

General Terms and Conditions of Purchase for Deliveries and Services of Third Parties to Companies of TÜV SÜD Group located in Canada



1. Conclusion of the Contract, Cancellation, Written Form, Secrecy, Prohibition of Sub-Contracting, Changes to the Object of the Order

1.1 The legal relationships between the Contractor and the companies of TÜV SÜD Group located in Canada as its customer (the "Customer") are based exclusively on these terms of purchase (the "Terms of Purchase") and on any other written agreements between the parties. The Contractor's standard terms and conditions shall not apply. Acceptance by the Customer of the delivery of goods/services without an explicit objection shall not be deemed as acceptance by the Customer of the Contractor's terms of delivery.

"Deliveries" within the meaning of these Terms of Purchase shall be both deliveries of goods and performance of services.

1.2 Until withdrawn by the Customer, these Terms of Purchase shall apply to all future contractual relationships with the Contractor. Without Customer's prior express written consent, no variation in or addition to, any of the terms, conditions, delivery requirements, prices, quality, quantity or specifications set forth in an order shall become part of an order (irrespective of the wording of the Contractor's proposal or acceptance), and absent Customer's prior express written consent, any additional or different terms proposed by Contractor are objected to and rejected.

1.3 Only orders that are issued or confirmed in writing shall be legally binding. Side agreements and subsequent amendments to this contract must also be in writing to take legal effect.

1.4 If the Contractor does not accept an order in writing within ten working days of receipt of the same from the Customer, Customer may cancel the order. Acceptance by Contractor is subject to the terms and conditions of these Terms of Purchase.

1.5 The Contractor agrees to treat as confidential the existence and terms of this contract and all non-publicised commercial or technical details that it becomes aware of through its business relationship with Customer. Any reference to this contract to third parties shall require the Customer's prior approval in writing. Approved subcontractors must be subjected to the same obligations by Contractor.

If the Contractor discovers that information that is to be kept confidential has been made available to an unauthorized third party or that a document that is to be kept confidential has been lost, it shall inform the Customer of this immediately.

This confidentiality obligation shall apply after the contract has been terminated and it shall only expire if and so far as the confidential information or documents that were disclosed hereunder have become generally known.

1.6 The Contractor shall not be entitled to assign or sub-contract its rights or delegate its performance hereunder, nor any interest therein, to third parties without the Customer's prior approval in writing.

1.7 The Customer may request changes to the object of an order even after the conclusion of the contract insofar as this is acceptable to the Contractor. In the event any such changes result in additional or reduced costs, the parties shall make an equitable adjustment of the contract price.

2. Prices, Shipping, Packaging

2.1 The agreed prices are fixed prices and exclude all types of additional demands. All prices are understood to be DDP (Delivery Duty Paid, Incoterms 2010, 7th revised version) to the destination set out in the purchase order including packaging. If prices are not shown in an order, the Contractor's list prices valid at the time of the order shall apply.

2.2 No payments shall be made for visits, specimens/samples or preparing offers, projects, etc.

2.3 Contractor shall notify Customer promptly after shipping, not later than one day after shipments are made, including providing Customer with original bills of lading, properly signed by carrier's repre-

sentative. A packing list shall be included with each shipment. Individual invoices shall be issued for each separate shipment under an order. All invoices, packing lists, bills of lading, and each separate package within each shipment shall clearly reference all piece numbers, Customer's order number and Contractor's packing slip number.

2.4 All applicable laws and regulations governing the transport of hazardous materials must be complied with by the Contractor and hazardous goods must be marked as such by the Contractor.

2.5 Deliveries ahead of schedule, excess deliveries, deliveries of less than the full amount or partial deliveries shall require the Customer's prior approval in writing. In the case of agreed partial Deliveries the remaining balance must be shown in writing delivered to Customer. Customer reserves the right to reject Deliveries and to cancel all or any portion of an order in the event of failure to deliver at the time and place specified. Customer's acceptance of any part of a Delivery not delivered as specified herein shall not obligate Customer to accept the remainder of Delivery or any future Delivery. Payment for Deliveries shall not constitute acceptance. All Deliveries shall be received subject to Customer's inspection and acceptance, and subject to Customer's right to reject, or as to accepted goods, Customer's right to revoke acceptance, and return at Contractor's expense goods which fail to conform strictly to the requirements of an order.

2.6 Shipping shall take place pending delivery to the destination indicated by the Customer at the sole risk of the Contractor. Risk of loss for any nonconforming goods received by Customer shall remain with Contractor irrespective of the provisions of an order for shipment of the goods.

2.7 Superfluous packaging must be avoided. Only environmentally-friendly packaging materials may be used. Customer shall not be charged for packaging, boxing, crating or cartage.

3. Documents, Safety Devices, Intellectual Property Rights

3.1 Storage, assembly and operating instructions and any necessary safety devices shall be provided free of charge. This shall also apply to documents that are required for the maintenance and repair of the Delivery item.

3.2 The Contractor shall furnish documentary evidence of origin requested by the Customer with all the necessary data, duly sign it and make it available free of charge without delay.

3.3 Implementation records, in particular drawings, jigs and fixtures, tools, models, etc., which the Customer provided to the Contractor for the implementation of an order, or which were made in accordance with the Customer's instructions or paid for by the Customer, shall remain the property of the Customer and may be removed or destroyed at Customer's option. Where goods are made to Customer's design, that design shall be considered the property of the Customer and shall not be used by the Contractor for any other purpose without prior express written consent of Customer. In the event drawings, jigs and fixtures, tools, models, etc. are provided by Customer, Contractor shall carefully inspect and approve such items for use in executing the order, and Contractor shall assume responsibility therefor and properly safeguard such property while in its possession and shall return the same in good condition upon completion of Customer's order. The Contractor may only use such items for the contractually agreed purposes with the Customer and they may only be made accessible to third parties with the Customer's written approval. After the order has been carried out the above-mentioned items shall be returned to the Customer without exception.

3.4 The Contractor warrants and guarantees that all Deliveries are free of the proprietary rights of third parties and that in particular the intellectual property rights of third parties are not infringed by the delivery and use of the Delivery items.

3.5 The Contractor shall indemnify the Customer and its customers from all claims by third parties arising from any infringements of intellectual property rights and shall bear all the costs that accrue to

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the Customer in this context, including legal fees, as more fully detailed in clause 10.1.

3.6 The Contractor shall not be entitled to make use of the Customer's trade name, logos or trademarks for its own benefit or that of third parties. Without the Customer's prior written approval, the Contractor may not use these either individually or in combination with its own trade name, trademarks or logos. If the Customer grants its approval the Contractor shall strictly comply with the instructions with regard to size, positioning and layout of the trade name, trademarks or logos.

4. Dates, Contractual Penalty, Withdrawal, Substitute Performance

4.1 Agreed delivery dates and periods are binding and time is of the essence. The receipt of the Deliveries or the provision of the works and services free of defects at the delivery point indicated by the Customer, or the successful acceptance in good time, shall be decisive for compliance with such dates and periods.

4.2 A credit shall become due and payable if the Contractor defaults on a contractual date or period. The credit shall be 0.2 % of the net value of the order per calendar day of the delay, but not exceeding 5% of the net value of the order. The Contractor acknowledges and agrees that such credit amount represents liquidated damages, is not a penalty and is a true and fair estimate of the damages that will be incurred as a result of the delay. Where there are multiple claims for credits they shall be aggregated. While the credit represents liquidated damages, the Customer reserves the right to claim any further damages that may result from the delay that are in excess of the credit amount calculated in accordance with the formula above, in which case the credit shall be set off against the total amount of the actual damages resulting from such delay. If, on acceptance of the goods or services, the Customer did not reserve the right to claim a credit, the credit may be claimed until the final payment has been made.

4.3 The acceptance of a late delivery or late works and services shall not constitute or contain a waiver of claims for compensation.

4.4 The Contractor shall notify Customer of delays to Deliveries immediately. It may only plead non-compliance with a time limit for situations that are beyond its control such as strikes, fires, severe weather, accidents, governmental actions, and other force majeure events, if it has notified the Customer immediately of the reason for the delay. The Contractor may only rely on the lack of necessary documents to be supplied by the Customer, if it had sent a written reminder for the documents and did not receive them within an acceptable period.

4.5 The Customer may terminate or withdraw from the contract or any order or any part thereof for its sole convenience. In the event of such termination, (a) Contractor shall immediately stop work hereunder, and shall order any approved subcontractors to cease work, and (b) Contractor shall be paid as its sole remedy a reasonable termination fee consisting of a percentage of the contract price reflecting the percentage of the work actually performed prior to the notice of termination, plus actual direct costs resulting from the termination. Customer may, without penalty, delay delivery and/or acceptance occasioned by causes beyond its control, such as strikes, fires, severe weather, accidents, governmental actions, and other force majeure events. At Customer's option, the time for delivery hereunder shall be extended to the extent of the delay occasioned by any such circumstance and the deliveries so omitted shall be made during the period of such extension.

5 Warranty, Guarantee, Claims under Liability for Defects, Damages, Periods for Giving Notice of Defects, Suspension, New Start

5.1 The Contractor expressly warrants and guarantees that all Deliveries will a) be in strict conformity with the agreed specifications,

as well as, without limitation, the latest accepted engineering standards, and any applicable federal, state, provincial and international laws and statutory requirements, including any rules and regulations by government authorities, trade bodies and professional associations; b) be free from defects in design, material and workmanship; c) be of merchantable quality and safe and appropriate for the purposes for which goods or services of that kind are normally used; d) not infringe upon any patent, trademark, or copyright; and e) bear all warnings, labels, and markings required by applicable laws and regulations. In addition Contractor warrants that all services have been performed in a good and workmanlike manner. If the Contractor has any questions regarding the specifications or type of implementation desired by the Customer it shall inform the Customer immediately in writing.

5.2 The Contractor agrees, to the extent that this is economically and technically possible, to use environmentally-friendly products and processes for its Deliveries and also for the deliveries or ancillary services of third parties. At the request of the Customer, the Contractor shall issue a certificate of inspection for the delivered goods free of charge.

5.3 The Customer shall notify the Contractor in writing of all apparent defects of the Deliveries and shipment/service/work as Customer is made aware of such defects in the course of its ordinary business practices.

5.4 Following a request by the Customer, the Contractor shall, without delay and free of charge and including all ancillary costs, remedy defects of the Deliveries/shipment/service or work and services that are the subject of complaints; such defects shall also include the non-achievement of guaranteed data and the lack of warranted qualities. The Customer shall be free to choose the type of remedy, i.e. repair, replacement of the defective parts or a replacement delivery. The Contractor shall in particular bear all expenses in connection with the detection of the defect and its remedy, insofar as these accrue to the Customer, in particular inspection costs, costs of dismantling and assembling, freight charges, transport costs and the costs of labour and materials. This shall also apply insofar as the expenses are increased because the delivery item was taken to a location other than the place of performance.

The Contractor shall carry out repairs or new deliveries in multishift operations or during overtime or on public holidays, provided that this is necessary because of the Customer's existing essential operating reasons and provided that this can be reasonably expected of the Contractor.

After the expiry of a reasonable time limit set by the Customer for repair or a replacement delivery, the Customer shall be entitled to make such corrections or replace such goods and charge the Contractor therefor. An agreed period for the replacement delivery shall have the same legal effects as a time limit set by the Customer.

If the non-fulfilment or defective performance is limited to a definable part of an order, the withdrawal may be limited to that part insofar as the Customer has the right to withdraw from that order and the remainder of the order and this contract remains in force.

These warranties are in addition to any other rights and remedies available to Customer under the order or applicable law and the Customer reserves the right to claim damages in all cases.

5.5 The warranties set forth in this clause 5 shall not be waived by Customer's acceptance of all or any part of goods or services that fail to conform to any of the warranties. In the event of defective or nonconforming goods or services, Customer retains the right to cancel all or any portion of the remaining order, to reject all or any portion of the goods or services delivered, or revoke acceptance as to all or any portion of the goods or services accepted and return such goods to Contractor and to recover the purchase price, any excess costs of cover, and damages, including manufacturing costs, costs of removal or recall, transportation and custodial expenses, injury to person or property incurred by Customer, all in addition to Customer's other

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remedies under this order or applicable law. In the event of Contractor's default or breach of the terms hereof, the insolvency of Contractor, or an assignment by Contractor for the benefit of its creditors, Customer shall have the right to cancel this order immediately. Failure by Customer to exercise any right or remedy provided herein or under applicable law shall not constitute a waiver and shall be without prejudice to the subsequent exercise by Customer of any right or remedy provided herein, or by law.

6 Quality Assurance, Product Liability; Insurance

6.1 The Contractor shall carry out quality assurance suitable in its type and its scope, and in accordance with the state of the art, and shall provide evidence of this to the Customer on demand. The Contractor shall conclude an appropriate quality assurance agreement with the Customer where the latter regards this as necessary.

6.2 The factory inspections carried out by the Contractor shall ensure that the Deliveries conform to the Customer's technical specifications. The Contractor agrees to make records of all inspections and tests carried out and to retain records of all test, measuring and inspection results for ten years. The Customer may inspect these documents at any time and make copies.

6.3 Unless otherwise agreed the Contractor shall mark the Delivery items in such a way that they are permanently recognisable as its goods.

6.4 Performance by Contractor under an order on Customer's premises shall be in full compliance with Customer's safety rules and with all federal, state and provincial regulations regarding workplace safety, including without limitation, law pertaining to occupational safety and health. If claims are made against the Customer for a breach of official safety laws or regulations or under foreign product liability regulations or statutes because of defectiveness of its product that is attributed to the Contractor's goods, the Customer shall be entitled to demand compensation from the Contractor for the damage insofar as this was caused by goods supplied by the Contractor. This damage also includes the costs of a precautionary recall action. As far as this is possible and reasonable the Customer shall inform the Contractor of the contents and scope of the recall measures and provide the Contractor with an opportunity to comment on such measures.

6.5 In addition, prior to commencement of any labour, work, or services hereunder on the premises of Customer and until the satisfactory completion of same, the Contractor shall at its expense obtain adequate insurance with carriers doing business in the province, state or other jurisdiction in which the work is performed and acceptable to Customer the following minimum insurance coverages:

(a) Statutory Workers' Compensation insurance in accordance with the laws of the jurisdiction in which the work is performed, and where available, private Employers Liability insurance with limits not less than \$1,000,000. Where permitted by law, this coverage shall provide for waiver of all Workers' Compensation subrogation rights by Contractor and its insurers to Customer on demand without additional consideration;

(b) Automobile liability insurance, including coverage for owned, non-owned and hired automobiles with combined bodily injury and property damage limits of not less than \$1,000,000; and

(c) Commercial general liability insurance written on an "occurrence" basis with combined bodily injury and property damage limits of not less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate.

Contractor shall furnish to Customer certificates of insurance indicating compliance with the foregoing and showing the dates of expiration and the limits of liability of all policies and providing that such insurance will not be cancelled or changed until thirty (30) days following written notice to Customer. The certificates shall also indicate: (1) that Customer has been named as an additional insured under Con-

tractor's commercial general liability policy, and (2) that the commercial general liability policy includes broad form contractual liability coverage which will include coverage for performance under this order. If Contractor fails to furnish said certificates or maintain said insurance, Customer shall have the right to cancel an order for breach of its conditions. Contractor, for itself and its insurers, hereby waives subrogation against Customer.

7 Invoicing, Payment, Certificates, Rights to Withhold, Prohibition of Assignment, Set-off, Insolvency of the Contractor

7.1 Invoices shall be submitted separately to the Customer in duplicate with all the appropriate documentation and data after the delivery/service or works and services. Invoices that are not duly submitted shall be deemed to be received by the Customer on the date they are corrected.

7.2 Payments shall be made in the usual form within 14 days less a discount of 3 % of the amount invoiced or 30 days without deduction calculated after complete delivery or acceptance inspection of the works and services and receipt of a proper and verifiable invoice. Discounts shall also apply, if the Customer sets off or retains payments because of defects; the discount period shall commence after the complete elimination of the defect. Deliveries ahead of schedule (Clause 2.5) shall not affect an agreed date for payment.

7.3 Insofar as certificates of material tests are agreed to between the parties they shall form an essential part of the Deliveries or works and services and shall be sent to the Customer together with the invoice. However, the Customer must receive them not later than ten days after receipt of the invoice. In these cases the period for payment shall commence with the receipt of the agreed certificate.

7.4 The Customer shall have the right to withhold payment in the event of incomplete or defective Deliveries or provision of the works and services.

7.5 The Contractor may not assign its claims against the Customer or have them collected by third parties without the approval of the Customer. If the Contractor assigns its claims to third parties or has them collected by third parties in spite of this the Customer shall have the option of paying the Contractor or the third party with the effect of a discharge.

7.6 With the exception of the Contractor being the subject of insolvency proceedings, the Customer shall have the right to set off any claims brought against the Contractor by any other companies that are affiliated with the TÜV SÜD Group.

7.7 If the Contractor discontinues payments to its creditors, is unable to discharge its liabilities, or if bankruptcy or insolvency proceedings have begun in relation to the Contractor's assets, the Customer shall be entitled to withdraw from the contract. If the Customer does not withdraw from the contract, it shall be entitled to withhold an amount of at least 5% of the net order sum as security.

8 Compliance

8.1 The Contractor hereby confirms its awareness of the TÜV SÜD Code of Ethics available online at <http://www.tuv-sud.com/code-of-ethics>.

8.2 All goods furnished or services rendered pursuant to this order shall be produced, sold, delivered, or rendered to Customer in compliance with all applicable laws and regulations, including without limitation, all United States and Canadian import/export laws, including ITAR, applicable federal, state and provincial labour laws, applicable federal, state and provincial civil rights, human rights and anti-discrimination laws, applicable federal, state and provincial occupational health and safety laws and regulations, applicable federal, state and provincial environmental laws and regulations, and federal, state and provincial accessibility laws and regulations and the rules, regulations and orders pertaining to the above. Contractor shall also comply with Customer's safety policies, including "Contractor's Health and Safety

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Obligations" and "Contractor's Environmental Obligations" to the extent applicable to services provided hereunder, copies of which shall be provided to the Contractor upon request.

8.3 The Contractor hereby assumes the obligation to undertake all necessary action in order to ensure that any of its employees comply with all applicable laws and refrain from any illegal activities within their professional activity. The Contractor hereby represents to the Customer that neither it nor any of its employees have committed any act in connection with this agreement that may constitute bribery, nor shall the Contractor or its employees commit such acts in the future. The Contractor hereby represents to the Customer 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.

8.4 In the event that the Contractor has demonstrably engaged in restrictive trade practices affecting the Customer, it shall be liable to pay to Customer 10% of the net order value. Both parties agree that this sum represents a reasonable pre-estimate of Customer's damages and either party shall be entitled to prove that a higher or lesser amount of damage has been caused. This payment obligation shall arise regardless of if the affected contract has been terminated or fulfilled. Further contractual or statutory claims of Customer shall remain unaffected. Restrictive trade practices shall be deemed to include anticompetitive practices and agreements with other contractors/tenders in relation to:

- the prices to be demanded,
 - commitments concerning further payments,
 - profit mark-ups,
 - process margins and other price elements,
 - payment, delivery and further conditions, insofar as they directly impact on the price,
 - profit sharing or other participation arrangements ,
- as well as recommendations, unless such practices or agreements are permitted under applicable competition law.

8.5 The Contractor hereby represents and warrants to the Customer that all necessary consents and authorizations have been obtained prior to making Deliveries and providing services to the Customer.

8.6 In the event of any violation of the provisions in this clause attributable to the Contractor's fault, the Customer shall be entitled to terminate all negotiations with the Contractor, and to terminate all contractual agreements with the Customer or withdraw from such agreements.

8.7 In supplying any labour, work or services hereunder, Contractor warrants that it is, and undertakes such performance as, an independent contractor, with sole responsibility for the payment of all taxes, wages, benefits, federal, provincial and/or state unemployment insurance, employment insurance, Social Security, social insurance and/or other similar payroll deductions.

9 Foreign Trade

The Contractor shall inform the Customer immediately, if any deliverable or performance is subject, in whole or in part, to export restrictions under United States or Canadian foreign trade rules, regulations or the terms of international embargos or export restrictions.

10 Indemnification

10.1 Contractor agrees to defend, indemnify and save harmless Customer, its customers and users of its goods, against any claim, demand, suit, damage, loss, expense, royalty, award, fees and costs (including court costs and reasonable lawyers' fees) arising from the actual or alleged infringement of any patent, copyright, or trademark by reason of sale or use of the goods covered hereby. In the case of actual infringement, Contractor shall, at its sole expense, procure for

Customer the right to continue using such goods, under license or otherwise, or replace the infringing goods with a non-infringing substitute of equal quality, or modify such goods to Customer's satisfaction so that they become non-infringing.

10.2 With respect to goods furnished pursuant to an order, Contractor agrees to defend, indemnify and save harmless Customer, its affiliates, agents, servants, employees, officers, directors, parents, affiliates and subsidiaries and insurers against any loss, damage, expense (including courts costs and reasonable lawyers' fees), or claim whatsoever for any injury to or death of any person (including without limitation injury or death of any employee of Contractor or Customer) or damage to any property arising from or relating to the undertaking of Contractor hereunder, or any defect(s) in the goods or services furnished, regardless of the negligence or fault, including the sole negligence or fault, of Customer.

10.3 Contractor agrees to defend, indemnify and save harmless Customer, its affiliates, agents, servants, employees, officers, directors, parents, affiliates and subsidiaries and insurers against any loss, damage, expense (including court costs and reasonable legal fees), or claim whatsoever for any injury to or death of any person (including without limitation injury or death of any employee of Contractor or Customer) or damage to any property arising from or relating to the performance of any labour, work, or services, or the use of any materials, tools, equipment, scaffolding, machinery, or property of Customer under or in connection with an order, including without limitation, labour, work, or services in connection with or collateral to a contract or agreement relative to the construction, alteration, repair, or maintenance of a building, structure, appurtenance, or appliance of Customer, including moving, demolition, and excavation connected therewith, whether the same arise under statutes (including without limitation workers' compensation laws), the common law, or otherwise and whether or not such loss, damage, expense or claim is caused in part by the negligence or other fault of Customer, its agents, servants, or employees, and insurers; provided, however, that this indemnity shall not apply to the extent that any such loss, damage, expense or claim results from the sole negligence of Customer. The indemnity of this clause 10.3 expressly includes damages, losses and expenses arising out of fines or penalties, including without limitation fines or penalties for violation of applicable laws and regulations including those governing costs of environmental clean-up necessitated thereby. Contractor's indemnity obligations under this clause 10.3 shall not be limited by applicable workers' compensation laws and, as respects these indemnity obligations, Contractor expressly waives all immunities and defenses it may have under such laws.

11 Place of Performance

Unless otherwise agreed in writing the place of performance for the obligation to deliver is the delivery location indicated by the Customer and the registered office of the Customer is the place of performance for all other obligations of both parties.

12 Contract language

The contract language is English. Insofar as the parties to the contract use another language in addition, the English wording shall prevail. [will there be people in Quebec?]

13 Choice of Law; Legal venue

The validity, interpretation, and performance of this contract and any dispute arising out of or related thereto shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to that province's choice of law provisions, and any claims arising out of this order shall be brought in the provincial courts located in Toronto, Ontario, and the Contractor agrees to and shall not contest such jurisdiction. The United Nations Convention on

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Contracts for the International Sale of Goods (CISG) shall be expressly excluded and any local implementing legislation related to the CISG is hereby expressly excluded.

14 Severability

If any parts of these general Terms of Purchase are invalid this shall not affect the validity of the remaining provisions.