

# Terms and Conditions of Purchase of Testing Equipment for TÜV SÜD (MALAYSIA) SDN BHD

## 1 Scope of Supply/Service

### 1.1 *Object of the Contract*

The object of this contract shall comprise the scope of supply/service as defined in the specifications and versions according to the appendix.

Moreover, the Supplier shall be responsible for the manner and quality of the entire performance of the order (development and manufacturing). The Supplier shall see to it that the order is performed as defined in the specifications, in accordance with the state of the art, with due regard to all relevant regulations, in a professional, qualitatively perfect and timely manner. The Supplier must indicate any alteration of or addition to the specifications that is necessary from its point of view.

### 1.2 *Parts of the Contract*

The specifications shall form the basis for all development activities, supplies and services as well as for all further details in connection with the content of the order. Therefore, they shall form an essential part of this contract. Any change in the specifications shall be made in writing and shall be countersigned by both parties. Oral subsidiary agreements are not binding.

### 1.3 *Changes in the Delivery Item*

The Customer can demand changes in the scope of supply/service also after the conclusion of the contract. In this context, the consequences, in particular with regard to additional or reduced costs as well as the dates of delivery, shall be reasonably taken into account.

### 1.4 *Subcontractors*

The Supplier is not entitled to subcontract essential parts of the order to a third party, except with the prior written approval of the Customer.

### 1.5 *Contact Persons*

The Customer has the right, without stating any reasons, to request the replacement of the Supplier's project officer. The Supplier is then obligated to designate a new project officer promptly.

## **2.0 Payment**

### **2.1 Price**

The total price is jointly agreed in the negotiation between supplier and customer plus the respectively applicable sales and service tax and is a fixed price.

### **2.2 Services Included**

The agreed prices shall include everything the Supplier has to bring about in order to fulfill its development, supply and service obligations at the agreed place of installation including freight, customs duties, packaging, assembly, commissioning, acceptance, insurance, including transportation insurance, site protection and warranty.

### **2.3 Payment**

Payments shall be made by the Customer on request as follows:

**10%** upon conclusion of the contract and presentation of the countersigned contract, the coordinated project plan, order confirmation and an advance payment guarantee covering the amount of the advance payment.

**40%** upon preliminary acceptance at the premises of the Supplier, i.e. upon presentation of an acceptance report (preliminary acceptance according to 3.1) signed by both parties in a legally binding manner and delivery to, assembly at, and initiation of a test run at the place of installation.

**50%** upon final acceptance at the place of installation, i.e. upon presentation of a final acceptance report signed by both parties in a legally binding manner, performance of the agreed training and familiarization activities, complete rectification of all defects complained about by the Customer in writing prior to delivery of the final acceptance report, and handing over of the complete documentation.

Payment shall be made within 30 days of invoicing; the Supplier is obligated to provide all documents required for the release of the payment.

### **2.4 Advance Payment Guarantee**

For the agreed advance payment, the Supplier shall, immediately upon the conclusion of the contract between the parties, provide the Customer with an irrevocable, unconditional, absolute bank guarantee at the costs of the Supplier, unlimited in time, waiving the defenses of voidability, set-off (with the exception of the defense in the case of counterclaims that are undisputed or have been established with final, binding legal force) and unexhausted remedies from a financial institution that is licensed in Malaysia and is acceptable to the Customer. The Customer shall return this guarantee document without delay after preliminary acceptance to the extent that preliminary acceptance has been successfully performed in accordance with the requirements of the specifications.

## **2.5 Warranty Retention**

A warranty retention in the amount of 5% of the contract value (total price including GST) shall be deducted from the final payment and paid out upon expiry of the warranty period if there are no defects.

## **3.0 Dates of Delivery, Delay in Delivery**

### **3.1 Date of Delivery**

The following phases or sequence of delivery shall be applicable:

- Design release
- Preliminary acceptance at the Supplier's premises
- Delivery to the agreed place of installation (followed by assembly, installation and test run)
- Start of test run
- Final acceptance at the Customer's premises.

### **3.2 Binding Character of the Agreed Dates**

The final date agreed for the performance of the delivery or service shall be expressly stated by the Customer to the Supplier at the inception and shall be binding on the parties.

Should operational disruption, a shortage of raw materials or semi-finished products or *force majeure* render it actually or imminently impossible for the Supplier to meet the agreed deadlines after the conclusion of the contract, it shall immediately inform the Customer thereof in writing. The parties shall then agree for the soonest delivery date. Should the Supplier fail to inform the Customer thereof as set out above, or fail to do so promptly, the Supplier shall be liable for any delays and any consequences resulting therefrom.

### **3.3 Compensation for all Damage and/or Losses Caused by Delays**

The Supplier is obligated to compensate the Customer for all damage and/or losses caused by delays. Acceptance of the delayed delivery or service shall not constitute a waiver of claims for damages.

### **3.4 Progress of Work**

The Supplier shall inform and update the Customer on every 14 days basis on the respective exact manufacturing stage of the machine/system. For this purpose, the Supplier shall deliver a written interim report to the Customer. In addition, the Customer is entitled to check up on the progress of the work on the machine/system to be delivered at the plant of the Supplier during normal business hours, subject to prior notice.

## **4 Functional Testing, Test Run**

### **4.1 Test Run (duration: two calendar weeks)**

After completion of the functional testing, the Supplier shall ensure that the machine/system shall be in working order. If, upon commissioning, the system proves to be functional, the test

run shall be immediately started in order to verify the functionality of the system. The test run shall be conducted for a period of two weeks upon commissioning.

#### **4.2 *Supervision during the Test Run***

During the test run, the system shall be checked according to the specifications and shall run under the Supplier's supervision and responsibility. Customer's representative(s) shall be present to verify the test run. Test run reports shall be generated by the Supplier for Customer's approval.

#### **4.3 *Damage during the Test Run***

Any damage caused to the machine/system during the test run shall be borne by the Supplier at its costs.

#### **4.5 *No Acceptance through Test Run***

Neither the start of the test run nor any events occurring during the test run shall be associated with the passage of risk, formal acceptance or the start of the warranty period.

### **5 *Acceptance***

#### **5.1 *Training***

The Supplier shall train the Customer's personnel in the respective local language at the location in such a way that proper operation of the machine/system is ensured.

#### **5.2 *Joint Acceptance***

If, upon completion of the successful test run, the machine/system proves to be functional, the joint acceptance test of the system shall be performed according to the criteria set out in the specifications.

If the acceptance does not take place for reasons for which the Customer is responsible, the Customer shall not assert claims for delay in delivery pursuant to Sec. 3.3 above.

#### **5.3 *Costs of Acceptance***

The Customer and the Supplier shall each bear their own costs incurred in conjunction with the acceptance test.

#### **5.4 *Repetition of the Acceptance Test***

If it turns out in the acceptance test that the machine/system has not been manufactured according to the contract and requirement of the Customer and if that causes the acceptance test to fail, the Supplier shall immediately, but no later than within one calendar week, take all necessary measures to enable another acceptance test to be performed.

#### **5.5 *Failure of Acceptance***

If a repetition of the acceptance test is required and if the contractually agreed performance is

not fulfilled in the repeated test, either, in particular if the warranted performance data are not proven, it shall be deemed that the contract has not been performed by the Supplier. Then the Supplier shall reimburse the customer for the cost incurred up to date and remedy the defect within fourteen (14) days from the date of receipt of the notice from TUV, failing which TUV may engage a third party to rectify the defect and all costs incurred shall be paid by the Supplier.

#### **5.6 *Conditional Acceptance***

If any defects that do not affect the system's functionality according to the specifications are detected, the acceptance procedure shall take place with the reservation that these defects be immediately corrected by the Supplier at its costs.

#### **5.7 *Passage of Risk***

The risk shall be passed upon final acceptance.

#### **5.8 *Approval / Certificate of Conformity as an Integral Part of Acceptance***

If the system can only be operated with the approval by government bodies or similar, such approval shall form a part of the acceptance procedure that requires fulfillment.

If the acceptance is not granted at all or is granted following a delay for reasons for which the Supplier is responsible, the Supplier shall bear all costs required for correcting the defects in the supplied system.

### **6 *Warranty***

#### **6.1 *Cure***

Any defects in the supply/service complained about during the warranty period shall be immediately rectified by the Supplier at its expense on request and, at the Customer's option, either by repair or by replacement of the defective parts.

#### **6.2 *Further Claims***

Any further claims, in particular for rescission of the contract or reduction of the purchase price and/or damages, or for compensation of the expenses incurred to no avail, shall remain unaffected.

#### **6.3 *Customer's Right to Rectify Defects Itself***

Should the Supplier culpably fail to comply with its warranty obligation within a reasonable period set by the Customer, the Customer shall be entitled to take the necessary measures either itself or by engaging a third party, at the Supplier's expense and risk, rectify the defects and to demand compensation from the Supplier for the expenses incurred thereby. Such rectification shall not affect or invalidate the warranty obligation of the Supplier.

In urgent cases, including but not limited to cases in which exceptionally high losses are imminent, and in case of minor defects, the Customer may take the measures specified in the first sentence above itself or have them performed by a third party, without affecting the Customer's warranty claims against the Supplier.

#### **6.4 *Warranty Period***

The warranty period shall be 24 months, starting on the date of the successful final acceptance at the production plant of the Customer. This date shall be fixed in writing between the Customer and Supplier. The same shall apply to spare parts.

#### **6.5 *Extension of the Warranty Period***

For any parts supplied that cannot remain in operation during the examination of a defect and/or during the rectification of the defect, the current warranty period shall be extended by the period of the interruption of operation.

For any repaired or newly delivered parts, the warranty period shall recommence upon completion of the rectification or, if an acceptance procedure has been agreed, upon acceptance. A written request for acceptance must be submitted to the Customer if necessary. With regard to hidden defects that are not apparent at the time of the final acceptance, the statutory limitation period shall not begin until the defect is detected. The detection of a hidden defect must be reported to the Supplier in writing by the Customer.

#### **6.6 *No Limitation of the Warranty Obligation***

The Customer's approval of drawings, calculations and other technical documents shall neither limit nor cancel any warranty obligations of the Supplier with regard to the delivery item.

The same shall also apply to any proposals and suggestions made by the Customer unless expressly agreed otherwise.

#### **6.7 *Response Time***

The Supplier warrants that it will start the repair work on the Customer's premises within 12 hours after a written notification of malfunction is sent out by the Customer. The Supplier shall, however, do its utmost to reach the site within six hours. [Back-out: 24 hours / 12 hours]

### **7 *Liability***

The Supplier shall indemnify the Customer from and against all and any losses, damages (including consequential, direct, indirect, special, incidental or punitive damages or loss or any other form of economic loss), liability, costs (including reasonable legal fees), expenses, claims (including any settlements of claims before or after issue of proceedings), actions, proceedings, judgment sums (including sums arising from consent orders or judgments) fines and penalties, however arising out of, or in connection with, the supply/service under this contract.

### **8.0 *Property Rights***

#### **8.1 *Third-Party Property Rights***

The Supplier warrants that all supplied items are free from any third party property rights,

including but not limited to the warranty that the supply and utilization of the object of this contract will not infringe any patents, licenses or other property rights or any patent applications of a third party disclosed at the time of acceptance. The Supplier shall indemnify the Customer against any third-party claims arising from possible infringements of property rights and shall also bear all costs incurred by the Customer in this context.

## **8.2 *Property Rights of the Supplier***

The Supplier grants the Customer, free of charge, a non-exclusive right of shared use in any possible property rights of the Supplier referring to the object of this contract insofar as the Customer requires such a right to order any spare parts for the object of the contract or for a sale of the object of the contract.

## **8.3 *Procurement of Ownership of Technical Documentation***

The Supplier is obligated to transfer the ownership of all technical documents to the Customer. This shall not affect the intellectual property rights therein.

## **9 *Conformity***

The object of this contract must conform to the acknowledged state of the art, the applicable laws and regulations in force in the agreed place of installation, and the then-applicable safety requirements and occupational safety and health and accident prevention regulations. All relevant technical rules and regulations must be observed by the Supplier.

## **10 *Insurance***

### **10.1 *Third-Party Liability Insurance***

The Supplier undertakes to take out third-party liability insurance with a sum insured of 15 million MYR for personal injury, property damage and financial losses, and to maintain such insurance for at least five years. Said insurance shall also include extended product liability insurance and in particular the machinery clause. Machine parts, instrumentation and measurement and control devices as well as tools and moulds/templates shall also be deemed to constitute machinery.

### **10.2 *Property Insurance***

The Supplier is furthermore obligated to insure the system to be supplied on an all-risks basis against loss or damage in transit as well as against loss or damage during assembly and test

run at least to the amount of the replacement value of the production system to be supplied.

### **10.3 Proof of Insurance**

On request, the Supplier shall send proof of all insurance contracts to the Customer within a period of 14 calendar days. In particular, the Supplier shall furnish proof that the machinery clause also covers tools on machines, instrumentation and control devices and moulds/templates.

## **11 Compliance**

The Supplier confirms that it has taken note of the TÜV SÜD Code of Ethics. This document is available at <https://www.tuvsud.com/code-of-ethics>.

The Supplier agrees to initiate all necessary steps to ensure that its employees and all parties in its supply chain, within the scope of their activities, comply with the respective applicable law, and do not commit any punishable acts. The Supplier confirms that neither the Supplier itself nor its employees have accepted or offered any bribes in connection with the conclusion or implementation of this contract, nor will they accept or offer any bribes in the future. The Supplier agrees to refrain from engaging in any behavior that could lead to criminal liability for fraud, embezzlement, or abuse of trust, offenses in insolvency matters, offenses against competition, granting of advantages or acceptance of bribes by persons employed by the Supplier or third parties.

The Supplier warrants that it has the permits, authorizations and approvals necessary for its activity.

In the event of a culpable breach of these provisions, the Customer has the right to stop any and all negotiations with the Supplier and to rescind all contractual relationships that exist with the Supplier or terminate them immediately. Should any claims be asserted on the Customer by third parties due to a violation of these provisions, the Supplier shall indemnify the Customer against any and all claims and shall compensate the Customer for any and all damage and/or losses resulting from the assertion of claims.

## **12 Obligation to Return Documents of the Customer**

All documents of any kind that the Customer places at the Supplier's disposal, such as samples, drawings, models and the like, shall remain the property of the Customer. They must not be used, reproduced or made accessible to a third party for any purposes other than the contractual purposes. These documents are to be returned to the Customer automatically without this being specifically requested as soon as they are no longer required for the performance of the order.



**13 Rescission**

The Customer may terminate the contract at any time without observing a notice period up to the time of completion and acceptance. In such case, the Customer shall bear the costs arising out of this contract that have been incurred by the Supplier up to the point of termination and can no longer be avoided. All payments, including this reimbursement of residual amounts/costs, must not exceed the total compensation in accordance with Sec. 2.1 hereof.

**14 Right of Rescission in Case of a Deterioration of Financial Circumstances**

If the Supplier suspends payments or files an application or being served a petition for institution of insolvency proceedings concerning the Supplier's assets or for composition proceedings in or out of court, the Customer shall be entitled to rescind the contract in whole or in part. Any payment due to the Supplier shall be suspended until such action(s) has been concluded.

**15 Written Form Requirement**

Any agreements that have not been included in this contract shall not be valid. Any additions and subsequent amendments to this contract shall be made in writing. Evidence of the content of the contract and of any waiver of the written form requirement must comply with this requirement as to form.

**16 Place of Performance**

The place of performance for supplies and services shall be the agreed place of installation.

**17 Place of Jurisdiction**

The place of jurisdiction shall be the court with jurisdiction over the Customer in accordance with Rules of Court 2012.

**18 Supplementary Provisions**

The contract shall be exclusively governed by the laws of Malaysia.

**19 Order of Precedence**

The following shall apply in the order of precedence specified:

1. This contract, including specifications;

2. The technical descriptions of the offer;
3. The ordering conditions of the Purchase Order;
4. The statutory provisions.

In the case of any conflicts between the individual regulations, the order of precedence set forth above shall apply accordingly.

## **20 Passing of Ownership**

The respective shares in the ownership of the system shall pass to the Customer on a percentage basis in accordance with the payments remitted by the Customer to the Supplier (Sec. 2.3). The warranty retention shall have no effect on the passing of ownership; that is to say, the ownership shall pass to the Customer in full, despite the retention of the sum in accordance with Sec. 2.5.

Insofar as the Customer resells the object of this contract, it shall be obliged to maintain the Supplier's reservation of title. The object of the contract must not be sold or assigned by way of security except with the Supplier's written consent. In case of attachment, seizure or any other disposal of the object of the contract by a third party, the Customer is obligated to indicate the Supplier's ownership and inform the Supplier without delay.

## **21 Severability**

Should any of the above sections or any parts thereof be null and void or legally invalid after the execution of this contract, this shall not affect the validity of the remaining parts of the contract. The parties hereto undertake to agree, in place of the invalid contractual provision, such legally valid provision as comes as close as possible to what the parties hereto would have permissibly stipulated if they had been aware that the former provision was null and void or invalid.