

TUV SUD LIMITED
trading as TÜV SÜD Product Service and TÜV SÜD BABT
TERMS AND CONDITIONS OF CONTRACT

1. GENERAL

1.1 These conditions, together with any Special Conditions set out by the Contractor in the Quotation or other contract documents shall be deemed to comprise the sole conditions under which TÜV SÜD Limited (hereinafter called the 'Contractor') offers its services to the Customer.

1.2 Where any conflict arises between these conditions and any Special Conditions advised by the Contractor the Special Conditions shall prevail to the extent that they are inconsistent with these conditions.

Notwithstanding any documentation to the contrary, all contracts entered into and work undertaken will be done on the basis of our standard terms & conditions unless the Contractor expressly agrees in writing to amend them in any way.

2. VALIDITY

2.1 The Contractor's tender is made on the assumption that the work is reasonably capable of being carried out and shall be subject to a formal contract review upon receipt of all the necessary information from the Customer. If on inspection, this is found not to be the case, the Contractor will advise the Customer as soon as reasonably practicable and thereupon shall be freed from carrying out its obligations thereunder. No liability shall attach to the Contractor for any loss occasioned by the work not being carried out and the cost of such inspection and all work connected therewith shall be borne by the Customer, and any monies already received from the Customer, less any costs, shall be refunded. Jigs, fixtures or related equipment as are required for the work are available either from the Contractor's Standard Equipment List or will be supplied by the Customer on a FOC basis.

2.2 The scope of the work shall not be changed without the written agreement of both parties.

Except for agreed sub-contract work no rights or obligations arising between the parties as a result of this Contract shall be assigned to any third party without the written agreement of both parties.

3. SERVICES TO BE PROVIDED

TÜV SÜD Ltd provides a wide range of services including, but not exclusively, testing, product certification, regulatory conformance services, management systems certification, consultancy and metering & billing accuracy assessment. These Terms and Conditions are deemed to apply to all these activities. The specific service area will be detailed in our quotation.

4. PRICE

4.1 Prices are exclusive of VAT or other taxes and levies chargeable in respect of the provision of goods or services. Any such taxes and levies shall be charged at the rate effective at the date of invoice.

4.2 Where the parties agree to vary the scope of work and/or delivery dates such agreement shall be recorded in

writing, signed by the parties and the Contractor shall be free to adjust the contract price to take account of such changes.

4.3 While the Contractor will endeavour to maintain prices it reserves the right to increase prices proportionately to increases in the cost of labour or materials arising between quotation and completion.

4.4 In the event of the suspension of the work due to any act of omission of the Customer, any prices quoted may be increased by the Contractor to cover any extra expenses incurred by it on this or any other contract by reason of such suspension.

4.5 All prices are usually quoted on the basis of the work being carried out during the normal hours of operation between 8.30 am and 5.00 pm.

5. PAYMENT

5.1 The Customer shall make full payment to the Contractor of the contract price (or the appropriate part thereof where payment is by instalments) within 30 days of date of invoice.

5.2 In the event of suspension of work as described in clause 4.4 above for a period of 30 days or more the Contractor shall be entitled to invoice the Customer for work done prior to suspension of work. Such invoicing shall not affect the remaining performance of the contract or liability of the parties, except as may be agreed in writing by them.

5.3 Once costs in excess of £10,000 have been accrued and where the expected end date is to be in excess of 30 days later, the Contractor reserves the right to enforce stage payments.

5.4 If any sum payable under this agreement is not paid by the Customer on the due date for such payment then without prejudice to the Contractor's other rights and remedies the Contractor reserves the right to charge interest as defined by the 'Late Payment of Commercial Debts (Interest) Act 1998'. Such interest together with all the Creditor's reasonable costs and expenses of recovering the late payment and interest shall be paid by the Customer on demand made by the Contractor.

5.5 If any sum payable under this agreement is not under query and is not paid by the Customer on the due date for such payment then without prejudice to the Contractor's other rights and remedies, the Contractor reserves the right to withhold services provided as detailed in the quote / proposal. All Reports and Certificates remain the property of the Contractor until the contract price has been paid in full. If payment is not forthcoming within the agreed payment terms, then all Reports (or their contents) or Certificates for whatever purpose, will be subject to withdrawal and be made invalid from that due date, until suitable resolution of payment has been made.

6. RETURN OF CUSTOMER PROPERTY

- 6.1 Unless otherwise agreed in writing, delivery and collection is ex-Works. For the avoidance of doubt, this means that the Customer is responsible for all costs and risks associated with both delivery and collection of their property to and from the Contractor's premises.
- 6.2 Where the Customer does not remove their property on completion, the Contractor shall notify the Customer of availability for collection. If the Customer fails to collect within seven (7) days of the date of notification the Contractor will arrange packing and transport for the items at the Customer's expense. This service would also be subject to a handling charge of 50% of transport costs, subject to a minimum of £50.00.
- 6.3 Where the Customer requires destruction of their property on completion, the Customer will advise the Contractor in writing. All disposal costs incurred shall be at the Customer's expense. This service would also be subject to a handling charge of 50% of disposal costs, subject to a minimum of £250.00.
- 6.4 In the event that the Contractor deems it appropriate to withdraw an existing certificate, upon demand the Customer shall return all certificates and annexes related to the service provided. As soon as is reasonably practicable, the Customer shall also remove any reference to the service provided from the Customer's publicity material, stationery and any other documents that the Customer may issue from time to time to its own clients.

7. COMPLETION

Time shall not be of the essence in relation to completion. All time scales quoted are the best available estimates, based on the information available at the date of the quotation and are subject to revision during the course of the work.

8. LIABILITY FOR DELAY, CANCELLATION OR SUSPENSION

- 8.1 For the purposes of this Contract time shall not begin to run until the Contractor is in receipt of all items and information necessary to carry out the work or until a written order to proceed, on the terms stated in the quotation, has been received by the Contractor, whichever is the latest.
- 8.2 The Contractor shall have no liability for delay or non-performance caused by Force Majeure. "Force Majeure" means industrial dispute or any circumstances beyond the Contractor's reasonable control including but not limited to any act or omission of the Customer (such as the Customer's failure to submit necessary materials or information within a reasonable time of being requested to do so).
Subject to 8.2, should the Customer suffer material loss as a direct result of the Contractor's delay, the Customer may give notice to the Contractor to complete the work within a reasonable period and should the Contractor fail so to complete the Customer's sole remedy shall be the right to terminate the Contract.

- 8.3 In the event that the Customer requires the work to be undertaken outside the United Kingdom, the Contractor reserves the right to terminate this Contract if, in the sole opinion of the Contractor, there arises a potential or actual situation of civil unrest, disobedience or war in the region in which the work is to be performed, which poses an unacceptable risk to the Customer's staff and/or subcontractors. In the event of such termination, the Contractor shall have no liability to the Customer, howsoever arising, for the work not being undertaken or completed.

9. TERMINATION LIABILITY

- 9.1 In the event that the Customer terminates or suspends services for its convenience or due to test failures under an Order, the Customer's termination liability ("Termination Liability") shall be as follows:
If less than 5 working days (5) notice of termination or suspension is provided, 100% percent of the price for the confirmed and allocated test slot or service terminated/ suspended shall be applied.
- 9.2 Termination Liability is the maximum liability of the Customer and in no event shall the Termination Liability exceed the agreed contractual price for the service terminated/suspended.
- 9.3 If the Customer or any of its Affiliates can utilise the capacity contracted under the terminated/suspended services for other business then there shall be no Termination Liability whatsoever.

10. LIABILITY

- 10.1 The Contractor shall indemnify the Customer for all losses arising in respect of direct damage to the customer's property by the negligence of its employees under the terms of this Agreement.
- 10.2 The Customer shall indemnify the Contractor for all losses arising in respect of direct damage to the Contractor's property as a result of negligence by the Customer's employees or as a result of a breach of the Customer's obligations to the Contractor.
- 10.3 Except as expressly stated in these terms & conditions, in no event will either party be liable to the other Party for any loss of or damage to profits, revenue, business goodwill or third party claims or loss of contracts arising out of or in connection with the work carried out (whether arising for breach of contract or by way of indemnity, tort, including but not limited to negligence) and each party specifically acknowledges that any such liability is hereby expressly excluded.
- 10.4 The total liability of the Contractor under or in connection with this Agreement (whether arising for breach of contract or by way of indemnity, tort, including but not limited to negligence) shall not exceed the greater of the value of the contract or £50,000.

11. NOTIFICATION OF HAZARDOUS EQUIPMENT

11.1 Where tests or services are to be carried out at the Contractor's work-place the Customer shall, prior to delivery, notify the Contractor of any actual or potential health and safety hazards whether inherent in, or arising from, the present condition of such equipment, with particular reference to the proposed work programme.

11.2 The Customer assumes full liability for any accident or damage to persons or property on the Contractor's premises caused by or arising out of the condition or nature of the equipment not disclosed to the Contractor. All electrical apparatus shall be suitably labelled to indicate that it complies with the requirements of the Electricity at Work regulations.

12. REPORTS OR CERTIFICATES

Any result or recommendations given in reports or certificates are correct to the best of the Contractor's knowledge at the time and on the basis of the instructions and information provided by the Customer. The Contractor shall not be liable for any claims, actions or consequential damages suffered by the Customer or any third party by use of such reports or certificates and the Customer hereby agrees to indemnify the Contractor against such liability arising from the use of such reports or certificates.

13. COPYRIGHT

The rights either under Letters Patent, Registered Design, Copyright or otherwise to any inventions, designs, drawings or information produced or acquired in the performance of this contract shall vest in and shall remain the property of the Contractor.

14. CONFIDENTIALITY

14.1 Both Parties agree to keep confidential all matters relating to this Contract and any other information obtained while on each other's site or in other information that can be considered to be of a sensitive nature not specifically related to the Contract. This covers every aspect of the relationship between the parties including but not limited to products tested, studies carried out, methods used, results of the work, the nature and contents of any reports and the existence of the Contract.

14.2 The Customer shall not by virtue of this Contract gain any rights in information wholly or partially owned by the Contractor or any third party and used in the execution of this work. All such information shall be treated as confidential by the Customer and shall not be divulged to any other party without the prior written consent of the Contractor.

14.3 The above shall not apply to information required by a Court of Law or which:

- a) is known to the receiving party at the start of contract negotiations.
- b) is in or comes into the public domain.
- c) is legitimately obtained from a third party.
- d) is divulged to a Regulatory or Accreditation Authority as they may require in pursuance of their statutory duties.

15. TERMINATION

If the Customer shall break any provision of this or any other Contract with the Contractor or suffer distress or execution or commit an act of bankruptcy, make arrangements with creditors or go into liquidation or have a receiver appointed, the Contractor may, without prejudice to any other claim or remedy, suspend or terminate performance of this or any other contract by written notice and shall be entitled, without prejudice to any other claim or remedy, to payment for the work already completed, work in progress, any tooling costs at the contract rate and any other additional cost incurred, or if none, at a reasonable rate based on the contract price or the value of the work done. In addition, the Contractor can request that all certificates & reports issued to the Customer during the performance of the contract be returned to the Contractor and any opinions given by the Contractor during the performance of the contract can be withdrawn at the discretion of the Contractor.

16. NON-SOLICITATION

All Parties agree that during the period of this Agreement and for twelve months after its conclusion, not directly nor indirectly to solicit for employment any of the staff of the other Parties without the prior written consent of the other Party. Where such employment is offered and accepted then the offering Party will pay to the other Party a sum equal to the current annual salary cost of the employee concerned

17. ARBITRATION

All differences between the Contractor and the Customer arising from the Contract shall (except where, by its terms, the Contractor's decision is to be final and binding) be referred to an arbitrator to be appointed, in default of agreement between the parties by the President of the Institution of Engineering and Technology, and acting in accordance with the provisions of the Arbitration Act 1950 as amended or re-enacted.

18. LAW

The Contract shall be governed by English Law.