

Standard Terms and Conditions of TÜV SÜD South Asia Private Limited – TÜV SÜD Group (hereinafter referred to as TÜV SÜD) for Testing, Inspection & Consultancy Services



1. GENERAL:

- 1.1 Unless otherwise agreed in writing by TÜV SÜD, all offers or services and all resulting contractual relationship(s) between TÜV SÜD, any affiliated companies of TÜV SÜD or any of their agents to any person applying for testing, inspection or consultancy services (the "client") shall be governed by these Standard Terms and Conditions.
- 1.2 These Standard Terms and Conditions, and, as applicable, the proposal, the application, the codes of practice, TÜV SÜD Testing and Inspection Regulations, which apply at the time when the order is placed constitute the entire agreement (the "contract") between the client and TÜV SÜD with respect to the subject matter hereof. Save as otherwise provided no variation to the contract shall be valid unless it is in writing and signed by or on behalf of the client and TÜV SÜD.
- 1.3 Where a Testing and/or Inspection report is issued to the Client, TÜV SÜD will provide the services using reasonable care and skill and in accordance to the terms and conditions agreed with the client or general TUV SUD procedure
- 1.4 In the event that an order is placed, the client shall unconditionally accept these Standard Terms and Conditions, and, as applicable, the proposal, the application, the codes of practice, TÜV SÜD Testing and/or Inspection Regulations, which apply at the time when the order is placed.

2. DEFINITIONS:

"Accreditation Body" means any organization (whether public or private) having the authorization to appoint Certification Bodies; "Application" means the request for services by a Client;
"Certification Body" means any TÜV SÜD Legal entity having the authorization to issue Certificates;
"Codes of Practice" means those codes of practice issued by a Certification Body in accordance with the relevant certification scheme;
"Proposa" means the outline of services to be rendered by TÜV SÜD to the Client.
"Report" a report issued by TÜV SÜD to the Client for the inspection or testing conducted by it.

3. SCOPE OF SERVICES:

- 3.1 These Standard Terms and Conditions shall apply to the following services:

Testing Services:

- Softlines (clothing, home textiles, footwear etc.) Testing;
- Food Testing,;
- Electricals / Electronics and Machinery Testing, Automotive Testing;
- IT Testing (Computers / Networks);
- International Compliance Management; and
- Environmental Testing (Air, water)

Inspection Services:

- Industrial Inspection , testing;
- Infrastructure;
- Automotive Engineering Services;
- Facilities Inspection;
- Telecom;
- Food Inspection;
- Softlines (clothing, home textiles, footwear etc.) inspection;
- Environment technology services;
- Climate Change related services;
- Energy and renewable; and
- Electrical & Electronic Inspection service

Consultancy Services:

- Project Management Consultancy Services
- Third Party Inspection & Quality Assurance Services
- Construction Supervision and Quality Control Services
- Independent Quality Audit Services

- Third Party Quality Monitoring Services
- Third Party Technical Examination Services
- Third Party Quality & Quantity Monitoring Consultancy Services
- Independent Verification Services
- Detailed Design Consultancy Services for Power Supply & Distribution System
- Independent Safety Assessment Services
- Optimization of Operational Planning for Signaling/ Electrical Works
- General Consultancy Services
- Design Validation and Proof Checking Services
- Power System Design Studies

- 3.2 The scope of the services to be rendered by TÜV SÜD shall be specified in writing when the order is placed. If there is any proposed change or extension in the specified scope of the order during execution of the order, then it shall be reduced to writing in advance.
- 3.3 Client acknowledges that TÜV SÜD, either by entering into the Contract or by providing the Services, neither takes the place of Client or any third party, nor releases them from any of their obligations, nor otherwise assumes, abridges, abrogates or undertakes to discharge any duty of Client to any third party or that of any third party to Client.
- 3.4 TÜV SÜD may outsource the performance of all or part of services to TÜV SÜD authorized third party and the client authorizes TÜV SÜD to disclose only related necessary information for such performance to third party.
- 3.5 The client shall ensure that auditors/representatives of the respective authorities (e.g. regulatory appointment body, accreditation body or certification scheme owner) are entitled to participate in so called observed and witness audits on the business premises of the client and/or their subcontractor/supplier.
- 3.6 Where on-site activities (e. g. audits, inspections) conducted by TÜV SÜD personnel require personal protective equipment, TÜV SÜD and the client shall agree upon supply of such in advance of any visit.

4. OBLIGATIONS OF THE CLIENT:

- 4.1 The Client shall ensure that all product samples if any, access, assistance, information, records, documentation and facilities are made available to TÜV SÜD when required by TÜV SÜD, including the assistance of authorized personnel of the Client.
- 4.2 So far as it is permitted by law, the Client acknowledges that, it has not been induced to enter into the Contract in reliance upon, nor has it given, any warranty, representation, statement, assurance, covenant, agreement, undertaking, indemnity or commitment of any nature whatsoever other than as are expressly set out in these General Conditions and, to the extent that it has been, it unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation thereto.
- 4.3 The Client shall take all necessary steps to eliminate or remedy any obstacles or interruptions in the performance of the Services.
- 4.4 In order to allow TÜV SÜD to comply with the applicable health and safety legislation the Client shall provide TÜV SÜD with all available information regarding known or potential hazards likely to be encountered by TÜV SÜD personnel during their visits. TÜV SÜD shall take all reasonable steps to ensure that whilst on the Client's premises, its personnel comply with all health and safety regulations of the Client, provided that the Client makes TÜV SÜD aware of the same.
- 4.5 The Client shall not publicize details of the way in which TÜV SÜD performs, conducts or executes its operations.
- 4.6 The Client shall immediately inform TÜV SÜD of any and all changes in their premises which may affect their management system, their service, their products, their process or their skills.
- 4.7 **Working Conditions:** The client shall provide safe and unrestricted access to pertinent work area to TÜV SÜD auditors at all times. Failure

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to do so, and delay caused due to no fault of TÜV SÜD shall result in an “extension of audit “at the cost of the client.

4.8 **Scheduling and Rescheduling of Dates:** Dates for on-site inspection must be scheduled at least 4 weeks prior to the inspection. The dates cannot be rescheduled without minimum 3 weeks advance notice. If the client re-schedules the audit without the requisite advance notice, then the client may be liable to compensate TÜV SÜD for any lost service charges.

4.9 When as a part of inspection activity, testing is conducted at client's premises, using its equipments; it is the responsibility of the client to make available the test and measuring equipments/instruments at the place of inspection site and its calibration status known to the TÜV SÜD staff.

5. TERMS OF PAYMENT & FEES:

5.1 Validity: Quotations are valid for 3 months. For continued validity of a quotation, execution of the work must begin within 3 months of order acceptance unless a specific waiver is granted by TÜV SÜD.

Validity of services: TÜV SÜD scope of Testing, Inspection & Consultancy services are valid for 3 months from the date of issue of Inspection and/or Testing report after which TÜV SÜD shall not be liable for any issues arising out of services rendered by it.

5.2 TÜV SÜD may increase its fees if the Client's instructions change or are found to be not in accordance with the initial details supplied to TÜV SÜD prior to it providing the relevant fee quotation. Clients will be notified of any increase in fees.

5.3 Additional fees shall be charged for services that are not included in the Proposal and for work required due to non-conformances being identified.

5.4 Without prejudice to clause 5.3, additional fees will be payable at TÜV SÜD's charging rates in force from time to time in respect of rush orders, cancellation or rescheduling of services. A copy of TÜV SÜD's prevailing charging rates is available upon request.

5.5 Unless otherwise stated all fees quoted are exclusive of travelling and lodging & boarding costs (which will be charged to the Client at actual). All efforts will be made to use local staff from TÜV SÜD branch office throughout the contract, in which case only conveyance costs will be charged at actual. Travel & Sojourn costs will be shown separately in the invoice. All fees and additional charges are exclusive of applicable Goods and Service Tax.

5.6 Invoices shall be raised upon completion of each stage in the quotation. Invoices for additional and further work will be issued on completion of the relevant task. Following submission of the Report to the Client, TÜV SÜD shall issue final invoice to the Client. Unless advance payment has been agreed upon or special terms of payment are agreed upon by TÜV SÜD in writing, all invoices are payable within 30 days from the date of raising of each invoice (the “Due Date”) regardless of whether the Client's system or products qualify for certification failing which interest will become due at a rate of 2% per month (or such other rate as may be established in the invoice) from the Due Date up to including the date payment is actually received. All payments must be made by Cheque/Demand Draft drawn on “TUV SUD South Asia Pvt. Ltd.”. Applicable Goods and Service tax, at the time of service shall be additional and shown separately in the invoice. In case of cheque bounce, an amount of Rs. 500/- shall be charged.

5.7 Any objection to TÜV SÜD invoice shall be communicated and justified in writing within a period of 7 days from the date of raising of invoice; failing which, it shall be deemed that the invoice is correct and then invoices shall not be changed, altered or modified for any reason whatsoever.

5.8 Client shall mention PAN No. AABCT0716G and TAN No. MUMT09385F on every TDS certificate. Any TDS deducted will continue to accrue as a receivable to TÜV SÜD until the TDS certificate is received. Receivables shall not be credited if TDS certificates receivable to TÜV SÜD bear an incorrect name or PAN number. TÜV SÜD Goods and Service Tax Registration no. is 27AABCT0716G1ZN.

5.9 Client shall not be entitled to retain or defer payment of any sums due to TÜV SÜD on account of any dispute, counter claim or set off which it may allege against TÜV SÜD.

6. TESTING/INSPECTION REPORT OWNERSHIP AND COPYRIGHT/TRADEMARKS:

6.1 Any document including, but not limited to any Testing/Inspection Report, provided by TÜV SÜD and the copyright contained therein shall be and remain the property of TÜV SÜD and the Client shall not alter or misrepresent the contents of such documents in any way. The Client shall be entitled to make copies for its internal purposes only.

6.2 The Client may promote its certification in accordance with the terms set out in the Regulations governing the use of the certification marks. Use of TÜV SÜD corporate name or any other registered trademarks for advertising purposes is not permitted without TÜV SÜD prior written consent.

7. SECRECY/CONFIDENTIALITY:

7.1 As used herein, “Confidential Information” shall mean any oral or written proprietary information that a party may acquire from the other party pursuant to the Contract or information as to the business of the other party provided, however, that Confidential Information shall not include any information which (1) is or hereafter becomes generally known to the public; (2) was available to the receiving party on a non-confidential basis prior to the time of its disclosure by the disclosing party; (3) is disclosed to a party by an independent third party with a right to make such disclosure.

7.2 Unless required by law or by a judicial, governmental or other regulatory body, neither party nor their agents or subcontractors shall use the Confidential Information other than for the purpose of the Contract nor disclose the other's Confidential Information to any person or entity without the prior written approval of the other party except as expressly provided for herein.

7.3 TÜV SÜD shall be authorized to make file copies of written documents, which have been made available to it for review and which are important for processing the order.

8. FORCE MAJEURE:

If TÜV SÜD is prevented from performing or completing any service for which the Contract has been made by reason of any cause whatsoever outside TÜV SÜD's control, including, but not limited to, acts of God, war, terrorist activity or industrial action; failure to obtain permits licenses or registrations; illness, death or resignation of personnel or failure by Client to comply with any of its obligations under the Contract, the Client will pay to TÜV SÜD:

- (a) the amount of all abortive expenditures actually made or incurred;
- (b) a proportion of the agreed fees equal to the proportion (if any) of the service actually carried out; and TÜV SÜD shall be relieved of all responsibility whatsoever for the partial or total non-performance of the required Services.

9. LIABILITY AND INDEMNITY:

9.1 TÜV SÜD undertakes to exercise due care and skill in the performance of the Services and accepts responsibility only in cases of proven negligence.

9.2 Nothing in these Standard Terms and Conditions shall exclude or limit TÜV SÜD liability to the Client for death or personal injury or for fraud or any other matter resulting from TÜV SÜD negligence for which it would be illegal to exclude or limit its liability.

9.3 Subject to clause 9.2, the total liability of TÜV SÜD to the Client in respect of any claim for loss, damage or expense of any nature and howsoever arising shall be limited, in respect of any one event or series of connected events, to an amount equal to the fees paid to

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TÜV SÜD under the Contract (excluding Goods and Service Tax thereon).

- 9.4 Subject to clause 9.2, TÜV SÜD shall have no liability to the Client for claim for loss, damage or expense unless arbitral proceedings are commenced within six months after the date of the performance by TÜV SÜD of the service which gives rise to the claim or in the event of any alleged non-performance within six months from the date when such service should have been completed.
- 9.5 TÜV SÜD shall not be liable to the Client nor to any third party:
(a) for any loss, damage or expense arising from (i) a failure by Client to comply with any of its obligations herein (ii) any actions taken or not taken on the basis of the Reports; and (iii) any incorrect results, Reports arising from unclear, erroneous, incomplete, misleading or false information provided to TÜV SÜD.
- 9.6 Except for cases of proven negligence or fraud by TÜV SÜD, the Client further agrees to hold harmless and indemnify TÜV SÜD and its officers, employees, agents or subcontractors against all claims (actual or threatened) by any third party for loss, damage or expense of whatsoever nature including all legal expenses and related costs and howsoever arising (i) relating to the performance, purported performance or non-performance, of the Services or (ii) out of or in connection with the Client's product, process or service the subject of the certification (including, without limitation, product liability claims).
- 9.7 Each party shall take out adequate insurance to cover its liabilities under the Contract.

10. COMPLIANCE:

Client hereby declares that it is aware of and acknowledges the Company's Code of Ethics available at:

<http://www.tuv-sud.in/in-en/about-tuev-sued/tuev-sued-group/code-of-ethics>

11. MISCELLANEOUS:

- 11.1 If any one or more provisions of these Standard Terms and Conditions are found to be illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 11.2 Neither party shall assign the Contract without the prior written consent of the other Party such consent shall not be unreasonably withheld. Any assignment shall not relieve the assignor from any liability or obligation under the Contract.
- 11.3 The Parties acknowledge that TÜV SÜD provides the Services to the Client as an independent contractor and that the Contract does not create any partnership, agency, employment or fiduciary relationship between TÜV SÜD and the Client.

12. COMPLAINT:

Any complaint can be addressed to "The Complaint Manager, TÜV SÜD South Asia Pvt. Ltd., TÜV SÜD House, Off Saki Vihar Road, Saki Naka, Andheri (East), Mumbai – 400072." and at info@tuv-sud.in

13. TERMINATION:

13.1 Termination of Contract for failure to become effective

If this Contract has not become effective within 2 months after the date of Contract signature i.e. Effective Date, either Party may, by not less than twenty-two (22) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a

declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.

13.2 Expiration of Contract

The contract shall expire when services have been completed and all payments have been made.

13.3 Termination by Client

Client may terminate the Contract / Work with or without cause at any time by giving 30 days' written "notice of termination" to TÜV SÜD, such termination to be effective subject to making the payment for services satisfactorily performed prior to the effective date of termination.

13.4 Termination by TÜV SÜD

TÜV SÜD may terminate this Contract, by not less than thirty (30) calendar days' written notice to the Client, in case, the Client fails to pay any money due to TÜV SÜD pursuant to this Contract within thirty (30) calendar days after receiving written notice from TÜV SÜD that such payment is overdue.

13.5 Payment upon Termination

Upon termination of this Contract, the Client shall make the following payments to TÜV SÜD:

- remuneration for services satisfactorily performed prior to the effective date of termination, other expenses, provisional sums and contingency for expenditures actually incurred prior to the effective date of termination;
- In case of suspension of works by the client, the payments of works successfully completed by TÜV SÜD shall not be suspended due to client's default/ failure

14. JURISDICTION, APPLICABLE LAW, DISPUTE & ARBITRATION:

Unless specifically agreed otherwise, all disputes arising out of or in connection with these Standard Terms and Conditions or the Contract shall be governed by the laws of India and Courts at Mumbai shall have the jurisdiction over the same.

All disputes, claims and questions whatsoever which shall arise during the continuance of the contract or construction or the application thereof or any clause or anything herein contained or as to any other matter in any way relating to these presents or mutual rights, duties or liabilities under these presents shall, if agreed to, be referred to an independent arbitrator. The said arbitration shall be governed by the rules of Arbitration and Conciliation Act, 1996 or any amendment thereof, by one arbitrator appointed by TÜV SÜD. The arbitration shall take place in Mumbai and be conducted in the English language. The expenses of arbitration shall be borne by both the parties equally.

15. ACKNOWLEDGEMENT:

Client acknowledges that it has received, read and understood these Standard Terms and Conditions of TÜV SÜD along with quotations/invoices and agrees and undertakes to accept the same without any reservation/objection and also agrees to fully abide by the same.

Note: These Standard Terms and Conditions of TÜV SÜD are in addition to specific rules and regulation of relevant Accreditation Body/Certification Body/ other body if any and should be read in conjunction with them. Client acknowledges the same and agrees to accept the same without any reservation/objection.