

Terms and Conditions of TUV Rheinland UK Limited

1. GENERAL

These terms and conditions (the "Terms and Conditions") of TUV Rheinland UK Ltd ("TUV") shall apply to all agreed services including advise, guidance, auditing, inspection, testing, consultation, information, deliveries, certification follow-up and the like, and to auxiliary services and other subsidiary contractual obligations and/or other services provided by TUV for all business transactions between TUV and the "Client" (the person or firm who purchases services from TUV) ("TUV's Services"). No terms and conditions of the Client shall form part of any contract or order between TUV and the Client even if they are not further repudiated by TUV.

The Client, when placing or confirming an order with TUV, accepting an offer from TUV, or accepting a delivery of services from TUV, recognises that these Terms and Conditions shall apply to the contract between the TUV and the Client for the supply of TUV Services in accordance with these Terms and Conditions ("Contract") to the exclusions of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Terms and Conditions shall also be applicable to all TUV's Services to be performed under or in connection with any Contract.

2. BASIS OF CONTRACT

- 2.1 An order constitutes an offer by the Client to purchase TUV Services in accordance with these Terms and Conditions.
- 2.2 The order shall only be deemed to be accepted when TUV issues written acceptance of the order at which point and on which date a Contract shall come into existence.
- 2.3 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of TUV which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by TUV, and any descriptions or illustrations contained in the TUV's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the TUV Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 Any quotation given by TUV shall not constitute an offer, and is only valid for a period of 3 months from its date of issue.
- 2.6 Offers made by TUV, particularly with regard to scope, implementation, prices and time limits, shall remain conditional and shall not be binding on TUV until the execution of the Contract or TUV's written confirmation of its acceptance of the client's order, regardless of whether the client's order is made based on TUV's previous offer or not.

3. SUPPLY OF SERVICES

- 3.1 TUV shall supply the TUV Services to the Client in accordance with the "Specification" (the description or specification of the TUV Services provided in writing by TUV to the Client) in all material respects.
- 3.2 TUV shall have the right to make any changes to the TUV Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the TUV Services, and TUV shall notify the Client in any such event.

4. INVOICING AND TERMS OF PAYMENT

- 4.1 If no fixed price was agreed upon in advance for a Contract, tests, appraisals, evaluation of external test report(s) for certification, audits, information with regard to standards and statutory requirements or other TUV Services will be charged at cost incurred. The cost incurred is to be calculated based on the hourly rate of the employee assigned to render such TUV Services and the time of this employee spent on rendering such TUV Services. The costs charged for travelling time are calculated in the same way and at the same rate as that of the employee for rendering such TUV Services. If the TUV Services are charged based on time required, the total time spent by all employees for such TUV Services will be charged.
- 4.2 In addition to the foregoing fees, when participating in TUV certification systems for the issuance of a certificate or license, additional fees for certification services as well as fees for licenses and storage will be billed.

- 4.3 If, upon the Client's request, TUV Services are rendered outside of normal working hours, TUV may demand a surcharge on the applicable hourly rate or the fixed price, whichever is applicable. If the Client wishes to have the services rendered at short notice, (e.g. testing has to be carried out within a period of time that is considerably shorter than the period stated in the relevant Contract), a special appointment surcharge of 50% will be added based on the applicable hourly rate or the fixed price, whichever is applicable.
- 4.4 The prices quoted do not include value-added tax ("VAT"). VAT will be charged in accordance with the currently applicable legal provisions and shown separately on the invoice.
- 4.5 As a rule, travelling expenses and other material and additional costs (subcontracts) associated with a Contract, cost incurred for the use of special laboratories or special measuring equipment (use of equipment cost) plus miscellaneous costs (e.g. photographic work, disposal of test samples (hazardous waste), packaging, shipping and customs duties) will be payable plus a 20% flat rate as administrative expenses. Travelling and subsistence expenses incurred in connection with TUV Services rendered in the field will be charged at cost or at a flat rate on a pro rata basis, whichever is applicable. Travelling and subsistence expenses consisting of accommodation, meals, transportation expenses (plane/rail ticket or others) and any other costs incurred as a result of performing the work.
- 4.6 Invoices will be made out reflecting the progress of the work. (i) TUV will invoice all EU clients up to 50% of the value of the project on receipt of a purchase order. This will be in the form of a downpayment invoice for immediate payment for new clients and those without an agreed credit account. In this case work will not commence until payment has been received. Clients with an agreed credit account shall make payment within 30 days of the date of the downpayment invoice. (ii) TUV will invoice Non EU clients for up to 100% of the value of the project on receipt of the purchase order.
- 4.7 No detailed statement of services rendered will be provided with the invoice if fixed prices were agreed upon.
- 4.8 All invoice amounts shall be due for payment without deduction on receipt of the invoice. No discounts will be granted on invoices.
- 4.9 If the account of TUV as specified on the invoice is not credited with the invoice amount within 30 days from the date of invoice, TUV shall have the right to charge interest on the overdue amount at the rate of 4% per annum above the then current Barclays Bank's base rate accruing on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment.
- 4.10 The Client shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Client shall not be entitled to assert any credit, set-off or counterclaim against TUV in order to justify withholding payment of any such amount in whole or in part. TUV may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by TUV to the Client.
- 4.11 Objections to the invoices of TUV shall be submitted in writing within two weeks from receipt of the invoice.
- 4.12 In the event that a debt remains unpaid and there is no dispute over the payment, the client will be deemed in default of payment. In this case TUV will take the necessary measures to recover the outstanding debt.
- 4.13 If a Contract is cancelled more than 7 days after receipt of a purchase order and prior to commencement of testing, TUV is entitled to demand from the Client a cancellation fee up to ten per cent of the Contract price, but not more than GBP 500 to cover administrative expenses. In addition all non-recoverable expenses already incurred need to be carried by the Client in case of cancellation of a Contract.
- 4.14 In the event that a Contract is dormant for a period of 4 months due to non-delivery of materials or information from the Client, TUV reserves the right to terminate the Contract and invoice the Client for all costs incurred to date. The project may subsequently be re-opened subject to a review of costs, issue of a new quotation and receipt of a new purchase order where appropriate.
- 4.15 No extension or variation of payment terms or other settlements of debt shall be allowed without specific written authorisation by the Managing Director of TUV.

4.16 If the Client fails to pay any amount due, TUV may, without prejudice to any other rights or remedies it may have, without notice to the Client, suspend all or any TUV Services.

4.17 Annual certification maintenance fees will be charged to Clients who hold certifications, based on the number of products and types of certifications. Annual maintenance fees are charged and invoiced separately from other fees. If a client intends to cancel a certificate it needs to be communicated to TUV in writing at least 3 months before the renewal date for such certificate.

5. PERFORMANCE TIMES AND DEADLINES

The performance times and deadlines agreed in a Contract are only estimates of the extent of the work based on particulars supplied by the Client and are not of the essence. They shall be binding on TUV only if TUV has expressed its written confirmation that they are binding.

6. PROVISION OF PRODUCT SAMPLES.

The Client shall provide TUV with appropriate product samples required for the testing and/or certification process. Such samples shall be provided at such locations as may be indicated to the Client from time to time, at the sole cost of the Client, including shipping and handling. TUV shall not be responsible for damage to or loss of product samples while in transit or during the performance of the TUV Services.

7. DISPOSAL OF PRODUCT SAMPLES.

The Client agrees that product samples submitted for testing and/or certification may be destroyed or damaged during the testing and/or certification process. Unless otherwise instructed by the Client or if otherwise required by the applicable certification standards or in TUV's Testing and Certification Regulations, TUV shall retain all product samples, damaged or not, for a period of thirty (30) days after the conclusion of the testing and/or certification process. Unless, before the end of said thirty (30) day period, TUV receives instructions from the Client that the Client wishes to reclaim the product samples, TUV shall be free to dispose of such product samples in any manner it deems appropriate. All costs associated with the safe and proper disposal of hazardous materials shall be borne solely by the Client. All shipping and handling costs associated with the return of product samples to the Client, shall be borne solely by the Client.

8. COOPERATION

8.1 The Client shall:

8.1.1 guarantee that all cooperation required of him, his agents or third parties will be provided in good time, in a timely manner, and at no cost to TUV;

8.1.2 ensure that the terms of the purchase order and any information it provides in the Specification are complete and accurate; and

8.1.3 provide TUV with such information and materials as TUV may reasonably require in order to supply the TUV Services, and ensure that such information is accurate in all material respects.

8.2 Design documents, supplies, auxiliary staff, etc. necessary for cooperation with TUV in the performance of the TUV Services shall be made available free of charge by the Client. Moreover, the co-operative acts of the Client, his agents, staffs or any other third parties must comply with all applicable law, standards, safety regulations and accident prevention rules applicable in each case.

8.3 The Client shall bear any additional costs incurred on account of work having to be redone or being delayed as a result of tardy, incorrect or incomplete information or lack of proper co-operation. Even where a fixed or maximum price is agreed, TUV shall be entitled to charge extra fees for such additional costs and expenses.

8.4 If TUV's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (Client Default) TUV shall without limiting its other rights or remedies have the right to suspend performance of the TUV Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays TUV's performance of any of its obligations.

9. CONFIDENTIALITY

9.1 Each party shall keep and procure to be kept secret and confidential Confidential Information belonging to the other party disclosed as a result of the relationship of the parties under this Agreement and shall not use nor disclose the same save as envisaged in this Agreement. Where disclosure is made to any employee, consultant or agent, it shall be done subject to obligations equivalent to those set out in this clause 9 and each party shall be responsible to the other in respect of any disclosure or use of such secret or confidential information by a person to whom disclosure is made.

9.2 The obligations of confidentiality in this clause 9 shall not extend to any matter which is in or becomes part of the public domain otherwise than by reason of a breach of the obligations of confidentiality in this Agreement or which either party can show was in its written records prior to the date of disclosure of the same by the other party under this Agreement or which it receives from a third party independently entitled to disclose it or which it is required by law or regulatory authority to disclose. A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.

9.3 Confidential Information means all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to a party by the other party, its employees, agents or subcontractors, and any other confidential information concerning a party's business or its products or its services. Each party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging its obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 9 shall survive termination of the Contract.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 All patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world ("Intellectual Property Rights") in or arising out of or in connection with the TUV Services including in any reports and calculations produced by TUV and/or any member of the TUV Rheinland Group shall be owned by TUV or the TUV Rheinland Group.

10.2 Any reports, calculations and/or other materials produced in connection with the TUV Services may be used by the Client only for agreed and intended purposes under the relevant Contract.

11. USE OF CERTIFICATION MARKS.

11.1 TUV or the appropriate affiliate of TUV will determine that the relevant certification standards have been met. TUV or its affiliates will authorise the use of the appropriate certification mark and, if applicable, the certification will be entered in the appropriate list or register.

11.2 Certification marks may only be used by Clients in strict compliance with the relevant standards issued by TUV, its affiliates and/or any other certification body, unless and until expressly authorised in writing by TUV or its affiliates and then only in the form and manner specified.

11.3 The Client's failure to use the certification marks in strict compliance with the relevant regulations issued by TUV and/or any other certification body, or the Client's failure to pay fees due to TUV, may result in the cancellation without notice of the certification(s) issued by TUV or its affiliates or any other certification body. In addition, in the event of an infringement of the certification marks by the Client, the Client agrees that TUV and its affiliates are entitled to seek injunctive relief, without the requirement to post a bond, to protect their rights in the certification marks.

12. INSPECTIONS AND PRODUCTION CONTROLS.

The Client shall insure that products receiving certifications are manufactured in conformity with all applicable laws, standards and requirements pertaining thereto. The Client's compliance with this requirement may, in appropriate cases, be established by TUV, TUV's affiliates or their representatives, by means of inspections of the manufacturing facilities of the Client, in accordance with established procedures or as otherwise determined by TUV or TUV's affiliates. The Client shall grant to TUV, its affiliates or their representatives free access at all reasonable times to such facilities of the Client as engage in the manufacture, distribution or servicing of the products, as well as to all relevant production processes, as is required to establish that the Client is in compliance with the applicable standards. All costs of such inspections shall be borne by the Client.

13. ACCEPTANCE OF SERVICES

Reports and work product generated by TUV or its affiliates shall be examined by the Client within five (5) business days beginning on the date of delivery to the Client. The TUV Services shall be deemed to be accepted unless a written notice describing the deficiency is received by TUV within five (5) business days beginning on the date of delivery to the Client. Any part of the TUV Services ordered by the Client which is complete in itself may be presented by TUV or its affiliates for acceptance as an instalment.

14. TERMINATION

14.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

14.1.1 the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 28 days of that party being notified in writing of the breach;

14.1.2 the other party suffers an Insolvency Event which means any one or more of (1) a notice being issued to propose a resolution for winding up or dissolution, or such a resolution being passed; (2) a petition for a winding up or an administration or bankruptcy order being presented, or such an order being made; (3) any steps being taken with a view to a voluntary arrangement or other assignment, composition or arrangement with all or any creditors or any moratorium, readjustment, rescheduling, forgiveness or deferral of all or any indebtedness; (4) suspension of payments to all or any creditors and/or ceasing business; (5) an encumbrancer taking possession of all or any assets of a party; (6) an administrator or receiver being appointed over a party or all or any of its assets; (7) any action anywhere similar or analogous to any of the foregoing; (8) the other party having reasonable grounds for believing that any of the foregoing is imminent. For the avoidance of doubt if any of the foregoing occurs in relation to a partner in any of the parties hereto it shall be deemed to occur in relation to that party.

14.2 Without limiting its other rights or remedies, TUV may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment.

14.3 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party 3 months' written notice.

14.4 Without limiting its other rights or remedies, TUV shall have the right to suspend provision of the TUV Services under the Contract or any other contract between the Client and TUV if the Client becomes subject to any of the events listed in clause 14.1.2, or TUV reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.

14.5 In the event of a suspension of performance TUV shall be entitled, as a condition of resuming performance, to require pre-payment, or such security as it may require.

15. CONSEQUENCE OF TERMINATION

15.1 On termination of the Contract for any reason:

15.1.1 the Client shall immediately pay to TUV all of TUV's outstanding unpaid invoices and interest and, in respect of TUV Services supplied but for which no invoice has been submitted, TUV shall submit an invoice, which shall be payable by the Client immediately on receipt;

15.1.2 the Client shall return all of the materials that belong to TUV. If the Client fails to do so, then TUV may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

15.1.3 the accrued rights, remedies, obligations and liabilities of either party as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

15.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

16. WARRANTY AND LIMITATION OF LIABILITY

16.1 TUV warrants that TUV's Services shall be performed in accordance with the applicable testing and certification standards and in a workmanlike manner by qualified personnel.

16.2 Subject to clause 16.8, TUV shall not be liable under any circumstances to the Client and/or any other person if:

16.2.1 TUV's Services or work products prepared in connection with TUV's Services are used other than for the intended purpose;

16.2.2 any report prepared by TUV was subsequently modified without TUV's written consent; and/or

16.2.3 the Client did not disclose to TUV all material facts known to the Client with respect to object of the services.

16.3 Except as provided for in these Terms and Conditions all warranties, representations, conditions and other terms implied by statute or common law, with respect to TUV's Services or any of its agents, subsidiaries, affiliates or subcontractors are, to the fullest extent permitted by law, excluded from the Contract.

16.4 Subject to clause 16.8, the Client may not bring any action arising out of or in connection with any transaction covered by these Terms and Conditions unless such action is commenced within one year after the cause of action has accrued.

16.5 Subject to clause 16.8, the liability of TUV and the TUV affiliates hereunder is expressly limited to direct damages incurred with respect to TUV's Services.

16.6 Subject to clause 16.8, in no event shall TUV be liable to the Client in contract, tort (including without limitation negligence), breach of statutory duty and/or otherwise for economic loss, loss of business opportunity, loss of revenue, loss of profits, additional expenses incurred, indirect, special, exemplary, punitive, incidental or consequential loss.

16.7 Subject to clause 16.8, the liability of TUV and the TUV affiliates, their employees, agents, managerial staff and constituent bodies, for all other losses arising under or in connection with the Contract, whether pursuant to a claim in contract, tort (including negligence), breach of statutory duty or otherwise shall in all events be limited to a total of one million pounds (£1,000,000) in aggregate.

16.8 Nothing in these Terms and Conditions shall limit or exclude TUV's liability for:

16.8.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

16.8.2 fraud or fraudulent misrepresentation; or

16.8.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

17. INDEMNIFICATION

The Client shall indemnify and hold harmless TUV and TUV's officers, directors, employees, affiliates, suppliers and agents (each a "TUV 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 TUV Indemnified Person may become subject arising out of claims by anyone including but not limited to Client's customers or any third party related to or arising out of any breach by Client of any provision of the Contract or the Certification and Testing Regulations or any misrepresentation made by it.

18. OTHER PROVISIONS

- 18.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), is governed by the laws of England and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.
- 18.2 The place of performance shall be the place where the agreed services are to be performed, or otherwise the registered office of TUV in the United Kingdom.
- 18.3 Any amendments and/or additions to a Contract must be in writing and agreed by TUV and the Client.
- 18.4 TUV shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event. For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of TUV including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of TUV or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 18.5 If the Force Majeure Event prevents TUV from providing any of the TUV Services for more than 4 weeks, TUV shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 18.6 TUV may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 18.7 The Client shall not, without the prior written consent of TUV, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 18.8 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 18.9 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 18.10 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 18.11 A person who is not a party to the Contract shall not have any rights under or in connection with it.

19. REVISIONS.

TUV may change, revise, amend or modify these Terms and Conditions from time to time. TUV shall provide Clients 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 but they shall not apply to any orders placed and accepted by TUV prior to the effective date of such changes, revisions, amendments or modifications.

20. SEVERANCE

If a provision (or part of any provision) of the Contract (including the Terms and Conditions) is found to be invalid, illegal or unenforceable by a court or other competent authority that that provision or part-provision shall, to the extent required, be deemed deleted, and all other terms and provisions or unaffected parts thereof or any other part thereof shall remain valid and enforceable.

21. NOTICES

All notices under this Contract shall be in writing and may be served by post or facsimile transmission addressed to the other party at the address given in this Contract or at such other address as a party shall from time to time by notice in writing give to the other party for the purpose of service of notices under this Contract and every such notice shall be deemed to have been served by post at the expiration of 7 days after despatch of the same or if sent by facsimile transmission at ten hours local time on the next normal Business Day of the recipient following despatch and in proving service it shall be sufficient to show in the case of a letter that the same was duly addressed prepaid and posted in the manner provided and in the case of a facsimile transmission a transmission report that it was transmitted to the correct telephone number. Saturdays, Sundays and Bank Holidays shall not in any event be treated as days on which service is effected, and service shall be deemed to take place on the next normal Business Day of the recipient.

Last reviewed: March 2013.