

## Terms and Conditions of Technical Services

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### **APPLICABILITY**

The terms and conditions as described below shall apply to all contracts between TUV NORD (Malaysia) Sdn. Bhd. (hereinafter referred to as TUV NORD) and the Customer unless otherwise specially excluded in the contract. Contradicting and deviating terms and conditions of the Customer will be binding on TUV NORD, only if the same has been expressly agreed to by TUV NORD in writing.

### **CONCLUSION OF CONTRACT**

A contract shall deem to be concluded when the Customer accepts the offer without reservation or when TUV NORD commences the rendering of services whichever is earlier.

### **AMENDMENTS**

All amendments to the Contract shall be made in writing and confirmed by TUV NORD and sent to the Customer for execution and upon execution the same shall be binding and effective.

### **VALIDITY**

If any provisions become invalid, illegal or unenforceable, this invalidity, unenforceability or illegality shall not affect the remaining provisions. The provisions used in lieu of the invalid, unenforceable or illegal provisions shall correlate best to the economic object of the contract and mutual interests of the parties.

### **INDEPENDENT CONTRACTOR**

The parties to this Contract intend that the relation between them created by this Contract is that of employer – independent contractor and not as agent – principal or employer-employee.

### **ASSIGNMENT**

The Contract shall not be assigned by either party without the written consent of the other party.

### **TERMS AND DEADLINES**

Services shall be provided within in the time period and deadlines agreed upon in writing.

In case the rendering of services by TUV NORD is delayed for force majeure reasons, TUV NORD shall be entitled to postpone the rendering of services for as long as the hindrance lasts and there shall be no claim for damages due to the said delay.

In case the Customer defaults in accepting services or is in breach of other duties to co-operate, TUV NORD shall be entitled to claim damages resulting therefrom including any additional expenditure.

### **SERVICES**

TUV NORD shall provide services in accordance to the standards, scope of the contract, commonly acknowledged technical rules and regulations.

### **EXECUTION OF WORK AND CUSTOMER OBLIGATIONS**

The Customer shall provide safe and unrestricted access to their workplace to TUV NORD auditor/engineers/representatives during the course of the audit /inspection and provide all information related to the work. TUV NORD is under no obligation to check the customer's data, information or other services for completeness and correctness, unless individual circumstances arise that give cause to do so.

If Customer's participation is needed to render services, the Customer is required to participate at his own cost. TUV NORD will only pay for the Customer's expenses if agreed upon specifically. If the Customer does not comply with his duty to participate or if his participation is not timely or is insufficient, TUV NORD has the right to charge the customer for all additional costs. TUV NORD also expressly reserves all other legal rights.

In case TUV NORD is engaged in actions taking place outside TUV NORD premises, the Customer shall be obliged to take all necessary measures in order to comply with existing duties of care towards third parties, unless it is otherwise determined either by the nature of the business or by agreement with the Customer. TUV NORD shall be entitled to refuse execution of the rendering of services as long as the necessary measures are not taken.

The transportation of the Customer's goods from or to the Customer shall be at the Customer's cost and risk. The transportation of goods to the Customer will be performed upon his demand. While storing Customer goods TUV NORD will take reasonable care but the Customer shall have valid insurance policies covering damage or loss to the goods at all times.

### **WITHDRAWAL**

The Customer's right to withdraw is valid only if TUV NORD is responsible for the violation of duties based upon which withdrawal is declared. The withdrawal must be communicated in writing by.

### **ACCEPTANCE**

1. The Customer is obligated to accept TUV NORD's services. The Customer is not entitled to refuse acceptance for insignificant defects that do not have a material effect on the fitness of the service pursuant to the contractual purpose, the TUV NORD is also authorized to request partial acceptance.
2. If the Customer refuses acceptance in violation of No. 1. of this section, acceptance is nonetheless deemed to be made.
3. The Customer is obligated to accept the services within 14 days after receipt unless such services show material defects that give cause to a refusal of acceptance. If the Customer does not accept the services within the fixed grace period even though it is obligated to do so, the service is deemed to be accepted.
4. If the Customer claims a retention right due to defects, the TUV NORD shall review its service. If the Customer's retention is proven to be unjustified, the Customer shall bear all incurred additional costs unless it has acted merely with slight negligence or is not at fault.

### **COPY RIGHTS**

The dissemination and exploitation of intellectual performances beyond the contractual purpose, in particular their publication shall depend on our agreed terms and conditions. The Customer shall be solely responsible for all duties applying under the law, in particular competition law, especially for statements made in advertising, the Customer shall be liable to all third parties claims brought against TUV NORD in this respect and shall keep TUV NORD fully indemnified against all such claims. For the avoidance of doubt the indemnity shall extend to damages, legal costs on a solicitor client basis and interest.

### **WARRANTIES**

In case the services rendered are defective, the Customer has to give TUV NORD the opportunity to rectify the defect within one month of the rendering of service, failing which the Customer shall be entitled to repudiate the contract or to reduce the agreed remuneration to a sum mutually agreed by the parties hereto.

The granting of a test certificate does not include any statement concerning the utility or quality of the tested object, which goes beyond the direct technical scope of the test certificate.

### **LIABILITY**

It is hereby agreed and declared that any liability under this Contract in respect of direct loss, damage or expenses arising out of the services provided shall be in respect of proven wilful misconduct or gross negligence only on the part of TUV NORD or its duly authorised representatives and shall in any event be restricted to a sum not exceeding the total fees payable to TUV NORD under the Contract. TUV NORD shall not be responsible for any indirect liability or consequential damages under the Contract.

Liability will be recognised only if the same are brought to the notice of TUV NORD in writing within six (6) months from the date of rendering of the services under the Contract.

TUV NORD shall be liable for breach of contractual obligations and that the liability shall be restricted to compensation for foreseeable losses in connection with the Contract.

### **INVOICING AND PAYMENTS**

Activity based invoicing would be done as outlined in the Contract and the same shall be settled by a Cheque/Banker Draft in favour of TUV NORD (Malaysia) Sdn. Bhd. within thirty (30) days of receipt of Invoice.

TUV NORD reserves the right to charge interest @ 12% p.a. for payments not received within the stipulated time. Sales tax or any applicable taxes at the applicable rates would be charged extra over and above the fees quoted in the Contract.

TUV NORD shall determine the debts to be set-off against the payment received if several debts are due. The Customer can claim setoff, if his claims with TUV NORD are undisputed.

If after the conclusion of the Contract TUV NORD receive notice of circumstances, which are likely to substantially diminish the creditworthiness of the Customer, TUV NORD shall be entitled to render services only against prepayment or lodging of security.

TUV NORD shall also be entitled to repudiate the Contract after expiration of a set deadline for the Customer to effect the aforesaid prepayments or lodging of securities. Non-payment would result withdrawal of certification.

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### **UTILIZATION RIGHTS AND INDEMNITY**

1. The services provided during the fulfillment of the Agreement (e.g. expert opinions, inspection and consultation services) may be utilized only within the scope of the contractually negotiated purpose. TUV NORD hereby grants to the Customer a simple, non-transferable utilization right that is limited in terms of duration and location, for its services that are subject to copyright protection. No other rights are granted; the Customer is in particular not authorized to process or modify the services of TUV NORD or to use excerpts of them.
2. Insofar as, pursuant to the Agreement, TUV NORD grants a right to the utilization of quality marks and/or a certificate of TUV NORD to the negotiated extent, such may be utilized only for the contractual, designated use or the certified area and only in the unmodified form or shape as provided by TUV NORD.
3. Any utilization of TUV NORD's brands and other identifying marks beyond the above, for example the word mark/design mark "TÜV NORD" requires the express, prior written consent.
4. If the Customer violates the above provisions, TUV NORD is at any time authorized to prohibit the continued utilization of its services, quality marks, certificates, and/or identifying marks. The Customer hereby agrees and undertakes to indemnify TUV NORD from all third party claims, regardless of the legal grounds (e.g. competition law), which claims are based on its utilization of TUV NORD's services, quality marks, certificates, and/or identifying marks as well as all of its own, connected, required expenses.

### **CONFIDENTIALITY AND RETURN OF RECORDS**

1. TUV NORD and the Customer shall maintain confidentiality regarding confidential information of the respective other contract partners. This obligation continues for a term of five years after termination of this Agreement.

Information not falling within this clause are such that:

- a) can be proven to have already been known to the recipient upon conclusion of the Agreement or that is disclosed by third parties after conclusion of the Agreement without such third parties violating a confidentiality agreement, statutory provisions, or official orders;
  - b) is public knowledge upon conclusion of the Agreement or becomes public knowledge after conclusion of the Agreement, unless such is based on a violation of this Agreement;
  - c) must be disclosed due to statutory obligation or order of a court or an official authority. Insofar as permitted and possible, the recipient obligated to disclose such information shall inform the other contract partner of such in advance and will provide the respective other contract partner with an opportunity to take action against such disclosure.
  - d) the recipient developed itself or had developed independently from its knowledge of such confidential information.
2. TUV NORD shall retain contractual documents insofar as a statutory or official obligation to retain records exists. TUV NORD is further obliged to retain records for the purpose of documentation; any of the Principal's possible statutory or contractual claims for return remain unaffected.

### **DISPUTES, RESOLUTION AND JURISDICTION**

Disputes arising out of this Contract shall be discussed mutually and resolved wherever possible. If the same is not successful the parties shall first resort to Mediation and only if the same is unsuccessful the parties shall have the right to opt for Arbitration in accordance with the Malaysian Arbitration Act with the appointment of a single Arbitrator.

### **FORCE MAJEURE EVENT**

Means any event beyond the reasonable control of a party hereto, including, but without limitation to strikes, lockouts and labour disputes, acts of God, war, riots, acts of terrorism, civil commotions, malicious damage, compliance with any law or government order, rule, regulation or direction, accident, fire, flood or storm.

### **JURISDICTION**

The place of jurisdiction for both parties for matters including all claims arising out of the contract shall be in Kuala Lumpur, Malaysia.

### **APPLICABLE LAW**

This Contract shall be governed by the laws of Malaysia.

**All our previous general terms and conditions of services shall be rescinded herewith.**