



TÜV SÜD America Inc.

Terms and Conditions of Equipment Sale, Rental or Service

1. GENERAL.

1.1 These Terms and Conditions of Equipment Sale, Rental or Service (“Equipment Terms”) shall apply to Orders for equipment (“Product”) sale, rental, and/or related services (“Services”).

1.2 **Product Sales. For Orders (as defined in Section 2 below) for the purchase of Product from TÜV, the following provisions shall also apply:**

- a. To facilitate Product build and acceptance testing, Customer agrees to supply all product information, hardware, acceptance samples or any other pertinent project information, including local, municipal, national and any other jurisdictional code and conformity requirements, to TÜV at no cost.
- b. Customer is responsible for all civil requirements, site preparations and facility improvements necessary to accept the Product. TÜV may provide consultation with Customer and Customer nominated design firm, as needed, to support the site work. Any travel not included in the Order and directed by Customer, shall be invoiced by TÜV and paid by Customer at cost plus 10%.
- c. Title to the Product transfers to Customer only upon full payment of the purchase price. Customer hereby grants to TÜV a purchase money security interest in the Product and all proceeds, to secure payment of the purchase price. Customer agrees to promptly execute any documents requested by TÜV to document, perfect and/or protect such security interest, or to allow TÜV to execute and file the UCC documents needed to perfect such security interest in the name of the Customer. The Order and these Equipment Terms will serve as the security agreement and financing statement for all purposes, and may be filed by TÜV in order to perfect its security interest. TÜV may enforce such security interest if Customer breaches these Equipment Terms. Following such breach, Customer agrees to assemble or disassemble the Product as requested by TÜV.
- d. Upon receipt of a notice of termination or cancellation by the Customer, TÜV, unless otherwise directed by Customer and upon payment as required by Customer, will (i) terminate promptly all work on the Product; (ii) transfer title and deliver to Customer the finished Product (if any), the work in process and the parts and materials which TÜV has purchased for the Product; (iii) verify/settle all claims by subcontractors for actual costs that are rendered unrecoverable by such termination; (iv) take actions reasonably necessary to protect property in TÜV’s possession in which Customer has an interest until disposal instruction from Customer has been received. Upon termination by Customer, the Customer’s obligation to TÜV will be (v) the Order price for all finished work and completed services; (vi) TÜV’s actual cost plus profit of the work in process and parts and materials transferred to Customer in accordance with (ii) hereof; (vii) TÜV’s actual cost plus profit of settling the claims by subcontractors in accordance with (iii) hereof; and TÜV’s actual cost plus profit of carrying out its obligations of (iv) hereof including storage fees. The Customer’s obligations will not exceed those that the Customer would have had to TÜV under the relevant Order in absence of termination.

1.3 **Product Rentals. For Orders for the rental of Product(s) from TÜV, the following provisions shall also apply:**

- a. The period for which the Customer intends to rent the Equipment shall be specified in the Order (the “Rental Period”). In addition, the Order may state a “Minimum Rental Period” which shall be less than the entire Rental Period, but shall be considered a part of the Rental Period. The Rental Period commences and rent begins to accrue from the date of shipment of the Product from TÜV or on behalf of TÜV to Customer. The Rental Period and the accrual of rent shall continue beyond the Rental Period and the Rental Period shall be deemed to continue until the Product(s) are returned to and received by TÜV (the “Rental Period”). Customer will pay rent to TÜV in advance of each 30-day period during the Rental Period. Invoices will be issued to Customer every 30 days starting on the date of shipment. If Product(s) is/are shipped in installments, each installment will be deemed a separate Rental.



- b. The Order for rental of Product evidences a rental of Product(s), not a sale. TÜV at all times retains title to the Product. Customer agrees that TÜV may file protective UCC filings for any and all rental transactions.
- c. Customer may use the Product(s) rented only for the purposes and in the manner intended by the manufacturer thereof. Other than the services for which TÜV is expressly responsible as provided in an Order, Customer is responsible for all maintenance of the Product(s), at Customer's sole cost and expense. The Customer will keep the Product(s) rented only at the location(s) agreed upon in the Order and not move the Product(s). Customer agrees that it will not alter the Products rented in any way during the Rental Period.
- d. Customer may terminate its Rental for a particular Product at any time after the Minimum Rental period by returning such item to TÜV. Customer will return each Product to TÜV at the end of the Rental thereof, properly packaged and in the same condition as delivered, ordinary wear and tear excepted. If Customer fails to so return any Product, then Customer will, upon demand, pay to TÜV the "advertised" price for such unit as the then-current advertised price is indicated on the Order.
- e. If Customer breaches these Equipment Terms, TÜV may declare Customer to be in default and require Customer to immediately return the Product to TÜV in accordance with Section 1.3(d) above. Such return will not relieve Customer of its obligation to pay rent or any other amounts which accrued prior to such return, including rent for the entire Minimum Rental period, as well as any other amounts payable to TÜV, including amounts related to the repair of any damage to the Product. Customer will be responsible for all legal fees and costs incurred by TÜV, should it be necessary to institute legal action to recover the Product(s).

1.4 Shipment and Delivery. TÜV will use reasonable efforts to meet acknowledged shipment dates for Product Sales, Rentals or Services, but will not be liable for delays. The Customer is responsible for all shipping costs F.O.B. shipping point. Customer bears all risk of loss for such shipments from and after the time of delivery by TÜV to the carrier or forwarding agent, including while in transit to or from TÜV following rejection or a warranty claim by Customer. Except as indicated in any applicable warranty, Customer will pay or reimburse all such freight, insurance, customs and duty charges, brokerage fees and other shipping expenses, including any special packing expenses, whether the Products are being shipped to or from Customer and hereby agrees to return the Product(s) "Free Domicile" when returning the Product(s) to TÜV. Customer agrees to insure each such Product against loss or damage, during the entire Rental Period and at all times from the point of shipment by TÜV until TÜV's receipt upon its return or, if applicable, full payment of the purchase price. Such insurance must be in an amount at least equal to the replacement value of the Product(s) or, if higher, the purchase price of the Product(s). Customer will furnish proof of such insurance to TÜV upon request. The Customer is solely responsible, unless otherwise indicated in the Order, to pay for the Product unloading and placement at the site. TÜV may, at its sole discretion, provide supervisory assistance throughout the unloading and placement process.

1.5 Software – for Product Sales or Rentals. Customer acknowledges that all software, including software included in a Product, and accompanying documentation (collectively "Software") obtained by Customer from TÜV is licensed (not sold) to Customer on the terms of the license set forth herein. Any and all Software and TÜV's existing intellectual property rights in its designs, specifications, drawings, and technical documents included with or within the Product shall at all times remain the sole and exclusive property of TÜV and/or its suppliers. TÜV grants to Customer a limited, non-exclusive, license to use the Software solely in connection with Customer's use of the Product in accordance with these Equipment Terms for so long as Customer owns or rents the Product, as the case may be. Customer may not reproduce, reverse-engineer, de-compile, disassemble, alter, translate, modify, adapt, market, resell, or sublease the Software or Technical Documents or use the Software or Technical Documents for third-party training, commercial time-sharing, rental service bureau use or for any other purpose. All rights not specifically granted to Customer herein are specifically excluded and are hereby reserved by TÜV and/or its suppliers. Customer agrees to comply with all applicable laws, rules and regulations with respect to Customer's use of Software, including without limitation U.S. export control laws.

In addition to the foregoing, Customer shall also be subject to any applicable license agreement accompanying such Software. Any references to "purchases" or "rental" of Software signify only the purchase or rental, as appropriate, by Customer of the rights granted under such license agreements. Customer agrees to comply with such license agreements. Software delivered to Customer hereunder



is subject to the terms of a software license agreement of the manufacturer of such software. Such agreement may contain limitations of warranties by the manufacturer and other restrictions and limitations of rights including limits on the use of such software by Customer. Customer acknowledges that it has read any such software license agreement, understands it, and agrees to abide by its terms and conditions.

1.5 Services. To the extent the Order includes the performance of Services:

- a. All Services will be performed at TÜV's facilities unless expressly indicated in the Order. Customer is responsible for shipping, at its expense, the Product or equipment to TÜV. TÜV will return such equipment or Product to Customer at Customer's expense. Customer bears all risk of loss for the equipment or Product at all times. Upon payment by the Customer for the Services, any parts provided by TÜV in connection with the Services shall become part of the relevant Product.
- b. Customer may cancel or reschedule the delivery of Services at any time, provided that Customer is liable for incurred costs, such as parts ordered by TÜV for such Services, and any Services performed prior to and on the date of such notice of cancellation. TÜV may cancel or reschedule the delivery of Services at any time upon notice to Customer.

2. QUOTATIONS; ORDERS; ACCEPTANCE OF ORDERS.

- 2.1 **Quotations; Orders.** Customers shall submit to TÜV all requests for Products and Services (a "Request"). In response to a Request, TÜV may issue to Customer a written quotation for Products and/or Services to be provided and/or performed (a "Quote"). Customer authorization to perform Services or deliver Product as described in a Quote from TÜV (an "Order"), including but not limited to signature on the Quote, the issuance of a purchase order, emailed authorization, or applying a prepayment shall indicate acceptance of the Quote and these Equipment Terms. Any additions to and/or deviations from the Equipment Terms are not binding unless they are expressly agreed to in writing by both parties. Any terms or conditions in Customer's purchase order or authorization in addition to or different from these Equipment Terms, are expressly rejected and of no force or effect and will not become part of these Equipment Terms.
- 2.2 **Acceptance of Orders.** An Order shall be deemed accepted and binding on TÜV without further action if: (i) it is received in response to a Quotation within 90 days of the date of the Quotation (or other period if otherwise set forth in the Quotation) and (ii) it contains no alteration of any term or condition stated in the Quotation. Notwithstanding any acceptance (deemed or otherwise) of an Order, TÜV may alter the terms and conditions of any Order at any time if Customer's creditworthiness fails to meet TÜV's requirements. Customer understands and agrees that all terms or conditions stated in a Quote are material for this purpose. Oral or written statements made by TÜV or its representatives or agents which conflict with or add terms or conditions to an Order shall not constitute a part of an Order unless confirmed in writing by TÜV.

An Order which does not meet the above requirements shall only be deemed accepted and binding on TÜV if TÜV issues a new written Quote stating the terms and conditions of the Order and Customer delivers an Order meeting the above requirements.

Any changes, modifications, deletions or additions of required Product or Services subsequent to the Order will not be covered under the Order. All changes, modifications, deletions or additions of required Product or Services must be in writing and agreed upon by TÜV and Customer.

- 2.3 **Order Acceptance Without Initial Request for Services or Quotation.** Customer may submit an Order without first submitting a Request and receiving a Quotation. TÜV has the right to accept or reject such an Order in whole or in part, and no such Order shall be deemed accepted and binding on TÜV unless TÜV expressly confirms its acceptance in writing. Any such Order so accepted by TÜV shall be subject to these Equipment Terms notwithstanding anything to the contrary in any such Order.
- 2.4 **Customer Affiliates.** Customer Affiliates may purchase Products or Services under these Equipment Terms upon entering an Order with TÜV pursuant to this Section 2 of these Equipment Terms. In such event, (i) the Customer Affiliate entering into each such Order will, for the purposes of such Order, be considered "Customer" as that term is used in these Equipment Terms, and (ii) the Order will incorporate all these Equipment Terms and be deemed to be a two-party agreement between TÜV on the one hand, and the applicable Customer Affiliate on

the other hand. Customer will cause its Affiliates to comply with its obligations under these Equipment Terms. "Affiliate(s)" means a party's wholly-owned subsidiaries or a joint venture, partnership or corporation that directly or indirectly controls, is controlled by or is under common control of or with said party or the party's wholly-owned subsidiary. The word "control" as used in this definition will mean ownership of, or the right to acquire, not less than fifty percent (50%) of the stock of said corporation, the right to vote not less than fifty percent (50%) of the stock of said corporation, or not less than fifty percent (50%) ownership interest in a partnership or joint venture or corporation. Should TÜV question whether an entity is a Customer Affiliate, Customer will promptly confirm its status to TÜV.

3. FEES AND PAYMENTS.

- 3.1 Unless otherwise agreed in writing, fees charged by TÜV shall be as stated in the Quote and any applicable price schedules of TÜV in effect at the time of acceptance of the Order. Customer must pay all amounts due under the Order in US dollars to the payment address noted on the applicable invoice. Customer is deemed to have accepted each Product or Service unless Customer notifies TÜV of non-acceptance within 7 days of Customer's receipt of such Product or Service. Prices do not include installation charges, sales, use, excise or other taxes or duties, unless provided for in the Order. Customer is responsible for any such applicable installation charge, tax or duty.
- 3.2 If TÜV ships or delivers Products or Services under these Equipment Terms in installments, then each such installment will be treated as a separate transaction and will be invoiced separately. However, if Customer defaults, TÜV may terminate, or suspend performance of, the entire Order without liability, and without limiting TÜV's remedies.
- 3.3 The prices for Services are as specified in the Quote. To the extent that additional Services, beyond those specified in the Quote, are necessary to resolve the issues with the particular equipment item, the additional Services and the price therefor shall be specified in writing. Services are performed on either a time and materials basis or on a fixed price basis. TÜV will provide an estimate of the cost to Service equipment for a set evaluation fee. The estimate will include the expected costs of labor and (unless otherwise specified) parts for such repair. If Customer elects to have TÜV repair such item, then the evaluation fee will be credited toward the repair charges. Any estimate provided is just that, and the actual repair costs which are charged on a time and materials basis, may exceed any estimate provided. TÜV will make reasonable efforts to inform Customer in advance when the repair costs are expected to exceed any estimate, but the Customer is obligated to pay TÜV even if TÜV fails to provide such notice. All parts charges are at TÜV standard rates. Invoices for Services fees will be issued on or about the date of delivery of such Services.
- 3.4 **Payment; Past Due Balance.** Subject to credit approval and unless otherwise indicated in the Quote, Customer agrees to pay invoices upon receipt. Customer agrees that a monthly administrative and finance charge of 1.5% of the outstanding account balance, but not in excess of the maximum allowed by law, will be payable by Customer for any account past due. Customer also agrees to pay TÜV's costs of collection, including attorneys' fees, incurred in collecting any past due amounts. If TÜV has payment concerns regarding Customer, TÜV may require prior payment or other acceptable security, and TÜV reserves the right to suspend its performance of Services or further work on any Product(s) until payment is received in full. Any questions or concerns regarding an invoice must be submitted to TÜV in writing within 14 days of receipt of the invoice. Failure by Customer to submit any questions or concerns within that 14-day period shall constitute an agreement by Customer to pay the invoice in full.
- 3.3 **Advance Payment; Partial Payment.** TÜV reserves the right at any time to request full or partial payment in advance or in satisfaction of fees for services rendered through the date of the invoice. TÜV may suspend its performance until such payment is made.

4. TAXATION.

The fees for TÜV's services do not include any taxes. Customer shall be responsible for paying any and all taxes which apply now or in the future to these services or to Customer's payments, other than taxes on TÜV's net income. In the event that TÜV may be required to collect or pay taxes for which Customer is responsible, TÜV may increase its charges to Customer by an equal amount.

5. IMPOSSIBILITY.

If TÜV's performance is prevented, restricted or interfered with by reason of a force majeure event (as defined below), then TÜV shall be excused from that performance to the extent of that prevention, restriction, or



interference. TÜV shall resume its performance promptly whenever such causes are removed.

“Force majeure events” shall be any cause or condition beyond the reasonable control of TÜV, including but not limited to natural catastrophes, acts or omissions of a government or its agencies or departments, labor strikes, lockouts or other disturbances, wars, riots or difficulties in procuring labor, energy shortages, shortage of suitable parts or materials, computer malfunctions, transportation problems, Customer’s failure to fulfill its obligations or delays in delivery by TÜV’s vendors.

6. LIMITED WARRANTY.

6.1 **Product Sale Warranty.** For sales of Product under an Order, TÜV warrants for a period of one year for new equipment or ninety (90) days for refurbished equipment or such other period as may be set forth in the Order (“Product Warranty Period”) that the Product will be free of material defects under normal use. In addition, the manufacturer of a product or component integrated into the Product by TÜV may provide a warranty, which shall apply for the benefit of the Customer. If TÜV repairs or replaces a Product under the foregoing warranty, the Product warranty continues for the remaining portion of the original Product Warranty Period, or 90 days from the date of the repair whichever is longer.

6.2 **Rental Warranty.** During the Rental Period (“Rental Warranty Period”), TÜV agrees to repair, replace or recalibrate any Product which does not substantially conform to the specifications. Such remedy will be at Customer’s expense if such repair, replacement, or recalibration is required due to Customer’s neglect, misuse or abuse of the Product, or if the Product was serviced by anyone other than TÜV. Customer must ship the Product in need of repair, replacement or recalibration to TÜV.

6.3 **Services Warranty.** TÜV warrants, for 30 days from return of the equipment to Customer following TÜV’s performance of Services (“Services Warranty Period”), that (i) the Services shall be performed in a good and workmanlike manner and in accordance with accepted industry practices, and (ii) all parts provided to Customer as part of such Services will be free from significant defects in materials and workmanship under normal use.

6.4 **Notification of Warranty Breach and Remedies.** In order to present a claim under the warranties herein, Customer must notify TÜV prior to the end of the applicable Warranty Period and, if requested by TÜV, ship the affected equipment unit, part, or Product to TÜV, freight prepaid. If TÜV confirms that the problem is covered by these warranties, it will, at its option, re-perform such Services or repair or replace such part at no charge to Customer. Shipping charges to return such item to Customer will be paid by TÜV, unless the claim is not covered by the warranty (in which case Customer is responsible for such shipping charges). The remedies set forth above are Customer’s sole and exclusive remedies for breach of any warranty relating to Product, Rental or Services. TÜV does not warrant that the Services specified in the Quote will resolve all issues with the particular equipment item.

6.5 **Warranty Disclaimers.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, TÜV ITSELF, ITS DISTRIBUTORS, AND AGENTS, DISCLAIM ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES AGAINST INFRINGEMENT, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OR FITNESS OR ADEQUACY FOR ANY PARTICULAR PURPOSE FOR USE, OR QUALITY, OF PRODUCTIVENESS OR OF CAPACITY, WITH RESPECT TO ANY PRODUCT OR COMPONENT THEREOF. NO OBLIGATION OR LIABILITY SHALL ARISE OR FLOW OUT OF TÜV’S RENDERING TECHNICAL OR OTHER ADVICE IN CONNECTION WITH THE PRODUCT (OR ANY COMPONENT THEREOF) OR SERVICES. THE CUSTOMER AGREES THAT ITS SOLE REMEDY IN CASE OF ANY DEFECTS IN ANY PRODUCT OR COMPONENT THEREOF, OR IN ANY SERVICE SHALL BE SUCH REMEDY AS IS AFFORDED HEREIN OR AS APPLICABLE BY THE ORIGINAL MANUFACTURER’S WARRANTY. THE OBLIGATIONS OF TÜV UNDER THE APPLICABLE LIMITED WARRANTY HEREIN ABOVE ARE CUSTOMER’S EXCLUSIVE REMEDY AND TÜV’S SOLE LIABILITY FOR ANY BREACH OF WARRANTY.

7. LIMITATION OF LIABILITY; INDEMNIFICATION.

7.1 **Damages.** TÜV SHALL NOT BE RESPONSIBLE TO CUSTOMER OR ANY OTHER PARTY CLAIMING THROUGH OR UNDER CUSTOMER FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES IN CONNECTION WITH OR ARISING FROM ANY ACTION OR OMISSION OF TÜV RELATING IN ANY WAY TO THE PRODUCTS OR SERVICES PROVIDED OR TO THESE STANDARD TERMS AND CONDITIONS OR AN ORDER, EVEN IF TÜV SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA OR INFORMATION OF ANY



KIND, LOST PROFITS OR FAILURE TO REALIZE EXPECTED SAVING AND REGARDLESS OF WHETHER ANY CLAIM FOR SUCH RECOVERY IS BASED ON THEORIES OF CONTRACT, DEFECT, NEGLIGENCE OR TORT (INCLUDING STRICT LIABILITY). TÜV'S ENTIRE LIABILITY, FOR ANY CAUSE RELATED TO OR ARISING OUT OF THESE Equipment Terms, REGARDLESS OF THE FORM OR NATURE OF THE ACTION, SHALL IN NO EVENT EXCEED THE FEES PAID BY CUSTOMER UNDER THE APPLICABLE ORDER. No claim may be asserted by either party against the other party with respect to any event, act or omission for which a claim accrued more than two (2) years prior to such claim being asserted.

7.2 **Indemnification.** Customer agrees to indemnify, hold harmless and defend TÜV from any and all claims, losses, damages, costs and expenses (including reasonable attorneys' fees) arising out of or relating in any way to any act or omission of the Customer in the use or operation of the Product or Rental or Services, including strict liability claims. Such indemnity will not apply to claims based on the actual gross negligence or willful misconduct of TÜV.

8. CONFIDENTIALITY.

Subject to the exceptions described below, "Confidential Information" will mean all of the information (whether in writing, orally, tangible or intangible, or by another means) that is disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") under or related to an Order, which information is either in writing and marked "confidential", "restricted", or "proprietary", or if disclosed orally or through access to facilities, is identified as being confidential at the time of disclosure, or which from all the relevant circumstances should reasonably be assumed to be confidential and proprietary whether or not such information is marked or identified as "confidential", "restricted" or "proprietary" at the time of disclosure. Confidential Information includes but is not limited to the Products, technical data, software and TÜV SÜD IP. Confidential Information shall not include information which (a) is now in the public domain or subsequently enters the public domain through no action or fault of the Receiving Party; (b) is known by or available to the Receiving Party from its own independent sources prior to its receipt thereof under an Order; (c) the Receiving Party receives from any third party having a legal right to transmit such information without any obligation to the Disclosing Party to keep such information confidential; or (d) is independently developed by the Receiving Party's employees, agents, or contractors. The Receiving Party agrees to treat all of the Disclosing Party's Confidential Information with the same degree of care to avoid disclosure to any third party as the Receiving Party uses with respect to its own information of like importance which is to be kept secret, and in any event no less than reasonable care. The Receiving Party is permitted to disclose Confidential Information only to those of its and its affiliates respective employees, officers, directors, shareholders, advisors, and agents, including without limitation consultants, attorneys, and accountants (collectively "Representatives"), whom the Receiving Party, in its reasonable discretion, deems need to know such information in connection with the relationship of the parties and/or TÜV's performance of services for Customer. Prior to disclosing Confidential Information to any Representative, the Receiving Party shall advise Representative of the confidential nature of the Confidential Information and shall ensure that such Representative is bound by the confidentiality obligations contained herein or such other confidentiality obligations substantially similar to those herein. Unless otherwise mutually agreed in writing, the Receiving Party's obligations under this paragraph with respect to each item of Confidential Information shall terminate five (5) years after the date of the receipt of that item by the Receiving Party.

9. INTELLECTUAL PROPERTY RIGHTS.

Intellectual property rights embodied in Confidential Information shall at all times remain the property of the Disclosing Party. In addition, TÜV shall retain all rights related to its intellectual property, existing as of the time that the parties hereto enter into an Order as well any improvements, modifications and derivatives thereof, including without limitation the Software and Technical Documents that are related to the Product(s) or Services provided as part of an Order ("TÜV SÜD IP"). Engineering fees charged to the Customer are strictly for the adaptation of TÜV SÜD IP to the Customer application and do not imply a sale of or grant of ownership of said intellectual property. Subject to the foregoing, all ownership rights of any kind or nature, including all intellectual property and other proprietary rights, resulting from TÜV's performance of Services to Customer Equipment Terms, including any of the following: (a) any reports, data, opinions, certificates, drawings, information, models or any other documents produced or otherwise resulting from its engagement by Customer (collectively, the "Reports"), and (b) any information, know-how, data, results, and inventions, and any associated intellectual property that is made, discovered, created, invented or generated by TÜV in any activities or work on behalf of Customer, shall belong solely to TÜV. Subject to Customer's payment in full of all fees due and payable to TÜV hereunder, TÜV hereby grants Customer a non-exclusive, revocable, perpetual license to use the unaltered Reports in connection with its internal business. Subject to Customer's payment in full of all fees due and payable to TÜV hereunder, TÜV hereby grants Customer a limited, non-exclusive, license to use TÜV's existing intellectual property in its designs, specifications, drawings and technical documents (the "Technical Documents") in



connection with Customer's internal business for so long as Customer owns the Product or rents the Product, as the case may be

10. ORDER OF PRECEDENCE; WAIVERS.

To the extent of any conflict or inconsistency between the Equipment Terms and any Order, or any of Customer's other order documentation, the terms of these Equipment Terms shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated or referenced in Customer's Orders, purchase order, or other order documentation, shall be incorporated into or form any part of or otherwise be effective to vary these Equipment Terms, and all such other terms or conditions shall be null and void and not form or become part of these Equipment Terms for TÜV to provide services. No waiver of any rights, obligations, or defaults with respect to these Equipment Terms or any Order shall be effective unless in writing and signed by the party against whom the same is sought to be enforced. One or more waivers of any right, obligation, or default shall not be construed as a waiver of any subsequent right, obligation, or default. No delay or failure of either party in exercising any right and no partial or single exercise thereof shall be deemed to constitute a waiver of that right or any other rights.

11. RELATIONSHIP OF THE PARTIES; ASSIGNMENT; SUBCONTRACTORS.

TÜV is an independent contractor for the provision of services, not an agent of the Customer. Customer has no authority to act on behalf of TÜV or to bind TÜV with respect to any promise or representation unless specifically authorized in writing to do so by TÜV. Customer may not, without TÜV's prior written consent, assign or transfer any Order, or any of its rights or obligations under these Equipment Terms or any Order, to any other person. TÜV may delegate its obligations to its affiliates, agents, suppliers, and contractors, and TÜV may disclose to any such persons any information required by them to perform the duties so delegated to them, but such delegation shall not relieve TÜV of its obligations under these Equipment Terms or the applicable Order. TÜV retains the right to employ sub-contractors of TÜV's choice to support the Product and Services, including but not limited to, any general labor required at the Customer worksite for installation or service of the equipment.

12. NOTICES.

Any notice, request or demand required or desired to be given from one party to the other must be in writing and shall be effective upon receipt if delivered personally, seven days after mailing if sent by pre-paid registered or certified mail, and on the next business day if sent by reputable overnight courier. Notices shall be sent to the party's then-current principal mailing address, or as a party may otherwise specify in a notice to the other party.

13. GOVERNING LAW AND CONSENT TO JURISDICTION.

13.1 Governing Law. These Equipment Terms and any Order and all rights and duties of TÜV and Customer arising thereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without reference to its conflict-of-law rules and not by the United Nations Convention on Contracts for the International Sale of Goods.

13.2 Jurisdiction. Subject to Section 14 concerning arbitration of disputes, Customer hereby irrevocably submits to the nonexclusive jurisdiction of any Massachusetts State court or any U.S. Federal court located in the Commonwealth of Massachusetts for any action or proceeding arising out of or relating to the provision by TÜV of services to Customer. Customer hereby irrevocably agrees that all claims with respect to such action or proceeding may be heard and determined in such court or courts, subject to paragraph 14 below. The foregoing shall not affect the right of TÜV to bring any action or proceeding against Customer or its property or assets in the courts of any other jurisdiction.

14. DISPUTE RESOLUTION.

14.1 Informal Discussion. In the event of any dispute or disagreement between Customer and TÜV arising out of any Order or these Equipment Terms, the performance of TÜV or Customer under any Order, or any other matter related to any Order, upon the written request of either party, authorized representatives of Customer and TÜV will meet for the purpose of resolving such dispute or disagreement. Those representatives will discuss the problem and negotiate in good faith without the necessity of any formal proceedings related thereto.

14.2 Arbitration. If a dispute or disagreement described in paragraph 14.1 above is not resolved as described in that paragraph, that dispute or disagreement shall be finally settled by binding arbitration held before a single arbitrator and according to the commercial Arbitration Rules of the American Arbitration Association ("AAA"), by which TÜV and Customer agree to be bound. The sole venue for any arbitration shall be the City of Boston in the Commonwealth of Massachusetts, unless the parties otherwise agree in writing. The Customer and TÜV shall jointly select the arbitrator, and failing agreement the arbitrator shall be selected in accordance with the AAA



Rules. The arbitrator shall have no authority to add to, change, or disregard any lawful terms of any Order or these Equipment Terms, nor to award punitive damages. The decision of the arbitrator shall be final and binding, and judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy. Arbitration shall be the exclusive final remedy for any dispute between the parties; provided, however, that this provision shall not prevent either party from seeking injunctive relief including but not limited to in order to prevent the misuse or misappropriation of its confidential or proprietary information.

15. TERM; TERMINATION.

15.1 The term of these Equipment Terms shall commence on the the last signature date set forth below and continue until terminated by either party with or without cause upon ninety (90) days prior written notice to the other party. Such termination shall relieve TÜV of any obligation to perform further work under any Order.

15.2 In case of termination, of these Equipment Terms or any Order hereunder, however occurring, TÜV is entitled to demand and Customer shall be obligated to pay a proportion of the contractual remuneration equal to the proportion (if any) of the Product(s) delivered, rent owed for the Rental Period or the Minimum Rental and for Services/work actually carried out and expenses incurred up through and including the date of termination.

16. MISCELLANEOUS.

16.1 **Non-Solicitation.** Customer covenants and agrees that for a period of eighteen (18) months following the rendering of TÜV's services under these Equipment Terms, Customer will not, directly or indirectly, by themselves or as a partner or in any relationship with any other person or entity, recruit from TÜV, or hire, any of TÜV's employees or consultants, or induce, solicit, or influence any employee or consultant of TÜV to terminate or curtail his or her employment or engagement with TÜV, without TÜV prior written consent. The covenants and obligations of Customer in this Section 16.1 shall survive termination of these Equipment Terms, however occurring, and shall be specifically enforceable in addition to and not in limitation of any other legal or equitable remedies, including monetary damages.

16.2 **Export Restrictions.** All Products, Software and Technical Documents are subject to export restrictions. Customer may not export, re-export, or transfer, directly or indirectly, any Product, Software, Technical Documents, Service or technical data provided under these Equipment Terms, to any country or user to which such actions are restricted by United States or local country law or regulation, without first obtaining any required governmental license, authorization, certification or approval and providing TÜV any required end user certification.

16.3 **Changes.** TÜV may substitute and modify the Product and Services without notice to Customer, if such substitutions and modifications do not materially affect the form, fit or function of the applicable Product or Services.

16.4 **Electronic Signatures.** The parties agree that the execution of these Equipment Terms is agreed upon by exchanging pdf signatures, and/or by industry standard electronic signature software, and shall have the same legal force and effect as the exchange of original signatures. In any proceeding arising under or relating to these Equipment Terms, each party hereby waives any right to raise any defense or waiver based upon execution of these Equipment Terms by means of such electronic signatures or maintenance of the executed agreement electronically. These Equipment Terms may be executed in one or more counterparts, all of which when fully executed and delivered by all parties to these Equipment Terms and taken together shall constitute a single agreement, binding against each of the parties. The parties may also show their agreement to these Equipment Terms by causing one or more printed copies of this document to be executed and delivered by their authorized representatives, in which case these Equipment Terms shall be effective as of the date when both parties have so signed and delivered one or more counterparts, whether the parties sign the same counterparts or different counterparts.

16.5 **Severability.** The illegality, invalidity, or unenforceability of any provision of these Equipment Terms shall not in any manner affect or render illegal, invalid or unenforceable any other provision of these Equipment Terms, and



that provision, and these Equipment Terms generally, shall be reformed, construed and enforced so as to most nearly give lawful effect to the intent of the parties as expressed in these Equipment Terms.

16.6 Agreement. Except as expressly set forth herein, these Equipment Terms and Orders entered into by the parties in accordance herewith constitutes the final, complete and exclusive statement of the Equipment Terms between the parties in respect of the subject matter hereof and supersede all prior and contemporaneous written and oral negotiations, understandings and agreements between the parties in respect to the subject matter hereof, including specifically any advertising or sales materials or any Customer purchase order or other ordering document. These Equipment Terms shall, without further action on either party's part, apply to Orders as described above, as well as to any other agreement between the parties if that agreement incorporates these Equipment Terms by reference or otherwise refers to them. Equipment TermsEquipment Terms

_____	TÜV SÜD AMERICA INC.
Customer's company / legal entity name	
Signature_____	Signature_____
Name:_____	Name:_____
Title:_____	Title:_____
Date:_____	Date:_____

For more information on our services, see our website: www.TÜVamerica.com
Please forward any questions to:
TÜV SÜD America Inc., FCO Group, 10 Centennial Drive, Peabody, MA 01960

Customer's Billing Address:

Email Address for Invoices: _____