Party at any time upon the request of the Disclosing Party, or to (ii)

destroy the Confidential Information, including all copies thereof, upon the request of the Disclosing Party, and to confirm in writing to the Disclosing Party the fact of such destruction.

The above-mentioned obligation to return or destroy does not apply to

(a) reports and certificates drawn up exclusively for the purpose of fulfilling the contractual obligations under the contract for the client, which remain with the client. However, TÜV is entitled to take copies of this and the Confidential Information, which forms the basis for the preparation of these reports and certificates, as proof of proper performance of the contract and for general documentation purposes for its files; or

(b) Confidential Information that is stored on backup servers or in analog backup systems on a generational basis during routine data backups as part of normal archiving processes; or

(c) the extent contrary to laws, regulations, orders of a competent court, an administrative or supervisory authority or an accreditation body.

9.6. This confidentiality obligation exists from the beginning of the contract and continues to apply for a period of two (2) years after termination of the contract.

## 10. Copyrights and rights of use, publication

- 10.1. The copyrights of the reports, test reports, test results, expert opinions, results, calculations, representations, etc. prepared within the scope of the order (hereinafter "Performance Results") are owned by TÜV. As the owner of the copyrights, TÜV is free to grant others the right to use the Performance Results for individual or all types of use (hereinafter "Right of Use").
- 10.2. The client receives a non-exclusive, unlimited, non-transferable, non-sub licensable right of use to the contents of the service results produced within the scope of the order, unless otherwise contractually agreed in individual cases. The Right of Use is limited to the contractual purpose (e.g. use of test reports, audit reports as proof of audits carried out or in the case of a contractually agreed review of a management system for conformity with certification conditions as proof of the corresponding decision).
- 10.3. The transfer of Rights of Use of the generated Performance Results regulated in Clause 10.2. of these GTC is subject to full payment of the remuneration agreed in favor of TÜV.
- 10.4. The client may only pass on the Performance Results in full unless TÜV has given its prior written consent to the partial passing on of Performance Results.
- 10.5. Any publication or reproduction of the Performance Results for advertising purposes or any further use of the Performance Results beyond the scope regulated in Clause 10.2 requires the prior written consent of TÜV in each individual case. The client shall be responsible for and hold TÜV harmless from any damages or complaints caused by publication or duplication of the service results for promotion purposes.
- 10.6. TÜV may revoke a once given approval according to Clause 10.5 at any time without stating reasons. In this case, the client is obliged to stop the transfer of the Performance Results immediately at its own expense and, as far as possible, to withdraw publications.
- 10.7. The consent of TÜV to publication does not entitle the client to use the corporate logo of TÜV, also registered as a Union trademark (Reg.No.: 005871116) or the corporate design of TÜV as reference advertising.

## 11. Defects

- 11.1. The legal warranty rights under applicable Malaysian laws shall apply, unless otherwise regulated in these conditions.
- 11.2. In the event of a defect, the client shall be entitled to request remedial performance. Remedial performance shall be effected at the discretion of TÜV either by rectification or replacement

delivery. Generally, remedial performance by TUV is carried out as a gesture of goodwill and without recognition of a legal obligation. Any acknowledgement for the purposes of the Limitation Act 1953 shall be governed strictly by the Limitation Act 1953. The provision of remedial performance shall not, by itself, restart or affect any statutory limitation period. If the remedial performance fails, the client is entitled either to terminate the contract or to reduce the price. Remedial performance shall be deemed to have failed after the second unsuccessful attempt, unless the nature of the item or the defect or other circumstances in particular indicate otherwise.

- 11.3. Any notification of defects by the client must be made in writing.
- 11.4. The client's claims for defects regulated in this Clause 11 shall be subject to, and governed by, the statutory limitation periods prescribed under the Limitation Act 1953 and other applicable Malaysian laws. Notwithstanding the foregoing, nothing in these GTC shall operate to limit or exclude (a) any claim arising from fraudulent concealment of a defect (b) any claim for damages arising from death or injury to life, body or health (c) any claim under product liability or consumer protection legislation (including the Consumer Protection Act 1999, where applicable), as well as grossly negligent or intentional breaches of duty.
- 11.5. Apart from the claims mentioned in this Clause 11, the client is not entitled to any further claims and rights due to defects, with the exception of claims for damages and reimbursement of expenses. Liability for damages and reimbursement of expenses shall be governed by Clause 12 of these GTC.

## 12. Damages and reimbursement of expenses

- 12.1. TUV is not liable for damages or reimbursement of expenses on whatever legal grounds, in particular due to defects, breach of duties arising from the contractual relationship or tort, to the fullest extent permitted by Malaysian laws. This limitation applies in particular, but not exclusively, to claims for indirect or consequential damages, including loss sales or profits, financing costs, business interruption or loss of production.
- 12.2. This exclusion of liability according to Clause 12.1 does not apply in the case of (a) intent or gross negligence, (b) liability for expressly guaranteed quality characteristics, (c) liability which cannot be excluded or limited under Malaysian laws (d) culpable injury to life, body or health and (e) liability under applicable product liability legislation. In addition, TUV is also liable in accordance with applicable Malaysian laws in the event of a breach of essential contractual obligations, i.e. obligations whose fulfilment is essential for the proper execution of the contract and on whose observance the client regularly relies and may rely.
- 12.3. Where TUV is liable for breach of essential contractual obligations, and such liability does not arise from fraud, wilful misconduct, gross negligence, or death or injury to life TUV's liability shall be limited to the foreseeable damage typical for the contract. Subject to the foregoing, whether arising from breach of essential or non-essential contractual obligations, TUV's total aggregate liability shall be capped at an amount of RM12,000,000 or the equivalent of €2,500,000, whichever is lower, based on the prevailing exchange rate at the time the claim arises.
- 12.4. Insofar as liability under this Clause 12 is excluded or limited, this shall also apply to the personal liability of the employees, representatives, directors, officers and other employees of TUV and its assistants and vicarious agents, to the extent permitted by Malaysian laws.
- 12.5. The limitation period for claims for damages and reimbursement of expenses shall be governed by the Limitation Act 1953 and other applicable Malaysian laws.
- 12.6. No change in the burden of proof to the detriment of the client shall be construed with the above-mentioned provisions, except as permitted under Malaysian laws.
- 12.7. Unless otherwise contractually agreed in writing, TUV shall only be liable under the contract to the client and, if applicable, to a third party explicitly named in writing in the contract. Liability towards other third parties is excluded, except to the extent such liability cannot lawfully be excluded under Malaysian laws.

### 13. Force Majeure

- 13.1. “Force Majeure” means the occurrence of an event or circumstance that prevents or impedes a Party from performing one or more of its contractual obligations under the contract, if and to the extent that that Party proves: (a) that such impediment is beyond its reasonable control; and (b) that it could not reasonably have been foreseen at the time of the conclusion of the contract; and (c) that the effects of the impediment could not reasonably have been avoided or overcome by the affected Party.
- 13.2. In the absence of proof to the contrary, the following events affecting a Party shall be presumed to fulfil conditions (a) and (b) under paragraph 1 of this Clause: (i) war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilization; (ii) civil war, riot, rebellion and revolution, military or usurped power, insurrection, act of terrorism, sabotage or piracy; (iii) currency and trade restriction, embargo, sanction; (iv) act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalization; (v) plague, epidemic, natural disaster or extreme natural event; (vi) explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy; (vii) general labor disturbance such as boycott, strike and lock-out, go-slow, occupation of factories and premises.
- 13.3. The Party successfully invoking this Clause is relieved from its duty to perform its obligations under the contract and from any liability in damages or from any other contractual remedy for breach of contract, from the time at which the impediment causes inability to perform, provided that the notice thereof is given without delay. If notice thereof is not given without delay, the relief is effective from the time at which notice thereof reaches the other Party. Where the effect of the impediment or event invoked is temporary, the above consequences shall apply only as long as the impediment invoked impedes performance by the affected Party. Where the duration of the impediment invoked has the effect of substantially depriving the contracting Parties of what they were reasonably entitled to expect under the contract, either Party has the right to terminate the contract by notification within a reasonable period to the other Party. Unless otherwise agreed, the Parties expressly agree that the contract may be terminated by either Party if the duration of the impediment exceeds one hundred and twenty (120) days.

### 14. Hardship

- 14.1. The Parties are bound to perform their contractual duties even if events have rendered performance more onerous than could reasonably have been anticipated at the time of the conclusion of the contract.
- 14.2. Notwithstanding paragraph 1 of this Clause, where a Party proves that:
- (a) the continued performance of its contractual duties has become excessively onerous due to an event beyond its reasonable control which it could not reasonably have been expected to have taken into account at the time of the conclusion of the contract; and that
  - (b) it could not reasonably have avoided or overcome the event or its consequences, the Parties are bound, within a reasonable time of the invocation of this Clause, to negotiate alternative contractual terms which reasonably allow to overcome the consequences of the event.
- 14.3. Where Clause 14.2 applies, but where the Parties have been unable to agree alternative contractual terms as provided in that paragraph, the Party invoking this Clause is entitled to terminate the contract, but cannot request adaptation by the judge or arbitrator without the agreement of the other Party.

## 15. Export control

- 15.1. When passing on the Services provided by TUV or parts thereof to third Parties in Malaysia or any other country, the client must comply with the respectively applicable regulations of national and international export control and other applicable trade control laws.
- 15.2. The performance of a contract with the client is subject to the proviso that there are no obstacles to performance due to national or international foreign trade legislations or embargos and/or sanctions.

## 16. Partial invalidity, place of performance, jurisdiction

- 16.1. In the event that one or more provisions of these GTC should be invalid, the remaining provisions of these GTC shall remain unaffected.
- 16.2. The place of performance for all obligations under these GTC or the contract, including supplementary performance, shall be the registered office of the respective TUV company providing the service owed under the contract.
- 16.3. The place of jurisdiction for all disputes arising from and in connection with the contractual relationship is Malaysia, insofar as the client is a merchant, a legal entity under public law or a special fund under public law. However, TUV is entitled to sue the client at its general place of jurisdiction or at any other competent court. The above provisions do not apply if the law provides for an exclusive place of jurisdiction. [In relation to non-merchants, Malaysia shall be the place of jurisdiction if the client moves its domicile or usual place of residence to another country after conclusion of the contract or its domicile or usual place of residence is not known to TUV at the time the claims are asserted in court.]
- 16.4. The legal and business relations between TUV and the client shall be governed exclusively by the laws of Malaysia to the exclusion of international private law and the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Sales Convention).

## 17. Data protection notice

TUV processes personal data of the client for the purpose of fulfilling this contract. In addition, TUV also processes the data for other legal purposes in accordance with the relevant legal basis (e.g. balancing of interests / consent). The personal data of the client will only be disclosed to other natural or legal persons if the legal requirements are met. This also applies to transfers to third countries. The personal data will be deleted immediately as soon as a corresponding reason for deletion arises. Legal record retention periods, which result e.g. from mandatory statutory provisions (e.g. retention periods under accounting or tax requirements) are taken into account. Data subjects may exercise the following rights: right of information, right of rectification, right of deletion, right of processing limitation, right of objection, right of data transferability. In addition, persons concerned by the data processing have the right to revoke their consent at any time with effect for the future, as well as the right to file a complaint with the competent data protection supervisory authority.

For further details on the processing of personal data by TUV as the person responsible or contract processor, please refer to the respective data protection information. You can contact the Data Protection Officer of TUV by e-mail at [farid.pouzan@tuv.com](mailto:farid.pouzan@tuv.com) or by mail to the following address:

TUV Rheinland Malaysia Sdn. Bhd.,  
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