



TÜV SÜD Canada Inc. Standard Terms and Conditions

1. GENERAL.

- 1.1 **Services Provided.** TÜV SÜD Canada Inc, a wholly owned subsidiary of TÜV SÜD America Inc. ("TÜV"), is an independent testing and conformity assessment company, which evaluates and tests products in accordance with the applicable standards / regulations and conducts management system audits in accordance with standards, regulations and other requirements. TÜV issues product and management system certificates upon the satisfactory completion of required testing / evaluation / auditing of representative samples.
- 1.2 As a global provider of testing, inspection and certification services, TÜV believes that independence, impartiality and integrity are a critical part of our mission and core values and therefore, we consider gifts to our staff as unnecessary and a practice that brings the potential of jeopardizing our impartiality as well as a cordial and mutually beneficial business relationship.

To uphold these values, we do not allow our staff to request or accept any gifts or benefits from our customers or their representatives. Examples can include but not be limited to expensive gifts, expensive hospitality (such as entertainment, accommodations, meals), or financial compensation or benefit of any kind.

For additional information, please refer to the TÜV SÜD Code of Ethics:

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

2. QUOTATIONS; ORDERS; ACCEPTANCE OF ORDERS.

- 2.1 **Quotations; Orders.** Customers shall submit to TÜV all requests for services in writing (a "Request for Services"). In response to a Request for Services, TÜV may issue to Customer a written quotation for services to be rendered (a "Quotation"). To order services from TÜV which are described in a Quotation, Customer shall submit a written order (an "Order"). These Standard Terms and Conditions shall apply to all Orders placed with TÜV or a subsidiary or affiliate of TÜV.
- 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 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 Quotation 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 Quotation stating the terms and conditions of the Order and Customer delivers an Order meeting the above requirements.

- 2.3 **Order Acceptance Without Initial Request for Services or Quotation.** Customer may submit an Order without first submitting a Request for Services 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 Standard Terms and Conditions notwithstanding anything to the contrary in any such Order.
- 2.4 **Customer Affiliates.** Customer Affiliates may purchase Services under these Standard Terms and Conditions upon entering an Order with TÜV pursuant to this Section 2 of these Standard Terms and Conditions. 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 Standard Terms and Conditions, and (ii) the Order will incorporate all these Standard Terms and Conditions 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 Standard Terms and Conditions. "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 between the parties, fees charged by TÜV shall be calculated pursuant to the TÜV Quotation and any applicable price schedules of TÜV in effect at the time of acceptance of the Order. A schedule of hourly rates charged by TÜV shall be made available to Customer upon request. Required work done beyond the Quotation, such as corrective action review, will be charged at an hourly rate. TÜV may change its fees without notice.

3.2 **Payment; Past Due Balance.** All invoices shall be due upon receipt of invoice. 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 over 30 days past due. Customer also agrees to pay TÜV's costs of collection, including attorneys' fees, incurred in collecting any past due amounts. TÜV reserves the right to suspend its performance of services until payment is received in full for services rendered. Such suspension of services may include, without limitation, the refusal to issue a test report or certification to which Customer would otherwise be entitled. 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.

3.4 **Cancellations / Postponements:** In the event that the customer cancels or postpones activities on less than 30 days' prior notice to TÜV, Customer shall pay TÜV a fee, with respect to the activities not done as originally scheduled, equal to 25% of the fees that would have been payable for those activities if they had been performed. This fee is in addition to Customer's obligation to pay TÜV for the services that are performed.

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 **Limited Warranty.** TÜV warrants that services performed by it shall be performed in accordance with the requirements of the applicable accepted and binding Order and in accordance with the relevant testing and audit standards and procedures referenced in paragraph 1 above. In the event that the services performed by TÜV do not comply with this warranty, Customer shall notify TÜV in writing of the noncompliance within 30 days of TÜV's completion of such services, and TÜV shall re-perform the non-conforming services. Products to be returned to TÜV for such re-testing shall be returned to TÜV at Customer's expense. The failure of Customer to so notify TÜV of a claim that services did not comply with this warranty within the foregoing period shall constitute an irrevocable waiver of that claim. Customer understands and agrees that TÜV's warranty extends only to the specific products or parts of a facility which were tested or audited by TÜV and only to the extent of such testing or audit. TÜV shall not be liable for any viral infection or other damage caused to software of Customer. Furthermore, Customer acknowledges that in some cases, TÜV's services can result in damage to, or the destruction of, the equipment under test and other materials supplied to TÜV. Accordingly, Customer agrees that TÜV shall not be responsible for any such damage or destruction to the extent not caused by TÜV's negligence.



6.2 **DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH AND LIMITED ABOVE, TÜV MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING THE SERVICES PROVIDED HEREUNDER. TÜV SPECIFICALLY DISCLAIMS ANY WARRANTIES WITH REGARD TO THE GENERAL SAFETY, MERCHANTABILITY, NON-INFRINGEMENT OR EFFECTIVENESS OF PRODUCTS OR FACILITIES OR WITH REGARD TO THE MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OF TÜV'S SERVICES THEMSELVES. THE OBLIGATIONS OF TÜV UNDER THIS LIMITED WARRANTY 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 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 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, NEGLIGENCE OR TORT (INCLUDING STRICT LIABILITY). TÜV'S ENTIRE LIABILITY, FOR ANY CAUSE RELATED TO OR ARISING OUT OF THESE STANDARD TERMS AND CONDITIONS, 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 assumes and shall defend, indemnify and hold TÜV harmless from all responsibility to Customer and third parties for personal injury and property damage, relating in any way to the services provided by TÜV. Customer shall defend at its sole expense any action brought against TÜV as a result of any personal injury or property damage. Customer further agrees to indemnify TÜV for all costs (including reasonable attorneys' fees) incurred by TÜV in defending any such claims or in establishing its right to indemnification.

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 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 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 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. Nevertheless, Customer agrees that TÜV may retain the required copies of Customer's Confidential Information and disclose same only to certification bodies and only as required for TÜV's performance of services for Customer. Unless otherwise mutually agreed in writing, the Receiving Party's obligations under this paragraph with respect to each item of Confidential Information shall terminate two (2) 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. 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 per these Standard Terms and Conditions shall belong solely to TÜV in and to 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. 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.

10. ORDER OF PRECEDENCE; WAIVERS.

To the extent of any conflict or inconsistency between the provisions in the body of these Standard Terms and Conditions and any Order, or any of Customer's other order documentation, the terms of these Standard Terms and Conditions 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 Standard Terms and Conditions, and all such other terms or conditions shall be null and void and not form or become part of these Standard Terms and Conditions for TÜV to provide services. In the event of a conflict between any Testing & Certification Regulations / Audit Agreements and these Standard Terms and Conditions, the Testing & Certification Regulations / Audit Agreement shall prevail solely with respect to such conflict, unless expressly stated otherwise in a written agreement signed and delivered by TÜV. No waiver of any rights, obligations, or defaults with respect to these Standard Terms and Conditions or any Order shall be effective unless in writing and signed by the party against which 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.

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 Standard Terms and Conditions 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 Standard Terms and Conditions or the applicable Order.

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 Standard Terms and Conditions 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.

13.2 **Jurisdiction.** 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 with respect to the interpretation of any provision of any Order or these Standard Terms and Conditions, 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 Standard Terms and Conditions, 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 for misuse or misappropriation of its confidential or proprietary information.

14.3 For management system auditing services the following shall apply

Informal Discussion. In the event of any dispute or disagreement between Customer and TÜV with respect to the interpretation of any provision of these Standard Terms and Conditions, the performance of TÜV or Customer under these Standard Terms and Conditions, TÜV’s determinations in its audit, or any other matter related to these Standard Terms and Conditions, 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.

Submission to Advisory Committee. If a dispute or disagreement described above is not resolved as described in that section, that dispute or disagreement shall be submitted to the Advisory Committee (which is comprised of representatives of TÜV’s customers, other industry representatives, and representatives of TÜV itself) for its consideration before either party commences any litigation relating to that dispute. Customer agrees to comply with any request of the chairman of the Advisory Committee for attendance of Customer’s representatives at the relevant meeting(s) of the Advisory Committee.

Further Steps Following Submission to Advisory Committee. In the event that a dispute not resolved through the steps described above, the parties shall then be free to pursue resolving the dispute through litigation in a court of competent jurisdiction; provided, however, that with respect to disputes over certification decisions for certificates accredited by the Standards Council of Canada (the “SCC”), if the Advisory Committee confirms a rejection of certification, Customer’s only further appeal shall be to the SCC and not to court. To pursue such an appeal to the SCC, Customer shall comply with the SCC’s applicable rules and shall provide to the SCC a copy of all documentation relating to the rejection, including all correspondence.

Pre-Payment Requirements. Notwithstanding anything to the contrary in these Standard Terms and Conditions, for the initial project for certification services or management system auditing services, Customer agrees to pre-pay an amount of fifteen thousand U.S. Dollars (\$15,000 USD) prior to commencement of such services, which shall be applied to the total amount due for the services. In the event that the total amount for such services are less than \$15,000, then Customer agrees to pay the total amount due in advance.

15. TERM; TERMINATION.

15.1 The term of these Standard Terms and Conditions 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.

15.2 In case of termination, of these Standard Terms and Conditions 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 services/work actually carried out 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 Standard Terms and Conditions, 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 these Standard Terms and Conditions, 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 **Electronic Signatures.** The parties agree that the execution of these Standard Terms and Conditions is agreed by exchanging pdf signatures, and/or by industry standard electronic signature software, shall have the same legal force and effect as the exchange of original signatures. In any proceeding arising under or relating to these Standard Terms and Conditions, each party hereby waives any right to raise any defense or waiver based upon execution of these Standard Terms and Conditions by means of such electronic signatures or maintenance of the executed agreement electronically. These Standard Terms and Conditions may be executed in one or more counterparts, all of which when fully executed and delivered by all parties to these Standard Terms and Conditions and taken together shall constitute a single agreement, binding against each of the parties.
- 16.3 **Severability.** The illegality, invalidity, or unenforceability of any provision of these Standard Terms and Conditions shall not in any manner affect or render illegal, invalid or unenforceable any other provision of these Standard Terms and Conditions, and that provision, and these Standard Terms and Conditions 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 Standard Terms and Conditions.
- 16.4 **Agreement.** Except as expressly set forth herein, these Standard Terms and Conditions and Orders entered into by the parties in accordance herewith constitutes the final, complete and exclusive statement of the Standard Terms and Conditions 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 Standard Terms and Conditions 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 Standard Terms and Conditions by reference or otherwise refers to them. The parties may also show their agreement to these Standard Terms and Conditions by causing one or more printed copies of this document to be executed and delivered by their authorized representatives, in which case these Standard Terms and Conditions 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 The parties hereto acknowledge and confirm that they have requested that this Agreement as well as all notices and other documents contemplated hereby be drawn up in the English language. Les parties aux presentes reconnaissent et confirment qu'elles ont convenu que la presente convention ainsi que tous les avis et documents qui s'y rattachent soient rediges dans la langue anglaise.

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E-mail: billing@tuvam.com
www.TUVcanada.ca



Customer's legal name

TÜV SÜD **CANADA INC.**

Signature _____

Signature _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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

Customer's Billing Address:

