



General Terms and Conditions of TUV USA Inc.

I. Definitions

The following terms used in these General Terms and Conditions have the following meaning:
"Contractor" is the company of TUV USA Inc., in which name this Agreement is being signed.
"Principal" is the customer commissioning the Contractor.

II. Validity of these Conditions

1. These terms and conditions as well as Contractor's proposal, quote or "Contract for Certification Services", as applicable, which is/are incorporated by reference herein (collectively, the "Agreement"), constitute all of the terms between Contractor and Principal with respect to the work specified in the proposal. The Contractor does not accept any of the Principal's proposals, terms, regulations or conditions that conflict with this Agreement unless expressly consented to in writing by Contractor. The terms of this Agreement apply even if the Contractor provides its services without reservations while knowing of the Principal's contradicting or conflicting conditions. Contractor rejects any competing terms and conditions submitted by Principal. If a term in Contractor's quote or Contract for Certification Services conflicts with the terms of these General Terms and Conditions, the term in the quote or Contract for Certification Services governs.
2. These General Terms and Conditions apply to all of the Contractor's services (to include but not limited to expert opinions, inspection and consulting services) and all responsibilities resulting from the contractual obligation with the Principal.

III. Formation of the Contract

1. This Agreement is effective only after the Principal accepts an offer by the Contractor without reservations, the Principal receives a written order confirmation from the Contractor, or if the Contractor commences the provision of the service. If the Contractor issues a written order confirmation, such order confirmation is decisive in terms of content and scope of the Agreement unless expressly negotiated otherwise.
2. This Agreement constitutes the entire agreement of Principal and Contractor relating to the services described in Contractor's proposal, quote or "Contract for Certification Services". The Agreement supersedes any prior discussions, negotiations or agreements between the parties. This Agreement can be modified only in writing signed by Contractor and Principal.

IV. Performance of the Agreement and Principal's Obligation to Participate

1. If objects of the contract must be accessed for the contractual performance of the service owed by the Contractor, the Contractor shall not be liable for compensation for damage to or destruction of these objects resulting from the contractual performance.
2. If the Contractor's own equipment is damaged, destroyed, or lost as a consequence or at the occasion of proper performance of the Contractor's service under the Agreement, the Principal will pay reasonable replacement costs.
3. Transportation and possible return of the Principal's objects is at its own cost and risk; however, return is performed only upon the Principal's express request. During storage, the Contractor's responsibility to safeguard is limited to the same measures Contractor takes with respect to its own property and Contractor is not responsible to take additional or extraordinary measures to safeguard Principal's property.
4. The Principal is obligated to fully disclose all information relevant for the Contractor's proper performance of its service. The Contractor is, however, not obligated to review the accuracy and completeness of data, information, or other services provided by the Principal, unless the agreed-upon scope of work expressly states that Contractor will review the accuracy and completeness of particular data, information or services provided by Principal. The Contractor does not make any warranties for the accuracy of safety rules, information and programs upon which its inspections and expert opinions are based, unless such regulations, instructions, or programs originate with the Contractor or are the object of the inspection order. If the Contractor is commissioned with inspecting the technical safety of an object, the Contractor does not make any warranties for the object's freedom from other faults, unless this is expressly listed in the order.
5. Insofar as the Principal's participation is required for the Contractor's performance of services, the Principal must provide such in a timely manner and at its own costs; Principal's expenses will be reimbursed only if they have been negotiated expressly in writing in advance. To the extent that the Principal does not fulfill its obligations to participate, does not do so properly or in a timely manner, and if acceptance is therefore delayed, the Contractor is authorized to charge any additional expenses thus incurred. Contractor's remedies are cumulative and pursuit of the additional expenses does not extinguish any other remedy of Contractor.
6. The Contractor is authorized to have the services owed under this Agreement performed by a carefully selected and suitable subcontractor.
7. If the Contractor is active outside of its premises, Principal shall be responsible for any measures required in order to fulfill duties of care to safeguard public, unless such is not required based on the nature of the activity or based on an agreement with the Principal. The Contractor is authorized to refuse performance of the service far as long as required measures are not taken. The Principal will inform the Contractor in writing, in a timely manner, of all safety and accident prevention regulations applicable at the location.
8. If the Agreement includes services pertaining to the Principal's EOP system, the Principal is obligated to back up data and programs at regular intervals that are adequate for the application, at least once a day, in machine-readable form, to ensure that these can be recovered with reasonable effort. The Contractor is responsible for recovery of data only if and insofar as the Principal has ensured that such data can be reconstructed from other data material with reasonable effort.

V. Deadlines and Schedules

1. If a binding deadline for the provision of services is not agreed, the Contractor defaults only if the Principal has first given a written, adequate notice to provide the service owed and such deadline has expired unsuccessfully. Deadlines commence only upon the complete provision of any and all obligations to participate owed by the Principal, and, insofar as a down payment has been negotiated, as of the receipt of such. Deadlines are extended accordingly due to the Principal's retroactive change requests or delayed participation. Contractor is not responsible for any losses or damages caused in any part by Principal's failure to complete its performance.
2. If the service owed by the Contractor is delayed due to unforeseeable circumstances and through circumstances for which the Contractor is not at fault, including events impacting Contractor's subcontractors or suppliers (e.g. strike, legitimate lockout, disruption of operation, transportation disruption, shortage of resources, official measures, war, civil disturbance, fires), the Contractor is authorized to defer the service for the duration of the delay. In the event that the delay lasts more than six weeks, the Contractor is authorized to withdraw from the Agreement. The Contractor will immediately inform the Principal of the non-availability of the service or partial service, and in the event of a withdrawal from the Agreement Principal will pay Contractor for services rendered prior to the withdrawal. Contractor will not be liable to the Principal for any claims that Contractor's services were defective in any way. Upon timely receipt of notice from Principal of perceived defects, Contractor will review Principal's contentions and respond in writing within 30 days of receiving Principal's notice and may exercise its rights as stated in Section VII of this Agreement. Contractor will review only those issues raised by Principal deemed to be material as opposed to insignificant or inconsequential. Principal shall not withhold payment of amounts due to Contractor even if Principal perceives defects. If Principal withholds payment otherwise due to Contractor, any such retention is determined to be unjustified. Principal will pay Contractor all costs incurred investigating and responding to Principal's notice of defects in addition to any other damages incurred by Contractor.

VI. Acceptance

1. The Principal is obligated to accept and pay for the Contractor's services within 30 days after receipt. The Principal 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, regardless of its right to assert warranty claims. In case of self-contained partial services, the Principal is required to accept those parts of the service that are completed and pay for them in accordance with the payment terms in the Contractor's proposal.
2. If the Principal refuses acceptance in violation of No. 1. of this section, acceptance is nonetheless deemed to be made.
3. If the Principal claims there are material defects with Contractor's work, Principal shall identify them clearly in writing and provide written notice to Contractor within 14 days of receipt of Contractor's services. Principal fails to notify Contractor of perceived defects within 14 days, Principal waives any claim that Contractor's services were defective in any way. Upon timely receipt of notice from Principal of perceived defects, Contractor will review Principal's contentions and respond in writing within 30 days of receiving Principal's notice and may exercise its rights as stated in Section VII of this Agreement. Contractor will review only those issues raised by Principal deemed to be material as opposed to insignificant or inconsequential. Principal shall not withhold payment of amounts due to Contractor even if Principal perceives defects. If Principal withholds payment otherwise due to Contractor, any such retention is determined to be unjustified. Principal will pay Contractor all costs incurred investigating and responding to Principal's notice of defects in addition to any other damages incurred by Contractor.

VII. Prices and Payments

1. The price listed by the Contractor or otherwise the price commonly charged by the Contractor for the respective service is decisive, plus statutory taxes and value-added tax insofar as such are applicable. Principal is responsible for all applicable taxes, fees, customs fees, and other charges (of any kind) incurred for the Contractor's service. Principal defends, indemnifies and holds harmless Contractor for any claims, demands or actions arising out of or related to the failure to pay taxes, fees, customs fees or other charges.
2. If, within the scope of contracts for the performance of a continuing obligation and long-term contracts, the Contractor's prime costs increase and such increase is not within the Contractor's own scope of responsibility, the Contractor is authorized to an appropriate price increase commensurate with the increase of its prime costs; if the Principal does not consent to such price increase it is authorized to terminate the Agreement within four weeks after receipt of such notification of a price increase; otherwise, the increase is deemed to be mutually agreed upon. In the event of a termination, the Principal will pay Contractor for all services provided prior to the termination and any expenses incurred by Contractor.
3. The Principal shall pay the remuneration owed without any cash discounts, free of charge to the Contractor, and within thirty days after receipt of the invoice. The Contractor reserves the right to request, and Principal agrees to pay, appropriate installment payments and appropriate advance payments.
4. If the Agreement is based on a cost estimate, and if it turns out that the costs will be significantly higher than the amount estimated, then the Contractor will inform the Principal of such in writing. In this case the Principal is authorized to terminate the Agreement in writing, within two weeks after receipt of such notification. In the event of a termination, the Principal will pay Contractor for all services provided prior to the termination and any expenses incurred by the Contractor. Principal's failure to object to the increased costs within two weeks of notice from Contractor constitutes Principal's acceptance of the higher costs.
5. If the Principal owes interest and expenses in addition to principal amounts due to Contractor, any payment by the Principal that does not fully redeem the total sum will first be credited against expenses, secondly against interest, and lastly against the principal claim.
6. The Principal waives any right to self-off or recoupment and agrees to pay all sums due to Contractor irrespective of whether Principal believes it has suffered any damages or losses.
7. If Contractor has bona fide concerns that Principal will not perform its obligations under this Agreement, the Contractor may in its sole discretion perform services only against and only in the event that it holds advance payment or other security. Contractor may in its sole discretion insist that all overdue amounts be paid before Contractor continues its work and Contractor may suspend work if Principal fails to pay invoices in a timely manner. The Contractor is authorized to withdraw from this Agreement and terminate its work if Principal fails to pay invoices in a timely manner and Principal remains liable to Contractor for all services provided and expenses incurred prior to the termination as well as any losses or damages resulting from the termination.
8. For any payment owed by Principal that is not received by Contractor by the date required, interest will accrue at the simple interest rate of 1.5% per month (18% per annum) until paid in full. Principal will pay Contractor all costs and attorneys' fees incurred by Contractor in any litigation between the parties, including, but not limited to, any litigation seeking to collect overdue amounts from Principal. Principal also agrees to pay \$10,000 for each notice of overdue payment sent by Contractor.

VIII. Claims for Defects

1. In the event Principal believes Contractor's work is materially defective, the Principal shall grant the Contractor opportunity to supplementary performance, at least twice, within appropriate grace periods, unless this is unreasonable in each individual case or unless special circumstances justify the Principal's immediate withdrawal in consideration of mutual interests. The Contractor may rectify the defect at its own choice or provide the service once more without defect. Principal's sole remedy is to receive corrective work from Contractor.
2. The Principal shall inform the Contractor immediately - no later than 14 days after receipt - in writing of any defects in Contractor's work. If Principal fails to notify Contractor of any defects within 14 days of receipt, Principal waives all claims of defective work.

IX. Withdrawal

The Principal may terminate this Agreement only upon a material breach by the Contractor and only after the Principal has provided written notice of material breach to the Contractor and allowed the Contractor 30 days to cure any defect or commence efforts to cure the defects. The Principal remains obligated to pay the Contractor for all services provided and expenses incurred prior to the effective date of any termination. The Principal's right to termination is subject to Section VIII of this Agreement.

X. Liability and Disclaimer of Warranties

1. Notwithstanding anything in this Agreement to the contrary, Principal agrees that the Contractor shall not be liable for any consequential, indirect, special, incidental, exemplary or punitive damages, including, but not limited to, any loss of profits, harm to business, harm to reputation, expense of procurement of substitute services, business interruption, or loss arising from claims of third parties, however caused and on any theory of liability, whether in contract, strict liability, or tort (including negligence) or otherwise, arising in any way out of this Agreement or otherwise in connection with any service the Contractor provides for or on behalf of the Principal, even if the Contractor has been or is advised of the possibility of such harm or damages. Principal's exclusive remedy against the Contractor for, and the extent of the Contractor's liability for, any claim, regardless of theory, shall be limited to correcting claimed defects as described in paragraph VIII. Under no circumstances will Contractor's liability, regardless of theory or cause, exceed the amount of consideration paid by Principal to Contractor.
2. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, CONTRACTOR MAKES NO EXPRESS OR IMPLIED WARRANTY, STATUTORY OR OTHERWISE, WITH RESPECT TO ITS MATERIALS OR SERVICES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR DESIGN. NO AGENT OF CONTRACTOR IS AUTHORIZED TO ALTER OR ENLARGE CONTRACTOR'S WARRANTY OBLIGATIONS.

XI. Period of Limitations

1. All claims, regardless of cause or legal theory against the Contractor expire one year after the last day the Contractor provides services to the Principal.
2. Prior to initiating any litigation against the Contractor, the Principal must first provide written notice of its claims to the Contractor and allow the Contractor thirty days to respond. Contractor and Principal also agree to a face-to-face meeting of their respective principals, to occur at a location of the Contractor's choosing, to attempt to resolve any dispute. The parties bear their own costs to attend this meeting. This meeting of the principals is a precondition before either party can file any complaint in any court. However, either party may file a complaint seeking temporary injunctive relief prior to a meeting of the principals if injunctive relief is necessary to protect the party's rights until the meeting occurs and the action will be stayed pending conclusion of the face-to-face meeting. If one party serves upon the other a written request for a face-to-face meeting of the respective principals and the requesting party does not receive a response within thirty days or if the request is rejected, the requesting party may file its complaint with a court of competent jurisdiction.

XII. Utilization Rights and Indemnification

1. The Contractor's 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. Subject to deviating agreements in each individual case, the Contractor hereafter grants to the Principal a simple, non-transferable license that is limited in terms of duration and location, for its services that are subject to copyright protection. Other rights are expressly not granted; the Principal is in particular not authorized to process or modify the Contractor's services or to use excerpts of them.
2. Insofar as pursuant to the Agreement, the Contractor grants a license to display Contractor's marks and/or a certificate of the Contractor 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 the Contractor.
3. Any utilization of the Contractor's brands and other identifying marks beyond the above, for example the word mark/design mark "TUV WORD" requires the Contractor's express, prior written consent.
4. If the Principal violates the above provisions, the Contractor is at any time authorized to prohibit the continued utilization of the Contractor's services, marks, certificates, and/or identifying marks. The Principal is upon first request by the Contractor obligated to indemnify the Contractor from all third party claims, regardless of the legal grounds (e.g. competition law), which claims are based on its utilization of the Contractor's services, marks, certificates, and/or identifying marks as well as all of its own, connected, required expenses.
5. The Principal hereby indemnifies and holds the Contractor and its subsidiaries and affiliates, and their officers, directors, members, managers, shareholders, representatives, employees, and agents (collectively "the indemnified parties"), harmless from and against any and all claims, losses, liabilities, damages, and expenses (including reasonable attorney fees) incurred by the indemnified parties that are caused by, arise out of, or relate in any way to any act or omission of the Principal, its shareholders, officers, directors, members, managers, employees or agents arising out of or related to the work described in this Agreement or the Principal's use of any materials or services provided by the Contractor. This provision shall survive the termination of this Agreement and inures to the benefit of the indemnified parties and their successors and assigns.

XIII. Data Protection

The Contractor shall process and utilize Principal's data exclusively within the scope of the purpose of the Agreement unless the Principal has consented to further utilization. No later than one year after the last day the Contractor provides services to the Principal, the Principal's personal data shall be blocked for further utilization and shall be deleted upon expiration of applicable statutory or regulatory retention periods, unless the Principal has provided separate consent for further utilization.

XIV. Obligation to Confidentiality and Retention of Records

1. The Contractor as well as the Principal are each obligated to maintain confidentiality of the other party's confidential information. "Confidential Information" is defined to mean but is not limited to some or all of the following, regardless of whether such information is in documentary, electronic or any other form: non-public information about products, systems, processes and services; customer lists; prospective customer lists; sales leads; methods by which Principal or Contractor does business and/or proposes to compete with business competitors; information concerning the preferences, requirements, transactions, creditworthiness and/or other characteristics of customers and/or prospective customers; price lists; pricing policies and practices; sources of supply; distribution channels; negotiating strategies; computer software; technical information; sales and training techniques; financial information; financial reports; data sheets; books and reports; specifications; strategic and technical data; manufacturing and development processes; marketing data; marketing research data; product research and development data; trade secrets; information concerning business plans; various other data concerning finances, technology and/or operations; other documents; and any other information about or generated by the Principal or Contractor which could, if disclosed, be useful to any competitors. This obligation continues for a term of five years after termination of this Agreement.
From this obligation excluded is any information that and confidential information does not include information 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 orders 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. The Contractor shall retain contractual documents insofar as a statutory or official obligation to retain records exists. The Contractor is furthermore obligated to retain records for the purpose of documentation; any of the Principal's possible statutory or contractual claims for return remain unaffected.

XV. Place of Fulfillment and Prohibition of Assignment

1. Place of fulfillment for all services is the Contractor's registered office.
2. Principal may not assign its rights, obligations or benefits without the express written consent of the Contractor.

XVI. Jurisdiction and Applicable Law

1. Any dispute, whether in tort, contract or otherwise, arising out of or relating to this Agreement in any way shall be governed exclusively by the law of the State of New Hampshire without giving effect to its conflict of law principles. The Principal consents to the exclusive jurisdiction of the state and federal courts of the State of New Hampshire for the resolution of all disputes related to or arising out of this Agreement or the Contractor's work. This provision shall survive the termination of this Agreement. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
2. Except as otherwise noted herein, neither party may assign any of its rights or obligations hereunder, without the prior written consent of the other party. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.
3. In the event any provision of this Agreement shall be held invalid by a court of competent jurisdiction, such provision shall be deleted from the Agreement, and the remaining provisions of this Agreement will remain in full force and effect.
4. In the event of any litigation concerning any controversy, claim or dispute between the parties hereto, arising out of or relating to this Agreement, the breach hereof, or the interpretation hereof, the Contractor shall recover from the Principal reasonable expenses, attorneys' fees, and costs incurred therein or in the enforcement or collection of any judgment or award rendered therein.
5. The failure of the Client to enforce the strict terms of this Agreement shall not constitute a waiver of these terms.
6. Any notices to be given hereunder by either party to the other shall be deemed to be received by the intended recipient: (a) when delivered personally; (b) the day following delivery to a nationally recognized overnight courier service with proof of delivery; or (c) three (3) days after mailing by certified mail, postage prepaid with return receipt requested, in each case addressed to the parties at the addresses set forth in the proposal or at any other address designated by the parties in writing.
7. Nothing in this Agreement shall be construed to create a partnership or joint venture between the Principal and the Consultant.
8. This Agreement shall not be construed so as to confer any right or benefit upon any third party other than the parties hereto and their respective successors and permitted assigns.
9. This Agreement may not be amended or modified except by a writing signed by the Contractor and the Principal.
10. Contractor posts additional policies on its website. Principal is directed to familiarize itself with those policies prior to entering into this Agreement and throughout the project.
11. For a period of two (2) years from the last date on which Contractor provides services to Principal, Principal, without the prior written consent of Contractor, shall not solicit the employment of, or employ, or contract with any officer, independent contractor or employee of Contractor. For the purposes of this Section, an advertisement in a newspaper, magazine or other publication of general or industry-wide circulation will not constitute a direct or indirect solicitation, provided however, that the advertisement does not identify Principal as placing the advertisement.

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