General Terms and Conditions of Business of TÜV Rheinland Maghreb

1. Scope of application

1.1 The following terms and conditions apply for the services agreed including information, deliveries and the like, as well as for ancillary services rendered in executing orders and other ancillary obligations.

1.2 Any general terms and conditions of the Client, including any conditions of purchase, are not applicable and are hereby excluded. The Client's contractual conditions do not form part of the contract even if TÜV Rheinland – hereinafter referred to as the "Contractor" – does not expressly contradict them.

1.3 Insofar as "accreditation bodies" are referred to in these General Terms and Conditions, this term also includes authorising and recognising organisations, whilst the terms "accreditation specifications", "accreditation requirements" and "accreditation procedures" correspondingly apply to the specifications and procedures of the authorizing or recognizing organizations.

2. Test material: Transportation risk and storage

2.1 The risk and the cost of freight and transport of documents or test material to and from the Contractor and the cost of necessary waste management measures shall be borne by the Client.

2.2 Test material which has been destroyed or has otherwise become worthless is to be disposed of by the Contractor (who will charge for this) unless otherwise agreed.

2.3 Test material which has not been destroyed is to be kept by the Contractor for four weeks after the completion of the test. If a longer retention period is required, the Contractor will charge a reasonable storage fee. During storage, the Contractor will be liable only to the level of care that it takes in its own affairs.

3. Offers, creation and duration of contracts

3.1 All Contractor offers are subject to change unless otherwise agreed.

3.2 The contract comes into existence by way of a written instruction to the Contractor by the Client on the basis of the Contractor's offer and runs for the agreed duration as per the Contractor's offer. The contract duration will be extended by the period provided for in the offer, if it is not terminated by one of the parties in writing six months before expiry.

4. Scope of services

4.1 The Contractor examines and certifies systems and products of manufacturers and service providers on the basis of a national or international regulations with accreditation, authorization or recognition ("accredited certification procedure"), according to national or international standards without accreditation ("standard certification") and provides his own additional, independent certification services ("in-house certificates").

4.2 The agreed services will be performed in accordance with generally accepted codes of practice and in compliance with applicable regulations at the time of conclusion of the contract. Furthermore, the Contractor is entitled to determine the method and the nature of the examination itself at his own discretion, unless otherwise agreed in writing or if mandatory provisions require a specific approach.

4.3 The Contractor will perform accredited certification procedures according to the contractually agreed standard or the regulations referred to therein, including the respective generally applicable accreditation standards specific to the certification standards, the certification standards, and all guidelines, as well as the accreditation requirements of the relevant accreditation body. If the audit reveals that more audit time is required due to the accreditation requirements, the Client must bear the additional costs incurred, insofar as the Contractor is not responsible for these costs through its own fault. Standard certifications are carried out according to the relevant national or international standards. Certification projects for issuing in-house certificates are carried out according to the specific rules established by the Contractor.

5. Time limits / due dates for services

5.1 The contractually agreed time limits and due dates for services are based on estimates of the scope of work which in turn are based on the information provided by the Client. They are only binding if they are confirmed in writing as such by the Contractor.

5.2 Insofar as time limits have been agreed as binding, they will begin when the Client has submitted all necessary documents to the Contractor. This similarly applies to agreed due dates, which are extended by the length of any delay for which the Contractor is not responsible, without the explicit consent of the Client.

6. Invoicing and acceptance

6.1 If, in issuing an order, the scope of services is not specified in writing, invoicing will be on a time and material basis. If no remuneration is agreed in writing, invoicing will occur according to the Contractor's price list valid at the time of performance.

6.2 Invoicing for the services will be based on the stage of completion, unless otherwise agreed. 80 % of the agreed amount will be invoiced after performance on site (i.e. after the audit), and the remaining 20 %, as well as travel and associated costs, after the entire process is completed.

6.3 The contracting parties expect that acceptance of the services provided by the Contractor will not generally be possible if these are works, meaning that the completion of the work will instead take the place of acceptance.

6.4 Acceptance is required, this is deemed to have occurred two weeks after completion and handover of the work, unless the Client expressly refuses acceptance within that time. The Contractor will expressly point this out at the beginning of the time limit.

7. Payment / costs / offsetting

7.1 All invoice amounts are due immediately without deduction upon receipt of the invoice. Discounts will not be granted.

7.2 The payments are to be made, stating the invoice number and client number, to the bank account of the Contractor indicated on the invoice.

7.3 In case of default, the Contractor is entitled to claim an interest rate of 8 % above the base rate of the Deutsche Bundesbank. At the same time, the assertion of further damages is reserved.

7.4 If the Client is delayed in settling the invoice, despite a reasonable extension, the Contractor may withdraw from the contract, withdraw the certificate, claim damages for non-performance and refuse the further performance of the order.

7.5 The provisions of Section 7.4 also apply to unpaid checks, the suspension of payments, the opening of insolvency proceedings against the Client or the rejection of the opening of insolvency proceedings due to a lack of assets.

7.6 Objections to Contractor invoices are to be made in writing within 2 weeks of receipt of the invoice.

7.7 The Contractor is entitled to require a reasonable advance payment.

7.8 If the Client cancels or postpones an audit date within two weeks of the agreed date which he has confirmed, the Contractor is entitled, even if no service has been rendered, to immediately charge 15 % of the remaining contract value as compensation.

7.9 The provisions of Section 7.8 apply accordingly if the timeframe for auditing / performance by the Contractor, as provided for within the scope of a certification procedure, could not be realized by the Client, resulting in the certificate being withdrawn (for example, in conducting a monitoring audit).

7.10 Furthermore the Contractor is entitled invoice for 10 % of the order value as compensation if a commissioned performance is not called upon within a year of it being commissioned.

7.11 The Contractor is entitled, in the event of increased overheads and/or delivery costs, to raise prices at the beginning of the month. This is done by written notice, sent 1 month (amendment period) before the intended entry into force. If the price increase per contractual year does not exceed 5 %, the Client will have no special right of termination as a result of this. In the event of a price increase of more than 5 % per contractual year, the Client is entitled to terminate the contract at the end of the amendment period. Otherwise, the new prices will be deemed to have been agreed as of the end of the amendment period.

7.12 Contractor claims can only be offset with undisputed or legally established claims.

8. Confidentiality

8.1 "Confidential Information" for the purposes of this agreement means all information, documents, photos, drawings, know-how, data, samples, and project document handed over, transmitted or disclosed in any other way during the term of this agreement by one party (the "disclosing party") to the other party (the "receiving party"). This includes copies of this information in paper or electronic form.

8.2 All Confidential Information transmitted in written form must be provided with a reference to its confidentiality by the disclosing party prior to disclosure to the receiving party; this also applies to Confidential Information sent via e-mail. An appropriate prior warning is to be given before the oral transmission of Confidential Information.

8.3 All Confidential Information communicated pursuant to this agreement by the disclosing party to the receiving party or distributed in any way,

a) may be used by the receiving party only for the fulfilment of the purpose defined above, provided there is no deviating express written agreement with the disclosing party,

b) may not be reproduced, distributed, published or transmitted in any other form by the receiving party, with the exception of Confidential Information which must be necessarily passed on to regulatory authorities and/or accreditation bodies of the Contractor in the course of the accreditation process,

c) must be kept confidential by the receiving party in the same manner as it would treat its own confidential information, but no less carefully than in accordance with objectively necessary care.

8.4 The receiving party will distribute the Confidential Information from the disclosing party only to those employees who need it to perform services within the scope of the purpose of this agreement. The receiving party will

oblige these employees to the same degree of confidentiality as set forth in this confidentiality agreement.

8.5 Information whereby the receiving party can demonstrate the following are not deemed to be Confidential Information within the sense of this agreement:

a) the information was already well known at the time of publication, or the public were aware of it without a breach of this agreement having occurred, or

b) the receiving party received the information from a third party who was legitimately allowed to give this to them, or

c) the information was in the possession of the receiving party prior to transmission by the disclosing party, or

d) the receiving party developed the information independently irrespective of its transmission by the disclosing party.

8.6 Confidential Information will remain the property of the respective disclosing party. The receiving party hereby gives its consent – at any time, though at the request by the disclosing party at the latest, and without the prior request of the latter for termination or expiration of this agreement – to immediately (i) return all Confidential Information, including all copies, to the disclosing party, or at the request of the latter (ii) destroy the Confidential Information, including all copies, and confirm the destruction to the disclosing party in writing. Exceptions to this provision are the Client reports and certificates created exclusively in order to fulfil the contractual obligations under this agreement. These reports and certificates will remain with the Client. With regard to these and to the confidential information forming the basis for the preparation of these reports and certificates, the Contractor is however entitled to take copies for their files as proof of the correctness of their results, and for general documentation purposes.

8.7 The receiving party will maintain the confidentiality of the Confidential Information as from commencement of the contract for a period of five years after termination of the agreement; for the same period, it will not distribute it to any third party, nor use the Confidential Information itself.

9. Copyrights and rights of use, publication

9.1 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").

9.2. 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).

9.3. The transfer of Rights of Use of the generated Performance Results regulated in Clause 9.2. of these GTC is subject to full payment of the remuneration agreed in favor of TÜV.

9.4. 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.

9.5. 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 9.2 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.

9.6. TÜV may revoke a once given approval according to Clause 9.5 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.

9.7. 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.

10. Liability of the Contractor

10.1. The Contractor's liability for damages and compensation for damage or expense caused by institutions and/or employees of the Contractor is – regardless of legal grounds, in particular in the event of a breach of contractual obligations or of tort – limited to three times the agreed remuneration for the Contractor for the basic term of the certificate, though this will in no case exceed 100 % contract price or 100 000 Tunisian Dinars.

10.2. This limitation of liability in accordance with Section 10.1 does not apply where a claim is based on intentional or bad faith of the Contractor, nor for any damage arising from injury to life, body or health, or for damages for which there is liability under the Law.

10.4 The Contractor will not be liable for manpower provided by the Client by way of support for the services to be rendered under this contract by the Contractor, unless the allocated manpower are to be regarded as agents of the Contractor. If the Contractor is not liable under the preceding sentence for allocated manpower, then the Client must indemnify the Contractor from any third-party claims.

10.7 The Client will indemnify the Contractor from compensation claims brought against the Contractor by third parties due to the use by the Client of examination, validation, verification and certification results. This indemnity obligation will not apply if the third-party claim is based on an intentional or grossly negligent breach of contract by the Contractor or by a culpable breach of cardinal obligations pursuant to Section 10.3 by the Contractor.

10.8 Neither party shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss or any loss of profit or revenue, loss of production or downtime costs, loss of contract or loss of goodwill or other pure economic loss arising under or in connection with the agreement (“consequential loss”).

11. Termination / Contractor's right of termination

11.1 The Contractor and the Client have the right to properly terminate the contract with a period of 6 months to the end of the contractual term.

11.2 The Contractor and the Client have the right to terminate the contract ordinarily by giving a period of 6 months' notice to the end of the contractually agreed term.

11.3 Good cause in this sense exists for the Contractor in particular, if

a) the Client does not notify the Contractor immediately of changes relevant to the certification conditions within the company or of indications of such changes,

b) the Client uses the certificate, or the certification mark used improperly or in breach of contract,

c) insolvency proceedings regarding the Client’s assets are opened or a directed request to open insolvency proceedings against it is rejected due to a lack of assets,

d) in the event of a default in payment in accordance with Section 7.4.

11.4 In the event of termination without notice by the Contractor for good cause, the Contractor is entitled to a claim for lump sum consideration against the Client. The latter will owe damages equal to 15 % of the remuneration payable until the end of the fixed agreed contract term. The Client reserves the right to demonstrate significantly lower damages; the Contractor reserves the right to demonstrate unusually high damages for an individual case.

11.5 The Contractor is also entitled to terminate the contract without notice if, as part of a certification process, time windows for auditing / performance by the Contractor could not be realized by the Client, thus resulting in the certificate being withdrawn (for example in the performance of surveillance audits).

11.6 If the Contractor terminates the contract in accordance with Section 11.5, the Contractor may assert a lump sum compensation claim against the Client equal to 15 % of the remuneration payable until the end of the fixed agreed contract term. The Client reserves the right to demonstrate significantly lower damages; the Contractor reserves the right to demonstrate unusually high damages for an individual case.

12. Complaints

12.1 Complaints must be presented in writing to the Contractor.

12.2 Should the complaint be justified, the Contractor shall the initiate appropriate measures.

12.3 Should the complaint prove to be unsustainable in the view of the Contractor, the complainant will be informed of this and asked to comment within a period of 30 calendar days. If no amicable solution can be reached with the complainant, the parties may mutually agree on the performance of arbitration proceedings, failing which legal action will be taken.

13. Jurisdiction, severability, written form, applicable law

13.1 Ancillary agreements to this contract have not been met.

13.2 Changes and additions must be made in writing to be legally effective.

13.3 In the event of the ineffectiveness of one or more provisions of this contract, the contracting parties will agree a replacement provision which comes as close as possible to the ineffective one from a legal and economic standpoint.

13.4 The contract is subject to the laws of the Republic of Tunisia. The contracting parties agree that disputes concerning the effectiveness, interpretation or execution of the contract shall be settled as far as possible on an amicable basis. In case of failure of these efforts, the right to resort to legal action remains intact. The place of jurisdiction shall be Tunis, unless the applicable legal provisions provide otherwise.

14. These General Terms and Conditions of Business apply to all contracts between TÜV Rheinland Maghreb and its customers. The same applies to the General Terms and Conditions of Certification which concern the certification activity.
In case of contradiction between the two documents, only the General Terms and conditions of Business are valid.

15. Within the framework of the mission entrusted to TÜV Rheinland Maghreb in accordance with the contract and the law, the contractor expressly authorizes TÜV Rheinland Maghreb to communicate or transfer his personal data to third parties or to a foreign country in accordance with the law N°2004-63 of July 27, 2004 concerning the protection of personal data la protection des données à caractère personnelle.

14. HSE (Health, Safety, and Environment)

14.1 The client shall ensure TÜV 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.

15. Data Protection Notice

15.1 TÜV Rheinland LLC ("Controller") processes the Client's personal data in accordance with Organic Law No. 2004-63 on the Protection of Personal Data and the requirements of the Instance Nationale de Protection des Données à Caractère Personnel ("INPDP"), including any required declarations or authorizations.
15.2 Personal data is processed to perform this Agreement, deliver the contracted services, meet legal, accounting and accreditation obligations, and protect the Controller's legitimate interests.

15.3 Personal data may be shared with TÜV Rheinland group entities, service providers acting on the Controller's instructions, and authorities where required by law. Transfers outside Tunisia, including to TÜV Rheinland AG (Germany), are

made only to countries recognized by the INPDP as offering adequate protection, or under INPDP authorization with appropriate safeguards

15.4 Personal data is kept only as long as necessary, then securely deleted or anonymized. The Controller applies appropriate security measures and will notify the Client of any significant data breach without undue delay

15.5 For any request or complaint regarding personal data, please contact the Data Protection Officer at dataprotection@tuv.com.

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