

## 1. Scope.

1.1 These General Terms and Conditions (these "Terms") are applicable to all customers or any customer affiliates (the "Customers" and each, individually, a "Customer") of TUV Rheinland AIA Services, LLC ("AIA") who have entered into an agreement with AIA or through AIA with any of AIA's affiliated companies (the "AIA 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 AIA or AIA Affiliates to Customer.

## 2. Offer and Acceptance.

2.1 Entire Agreement. These Terms, together with the Service Agreement, any SOW or Quote issued by AIA pursuant to the Service Agreement, and any schedules attached thereto by AIA, 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. Any additional or different terms proposed by Customer in any document, including but not limited to terms shown on Customer's sales or purchase order or any other of Customer's documents, are objected to, null and void, and rejected and will not be binding upon AIA. These terms and conditions supersede all prior terms and conditions and shall be the sole terms and conditions which apply to any sale, lease, or other furnishing of goods or services.

2.2 Amendment. AIA may change, revise, amend or modify these Terms from time to time. AIA 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.

2.3 Acceptance. 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 AIA's performance of any work shall constitute acceptance.

2.4. Notwithstanding any prior acceptance of a Service Agreement by AIA, AIA 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 AIA or any AIA 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 AIA Affiliates, and by the relevant testing and/or certification standards, if applicable. No changes or revisions to the SOW will be allowed unless mutually agreed in writing by the Parties. If mandatory legal regulations and standards or official requirements for the agreed SOW change after conclusion of the contract, AIA shall be entitled to additional payment for any possible additional expenses.

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

3.4 AIA is not a designer, manufacturer, marketer, seller, endorser, guarantor, or insurer of the parts, products or systems provided by Customer to AIA for Services. By providing the Services, AIA is not assuming, and it disclaims, any obligation related to the design, manufacture, construction, selection of materials, assembly, installation, use, application, marketing, sale, or testing by entities other than AIA of any parts, products or systems provided to AIA for Services.

3.5 In the case of inspection work, AIA shall not be responsible for the accuracy or checking of the safety programs or safety regulations on which the inspections are based, unless otherwise expressly agreed in writing.

## 4. Delivery Deadlines.

Time of performance and deadlines shall be agreed upon between Customer and AIA 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 AIA or the AIA Affiliates. Notwithstanding the foregoing, AIA and the AIA Affiliates reserve the right to change the date for completion of Services and, if it does so, it will notify 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 AIA or the AIA 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 AIA free of charge. In cooperating with AIA or the AIA 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, AIA or the AIA 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, Fees and Cancellation.

6.1 Unless otherwise agreed to in writing in the Service Agreement, the SOW or the Quote, fees charged by AIA shall be calculated in accordance with the then current rates in effect. 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. AIA will issue an electronic invoice to the Customer. An electronic invoice may be sent by email and will be deemed to have been delivered to the Customer upon receipt of such email. If Customer requests a paper invoice from AIA to be sent by post, such invoice will include a \$35.00 administration fee. 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 AIA of interest under this subsection shall not constitute a waiver by AIA 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 AIA 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. The AIA Cancellation Policy is available on AIA website and is incorporated by reference. If a project commences and Customer terminates a project without cause as detailed in the Cancellation Policy, Customer is responsible to pay AIA for any costs and/or expenses plus reasonable margin incurred by AIA up to the date of cancellation. No extension to payment terms or other settlements of debt shall be allowed without specific authorization by the CEO or CFO of AIA. If Customer fails to pay any amount due, AIA may suspend all Services, subject to having provided Customer with ten (10) days' prior notice. Furthermore, AIA 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 sales tax, value added tax ("VAT"), excise or similar taxes, which are payable by Customer, where required.

6.5 Annual certification maintenance and factory registration / inspection fees will be charged to Customer if and/or when Customer holds certifications, based on the number of products and types of certifications. Annual maintenance fees are charged and invoiced separately from other fees.

6.6 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.

6.7 Travel fees, 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 test samples (hazardous waste), packaging, shipping and customs duties). A ten percent (10%) flat rate for

administrative expenses will be added to such material and additional costs. Travel expenses incurred in connection with Services will be charged at cost or on a pro-rata basis as a flat rate, plus a ten percent (10%) flat rate for administrative expenses. 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. In addition, travel time of AIA employees shall be charged on the basis of the hourly rates of the AIA employees engaged in the performance of the Services or as otherwise agreed by the Parties.

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

6.9 AIA 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 AIA or the AIA Affiliates under these Terms or otherwise.

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

8.1 Reports and work product generated by AIA or the AIA Affiliates shall be examined by Customer within five (5) business days beginning on the date of delivery to Customer. AIA's work product shall be deemed to be accepted unless a written notice describing the deficiency is received by AIA within the applicable time period set forth above. Customer is not entitled to refuse acceptance due to insignificant or non-material defects or deficiencies. Any part of the Services ordered by Customer which is complete in itself may be presented by AIA or the AIA Affiliates for acceptance as an installment.

8.2 AIA and AIA Affiliates issue test results, test reports, certifications, test marks and other statements regarding the Services (collectively "Reports") only as an email attachment. Any communications in the body of an 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 Testing and Certification Regulations.

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

9.1 For purposes of this Section 9, AIA 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, (ii) Confidential Information with accreditation bodies to the extent this information is necessary for the issuance of certificates or (iii) 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 Confidential information remains the property of the respective disclosing party. The receiving Party hereby agrees to immediately, upon written request of the disclosing Party (i) return all Confidential Information, including all copies thereof, to the disclosing Party at any time upon the request of the disclosing Party, or to (ii) destroy the Confidential Information, including all copies thereof, upon the request of the disclosing Party, and to confirm in writing to the disclosing Party the fact of such destruction. The above mentioned obligations to return or destroy do not apply to information that is stored on backup servers or in analog backup systems as part of normal archiving processes.

9.4 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.

9.5 This confidentiality obligation exists from the date of initial disclosure of Confidential Information and continues to apply for a period of five (5) years thereafter.

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

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

10.2 All Reports delivered to Customer are hereby licensed to Customer on an unlimited, non-transferable, non-sublicensable, royalty free, right to use and can be freely used by Customer for their intended purpose as reflected in the Parties contractual SOW (e.g. use of test reports, audit reports as proof of audits carried out or in the case of a contractually agreed review of a management system for conformity with certification conditions as

proof of the corresponding decision). Customer shall not modify or change Reports in any way or create derivative works therefrom.

10.3 Any publication or reproduction of the service results for advertising purposes or any further use of the service results beyond the scope regulated in this Section requires the prior written consent of AIA in each individual case.

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

11.1 AIA warrants that the Services shall be performed by AIA in accordance with the applicable testing and certification standards and in a workmanlike manner by qualified personnel. AIA and the AIA 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 contractual purpose; (b) any report prepared by AIA or the AIA Affiliates was subsequently modified without AIA's or, as appropriate, the AIA Affiliates' written consent; (c) if Customer fails to perform its obligations under these Terms; or (d) Customer did not disclose to AIA or the AIA Affiliates all material facts known to Customer with respect to the object of the Services.

11.2 EXCEPT FOR THE WARRANTIES SET FORTH HEREIN, AIA MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES BY AIA 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.

11.3 THE LIABILITY OF AIA AND ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, MANAGERIAL STAFF AND CONSTITUENT BODIES, FOR ALL DAMAGES IN CONNECTION WITH THIS AGREEMENT 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) FIVE (5) TIMES THE VALUE OF THE SERVICE THE CLAIM IS RELATED TO.

11.4 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANY PERSON FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOST PROFITS, BUSINESS INTERRUPTION, DOWNTIME, LOSS OR INABILITY TO USE PROPERTY OR EQUIPMENT, AND DAMAGES OR EXPENSES DUE TO POLLUTION, REGARDLESS OF FAULT WHETHER PURSUANT TO A CLAIM IN SOLE, JOINT OR CONCURRENT FAULT OR NEGLIGENCE OR IS BASED UPON CONTRACT, WARRANTY, INDEMNITY, TORT/EXTRA-CONTRACTUAL LIABILITY (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE EVEN OF SUCH DAMAGES COULD HAVE BEEN FORESEEABLE AT THE TIME OF CONTRACTING.

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

12.1 Customer shall indemnify and hold harmless AIA and AIA's officers, directors, employees, affiliates, suppliers and agents (each a "AIA 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 AIA 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 Testing and Certification Regulations; (b) any misrepresentation made by Customer in connection with obtaining any Services; or (c) any negligence, gross negligence or willful misconduct of Customer related to the Service Agreement, other than as expressly authorized in such Service Agreement.

12.2 AIA 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 AIA (including without limitation any AIA Affiliate) related to or arising out of any negligence, gross negligence or willful misconduct of AIA related to the Service Agreement, other than as expressly authorized in such Service Agreement.

#### **13. Provision of Product or Product Samples.**

13.1 Customer shall provide AIA or a AIA Affiliate with appropriate product or product samples ("Product") required for the testing and/or certification process. Such Product shall be provided at such locations as may be indicated to Customer from time to time, at the sole cost of Customer, including shipping and handling. AIA or the AIA Affiliates shall not be responsible for damage to or loss of Product while in transit or during the performance of the Services. Customer represents and warrants that it has the full right and authority to provide the Product for testing, certification and/or other Services in accordance with these Terms. Without limitation of the previous sentence, if Customer does not own the Product, Customer represents and warrants that it has obtained all necessary permissions from the owner of the Product to subject the Product to the testing, certification, and/or other Services performed on it in accordance with these Terms and agrees that these Terms shall apply to the Product on the same basis as if Customer was the owner of the Product.

13.2 It is the Customer's responsibility to comply with applicable import or export control regulations. The Customer shall be responsible for and shall save, indemnify, defend and hold harmless AIA from and against all Claims in connection with any failure by the Customer to comply with applicable export control regulations arising from, relating to or in connection with this agreement. The Customer represents that it is knowledgeable and has expertise regarding all export control laws, regulations, procedures, international sanctions, embargoes and restrictions, prohibited party lists and international shipping practices applicable to the Customer, including but not limited to the laws of the United States of America ("Export Controls"). The Customer shall promptly alert AIA to any violations or suspected violations of Export Controls and shall obtain all necessary licenses, permits, forms and applications required pursuant to Export Controls.

#### **14. Disposal of Product Samples.**

Customer acknowledges that Product submitted for testing and/or certification may be destroyed or damaged during the performance of the Services, testing and/or certification process. Unless otherwise instructed by Customer or if otherwise required by the applicable certification standards or in AIA's Testing and Certification Regulations. AIA shall retain all Product, damaged or not, for a period of thirty (30) days after the conclusion of the testing and/or

certification process. Unless, before the end of said thirty (30) day period, AIA receives instructions from Customer that Customer wishes to reclaim the Product, AIA shall be free to dispose of such Product in any manner it deems appropriate, subject to any regulatory or other statutory guideline governing such disposal. All costs associated with the safe and proper disposal of hazardous materials shall be borne solely by Customer. All shipping and handling costs associated with the return of Product to Customer, shall be borne solely by Customer.

#### **15. Use of Certification Marks.**

15.1 Provided that AIA or the appropriate AIA Affiliate determines that the relevant certification standards have been met, AIA or the AIA Affiliate will authorize the use of the appropriate certification mark and, if applicable, the certification will be entered in the appropriate list or register.

15.2 Certification marks shall only be used by Customer in strict compliance with the relevant standards issued by AIA, the AIA Affiliates or any other certification body, unless and until expressly authorized in writing by AIA or the AIA Affiliates and then only in the form and manner specified by such written authorization.

15.3 Customer's failure to use the certification marks in strict compliance with the relevant standards issued by AIA, the AIA Affiliates or any other certification body, or Customer's failure to pay fees due to AIA, may result in the cancellation without notice of the certification(s) issued by AIA or the AIA Affiliates or any other certification body. In addition, in the event of an infringement of the certification marks by Customer, Customer agrees that AIA and the AIA Affiliates are entitled to seek injunctive relief, without the requirement to post a bond, to protect their rights in the certification marks.

15.4 The Accreditation and Marks Policy is incorporated by reference and available on AIA website or upon request.

#### **16. Inspections and Production Controls.**

Customer shall ensure that products receiving certifications are manufactured in conformity with the applicable standards and requirements pertaining thereto. Customer's compliance with this requirement may, in appropriate cases, be established by AIA, the AIA Affiliates or their representatives or the relevant Certification Bodies, by means of inspections of Customer's manufacturing facilities, in accordance with established procedures or as otherwise determined by AIA or the AIA Affiliates, or the relevant Certification Bodies. AIA, the AIA Affiliates, or their representatives, or the relevant Certification Bodies shall be granted free access to such Customer facilities that engage in the manufacturing, distribution or servicing of the products receiving certification, as well as to all relevant production processes, and Customer expressly agrees such free access is required to establish Customer is in compliance with the applicable standards. All costs of such inspections shall be borne by Customer.

#### **17. Governing Law and Jurisdiction.**

17.1 THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPALS AND WAIVER OF SAME, EACH PARTY HERETO SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF TEXAS IN HARRIS COUNTY, TEXAS AND THE FEDERAL COURTS IN AND FOR THE SOUTHERN DISTRICT OF

TEXAS SITTING IN HOUSTON, TEXAS IN CONNECTION WITH ANY DISPUTE ARISING UNDER THIS AGREEMENT OR ANY DOCUMENT OR INSTRUMENT ENTERED INTO IN CONNECTION HEREWITH.

17.2 AIA 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.

17.3 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.

#### **18. Waiver and Severability.**

18.1 The failure or delay by a Party to enforce its rights hereunder shall not be deemed a subsequent waiver of

that right or to waive enforcement of any other term or right.

18.2 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.