

## **1 DEFINITIONS**

1.1 For the application of our agreements and these General Terms and Conditions, the definitions below shall apply:

- Customer: the person or organization that engages TUV NORD Malaysia for the purposes of certifying its product and/or system;
- Accreditation standards: the standards for which TUV NORD Malaysia is accredited, in particular the accreditation standards known under references ISO/IEC 17021, ISO/IEC 17065, ISO/IEC 17020.
- Audit: the procedure whereby products or quality systems are investigated in order to establish whether they fulfil certain standards.
- Certificate: the document issued by TUV NORD Malaysia which confirms that the product or management system ("scope") of the Customer, as identified in the Certificate, complies with the standards established in the Regulations that apply to the product/system.
- Certification: the provision of a Certificate by TUV NORD Malaysia
- Certification procedure: all of the components that are involved in Certifying a Product/System
- Certification schedule: the specifications set by the Certification manager, including any exceptional regulations or requirements as issued by the manager of the Certification scheme, and with which the Product/System must comply in order to be certified.
- Confidential information: all data and information that the Customer provides to TUV NORD Malaysia within the context of the Certification procedure, with the exception of anything that has already entered the public domain.
- Regulations: all of the legal, regulatory or conventional regulations that govern the control and certification of a Product/System, with no exceptions, also including those within the applicable Certification schemes, which may include additional requirements set by the Certification scheme manager(s) and, when applicable, the Accreditation norms.
- Product: goods, services and processes, object of (product) certification.
- System: management systems, object of (system) certification.
- TUV NORD Malaysia Quality System: the inspection and certification system developed by TUV NORD Malaysia which guarantees the impartiality and expertise of the service providers and the confidential treatment of Confidential Information.

## **2 GENERAL PROVISIONS**

- 2.1 These General Terms and Conditions apply to every quote, offer and certification agreement between TUV NORD Malaysia and the Customer, insofar as the parties have not stated otherwise in writing.
- 2.2 TUV NORD Malaysia retains the right to unilaterally amend these General Terms and Conditions and to do so in line with amendments in its processing policies and economic and legal necessity. The new General Terms and Conditions enter into force as and when the Customer is notified.
- 2.3 By placing an order or signing a certification agreement, the Customer confirms to have familiarized himself with these General Terms and Conditions and accepted them as contract conditions with respect to his order.
- 2.4 All contradictory conditions, set by the Customer, no matter how they are formulated, shall not apply to TUV NORD Malaysia unless TUV NORD Malaysia has accepted these in writing.

## **3 TUV NORD MALAYSIA SERVICES**

- 3.1 Once a certification agreement has been signed, TUV NORD Malaysia shall check the Customer with respect to compliance with the Regulations that apply to the Customer on the date of the audit, pursuant to the Certification set forth within the certification agreement. The Customer shall commit to complying with all of the regulations that apply to him for the full duration of the certification agreement. TUV NORD Malaysia shall undertake to conduct the audit in line with the Regulations and the TUV NORD Malaysia Quality System.
- 3.2 The audit must permit the Customer to obtain/retain certification for the Products/Systems as outlined in the certification agreement.
- 3.3 The Customer is cognizant of, and accepts, the fact that once a certificate has been issued, the Company will be entered into a list of certified companies made available by TUV NORD Malaysia to third parties, with possible identification of the kinds of certified products and types of activity.

## **4 CERTIFICATION PROCEDURE**

- 4.1 The Customer undertakes to, prior to finalizing the certification agreement, notify TUV NORD Malaysia in writing of all

information (including technical, organizational, legal, risk and quality-related aspects) that could be useful or necessary in order to obtain an accurate and complete overview of the Customer and the Product/System for which the Customer has requested certification in the certification agreement. The Customer is exclusively responsible for the completeness and accuracy of the information provided. The Customer is aware that the provision of inaccurate or incomplete information can lead to the certification procedure being halted, or the suspension or withdrawal of the certificate issued.

- 4.2 By signing the certification agreement, the Customer accepts his candidature for certification by TUV NORD Malaysia, and commits to participating in all of the inspections conducted by TUV NORD Malaysia. The Customer shall cooperate in full with the preparation, execution and follow-up for the inspections, shall provide all requested data upon first request by TUV NORD Malaysia and shall provide access to the company locations, products, documents, archives, processes, employees and so on that are relevant for the service. He shall grant TUV NORD Malaysia permission to take unlimited samples and shall provide the necessary meeting room at first request of TUV NORD Malaysia. If asked, he shall appoint a spokesperson who is authorized to communicate with TUV NORD Malaysia and provide the requested information.
- 4.3 The Customer acknowledges and accepts that the inspections conducted by TUV NORD Malaysia may include the presence of representatives from the competent body, the accreditation organization, the Certification scheme managers and the auditors appointed by TUV NORD Malaysia. The Customer also accepts that the organizations concerned may also arrange inspections for the purposes of assuring the quality of the Certificates.
- 4.4 For the duration of the certification agreement, the Customer shall comply with all other conditions imposed by the Regulations.
- 4.5 TUV NORD Malaysia shall conduct the inspections in an objective and impartial manner. The Customer undertakes to inform TUV NORD Malaysia, in writing, of any semblance of subjectivity on the part of any TUV NORD Malaysia inspector in the course of the inspection or, at the latest, within 24 hours after having observed such partiality. In the absence of any such notification, the inspection shall be deemed to have been conducted objectively and impartially.
- 4.6 TUV NORD Malaysia inspects and certifies using its own appointees, or via independent employees under its supervision, pursuant to the requirements set forth in the Regulations and in line with the TUV NORD Malaysia Quality System.
- 4.7 If TUV NORD Malaysia decides that the Product/System that is set forth in the certification agreement fulfils the definitions as set by the Regulations, the Certificate shall be issued for all identified and evaluated sites and items (scope of the Certificate). The relevant Certificate and its annexes remains the property of TUV NORD Malaysia, irrespective of the form in which it is issued, and may only be copied or reproduced by the Customer as and when necessary for activities, in an unaltered form and stating 'copy of the original'. The Annexes to the Certificate are only valid in combination with the certificate itself.
- 4.8 TUV NORD Malaysia retains the right at all times to refuse an inspection or certification request if it can provide well founded reasons for doing so.
- 4.9 Certification agreements may be terminated by TUV NORD Malaysia at any time, unilaterally, with immediate effect and without reimbursement being due, if there are well founded reasons vis-à-vis the Customer. Such reasons could include: the provision by the customer of incorrect or incomplete information, a breach by the Customer of a valid norm, the misuse of issued certificates, sanctions being imposed on the Customer by governments or other certification bodies, the refusal of inspections by the Customer, non-payment of fees owed to TUV NORD Malaysia, and more but in general: any activity that fundamentally impacts upon the trust between the parties.

## **5 INTRODUCING / KEEPING PRODUCTS ON THE MARKET**

- 5.1 Certified Products or products that relate to a System certified by TUV NORD Malaysia, shall only be brought to/kept on the market under reference to an issued Certificate if they comply with the Regulations and insofar as the activities relate to a valid TUV NORD Malaysia certificate. The Customer shall maintain a detailed register of all complaints received with respect to the products, as well as of the actions it has undertaken in order to rectify the complaints. The Company shall make this register available for scrutiny by TUV NORD Malaysia at the latter's first simple request. TUV NORD Malaysia shall be entitled to make a copy of this register at any time.
- 5.2 The Customer shall only use the logos of the certification scheme according to instructions from the certification scheme owners. The Customer is forbidden from using the TUV NORD Malaysia logo.

[Issuance of MSPO Logo Usage License by MPOCC under the Malaysian Sustainable Palm Oil \(MSPO\) Certification Scheme \(MSPOLGP04\)](#)

- 5.3 During the validity period of the Certificate, the Customer shall take every measure that is necessary to continue to fulfil all of the Regulation requirements. As soon as the Customer is aware that a Product or System that relates to a valid Certificate does not (or no longer) correspond to the Regulations, he must take the necessary measures to isolate the Product/System and then halt any reference to the Certificate, including any on packaging or any other Product or System related data carrier, such as publicity or other announcements.
- 5.4 The Customer shall abide by all of the information and notification obligations imposed on him, including those vis-à-vis the government, TUV NORD Malaysia and the owner of the Certification scheme.

- 5.5 The Customer undertakes to not use the Certificate (or allowing it to be used) contrary to the Regulations and/or in a manner that could damage the interests or reputation of TUV NORD Malaysia and/or the owner of the Certification scheme. The Customer indemnifies TUV NORD Malaysia and/or the owner of the Certification scheme against all detrimental consequences, including those arising as a result of product liability.
- 5.6 A Certificate may not be transferred, unless explicit and written approval has been granted by TUV NORD Malaysia in advance.

## **6 CHANGES TO THE CUSTOMER'S ORGANIZATION OR THE REGULATIONS**

- 6.1 All changes in the Customer's organization, which could lead to the Customer no longer fulfilling the conditions for the Certificate, shall be passed onto TUV NORD Malaysia immediately in writing, on pain of suspension or withdrawal of the Certificate. This concerns, among other things, modifications to the customer's legal, commercial and organizational circumstances, the name, the company controls, the organization, the Customer's board or management, the Customer's contact addresses and locations, the scope of the activities under the certified system, the management system and the management procedures, closing or opening a product site, changes to the certified Products/Systems and so on.
- 6.2 TUV NORD Malaysia shall inform the Customer immediately if there is a change with respect to the applicable Regulations which could impact upon Certification. TUV NORD Malaysia will check to ensure the certified Product/System fulfils the new Regulations.
- 6.3 TUV NORD Malaysia shall determine, on the basis of the information gathered, which steps are necessary in order for Certification to be retained, limited, expanded or updated after the relevant changes to the Customer's organization or the Regulations on the basis of the requirements set forth in the Regulations.
- 6.4 If the scope of the Certification changes, the Customer must amend his publicity materials to reflect this.

## **7 SUSPENSION OR WITHDRAWAL OF THE CERTIFICATE**

- 7.1 TUV NORD Malaysia can suspend a Certificate at any time and with immediate effect in one of the situations set out below:
- upon express request from the Customer;
  - if the Customer breaches the Regulations, the certification agreement or the definitions set forth in the present General Terms and Conditions.
  - if and as long as the Customer does not pay for the services of TUV NORD Malaysia.
- 7.2 TUV NORD Malaysia can withdraw a Certificate at any time and with immediate effect in one of the situations set out below:
- If the certification agreement with the Customer comes to an end, for whatever reason;
  - If the Customer fails to take the necessary measures within the term set by TUV NORD Malaysia to rectify the situation that led to the suspension of the Certificate.
  - If a certified Product is no longer marketed.
- 7.3 A decision to suspend or withdraw a Certificate will be communicated with the Customer in writing. In the event of suspension, the Customer will be notified of the situation that has led to the suspension and the period within which this situation must be rectified.
- 7.4 In the event of suspension or withdrawal, the Customer shall cease to use the Certificate and any reference thereto immediately, without any right to reimbursement of the costs of certification. The decision to suspend or withdraw will be publicized by TUV NORD Malaysia and TUV NORD Malaysia will notify the competent accreditation bodies, the manager of the Certification scheme and the competent authorities.
- 7.5 TUV NORD Malaysia can at any time, for the duration of the certification agreement and pursuant to the requirements set forth in the Regulations, check to ensure that a Product/System for which a Certificate has been issued still complies with the Regulations and the conditions of Certification. The Customer acknowledges that agreed inspection frequencies can be supplemented by short notice supervisory activities. The costs for all interim inspections will be borne by the Customer.

## **8 EXPIRY OF THE CERTIFICATE**

- 8.1 A Certificate legally expires on the date stated on the Certificate itself, or upon death or bankruptcy of the Customer.

## **9 APPEALS AND COMPLAINTS**

- 9.1 Appeal – The Customer may lodge an appeal against certification decisions that are made by TUV NORD Malaysia. This must take place via registered letter and within 7 days of the Customer being notified of the certification decision. This appeal procedure shall not entail the suspension of the contested decision. TUV NORD Malaysia's appeal committee shall send the customer a notice of receipt with mention of the date on which a hearing can be scheduled for the customer. The appeal committee is made up of experts that are completely independent of the employees that have taken the certification decision and conducted the audit. After an investigation of the Customer's defense, TUV NORD Malaysia's appeal

committee will decide whether the certification decision will be withdrawn, changed or confirmed. The appeal committee may consult all of the persons and conduct all of the investigations they deem to be necessary. The appeal committee shall deal with the appeal and pronounce its decision within 20 days of the notice of receipt. If the law permits, after this appeal procedure, the Customer may appeal against TUV NORD Malaysia's decision to the competent authority.

- 9.2 Complaint – All interested parties can submit a complaint against any of TUV NORD Malaysia's activities pertaining to a certification agreement (audit, inspection, certification...). The complaint will be processed in line with the TUV NORD Malaysia complaints procedure which can be consulted at any time on the TUV NORD Malaysia website.

## **10 INFORMATION PROCESSING**

- 10.1 Unless explicitly agreed otherwise, TUV NORD Malaysia shall treat all of the Confidential Information gathered by appointees, employees or subcontractors in the utmost confidence, both during and after the duration of the certification agreement and only use this for the purposes for which it had been collected. The Customer acknowledges that Confidential Information can be made available to certification scheme owners, accreditation bureaus or the TUV NORD Malaysia appeal committees or any third parties provided for in law or in the Regulations.
- 10.2 TUV NORD Malaysia is permitted to inform third parties of the certification status. It can also notify certification owners of its decisions to recognize, refuse, suspend or withdraw at any time.

## **11 PAYMENT OF FEES**

- 11.1 The Customer shall make the payments set forth in the certification agreement to TUV NORD Malaysia in good time; in the event of a failure to pay, TUV NORD Malaysia retains the right, irrespective of the other options open to it, to suspend all further activities.
- 11.2 Unless explicitly agreed otherwise, TUV NORD Malaysia retains the right amend the payments in the certification agreement:
- if there are changes to the certification conditions for the relevant certification schemes, which cannot be influenced by TUV NORD Malaysia and which increase the cost of certification activities by at least 10% (e.g. longer audits, higher audit frequency, increase in fees to owners of certification schemes,...);
  - in the event of activities or costs that were not foreseen when finalizing the agreement, such as exceptionally long or complex inspection activities, supplementary inspections that are necessary, etc.
  - in the event of costs being incurred for translation.

## **12 INVOICING**

- 12.1 The fees owed to TUV NORD Malaysia as a result of this certification agreement can be invoiced to the Customer in a digital format. The invoices, unless explicitly agreed otherwise, will be payable to the registered offices of TUV NORD Malaysia and thirty days after the date of issue. In the event of late payment, interest of 1 percent shall be applied, legally and without notice of default being required, per commenced month. In the event of late payment, TUV NORD Malaysia may halt all activities relating to the certification agreement, terminate the agreement and suspend the certificates issued and, if necessary, withdraw them.

## **13 LIABILITY**

- 13.1 The financial consequences resulting from shortcomings attributable to TUV NORD Malaysia, during the performance of its certification tasks shall, unless in cases of willful deception or fraud on its part, be limited to amounts of maximum EUR 5,000,000 and this to the exclusion of indemnification in compensation of the following instances: consequential loss and damage such as loss of profit, and loss and damage suffered through down-time in the Customer's production activities, as well as loss and damage inflicted through willful deception or fraud committed by TUV NORD Malaysia subcontractors, appointees or other executing agents.

## **14 PREMATURE TERMINATION OF CERTIFICATION AGREEMENT**

- 14.1 If the Customer terminates the certification agreement prematurely, for whatever reason, he shall still owe TUV NORD Malaysia for all of the work completed, plus a payment for the lost income, which shall be estimated at a fixed fee of 50 (fifty) percent of the fee that would have been due had the cancelled activities been completed.
- 14.2 Fees for audits that are planned for less than 7 calendar days after the date of termination will be paid in full.

## **15 COMPETENT COURT AND APPLICABLE LAW**

- 15.1 The present agreement shall be governed by Malaysian law.
- 15.2 Unless TUV NORD Malaysia puts a dispute before the courts at the location of the Customer's registered office or residence, all disputes regarding interpretation and execution of this agreement shall be presented to courts in the vicinity of the registered office of TUV NORD Malaysia.