



GENERAL TERMS AND CONDITIONS OF PURCHASE

CONDITIONS APPLICABLE

1. These General Terms and Conditions of Purchase are applicable to all purchase of goods and services ("Goods / Services") by TUV SUD (Malaysia) Sdn Bhd and its subsidiaries (collectively the "TUV SUD Group" and individually the "TUV SUD Entity").

2. Save as otherwise expressly provide herein, these General Terms and Conditions of Purchase shall prevail over any other terms and conditions including any terms and conditions which the Supplier may purport to apply under any purchase order, confirmation or order or any other document.

SUPPLY OF GOODS / SERVICES

3. The Supplier shall supply and deliver to the TUV SUD Entity all the Goods / Services as set out in the purchase order issued by the TUV SUD Entity.

QUALITY

4. The Goods / Services shall be of good quality and workmanship and be fit for the purpose for which they are required by the TUV SUD Entity. The Supplier is deemed to have full knowledge of the requirements of such entity and of all relevant specifications and standards applicable to the Goods / Services and shall ensure that the Goods / Services comply with such specifications and standards in every respect.

PRICE AND PAYMENT

5. The price of the Goods / Services shall be that stated in the purchase order issued by the TUV SUD Entity. The price shall, unless expressly stated otherwise, be deemed to be inclusive of all applicable customs duties, packaging, marking, handling, freight and delivery, insurance, and all other applicable costs and charges.

6. Further, the price of the Goods / Services shall be fixed and shall not be subject to any increase as a result of any increase in the cost of materials, labour, delivery or any other costs which may be incurred by the Supplier for the provision of the Goods / Services.

7. The Supplier shall submit an invoice for payment (inclusive of GST if the Supplier is a taxable person under the GST Act) within the time period (indicated in the relevant purchase order issued by any TUV SUD Entity) from the date on which the TUV SUD Entity receives and accepts the delivery and/or supply of the Goods / Services. Payment of the relevant invoice submitted by the Supplier is to be made within the time period (indicated in the relevant purchase order issued by the said entity) after TUV SUD Entity receives the relevant undisputed original invoice from the Supplier.

DELIVERY

8. The Supplier shall deliver the Goods / Services to such destination(s) and at such time(s) as may be specified by the TUV SUD Entity in the purchase order.

9. For the avoidance of doubt, until the Goods are accepted by the TUV SUD Entity or its authorised representatives, they shall remain the property and responsibility of the Supplier and be at the Supplier's risk. Subject to Clause 14, except where so instructed by the TUV SUD Entity, delivery of the Goods to any third party, including a carrier, shall not in itself be deemed to be delivery of the Goods to the TUV SUD Entity. **[This clause is only applicable to the delivery of Goods, but not Services.]**

10. For the avoidance of doubt, the time for delivery of the Goods/Services as specified by the TUV SUD Entity in the purchase order shall be of the essence.

PACKAGING

11. The Goods shall be packed and marked in a proper manner and in accordance with any relevant specifications and standards and/or in accordance with any instructions of the TUV SUD Entity.

[This clause is only applicable to the delivery of Goods, but not Services.]

COMPLIANCE WITH LAWS

12. The Supplier shall, at its own cost and expense, comply with and give all notices required by any law, by-law, regulations, codes and standards that may from time to time be applicable to the performance by the Supplier.

13. Supplier shall pay and indemnify the TUV SUD Group and their directors, officers, employees, affiliates, subsidiaries, agents against any fees, fines, penalties, charges or sanctions of similar nature which may be imposed by any law, by-law, regulations, codes and standards or any competent authorities arising out of or in connection with the supply of Goods / Services.

NON-COMPLIANT & DEFECTIVE GOODS / SERVICES

14. Without prejudice to the relevant TUV SUD Entity's other rights, where any of the Goods / Services supplied are not in accordance with the purchase order and/or these General Terms and Conditions of Purchase:

- The relevant TUV SUD Entity may instruct the Supplier to repair and/or replace the relevant Goods / Services at no additional cost to that TUV SUD Entity, and the Supplier shall comply with any such instruction within the time specified by that TUV SUD Entity; and/or
- The relevant TUV SUD Entity may reject the relevant Goods, in which event the rejected Goods shall remain at the sole risk of the Supplier. Upon receiving notice of the rejection, the Supplier shall remove the rejected Goods within such time as may be specified by that TUV SUD Entity, failing which the rejected Goods shall be removed and/or disposed of by that TUV SUD Entity and the Supplier shall be liable for any loss, expense or damage thereby incurred or suffered by that TUV SUD Entity. **[This clause is only applicable for the supply of Goods, but not Services.]**

15. Notwithstanding Clause 14, and without prejudice to the relevant TUV SUD Entity's other rights, where any of the Goods / Services supplied are not in accordance with these General Terms and Conditions of Purchase, that TUV SUD Entity shall be at liberty to seek an alternative supply of the relevant Goods / Services, and where such alternative supply is sought, the Supplier shall be liable for any loss or damage thereby incurred by that TUV SUD Entity, including but not limited to the cost of obtaining such alternative supply.

INDEMNITY

16. The Supplier shall indemnify the TUV SUD Group and their directors, officers, employees, affiliates, subsidiaries, agents against any liability incurred by any TUV SUD Entity to any person, and against all claims, damages, costs and expenses made against or incurred by that TUV SUD Entity and its directors, officers, employees, affiliates, subsidiaries, agents by reason of any negligence, default or breach by the Supplier or its agents, employees, or sub-vendors arising out of or in connection with the supply of Goods / Services.

ACCESS

17. The Supplier shall at all reasonable times permit the relevant TUV SUD Entity and/or its duly authorised representatives and/or agents and/or servants access to all workshops and other places where the Goods are manufactured, prepared or stored for the purpose of inspecting the same. **[This clause is only applicable for the supply of Goods, but not Services.]**

SUB-CONTRACTING AND ASSIGNMENT

18. The Supplier shall not sub-contract the whole or any part of the supply of the Goods / Services to any other person without the written consent of the relevant TUV SUD Entity.

19. TUV SUD Group shall have the right at any time to assign all or any of their rights or benefits, and/or transfer any or all of their obligations in respect of the supply of the Goods / Services in whole or in part to any party upon written notice to the Supplier, but without requiring the prior written consent of the Supplier.

VARIATIONS

20. The relevant TUV SUD Entity shall be entitled at any time, to issue orders to vary any part of the Goods / Services to be supplied, including but not limited to the quantity and/or specifications of the Goods, or order any change to the Goods / Services that may be required by that TUV SUD Entity.

21. Where an order for variation is issued by the relevant TUV SUD Entity, the Supplier shall advise that TUV SUD Entity on any time and/or cost implications that may result from such order within seven (7) days (or such other time as may be allowed by that TUV SUD Entity) of receiving the said order.

22. The relevant TUV SUD Entity shall pay the Supplier for any such variation, and the amount payable shall be agreed to by the Parties, failing which, subject to such adjustment as that TUV SUD Entity may consider reasonable.

INSURANCE

23. The Supplier shall, at its own cost and expense, take out and maintain such insurance(s) necessary to cover its liabilities in respect of the supply of the Goods / Services. The terms of any insurance or the amount of any cover shall not relieve the Supplier of any of its liabilities hereunder.

TERMINATION

24. The TUV SUD Entity may at any time and for any reason give the Supplier written notice of termination, which shall have the effect of terminating the agreement for the supply of Goods / Services immediately. Upon receiving TUV SUD Entity's written notice of termination, the Supplier shall immediately:

- stop all work under the relevant purchase order issued by any TUV SUD Entity; and
- notify its sub-vendors and agents in writing to do the same.

25. Upon termination under Clause 24, the Supplier shall be entitled to be reimbursed for the actual costs incurred up to and including the date of termination, which shall be limited to such costs that are properly incurred and consistent with such deliveries that have been ordered by the relevant TUV SUD Entity and in accordance with recognized accounting principles. For the avoidance of doubt, save for the actual costs incurred by the Supplier as aforesaid, the Supplier shall not be entitled to claim for any other losses, damages costs or expenses, including loss of profit, that may be incurred by the Supplier as a result of such termination.

26. Without prejudice to any other rights or remedies available to the relevant TUV SUD Entity under general law or hereunder, if the Supplier is in breach of any of the terms set out herein or fails to comply with any notice, instruction or order by that TUV SUD Entity, then that TUV SUD Entity may issue a notice in writing to the Supplier specifying the default and requiring the Supplier to rectify the default within 30 days of receipt of the said notice.

27. In the event the Supplier fails to rectify the default within said 30 days period, the agreement for the supply of Goods / Services shall be deemed terminated.

28. Should the Supplier commit an act of bankruptcy or become bankrupt or insolvent or enter into any agreement of composition or deed of arrangement with its creditors or if being a company, a winding up order is made or if a receiver or manager of the Supplier's undertaking is appointed or possession taken or execution levied by creditors or debenture holders or under a floating charge or if a judicial manager is appointed, the relevant TUV SUD Entity shall be entitled to give notice in writing to terminate the agreement for the supply of Goods / Services immediately, without prejudice to other rights or remedies available to that TUV SUD Entity under general law.

29. Upon termination of the agreement under Clauses 27 or 28, the relevant TUV SUD Entity shall be entitled to damages on the same basis as if the agreement had been terminated as a result of the Supplier's default under general law.

30. The relevant TUV SUD Entity may use any of the Goods supplied by the Supplier up to the time of termination and shall have a lien over those Goods and may sell any of the same and apply the proceeds of sale in or towards the satisfaction of any sums due or becoming due to it from the Supplier. **[This clause is only applicable for the supply of Goods, but not Services.]**

RIGHT TO DEDUCTION OR SET OFF

31. Notwithstanding anything herein, the TUV SUD Group shall be entitled to deduct from or set-off against any money due from any TUV SUD Entity to the Supplier any sum which the Supplier is or may be liable to pay any TUV SUD Entity.

CONFIDENTIALITY

32. The Supplier undertakes and shall ensure its partners, directors, agents, employees, representatives, sub-contractors and servants undertake to treat as confidential, all information which comes into its or their possession pursuant to or as a result of or in the performance of the supply of Goods / Services.

33. The Supplier shall not and shall ensure that its partners, directors, agents, employees, representatives, sub-contractors and servants do not without the written permission of the relevant TUV SUD Entity, disclose any such confidential information mentioned in Clause 32 herein to any third party.

34. The operation of Clauses 32 to 34 herein shall survive the termination of the agreement for the supply of Goods / Services without limit in point of time but shall cease to apply to information or knowledge which may properly come into the public domain through no fault of the Supplier.

OWNERSHIP OF COPYRIGHT

[The following clauses are only applicable for the supply of Goods, but not Services.]

35. The copyright in all drawings, designs, plans and specifications given by any TUV SUD Entity to the Supplier shall at all times belong to the TUV SUD Group. Any drawings, designs, plans and specifications given by any TUV SUD Entity to the Supplier to enable the Supplier to fulfill its obligations for the supply of Goods / Services to the TUV SUD Entity shall be used exclusively by the Supplier only for such purpose. For the avoidance of doubt, the drawings, designs, plans and specifications referred to in this clause shall be deemed confidential.

36. Insofar as any of the Goods are manufactured pursuant to drawings, designs, plans and specifications given by any TUV SUD Entity, the Supplier shall not be permitted to disclose or provide any information on these Goods to third parties without the prior written consent of that TUV SUD Entity.

37. The Supplier hereby warrants that it is the sole and unencumbered owner of the drawings, designs, plans, reports, specifications, samples, prototypes or other documents related to the Goods and/or the Goods and that none of the same or the use thereof infringes the copyright or other intellectual property rights of any third party. The Supplier shall be deemed to have given to the relevant TUV SUD Entity a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate such drawings, designs, plans, reports, specifications, samples, prototypes or other documents related to the Goods and/or the Goods.

38. The Supplier undertakes to indemnify and keep the TUV SUD Group and their employees, affiliates and agents harmless from and against any liabilities, damages, losses, costs, expenses, proceedings, suits or other consequences arising from any allegation or claim that a third party's intellectual property or other right has been infringed by the drawings, designs, plans, reports, specifications or other documents and/or any part or use thereof in connection with the supply of the Goods / Services.

NOTICES

39. Any notice, request, demand or other communication to be given or served under the terms herein may be delivered by personal delivery, recorded delivery, registered post or by facsimile transmission to the addresses specified by the Parties from time to time and shall be deemed to be duly served and received:

- if it is delivered by hand, at the time of delivery;
- if it is sent by registered post, three (3) days after posting thereof, whose address of the other party is within Malaysia; or
- if it is sent by facsimile transmission or email, immediately after transmission thereof.

SEVERABILITY

40. If any provision herein is held to be invalid, illegal or unenforceable for any reason, such provision shall be severed and the remaining provisions herein shall continue in full force and effect.

WAIVER

41. TUV SUD Group's restraint or failure to enforce, at any time any of the provisions herein or any of its rights shall not waive any such right or provision. The exercise by TUV SUD Group of any of their rights shall not preclude or prejudice TUV SUD Group from thereafter exercising the same or any other right it may have irrespective of any previous action taken by TUV SUD Group.

AMENDMENT, MODIFICATION OR VARIATION

42. TUV SUD Group may at any time and for any reason amend, modify or vary any of the terms and conditions herein at its absolute discretion, without obtaining the Supplier's prior written consent and the Supplier agrees to be bound by such amendment, modification or variation.

GOVERNING LAW

43. The law governing the agreement for the supply of Goods / Services shall be the law of Malaysia, without regard to principles of conflicts of laws.

44. The Parties hereby submit to the non-exclusive jurisdiction of the courts of Malaysia.

RIGHTS OF THIRD PARTIES

45. Save as expressly provided otherwise, any person or party who is or which is not a party to the agreement for the supply of Goods / Services shall have no right under the Contracts Act 1950 or any subsequent amendment thereto, to enforce any of the terms and conditions herein. For the avoidance of doubt, nothing herein shall affect any right or remedy of a third party which exists or is available apart from the said Act.

COMPLIANCE

46. Supplier hereby confirms its awareness of the TUV SUD Group Code of Ethics available online at <http://www.tuev-sued.de/company/tuev-sued-group/code-of-ethics>

47. Supplier hereby undertakes all necessary actions in order to ensure that any of its employees comply with all applicable laws and refrain from any illegal activities within their professional activity. Supplier represents to the TUV SUD Group that neither it nor any of its employees have committed any act in connection with this agreement that may constitute bribery, nor shall Supplier or its employees commit such acts in the future. Supplier hereby represents to the TUV SUD Group that it shall refrain from all activities, which could constitute a criminal act of fraud, fraudulent breach of trust, criminal offence under insolvency law, criminal offence under unfair competition law, granting of an undue advantage or bribery.

48. Supplier hereby represents and warrants to the TUV SUD Group that all necessary consents and authorizations have been obtained prior to supplying goods or providing services to the TUV SUD Group.

49. In the event of any violation of the provisions in this section attributable to Supplier's fault, TUV SUD Group shall be entitled to terminate all negotiations with Supplier, and to terminate all contractual agreements with Supplier or withdraw from such agreements. In the event that the TUV SUD Group is held liable by any third party based on a violation of any undertaking in this section by the Supplier, Supplier hereby agrees to indemnify the TUV SUD Group from any such claims. In addition, Supplier hereby agrees to reimburse the TUV SUD Group for all cost and damages related to such third party claim.

Please contact Procurement at 603 - 5103 8128 if you need any clarifications