

## **1. Scope.**

1.1. These General Terms and Conditions (these "Terms") are applicable to all customers (the "Customers" and each, individually, a "Customer") of TUV Rheinland Industrial Solutions, Inc. ("TRIS") who have entered into an agreement with TRIS or through TRIS with any of TRIS's affiliated companies (the "TRIS Affiliates") for any of the services (the "Services") indicated on the Service Agreement (the "Service Agreement") or otherwise outlined on a statement of work ("SOW") or quotation ("Quote") submitted by TRIS or TRIS Affiliates to Customer.

1.2. No terms and conditions of Customer shall at any time form a part of the content of any contract between Customer and TRIS or the TRIS Affiliates, unless expressly agreed to in writing by TRIS even if they are not further expressly rejected by TRIS or the TRIS Affiliates.

## **2. Offer and Acceptance.**

2.1. Customer's acceptance of the terms set forth in the Service Agreement, SOW or Quote is expressly conditioned upon Customer's assent to all the terms and conditions set forth therein and in these Terms. Customer shall accept the Service Agreement, SOW or Quote by signing a copy of the Service Agreement SOW or Quote or by accepting the Services. No Service Agreement, SOW, or Quote is binding upon TRIS or the TRIS Affiliates until it is fully executed by Customer and it is accepted by TRIS in writing.

2.2. All Services performed by TRIS and the TRIS Affiliates pursuant to the Service Agreement and any SOW or Quote issued by TRIS or the TRIS Affiliates pursuant to the Service Agreement shall be governed by the Service Agreement and these Terms.

2.3. Notwithstanding any prior acceptance of a Service Agreement by TRIS, TRIS shall have no obligation to provide services if Customer is in breach of any of its obligations hereunder, or any other agreement between Customer and TRIS or any TRIS Affiliates, at the time such services were scheduled to be provided.

## **3. Scope of Services**

3.1. The scope of the Services and the nature of the report, if any, shall be governed by the Service Agreement, SOW or Quote for the specific Services required, as evidenced by a written instrument executed by both parties and, if appropriate any additional parties, such as TRIS Affiliates, and by the relevant testing and/or certification standards, if applicable.

3.2. The agreed Services shall be performed in compliance with the regulations in force at the time the contract is entered into.

3.3. Furthermore, TRIS is entitled to determine (in its sole discretion) the method and nature of the assessment unless otherwise agreed in writing or if mandatory provisions require a specific procedure to be followed.

3.4. On execution of the work there shall be no simultaneous assumption of any guarantee of the correctness (proper quality) and working order of either tested or examined parts nor of the installation as a whole and its upstream and/or downstream processes, organizations, use and application in accordance with regulations, nor of the systems on which the installation is based; in particular, no responsibility shall be assumed for the construction, selection of materials and assembly of installations examined, nor for their use and application in accordance with regulations unless these questions are expressly covered by the contract.

3.5. The work performed by TRIS shall not include determining, supervising or implementing the means, methods, techniques, sequences, or procedures of construction or fabrication. TRIS shall not be responsible for evaluating, reporting or affecting job conditions concerning health, safety or welfare.

## **4. Delivery Deadlines.**

4.1. Time of performance and deadlines shall be agreed upon between Customer and TRIS and shall be set forth in the Service Agreement, SOW, Quote or

other documentation specifying the Services to be delivered. Agreed upon delivery times and deadlines shall be based on estimates of the extent of the Services required and according to particulars and information supplied by Customer. Delivery times and deadlines shall be binding only on request by Customer and confirmation in writing by TRIS or the TRIS Affiliates. Notwithstanding the foregoing, TRIS and the TRIS Affiliates reserve the right to change the date for completion of Services and, if it does so, it will notify Customer.

4.2. If TRIS is required to delay commencement of the work, is required to stop or interrupt the work progress due to Customer's request or a change in the scope of work, additional charges will be applicable and payable by the Customer.

## **5. Customer Cooperation.**

5.1. Customer agrees that all cooperation required of Customer, Customer's agents, employees or any third party in connection with the Services, as such may be specified in the Service Agreement, SOW, Quote or other underlying documentation for the Services, shall be provided in a timely manner and at no cost to TRIS or the TRIS Affiliates.

5.2. All documentation and materials, supplies, auxiliary staff, etc., necessary and reasonably required for the performance of the Services shall be made available to TRIS free of charge. In cooperating with TRIS or the TRIS Affiliates, Customer shall comply with all legal requirements and industry safety regulations and standards.

5.3. Customer shall bear any additional cost incurred as a result of Services having to be redone or delays resulting from untimely, incorrect or incomplete information or lack of proper cooperation. Notwithstanding that a fixed or maximum price for the Services has been agreed upon between the parties, TRIS or the TRIS Affiliates shall be entitled to charge additional fees to offset additional expenses incurred as a result of such lack of proper Customer cooperation.

## **6. Payment Conditions and Fees.**

6.1. Unless otherwise agreed to in writing in the Service Agreement, the SOW or the Quote, fees charged by TRIS shall be calculated in accordance with the then current rates in effect at the time of TRIS's acceptance of the Service Agreement. A rate schedule or quotation will be provided to Customer upon request. Customer agrees that its obligations with respect to the payment of fees exists independently from the results of the investigation and are not dependent on whether or not a certification is issued to Customer. Invoices are only payable in the legal tender of the invoice.

6.2. Unless otherwise agreed to by the parties in writing, invoices will be issued regularly. In case of Services that are rendered under flat-fee arrangements, no detailed statement of services shall be provided. All invoice amounts shall be due for payment without deduction thirty (30) days after issuance of the invoice. A service charge of 1.5% per month or the highest rate permitted by law will be added to those accounts not paid within thirty (30) days of invoice date. If collection procedures are required, Customer will pay for all reasonable expenses including court and attorneys' fees. The accrual or receipt by TRIS of interest under this subsection shall not constitute a waiver by TRIS of any right it may have to declare Customer in default under its agreement or to terminate its agreement to perform Services.

6.3. Payments shall be made to the bank account of TRIS as indicated on the invoice, stating the invoice and client numbers. Objections to any invoice shall be submitted in writing within two (2) weeks from receipt of the invoice. If Customer cancels a project fewer than ten (10) business days prior to commencement of Services, TRIS is entitled to a cancellation fee of ten percent (10%) of the quoted price. No extension to payment terms or other settlements of debt shall be allowed without specific authorization by the CEO, CFO or COO of TRIS. If Customer fails to pay any amount due, TRIS may, without notice to Customer, suspend all Services. Furthermore, TRIS shall be entitled to withdraw the certificate and claim damages for non-performance.

6.4. Fees for services rendered hereunder do not include any relevant value added tax ("VAT"), sales, excise or similar taxes, which are payable by Customer, where required.

6.5. Services rendered outside normal working hours at the request of Customer and Services required to be rendered at short notice, (e.g. within a period of time that is considerably shorter than the period initially agreed upon), may be subject to surcharges listed in TRIS's rate schedule.

6.6. Travel fees, expenses and "material and additional costs" are charged separately, unless such fees, expenses and/or costs were included in a Quote. "Material and additional costs" consist of external costs (including, for example, subcontractor costs) associated with the Services, costs incurred for the use of special laboratories or special measuring equipment and miscellaneous costs (e.g. photographic work, disposal of test samples (hazardous waste), packaging, shipping and customs duties). A fifteen percent (15%) flat rate for administrative expenses will be added to such material and additional costs. Travel expenses incurred in connection with Services will be charged at cost or on a pro-rata basis as a flat rate, plus a fifteen percent (15%) flat rate for administrative expenses. Travel expenses include a per diem allowance, overnight allowance, transportation expenses (plane/rail ticket or the applicable standard mileage rate as published by the U. S. Internal Revenue Service for travel by car in effect at the time services are rendered) and any other costs incurred. In addition, travel time of TRIS employees shall be charged on the basis of the hourly rates of the TRIS employees engaged in the performance of the Services.

6.7. Outstanding customer credit balances remaining with TRIS longer than two (2) years will be considered an administrative fee and will become the property of TRIS.

6.8. TRIS may suspend credit extended towards Customer's accounts in its sole discretion without notification.

## **7. No Right of Set-off.**

Customer shall have no right of set-off against any payments due, whether on account of any claims or alleged claims against TRIS or the TRIS Affiliates under these Terms or otherwise.

## **8. Acceptance.**

8.1. Reports and work product generated by TRIS or the TRIS Affiliates shall be examined by Customer within five (5) business days beginning on the date of delivery to Customer. TRIS's work product shall be deemed to be accepted unless a written notice describing the deficiency is received by TRIS within the applicable time period set forth above. Any part of the Services ordered by Customer which is complete in itself may be presented by TRIS or the TRIS Affiliates for acceptance as an installment.

8.2. Neither TRIS nor the TRIS Affiliates issue test results, test reports, certifications, test marks and other statements regarding the Services (collectively "Reports") via e-mail. Any communications via e-mail regarding the Services are for informational purposes only, may not be relied on by Customer, and do not replace or anticipate the formal notification regarding Reports or other decisions in accordance with the Regulations.

## **9. Confidentiality.**

9.1. For purposes of this Section 9, TRIS and Customer are each referred to as a "Party" as appropriate. As used throughout these Terms, "Confidential Information" means any scientific, technical, trade or business information which is given by one Party to the other and which is treated by the disclosing Party as confidential or proprietary. Confidential Information does not include information that (a) is in possession of the receiving Party at the time of disclosure, as reasonably demonstrated by written records and without obligation of confidentiality, (b) is or later becomes part of the public domain through no fault of the receiving Party, (c) is received by the receiving Party from a third party without obligation of confidentiality, or (d) is developed independently by the receiving Party

without use of, reference to, or reliance upon the disclosing Party's Confidential Information by individuals who did not have access to Confidential Information. The disclosing Party shall, to the extent practical, use reasonable efforts to label or identify as confidential, at the time of disclosure all such Confidential Information that is disclosed in writing or other tangible form.

9.2. Each Party agrees (a) to keep confidential the Confidential Information of the other Party and the contents of the Service Agreement and these Terms, (b) not to disclose the other Party's Confidential Information to any third party without the prior written consent of such other Party, and (c) to use such Confidential Information only as necessary to fulfill its obligations or in the reasonable exercise of rights granted to it hereunder. Notwithstanding the foregoing, a Party may disclose (i) Confidential Information of the other Party to its Affiliates, and to the Party's and/or its Affiliates' directors, employees, consultants, and agents who, in each case, have a specific need to know such Confidential Information and who are bound by a like obligation of confidentiality and restriction on use, or (ii) Confidential Information of the other Party to the extent such disclosure is required to comply with applicable law or to defend or prosecute litigation; provided, however, that in each case the receiving Party provides prior written notice of such disclosure to the disclosing Party and takes reasonable and lawful actions to avoid or minimize the degree of such disclosure.

9.3. Except to the extent required by applicable law, neither Party shall make any public statements or releases concerning the Service Agreement, these Terms or the transactions contemplated hereby without obtaining the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

#### **10. Copyright, Ownership and Use of Reports.**

10.1. Except as expressly set forth in this Section, TRIS retains exclusive ownership of all Reports, methods of doing business, raw data, calculations, test results and expert opinions. The copyright on all Reports issued by TRIS or the TRIS Affiliates belongs exclusively to TRIS and the TRIS Affiliates, respectively.

10.2. All Reports and other documents, including certifications and opinions which are produced by TRIS or the TRIS Affiliates during the performance of the Services and delivered to Customer may be used by Customer only for their intended purpose.

#### **11. Warranty and Limitation of Liability.**

11.1. TRIS warrants that the Services shall be performed by TRIS in accordance with the applicable testing and certification standards and in a workmanlike manner by qualified personnel. TRIS and the TRIS Affiliates shall not be liable under any circumstances to Customer or any other person if (a) the Services or work products prepared in connection with the Services are not used for the intended purpose; (b) any report prepared by TRIS or the TRIS Affiliates was subsequently modified without TRIS's or, as appropriate, the TRIS Affiliates' written consent; (c) if Customer fails to perform its obligations under these Terms; or (d) Customer did not disclose to TRIS or the TRIS Affiliates all material facts known to Customer with respect to the object of the Services.

11.2. Statements or findings made in TRIS reports are opinions based on the tests conducted and are not to be construed as representations of fact. Due to the limitations of testing methods in evaluating all of the factors that determine the overall component quality, no guarantee is made nor liability assumed by TRIS for the component quality or serviceability.

11.3. EXCEPT FOR THE WARRANTIES SET FORTH HEREIN, TRIS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES BY TRIS OR ANY OF ITS AGENTS, SUBSIDIARIES, AFFILIATES OR SUBCONTRACTORS. ANY AND ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY

EXCLUDED AND DECLINED.

11.4. CUSTOMER MAY NOT BRING ANY ACTION ARISING OUT OF OR IN CONNECTION WITH ANY TRANSACTION COVERED BY THESE TERMS UNLESS SUCH ACTION IS COMMENCED WITHIN SIX MONTHS AFTER THE CAUSE OF ACTION HAS ACCRUED.

11.5. THE LIABILITY OF TRIS AND THE TRIS AFFILIATES, THEIR EMPLOYEES, AGENTS, MANAGERIAL STAFF AND CONSTITUENT BODIES, FOR ALL DAMAGES IN CONNECTION WITH THE PROVISION OF THE SERVICES SHALL IN ALL EVENTS BE LIMITED TO THE LOWER OF:

(A) A TOTAL OF ONE MILLION UNITED STATES DOLLARS (\$1,000,000.00); OR

(B) IF THIS IS A CONTRACT WITH A FIXED OVERALL FEE, TEN TIMES THE AMOUNT PAID BY CUSTOMER FOR SERVICES RELATED TO A PARTICULAR QUOTE, ORDER OR SOW UNDER WHICH THE DAMAGES OCCURRED; OR

(C) IF THIS IS A CONTRACT FOR ANNUALLY RECURRING SERVICES, THE AGREED ANNUAL FEE PAID BY CUSTOMER; OR

(D) IF THIS IS A CONTRACT EXPRESSLY CHARGED ON A TIME AND MATERIALS BASIS, A TOTAL OF FIFTY THOUSAND UNITED STATES DOLLARS (\$50,000.00); OR

(E) IF THIS IS A FRAMEWORK AGREEMENT THAT PROVIDES FOR THE POSSIBILITY OF PLACING INDIVIDUAL ORDERS, AN AMOUNT EQUAL TO THREE TIMES THE FEE PAID BY CUSTOMER FOR SERVICES RELATED TO A PARTICULAR QUOTE, ORDER OR SOW UNDER WHICH THE DAMAGES OCCURRED.

THE LIABILITY OF TRIS AND THE TRIS AFFILIATES HEREUNDER IS EXPRESSLY LIMITED TO DIRECT DAMAGES INCURRED WITH RESPECT TO THE SERVICES PERFORMED BY TRIS. IN NO EVENT SHALL TRIS BE LIABLE TO ANY PERSON FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR GOODWILL, OR ADDITIONAL EXPENSES INCURRED, WHETHER PURSUANT TO A CLAIM IN CONTRACT, TORT OR OTHERWISE AND WHETHER IN AN ACTION FOR BREACH OF WARRANTY OR OTHERWISE.

#### **12. Indemnification.**

12.1. Customer shall indemnify and hold harmless TRIS and TRIS's officers, directors, employees, affiliates, suppliers and agents (each a "TRIS Indemnified Person") against any losses, claims, damages, liabilities, penalties, actions, proceedings or judgments of any kind whatsoever (including all reasonable legal and attorney's fees and expenses) to which a TRIS Indemnified Person may become subject out of claims by Customer or any third party (including without limitation customers of Customer) related to or arising out of (a) any breach by Customer of any provision of the Service Agreement, these Terms or the Certification and Testing Regulations; (b) any misrepresentation made by Customer in connection with obtaining any Services; or (c) any action or omissions of Customer related to the Service Agreement, other than as expressly authorized in such Service Agreement.

12.2. TRIS shall indemnify and hold harmless Customer and, as applicable, Customer's officers, directors, employees, affiliates, suppliers and agents (each a "Customer Indemnified Person") against any losses, claims, damages, liabilities, penalties, actions, proceedings or judgments of any kind whatsoever (including all reasonable legal and attorney's fees and expenses) to which a Customer Indemnified Person may become subject out of claims by TRIS or any third party (including without limitation any TRIS Affiliate) related to or arising out of (a) any breach by TRIS of any provision of the Service Agreement, these Terms, or the Certification and Testing Regulations; or (b) any action or omissions of TRIS related to the Service Agreement, other than as expressly authorized in such Service Agreement.

#### **13. Non-Solicitation**

It is agreed that the Customer, shall not solicit for hire or induce any person who is an employee, independent contractor, subcontractor or agent of TRIS to

terminate their employment or relationship with TRIS, in order to become an employee, come under the direction of the Customer to independently perform services for the Customer, during the term of this Agreement and twelve (12) months after its termination without the express written consent of TRIS. If the Customer breaches this agreement and employs the above, or causes the termination of employment with TRIS, the Customer will immediately pay TRIS an amount equal to thirty-percent (30%) of the affected individual's annualized compensation in effect at the time of employment termination.

#### **14. Governing Law and Jurisdiction; Place of Performance.**

14.1. The construction and validity of these Terms shall be governed by the laws of the State of Michigan, USA, without giving effect to its conflict of laws rules, regardless of where any order was placed or filed, the place of performance of the Services or delivery of reports or where any other act or performance occurred.

14.2. Customer agrees to the exclusive jurisdiction of the federal and state courts located in the Kent County, Michigan, with respect to the adjudication of any dispute arising out of or in connection with the provision of the Services, the Service Agreement, these Terms, or Testing Regulations.

14.3. TRIS AND CUSTOMER HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT.

14.4. In the event of any legal action, the prevailing party shall be entitled to recover from the other party all costs, expenses and reasonable attorney's fees, expert witness fees, and any other costs incurred to bring or defend such action.

#### **15. Severability.**

If any provision of these Terms is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of these Terms, and the remainder of these Terms shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in these Terms, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under these Terms by one party to the other, the remaining provisions of these Terms shall also be modified to the extent necessary to equitably adjust the parties' respective rights and obligations hereunder.

#### **16. General Conditions.**

TRIS reserves the right to discontinue any of the Services and to revoke or change prices or terms, except when otherwise indicated in these Terms. If, at any time, it becomes necessary to discontinue Services to Customer, to revoke or modify any provisions of these Terms or of any SOW, or to allocate the provision of Services, TRIS will take whatever action which it, in its sole and absolute judgment, deems fair and appropriate.

#### **17. Revisions; Modifications; Waiver.**

17.1. TRIS may change, revise, amend or modify these Terms from time to time. TRIS shall provide Customer with written notice of any such changes, revisions, amendments or modifications, provided, however, that any such changes, revisions, amendments or modifications shall become effective without any further action by any party and that they shall not apply to any orders placed and accepted prior to the effective date of such changes, revisions, amendments or modifications.

17.2. Should TRIS at any time not enforce any one of these Terms, such event shall not be interpreted as a change of said Terms, or as TRIS's waiver to exercise

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any of its rights under these Terms.

**18. Entire Agreement.**

These Terms, together with the Service Agreement, any SOW or Quote issued pursuant to the Service Agreement, and any schedules attached thereto, shall be the complete and exclusive statement of the agreement between the parties with respect to the subject matter hereof and supersede any oral or written communications, understandings, acknowledgements or representations or agreements relating thereto.