**1. Scope.**

1.1. These General Terms and Conditions (these “Terms”) are applicable to all customers (the “Customers” and each, individually, a “Customer”) of TUV Rheinland AIA Services, LLC (“TUVAIA”) who have entered into an agreement with TUVAIA or through TUVAIA with any of TUVAIA’s affiliated companies (the “TUVAIA Affiliates”) for any of the services (the “Services”) indicated on the Service Agreement (the “Service Agreement”) or otherwise outlined on a statement of work (“SOW”) or quotation (“Quote”) submitted by TUVAIA or TUVAIA Affiliates to Customer.

**2. Offer and Acceptance.**

2.1. Customer’s acceptance of the terms set forth in the Service Agreement, SOW or Quote is expressly conditioned upon Customer’s assent to all the terms and conditions set forth therein and in these Terms. Customer shall accept the Service Agreement, SOW or Quote by signing a copy of the Service Agreement SOW or Quote or by accepting the Services. No Service Agreement, SOW, or Quote is binding upon TUVAIA or the TUVAIA Affiliates until it is fully executed by Customer and it is accepted by TUVAIA in writing.

2.2. All Services performed by TUVAIA and the TUVAIA Affiliates pursuant to the Service Agreement and any SOW or Quote issued by TUVAIA or the TUVAIA Affiliates pursuant to the Service Agreement shall be governed by the Service Agreement and these Terms.

2.3. Notwithstanding any prior acceptance of a Service Agreement by TUVAIA, TUVAIA shall have no obligation to provide services if Customer is in breach of any of its obligations hereunder, or any other agreement between Customer and TUVAIA or any TUVAIA Affiliates, at the time such services were scheduled to be provided.

**3. Scope of Services**

3.1. The scope of the Services and the nature of the report, if any, shall be governed by the Service Agreement, SOW or Quote for the specific Services required, as evidenced by a written instrument executed by both parties and, if appropriate any additional parties, such as TUVAIA Affiliates, and by the relevant inspection and/or certification standards, if applicable.

3.2. The agreed Services shall be performed in compliance with the regulations in force at the time the contract is entered into.

3.3. Furthermore, TUVAIA is entitled to determine (in its sole discretion) the method and nature of the assessment unless otherwise agreed in writing or if mandatory provisions require a specific procedure to be followed.

3.4. On execution of the work there shall be no simultaneous assumption of any guarantee of the correctness (proper quality) and working order of either inspected or examined parts nor of the installation as a whole and its upstream and/or downstream processes, organizations, use and application in accordance with regulations, nor of the systems on which the installation is based; in particular, no responsibility shall be assumed for the construction, selection of materials and assembly of installations examined, nor for their use and application in accordance with regulations unless these questions are expressly covered by the contract.

3.5. The work performed by TUVAIA shall not include determining, supervising or implementing the means, methods, techniques, sequences, or procedures of construction or fabrication. TUVAIA shall not be responsible for evaluating, reporting or affecting job conditions concerning health, safety or welfare.

**4.** **Delivery Deadlines.**

4.1. Time of performance and deadlines shall be agreed upon between Customer and TUVAIA and shall be set forth in the Service Agreement, SOW, Quote or other documentation specifying the Services to be delivered. Agreed upon delivery times and deadlines shall be based on estimates of the extent of the Services required and according to particulars and information supplied by Customer. Delivery times and deadlines shall be binding only on request by Customer and confirmation in writing by TUVAIA or the TUVAIA Affiliates. Notwithstanding the foregoing, TUVAIA and the TUVAIA Affiliates reserve the right to change the date for completion of Services and, if it does so, it will notify Customer.

4.2. If TUVAIA is required to delay commencement of the work, is required to stop or interrupt the work progress due to Customer’s request or a change in the scope of work, additional charges will be applicable and payable by the Customer.

**5.** **Customer Cooperation.**

5.1. Customer agrees that all cooperation required of Customer, Customer’s agents, employees or any third party in connection with the Services, as such may be specified in the Service Agreement, SOW, Quote or other underlying documentation for the Services, shall be provided in a timely manner and at no cost to TUVAIA or the TUVAIA Affiliates.

5.2. All documentation and materials, supplies, auxiliary staff, etc., necessary and reasonably required for the performance of the Services shall be made available to TUVAIA free of charge. In cooperating with TUVAIA or the TUVAIA Affiliates, Customer shall comply with all legal requirements and industry safety regulations and standards.

5.3. Customer shall bear any additional cost incurred as a result of Services having to be redone or delays resulting from untimely, incorrect or incomplete information or lack of proper cooperation. Notwithstanding that a fixed or maximum price for the Services has been agreed upon between the parties, TUVAIA or the TUVAIA Affiliates shall be entitled to charge additional fees to offset additional expenses incurred as a result of such lack of proper Customer cooperation.

**6. Payment Conditions and Fees.**

6.1. Unless otherwise agreed to in writing in the Service Agreement, the SOW or the Quote, fees charged by TUVAIA shall be calculated in accordance with the then current rates in effect at the time of TUVAIA’s acceptance of the Service Agreement. A rate schedule or quotation will be provided to Customer upon request. Customer agrees that its obligations with respect to the payment of fees exists independently from the results of the investigation and are not dependent on whether or not a certification is issued to Customer. Invoices are only payable in the legal tender of the invoice.

6.2. Unless otherwise agreed to by the parties in writing, invoices will be issued regularly. In case of Services that are rendered under flat-fee arrangements, no detailed statement of services shall be provided. All invoice amounts shall be due for payment without deduction thirty (30) days after issuance of the invoice. A service charge of 1.5% per month or the highest rate permitted by law will be added to those accounts not paid within thirty (30) days of invoice date. If collection procedures are required, Customer will pay for all reasonable expenses including court and attorneys’ fees. The accrual or receipt by TUVAIA of interest under this subsection shall not constitute a waiver by TUVAIA of any right it may have to declare Customer in default under its agreement or to terminate its agreement to perform Services.

6.3. Payments shall be made to the bank account of TUVAIA as indicated on the invoice, stating the invoice and client numbers. Objections to any invoice shall be submitted in writing within two (2) weeks from receipt of the invoice. If Customer cancels a project fewer than ten (10) business days prior to commencement of Services, TUVAIA, at its discretion, is entitled to a cancellation fee of ten percent (10%) of the quoted price. No extension to payment terms or other settlements of debt shall be allowed without specific authorization by the CEO, CFO or COO of TUVAIA. If Customer fails to pay any amount due, TUVAIA may, without notice to Customer, suspend all Services. Furthermore, TUVAIA shall be entitled to withdraw the certificate and claim damages for non-performance.

6.4. Fees for services rendered hereunder do not include any relevant value added tax (“VAT”), sales, excise or similar taxes, which are payable by Customer, where required.

6.5. Services rendered outside normal working hours at the request of Customer and Services required to be rendered at short notice, (e.g. within a period of time that is considerably shorter than the period initially agreed upon), may be subject to surcharges listed in TUVAIA’s rate schedule.

6.6. Travel fees, travel time calculated portal to portal, expenses and “material and additional costs” are charged separately, unless such fees, expenses and/or costs were included in a Quote. “Material and additional costs” consist of external costs (including, for example, subcontractor costs) associated with the Services, costs incurred for the use of special laboratories or special measuring equipment and miscellaneous costs (e.g. photographic work, disposal of inspection samples (hazardous waste), packaging, shipping and customs duties). Travel expenses include a per diem allowance, overnight allowance, transportation expenses (plane/rail ticket or the applicable standard mileage rate as published by the U. S. Internal Revenue Service for travel by car in effect at the time services are rendered) and any other costs incurred.

6.7. Outstanding customer credit balances remaining with TUVAIA longer than two (2) years will be considered an administrative fee and will become the property of TUVAIA.

6.8. TUVAIA may suspend credit extended towards Customer’s accounts in its sole discretion without notification.

**7.** **No Right of Set-off.**

Customer shall have no right of set-off against any payments due, whether on account of any claims or alleged claims against TUVAIA or the TUVAIA Affiliates under these Terms or otherwise.

**8.** **Acceptance.**

8.1. Reports and work product generated by TUVAIA or the TUVAIA Affiliates shall be examined by Customer within five (5) business days beginning on the date of delivery to Customer. TUVAIA’s work product shall be deemed to be accepted unless a written notice describing the deficiency is received by TUVAIA within the applicable time period set forth above. Any part of the Services ordered by Customer which is complete in itself may be presented by TUVAIA or the TUVAIA Affiliates for acceptance as an installment.

8.2. Neither TUVAIA nor the TUVAIA Affiliates issue inspection results, inspection reports, certifications, inspection marks and other statements regarding the Services (collectively “Reports”) via e-mail. Any communications via e-mail regarding the Services are for informational purposes only, may not be relied on by Customer, and do not replace or anticipate the formal notification regarding Reports or other decisions in accordance with the Regulations.

**9.** **Confidentiality.**

9.1. For purposes of this Section 9, TUVAIA and Customer are each referred to as a “Party” as appropriate. As used throughout these Terms, “Confidential Information” means any scientific, technical, trade or business information which is given by one Party to the other and which is treated by the disclosing Party as confidential or proprietary. Confidential Information does not include information that (a) is in possession of the receiving Party at the time of disclosure, as reasonably demonstrated by written records and without obligation of confidentiality, (b) is or later becomes part of the public domain through no fault of the receiving Party, (c) is received by the receiving Party from a third party without obligation of confidentiality, or (d) is developed independently by the receiving Party without use of, reference to, or reliance upon the disclosing Party’s Confidential Information by individuals who did not have access to Confidential Information. The disclosing Party shall, to the extent practical, use reasonable efforts to label or identify as confidential, at the time of disclosure all such Confidential Information that is disclosed in writing or other tangible form.

9.2. Each Party agrees (a) to keep confidential the Confidential Information of the other Party and the contents of the Service Agreement and these Terms, (b) not to disclose the other Party’s Confidential Information to any third party without the prior written consent of such other Party, and (c) to use such Confidential Information only as necessary to fulfill its obligations or in the reasonable exercise of rights granted to it hereunder. Notwithstanding the foregoing, a Party may disclose (i) Confidential Information of the other Party to its Affiliates, and to the Party’s and/or its Affiliates’ directors, employees, consultants, and agents who, in each case, have a specific need to know such Confidential Information and who are bound by a like obligation of confidentiality and restriction on use, or (ii) Confidential Information of the other Party to the extent such disclosure is required to comply with applicable law or to defend or prosecute litigation; provided, however, that in each case the receiving Party provides prior written notice of such disclosure to the disclosing Party and takes reasonable and lawful actions to avoid or minimize the degree of such disclosure.

9.3. Except to the extent required by applicable law, neither Party shall make any public statements or releases concerning the Service Agreement, these Terms or the transactions contemplated hereby without obtaining the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

**10.** **Copyright, Ownership and Use of Reports.**

10.1. Except as expressly set forth in this Section, TUVAIA retains exclusive ownership of all Reports, methods of doing business, raw data, calculations, inspection results and expert opinions. The copyright on all Reports issued by TUVAIA or the TUVAIA Affiliates belongs exclusively to TUVAIA and the TUVAIA Affiliates, respectively.

10.2. All Reports and other documents, including certifications and opinions which are produced by TUVAIA or the TUVAIA Affiliates during the performance of the Services and delivered to Customer may be used by Customer only for their intended purpose.

**11.** **Warranty and Limitation of Liability.**

11.1. TUVAIA warrants that the Services shall be performed by TUVAIA in accordance with the applicable inspection and certification standards and in a workmanlike manner by qualified personnel. TUVAIA and the TUVAIA Affiliates shall not be liable under any circumstances to Customer or any other person if (a) the Services or work products prepared in connection with the Services are not used for the intended purpose; (b) any report prepared by TUVAIA or the TUVAIA Affiliates was subsequently modified without TUVAIA’s or, as appropriate, the TUVAIA Affiliates’ written consent; (c) if Customer fails to perform its obligations under these Terms; or (d) Customer did not disclose to TUVAIA or the TUVAIA Affiliates all material facts known to Customer with respect to the object of the Services.

11.2. Statements or findings made in TUVAIA reports are opinions based on the inspections conducted and are not to be construed as representations of fact. Due to the limitations of inspection methods in evaluating all of the factors that determine the overall component quality, no guarantee is made nor liability assumed by TUVAIA for the component quality or serviceability.

11.3. Except for the warranties set forth herein, tuvaia makes no other warranties, express or implied, with respect to the services by tuvaia or any of its agents, subsidiaries, affiliates or subcontractors. any and all warranties, including without limitation, warranties of merchantability or fitness for a particular purpose, are expressly excluded and declined.

11.4. Customer may not bring any action arising out of or in connection with any transaction covered by these terms unless such action is commenced within six months after the cause of action has accrued.

11.5. The liability of tuvaia and the tuvaia affiliates, their employees, agents, managerial staff and constituent bodies, for all damages in connection with the provision of the services shall in all events be limited to the lower of:

(a) a total of one million united states dollars ($1,000,000.00); or

(b) if this is a contract with a fixed overall fee, ten times the amount paid by customer for services related to a particular quote, order or sow under which the damages occurred; or

(c) if this is a contract for annually recurring services, the agreed annual fee paid by customer; or

(d) if this is a contract expressly charged on a time and materials basis, a total of fifty thousand united states dollars ($50,000.00); or

(e) if this is a framework agreement that provides for the possibility of placing individual orders, an amount equal to three times the fee paid by customer for services related to a particular quote, order or sow under which the damages occurred.

The liability of tuvaia and the tuvaia affiliates hereunder is expressly limited to direct damages incurred with respect to the services performed by tuvaia. in no event shall tuvaia be liable to any person for any indirect, special, exemplary, punitive, incidental or consequential damages including but not limited to loss of profits or goodwill, or additional expenses incurred, whether pursuant to a claim in contract, tort or otherwise and whether in an action for breach of warranty or otherwise.

**12.** **Indemnification**.

12.1. Customer shall indemnify and hold harmless TUVAIA and TUVAIA’s officers, directors, employees, affiliates, suppliers and agents (each a “TUVAIA Indemnified Person”) against any losses, claims, damages, liabilities, penalties, actions, proceedings or judgments of any kind whatsoever (including all reasonable legal and attorney’s fees and expenses) to which a TUVAIA Indemnified Person may become subject out of claims by Customer or any third party (including without limitation customers of Customer) related to or arising out of (a) any breach by Customer of any provision of the Service Agreement, these Terms or the Certification and Inspection Regulations; (b) any misrepresentation made by Customer in connection with obtaining any Services; or (c) any action or omissions of Customer related to the Service Agreement, other than as expressly authorized in such Service Agreement.

12.2. TUVAIA shall indemnify and hold harmless Customer and, as applicable, Customer’s officers, directors, employees, affiliates, suppliers and agents (each a “Customer Indemnified Person”) against any losses, claims, damages, liabilities, penalties, actions, proceedings or judgments of any kind whatsoever (including all reasonable legal and attorney’s fees and expenses) to which a Customer Indemnified Person may become subject out of claims by TUVAIA or any third party (including without limitation any TUVAIA Affiliate) related to or arising out of (a) any breach by TUVAIA of any provision of the Service Agreement, these Terms, or the Certification and Inspection Regulations; or (b) any action or omissions of TUVAIA related to the Service Agreement, other than as expressly authorized in such Service Agreement.

**13. Non-Solicitation**

It is agreed that the Customer, shall not solicit for hire or induce any person who is an employee, independent contractor, subcontractor or agent of TUVAIA to terminate their employment orrelationship withTUVAIA, in order to become an employee, come under the direction of the Customer to independently perform services for the Customer, during the term of this Agreement and twelve (12) months after its termination without the express written consent of TUVAIA. If the Customer breaches this agreement and employs the above, or causes the termination of employment with TUVAIA, the Customer will immediately pay TUVAIA an amount equal to thirty-percent (30%) of the affected individual’s annualized compensation in effect at the time of employment termination.

**14. Governing Law and Jurisdiction; Place of Performance.**

14.1. The construction and validity of these Terms shall be governed by the laws of the State of Texas, USA, without giving effect to its conflict of laws rules, regardless of where any order was placed or filed, the place of performance of the Services or delivery of reports or where any other act or performance occurred.

14.2. Customer agrees to the exclusive jurisdiction of the federal and state courts located in the Harris County, Texas, with respect to the adjudication of any dispute arising out of or in connection with the provision of the Services, the Service Agreement, these Terms, or Inspection Regulations.

14.3. TUVAIA AND CUSTOMER HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT.

14.4. In the event of any legal action, the prevailing party shall be entitled to recover from the other party all costs, expenses and reasonable attorney’s fees, expert witness fees, and any other costs incurred to bring or defend such action.

**15.** **Severability.**

If any provision of these Terms is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of these Terms, and the remainder of these Terms shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in these Terms, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under these Terms by one party to the other, the remaining provisions of these Terms shall also be modified to the extent necessary to equitably adjust the parties’ respective rights and obligations hereunder.

**16. General Conditions.**

TUVAIA reserves the right to discontinue any of the Services and to revoke or change prices or terms, except when otherwise indicated in these Terms. If, at any time, it becomes necessary to discontinue Services to Customer, to revoke or modify any provisions of these Terms or of any SOW, or to allocate the provision of Services, TUVAIA will take whatever action which it, in its sole and absolute judgment, deems fair and appropriate.

**17.** **Revisions; Modifications; Waiver.**

17.1. TUVAIA may change, revise, amend or modify these Terms from time to time. TUVAIA shall provide Customer with written notice of any such changes, revisions, amendments or modifications, provided, however, that any such changes, revisions, amendments or modifications shall become effective without any further action by any party and that they shall not apply to any orders placed and accepted prior to the effective date of such changes, revisions, amendments or modifications.

17.2. Should TUVAIA at any time not enforce any one of these Terms, such event shall not be interpreted as a change of said Terms, or as TUVAIA’s waiver to exercise any of its rights under these Terms.

**18. Entire Agreement.**

These Terms, together with the Service Agreement, any SOW or Quote issued by TUVAIA pursuant to the Service Agreement, and any schedules attached thereto by TUVAIA, shall be the complete and exclusive statement of the agreement between the parties with respect to the subject matter hereof and shall prevail over any terms and conditions contained in any other documentation and expressly exclude any of Customer’s general terms and conditions contained in any purchase order and any other documentation issued by Customer.