

TÜV RHEINLAND INDUSTRIAL SERVICES LIMITED

GENERAL TERMS AND CONDITIONS OF SALE – AUGUST 2024

1 Definitions and interpretation

1.1 The following definitions and rules of interpretation apply in these Conditions.

1.2 Definitions:

Business Day a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;

Conditions these terms and conditions as amended from time to time in accordance with their terms;

Charges the charges payable by the Customer for the supply of the Services in accordance with these Conditions;

Commencement Date has the meaning given in Condition 2.2;

Confidential Information any and all information of whatever nature relating to TÜV or any other member of the TÜV Group which information is designated in writing to be confidential or proprietary, or which information would, under the circumstances, appear to a reasonable person to be confidential or proprietary;

Contract the contract between TÜV and the Customer for the supply of the Services in accordance with these Conditions;

Control has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly;

Customer the person or firm who purchases Services from TÜV as set out in the Order;

Customer Materials all documents, information, items and materials in any form provided by the Customer to TÜV in connection with the Services;

Customer Default has the meaning set out in Condition 6.2;

Deliverables the documentation (being any reports, test results, test results, expert opinions, or calculations) or other output to be produced by TÜV as part of the Services, including any set out in the PO;

Group in relation to TÜV, TÜV, any subsidiary or holding company from time to time of TÜV, and any subsidiary from time to time of a holding company of TÜV and **member(s) of the TÜV Group** shall be construed accordingly;

Intellectual Property Rights any and all copyrights, moral rights, related rights, patents, supplementary protection certificates, petty patents, utility models, trade marks, trade names, service marks, design rights, database rights, website rights, semi-conductor topography rights, domain name rights, rights in undisclosed information or Confidential Information, rights in get up, goodwill or to sue

for passing off, unfair competition rights, and other similar intellectual property rights (whether registered or not) and applications for any such rights as may exist anywhere in the world;

Order the Customer's order for the Services from TÜV;

Services the services, including the Deliverables, to be supplied by TÜV to the Customer as set out in Specification;

Specification the description or specification of the Services provided by TÜV to the Customer as set out in the Order;

TÜV TÜV Rheinland Industrial Services Limited, registered in England and Wales with company number 14348288.

1.3 A reference to:

1.3.1 the **singular** includes the plural and vice versa, and **masculine** includes the feminine and neuter and vice versa;

1.3.2 legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time and includes all subordinate legislation made from time to time under the same;

1.3.3 **writing** or **written** excludes fax but not email;

1.3.4 an **English legal term** for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

1.4 Any words following the terms **include, including, in particular, for example** or anything similar are illustrative only and none of them shall limit the sense of the words, description, definition, phrase or term preceding those terms and each of them shall be deemed to incorporate the expression **without limitation**.

2 Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 TÜV may accept or reject an Order at its discretion. An Order shall only be deemed accepted when:

2.2.1 TÜV issues written acceptance of the Order; or

2.2.2 TÜV agrees in writing to start providing the Services;

on which date the Contract shall come into

2.3 existence (the **Commencement Date**). TÜV may issue quotations to the Customer from time to time. Unless expressly stated otherwise within the relevant quotation, a quotations shall not constitute an offer, is an invitation to treat only and is incapable of being accepted by the Customer.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3 Supply of Services

3.1 TÜV shall:

3.1.1 supply the Services to the Customer in accordance with the Specification in all material respects; and

3.1.2 use all reasonable endeavours to meet any performance dates or timescales agreed in writing with the Customer, but any such dates or timescales shall be estimates only and time shall not be of the essence for performance of the Services.

3.2 TÜV shall not be liable to provide any additional services outside the scope of the Services to be provided pursuant to Condition 3.1.1, including reviewing and assessing the appropriateness and functionality of any parts, products, processes, and/or installations not included within the Specification. The Customer acknowledges and agrees that TÜV shall not be liable for the design, selection of materials, construction, or intended use of any part, product, process and/or plant unless expressly agreed in advance in writing by TÜV.

3.3 TÜV reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and TÜV shall notify the Customer in any such event. Where the change under this Condition 3.3 results in an increase to the Charges payable by the Customer, TÜV shall notify the Customer of the same and the Customer shall be liable to pay such additional Charges.

3.4 TÜV has the right to determine the mode and method of delivering the Services, including any examination or testing services.

3.5 The Customer acknowledges and agrees that where, as part of the Services, TÜV are providing testing and/or certification services TÜV does not guarantee the accuracy of the safety programmes or safety regulations upon which the testing and/or certification are based.

4 Acceptance

TÜV shall notify the Customer upon completion of the Services or part of the Services (as applicable) confirming the

Services performed. The Customer shall be deemed to have accepted the Services or part thereof (as applicable) upon receipt of such notification from TÜV.

5 Charges and payment

5.1 The Charges for the Services shall be as set out in the Order, or where no such provision is set out, calculated on a time and materials basis in accordance with TÜV's fees rates in force from time to time.

5.2 Where the Charges are calculated on a time and materials basis:

5.2.1 TÜV's daily fee rates for each individual are calculated on the basis of an eight-hour day during its normal business hours; and

5.2.2 TÜV shall be entitled to charge an overtime rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside its normal business hours.

5.3 TÜV shall be entitled to charge for all expenses, costs and disbursements incurred in connection with the Services including insurance, all other related charges, taxes, third party costs and visas. TÜV shall be entitled to raise an invoice for such costs, plus an administration fee calculated as 10% of the total value of such costs and disbursements or as otherwise set out in the Specification.

5.4 TÜV may increase the Charges with immediate effect by written notice to the Customer where there is an increase in the direct cost to TÜV of supplying the relevant Services which exceeds 5% and which is due to any factor beyond the control of TÜV.

5.5 Unless otherwise agreed by TÜV, it shall raise its invoices:

5.5.1 in accordance with the PO or at such regular intervals as TÜV determines from time to time according to the Service being delivered; and

5.5.2 on completion of the Services in respect of any Charges not previously invoiced.

5.6 The Customer shall pay TÜV's invoices:

5.6.1 where payment is required in advance, immediately upon receipt of the invoice, and TÜV shall not be obliged to start supplying the Services until payment has been received in full; or

5.6.2 where payment is not required in advance, within 30 days of the date of the invoice.

5.7 Where the Customer terminates the Contract on or after 7 days from the Commencement Date, but before TÜV has started providing the Services, TÜV is entitled to raise an invoice for, a cancellation fee calculated at 10% of the Charges payable by the Customer under the Contract, or £500 (whichever is the

- lower).
- 5.8 All amounts payable by the Customer under the Contract are:
- 5.8.1 exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by TÜV to the Customer, the Customer shall, on receipt of a valid VAT invoice from TÜV, pay to TÜV such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services;
- 5.8.2 to be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law);
- 5.8.3 to be paid and in cleared funds to a bank account nominated in writing by TÜV; and
- time for payment is of the essence of the Contract.
- 5.9 If the Customer fails to make a payment due to TÜV under the Contract by the due date, then, without limiting TÜV's other rights and remedies:
- 5.9.1 the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Condition 5.9.1 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%; and
- 5.9.2 TÜV may, without notice to the Customer, suspend all or part of its Services until payment has been made in full and recover any reasonable costs and expenses associated with such suspension and remobilisation.
- 5.10 TÜV may at any time without notice to the Customer set off any liability of TÜV to the Customer against any liability of the Customer to TÜV, whether either liability is present or future or liquidated or unliquidated, and whether or not either liability arises under these Conditions.
- 6 Customer's obligations**
- 6.1 The Customer shall:
- 6.1.1 provide all information required by TÜV for the provision of the Services and ensure that such information is complete and accurate;
- 6.1.2 and shall ensure and procure that its agents, officers, employees shall, cooperate with TÜV in all matters relating to the Services;
- 6.1.3 provide TÜV, its employees, agents, consultants and subcontractors, with access to the Customer's premises, equipment and other facilities as required by TÜV for the provision of the Services;
- 6.1.4 comply with any additional obligations as set out in the Specification; and
- 6.1.5 obtain licences, permissions and consents which may be required for the Services before the date on which the Services are to start.
- 6.2 If TÜV's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 6.2.1 without limiting or affecting any other right or remedy available to it, TÜV shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays TÜV's performance of any of its obligations;
- 6.2.2 TÜV shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from TÜV's failure or delay to perform any of its obligations as set out in this Condition 6.2; and
- 6.2.3 the Customer shall reimburse TÜV on written demand for any costs, losses or expenses sustained or incurred by TÜV arising directly or indirectly from the Customer Default.
- 7 Defect rectification**
- 7.1 In the event of a defect, TÜV shall reperform the Services within a reasonable period of time, provided always the Customer promptly notified TÜV of such defect in writing.
- 7.2 Notwithstanding the foregoing, TÜV shall have no liability for defective services after one (1) year from performance of the Services.
- 7.3 To the maximum extent permitted at law, reperformance is the Customer's sole remedy for defects and all other remedies are hereby excluded to extent legally permissible.
- 8 Intellectual property rights**
- 8.1 All Intellectual Property Rights in or arising out of the Deliverables shall be owned by TÜV.
- 8.2 Subject to the payment of Charges by the Customer, TÜV grants to the Customer, or shall procure the direct grant to the Customer of, a non-exclusive, royalty-free, non-sublicensable licence to use the Deliverables for the purpose of receiving and using the Services and the Deliverables in its business and subject always to the contractual purpose agreed in writing by TÜV as at the

- Commencement Date (including the use of test or audit reports as evidence of tests or audits having been carried out or conformity with test standards or certification conditions in a management system review).
- 8.3 The Customer shall not assign or otherwise transfer the rights granted in Condition 8.2.
- 8.4 The Customer shall not share with any third party, make any announcement, or public disclosure of, or make any publication or reproduction of the Deliverables, without the prior written consent of TÜV. For the avoidance of doubt, where consent is given, Deliverables such as test or audit reports may only be published in full; the use of excerpts is prohibited. TÜV shall have the right to withdraw its consent at any time (in its sole, unfettered discretion) and the Customer shall immediately withdraw access to the Deliverables by such third-parties, or immediately withdraw and discontinue any announcement, disclosure, publication, or reproduction of the same. Any consent provided by TÜV pursuant to this Condition 8.4 shall not entitle the Customer to use any trademark or logo of TÜV.
- 8.5 The Customer grants to TÜV a fully paid-up, non-exclusive, royalty-free, worldwide, non-transferable licence to use, copy and modify any Customer Materials provided to TÜV for the purpose of providing the Services to the Customer.
- 8.6 The Customer:
- 8.6.1 warrants that the receipt and use of the Customer Materials in the performance of the Contract by TÜV, any member of the TÜV Group, their agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- 8.6.2 shall indemnify TÜV and each member of the TÜV Group in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by TÜV arising out of or in connection with any claim brought against TÜV, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt or use in the performance of the Contract of the Customer Materials.
- 9 Confidentiality**
- 9.1 The Customer shall:
- 9.1.1 at all times keep confidential and secret the Confidential Information;
- 9.1.2 only use the Confidential Information wholly, necessarily and exclusively for the purpose of the Contract and not exploit (whether for commercial gain or otherwise) or use the Confidential Information for any other purpose;
- 9.1.3 only permit access to the Confidential Information to such of its employees, officers, agents, representatives and advisers who have a genuine need to know such Confidential Information and inform them of the confidential nature of the Confidential Information and of its obligations in respect of the same.
- 9.2 The Customer may disclose the Confidential Information as required by law, a court of competent jurisdiction or any government or regulatory authority.
- 10 Warranty**
- 10.1 The Customer warrants that it has the right, power and authority to enter into the Contract and grant to TÜV the rights (if any) contemplated in the Contract.
- 10.2 TÜV warrants that the Services and Deliverables:
- 10.2.1 will be provided with reasonable care and skill; and
- 10.2.2 will be free from material defects upon completion of the same.
- 11 Data protection**
- The Parties shall comply with their data protection obligations under the UK GDPR. The parties hereby agree to enter into any additional data processing agreements or other agreements relating to data protection as required by mandatory law.
- 12 LIMITATION OF LIABILITY:**
- 12.1 The following provisions set out the entire liability of TÜV (including any liability for the acts and omissions of its employees, agents, representatives and sub-contractors). References to liability in this Condition 12 shall include liability arising out of or in connection with the Contract, including liability in contract, tort (including negligence), misrepresentation, misstatement, indemnity, statutory duty, strict liability or otherwise.
- 12.2 Notwithstanding anything to the contrary in the Contract, nothing in the Contract shall limit or exclude the liability of TÜV:
- 12.2.1 for death or personal injury resulting from its own negligence or that of its representatives;
- 12.2.2 for fraud or fraudulent misrepresentation; or
- 12.2.3 to the extent that such liability or exclusion is not permitted by law.

- 12.3 The Customer is responsible for any conclusions it or its employees, agents or representatives draw from the Services.
- 12.4 Subject to Condition 12.2, the total liability of TÜV to the Customer shall not exceed an amount equal to 125% of the Charges that have been paid in relation to the Services giving rise to the Liability Event or £1,000,000 (whichever is the lower).
- 12.5 Subject to Condition 12.2, this Condition 12.5 sets out the types of losses that are wholly excluded and which TÜV shall not be liable to the Customer for :
- 12.5.1 loss of profits;
- 12.5.2 loss of turnover;
- 12.5.3 loss of anticipated savings;
- 12.5.4 loss of sales or business;
- 12.5.5 loss of or damage to goodwill;
- 12.5.6 loss of use or corruption of software data or information,
- in each case whether direct or indirect; or
- 12.5.7 any special, economic or consequential loss to the extent these are not included in 12.5.1 to 12.5.6 inclusive.
- 12.6 TÜV has provided commitments as to the compliance of the Services with relevant specifications in Conditions 3 and 10 and therefore the conditions implied by the Supply of Goods and Services Act 1982 ss 12–16 are excluded to the fullest extent permitted by law.
- 12.7 The Customer declares and acknowledges that it has considered the provisions of this Condition 12 in detail including each of the limitations on liability contained in Conditions 12.3 to 12.5 (inclusive) and considers them reasonable in the circumstances having taken into account among other factors the subject matter of the Contract and having obtained or had the opportunity to obtain independent legal advice on the same.
- 13 Compliance with law**
- 13.1 Each Party shall comply and shall (at its own expense unless expressly agreed otherwise) ensure that in the performance of its duties under the Contract, its employees, agents and representatives will comply with all applicable laws and regulations, provided that neither Party shall be liable for any breach of this Condition 13 to the extent that such breach is directly caused or contributed to by any breach of the Contract by the other Party (or its employees, agents and representatives).
- 14 Dispute resolution**
- 14.1 If any dispute arises between the Parties out of, or in connection with, the Contract, it shall be referred to the senior representatives of each Party who shall use their reasonable endeavours and act in good faith to resolve it.
- 14.2 Either Party may issue formal legal proceedings at any time whether or not the steps referred to in Condition 14.1 have been completed.
- 15 Termination**
- 15.1 Without affecting any other right or remedy available to it, either Party may terminate the Contract with immediate effect by written notice to the other Party if:
- 15.1.1 the other Party commits any material breach of any term of the Contract and (if such breach his remediable) fails to remedy the same within 30 days of a written notice from the other Party giving particulars of the breach and requiring it to be remedied;
- 15.1.2 the other Party shall make a proposal for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors generally or if the other Party shall be unable to pay its debts as they fall due within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrator, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other Party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other Party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction);
- 15.1.3 the other Party suspends, threatens to suspend or ceases to carry on its business or substantially the whole of its business;
- 15.1.4 if any event analogous to that set out in Conditions 15.1.2 or 15.1.3 shall occur in any jurisdiction in which the other Party is incorporated or resident or carries on business.
- 15.2 Without affecting any other right or remedy available to it, TÜV may terminate the Contract with immediate effect if by written notice to the Customer if:
- 15.2.1 the Customer fails to pay any amount due under the Contract on the due date for payment;
- 15.2.2 the Customer does not supply the materials and/or information required by TÜV to enable the supply of the Services for not less than 4 months; and
- 15.2.3 there is a Change in Control of the Customer.
- 15.3 Without limiting its other rights or remedies, TÜV may suspend provision of the Services under the Contract or any other contract between the Customer and TÜV if the

Customer becomes subject to any of the events listed in Conditions 15.1.2 to Condition 15.1.4, or TÜV reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under the Contract on the due date for payment.

16 Consequences of termination

16.1 On termination or expiry of the Contract, the Customer shall:

16.1.1 immediately pay to TÜV all of TÜV's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, TÜV shall submit an invoice, which shall be payable by the Customer immediately on receipt, including any cancellation fee pursuant to Condition 5.7;

16.1.2 return any Deliverables which have not been fully paid for.

16.2 Termination of the Contract, however arising, shall not affect any of the Parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

16.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

17 Force Majeure

Neither Party shall be in breach of the Contract nor liable to the other Party for any failure or delay in performing any of its obligations under the Contract to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control, including, strikes, lockouts or other industrial disputes

(whether involving the workforce of TÜV or otherwise), act of God, pandemic, epidemic, war, riot, civil, commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, or default of suppliers or sub-contractors, but not including an inability to pay by the Customer.

18 Non-solicitation

The Customer shall not during the term of the Contract and for a period of twelve months following termination or expiry of the Contract, directly or indirectly induce or attempt to induce any person employed or engaged by TÜV or any member of the TÜV Group during the term of the Contract who has been engaged in the provision of the Services or the management of the Contract or otherwise in connection with the Contract to leave the employment or engagement of

TÜV or the member of the TÜV Group provided, however, that nothing herein shall prevent the Customer from employing a person who responds to any public advertisement or general solicitation (such as a newspaper advertisement or internet posting) not specifically targeting such employee.

19 General

19.1 Notices.

Any notice to be given by a Party under or in connection with the Contract shall be in writing in English language and delivered by hand or sent by first class post or other next Business Day delivery service to the other Party at its registered office or such other address notified to the other Party in writing from time to time. Any such notice shall be deemed to have been received:

19.1.1 if delivered by hand, at the time the notice is left at the correct address; or

19.1.2 if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting; or

19.1.3 if sent by pre-paid airmail, 9.00 am on the fifth Business Day after posting.

A notice required to be given under these Conditions shall not be validly given if sent by e-mail.

This Condition 19.1 does not apply to the service of any proceedings or other documents in any legal action.

19.2 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties.

19.3 Entire agreement.

19.3.1 The Contract constitutes the entire understanding between the Parties and supersedes and extinguishes all previous agreements, arrangements, promises, warranties, assurances, representations and understandings between them whether written or oral, relating to the same its subject matter.

19.3.2 Each Party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance, warranty (whether made innocently or negligently) that is not set out in the Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

19.3.3 Nothing in this Condition shall limit of exclude any liability for fraud.

19.4 **Announcements.** Except as required by law or any regulatory body of competent jurisdiction or otherwise in accordance with these

Conditions, no announcement or communication concerning the existence or contents of these Conditions and/or the Contract or any ancillary matter shall be made by either Party.

19.5 **Assignment.** TÜV may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of all of its rights and obligations under the Contract.

19.6 **Third party rights.** Save in respect of other members of the TÜV Group, a person who is not a Party to the Contract shall not have any rights under the Contract (Rights of Third Parties) Act 1999 to enforce any of these Conditions and/or terms of the Contract.

19.7 **Waiver.** A failure, delay or neglect by either Party to exercise any right or remedy or enforce any of the provisions of these Conditions and/or the Contract shall not be construed or deemed to be a waiver or continuing waiver of that Party's rights or remedies, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

19.8 **No partnership.** Nothing in these Conditions is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of the other Party, nor authorise any Party to make or enter into any commitments for or on behalf of the other Party.

19.9 **Severance.** If any provision or part provision of the Contract is or becomes invalid, illegal or unenforceable it shall, to the extent required, be deemed to be deleted and the validity and enforceability of the other provisions shall not be affected.

20 **Governing law and jurisdiction**

20.1 The Contract, any dispute arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

20.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract its subject matter or formation (including non-contractual disputes or claims).