RL-TASH-006-An2 Terms and Conditions Rev.0.0
商务条款

1. Applicability

Any agreement between TÜV AUSTRIA (SHANGHAI) CO., LTD and its Principals (clients) shall be concluded under these Terms and Conditions. Terms and Conditions once concluded shall also be valid — until revoked by TÜV AUSTRIA (SHANGHAI) CO., LTD — for any future contractual agreements. The applicability of the Principal's purchase and other terms and conditions of business shall hereby be excluded for the entire professional association.

2. Quotations

2.1. Quotations issued by TÜV AUSTRIA (SHANGHAI) CO., LTD shall, unless agreed otherwise in writing, be subject to change and non-binding. A mutually binding agreement shall come into force only with the receipt by the Principal of the written confirmation of the order by TÜV AUSTRIA (SHANGHAI) CO., LTD or the commencement of the provision of services through TÜV AUSTRIA (SHANGHAI) CO., LTD. Changes and additions to the agreement shall have to be made in writing. This shall also apply to any agreement to waive the requirement to make such amendments in writing. Verbal information, ancillary arrangements and undertakings by agencies or employees of TÜV AUSTRIA (SHANGHAI) CO., LTD shall, at any stage of the contractual process, be binding only if confirmed in writing.

2.2. Upon notification of inspections and their performance TÜV AUSTRIA (SHANGHAI) CO., LTD shall not assume the obligation incumbent upon the Principal to adhere to this or follow-up inspection appointments.

3. Geographical applicability

Fees quoted shall be, unless expressly stated otherwise, applicable only for services provided in China.

4. Implementation of agreement

4.1. TÜV AUSTRIA (SHANGHAI) CO., LTD shall be liable to provide services only as expressly set out in the agreement, which services shall be provided in compliance with generally acknowledged technical regulations. TÜV AUSTRIA (SHANGHAI) CO., LTD shall not assume any liability for the accuracy of laws, directives and standards on which the agreements are based.

4.2. On conclusion of agreement, the volume of orders shall be set down in writing. If in the course of the proper implementation of the contract changes or excesses to the agreed contract volume should become necessary, TÜV AUSTRIA (SHANGHAI) CO., LTD shall be entitled to carry these out on the basis of the Terms and Conditions in hand, even without written notification, provided that the charges last agreed upon shall not be exceeded by more than 15%. If the modification exceeds 15%, then these shall need to be agreed upon in writing prior to the provision of the additional services. If the modified contractual volume raises the charges last agreed upon by more than 50%, the Principal shall be entitled to withdraw from the contract within three days from notification of the new fees. The Principal however shall pay for the services that have already been provided in accordance with the amount agreed on.

4.3. TÜV AUSTRIA (SHANGHAI) CO., LTD shall not assume any liability for the proper operation and functionality of objects inspected exclusively for technical safety, unless specifically stated in the agreement. In particular, design, choice of materials and construction of equipment and installations shall be subject to inspection only if the agreement specifically provides for such services. The same shall apply likewise to safety programs or safety regulations.

4.4. On conclusion of agreement the Principal shall provide TÜV AUSTRIA (SHANGHAI) CO., LTD with all the required documents such as drawings, plans, calculations and certifications, obtain any authorizations and clearances that may be required, provide contract-related information at any time, and carry out, prior to the commencement of the order fulfilment, the required preparations, in particular to make the object of inspection accessible. The Principal shall undertake to make all reasonable efforts to provide the required documents or authorizations on time. If the Principal fails to fulfil these obligations, despite a deadline having been set by TÜV AUSTRIA (SHANGHAI) CO., LTD, the agreement shall be revoked on expiry of the dead- line. In this event TÜV AUSTRIA (SHANGHAI) CO., LTD shall be entitled to claim damages for non-fulfilment.

4.5. TÜV AUSTRIA (SHANGHAI) CO., LTD shall not be obliged to verify the accuracy of documents provided as a basis for inspection or the accuracy of verbal statements provided by the Principal or his employees, but it shall presume the accuracy of such information.

4.6. TÜV AUSTRIA (SHANGHAI) CO., LTD shall be entitled to determine the method and type of inspection at its discretion on the basis of professional criteria.

4.7. TÜV AUSTRIA (SHANGHAI) CO., LTD shall be entitled to produce copies of the provided documents and to keep them in its records and to save the Principal's data and data arising from the business dealings for its own purposes in an electronic data processing installation. In accordance with clause 10 of Terms and Conditions the Principal shall hereto expressly give his consent.

4.8. TÜV AUSTRIA (SHANGHAI) CO., LTD provides the service, unless agreed otherwise in individual cases, with one employee per area of expertise. Any assistance required or useful for the order fulfilment shall be provided to TÜV AUSTRIA (SHANGHAI) CO., LTD by the Principal or a third party on behalf of the Principal, free of charge. The Principal shall undertake to make every reasonable effort to provide the required or useful assistance. In providing such assistance the Principal shall monitor and adhere to applicable legal or official provisions, in particular in the area of employee protection.

4.9. The client allows the accreditation body to accompany and observe (audit) the conformity assessment activities, which are covered by contract, of TÜV AUSTRIA (SHANGHAI) CO., LTD.

5. Terms and deadlines/delays

5.1. Terms and deadlines as stipulated in the agreement shall be based on estimates of the volume of work as per information provided by the Principal. These deadlines shall become binding only when expressly stipulated in writing as 'binding' by TÜV AUSTRIA (SHANGHAI) CO., LTD. Delays shall not entitle the Principal to claim damages, irrespective of legal title.

5.2. Terms stipulated as binding shall commence with the complete accord in all parts of the agreement and about all conditions of the services to be provided and end with the provision of services by TÜV AUSTRIA (SHANGHAI) CO., LTD. They shall cease to be binding when the Principal is in default with his obligations according to the provisions of the Terms and Conditions in hand, in particular with regard to clauses 4.4. and 4.8, for whatever reason.

5.3. If fulfilment of the agreement is delayed by circumstances which TÜV AUSTRIA (SHANGHAI) CO., LTD is not accountable for (e.g. operational disruptions, strike, force majeure, transport impediments etc.) TÜV AUSTRIA (SHANGHAI) CO., LTD shall be entitled, under exclusion of warranties, rescission for mistakes and/or claims for damages, either to withdraw from the agreement or to extend the deadline by an appropriate period of time. This shall also apply when the events occur at a point in time at which TÜV AUSTRIA (SHANGHAI) CO., LTD is already in default. TÜV AUSTRIA (SHANGHAI) CO., LTD shall notify the Principal of this in good time. In the event of withdrawal from the agreement TÜV AUSTRIA (SHANGHAI) CO., LTD shall be entitled to charge the Principal for partial services rendered up to that point in time at the prices agreed upon.

6. Terms of payment

6.1. Services shall be charged in accordance with the offers, price lists and so on valid on conclusion of the agreement. If the provision of services extends over a period of more than one year or if services are provided repeatedly, services shall be

charged in accordance with prices as valid at the point in time when individual services are provided.

6.2. If TÜV AUSTRIA (SHANGHAI) CO., LTD provides services for a period of time extending to more than 4 weeks, TÜV AUSTRIA (SHANGHAI) CO., LTD shall be entitled to issue monthly invoices for partial provision of services. Partial and total payment of invoices shall be effected promptly and without deduction upon receipt of the invoice, stating invoice and customer numbers.

6.3. Objections to invoices shall be made and substantiated in writing within a period of two weeks following receipt of the invoice, failing which the invoice shall be deemed to have been accepted.

6.4. The Principal shall not be entitled to offset claims, of whatever kind, unless these have been ascertained in a legally binding manner by a court of law or acknowledged by TÜV AUSTRIA (SHANGHAI) CO., LTD in writing.

6.5. In the event of default of payment, even if only one item is outstanding, all outstanding claims — even those from other agreements and regardless of any diverging payment terms — shall fall due immediately and TÜV AUSTRIA (SHANGHAI) CO., LTD may opt to demand immediate payment of the out- standing claims and suspend the fulfilment of the agreement while awaiting the receipt of such payment, or else withdraw from the agreement without notice and claim compensation for damages on the grounds of non-fulfilment. Default of payment shall entitle TÜV AUSTRIA (SHANGHAI) CO., LTD to charge interest on late payments of 9,2 percentage points p.a. above the base interest rate of the Bank of China and also to charge dunning costs of 30 RMB per reminder.

6.6. The Principal shall furthermore undertake to reimburse TÜV AUSTRIA (SHANGHAI) CO., LTD for costs and expenses incurred de facto through the default of payment and appropriately required for the purposes of asserting its legal rights. This shall include, without prejudice to any obligations to pay cost of proceedings, in particular extrajudicial costs, dunning costs, the costs for a debt collection agency well as the costs for intervening lawyers insofar as they were expedient and necessary.

6.7. When in doubt prices shall be exclusive of the legal rate of value added tax, which shall be borne by the Principal at the applicable rate.

6.8. Several contractual partners shall be liable jointly and severally.

6.9. TÜV AUSTRIA (SHANGHAI) CO., LTD shall be entitled to send the Principal invoices in electronic form as well. The Principal declares his explicit consent to having invoices sent to him in electronic form by TÜV AUSTRIA (SHANGHAI) CO., LTD.

7. Warranty

7.1. The Principal shall on completion of the agreement examine the works or services of TÜV AUSTRIA (SHANGHAI) CO., LTD without delay and assert in writing, without any delay, but at any rate not later than seven calendar days following the supply of the expert opinion or inspection report or such like, any defects detected or detectable, under exclusion of any liability of TÜV AUSTRIA (SHANGHAI) CO., LTD. Concealed defects shall upon identification be objected to in writing without any delay, at the latest within seven calendar days thereafter but at any rate within the warranty period. Notifications of defects shall not confer entitlement to withhold payment of invoiced amounts in whole or in part.

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7.2. Warranty claims of the Principal shall, at the choice of TÜV AUSTRIA (SHANGHAI) CO., LTD, be limited to rectification or supply of a replacement. TÜV AUSTRIA (SHANGHAI) CO., LTD shall be entitled to carry out two attempts at rectification or supply of replacements.
If attempts at rectification or the supply of a replacement do not lead to success within an appropriate period of time or if the rectification or supply of replacement is economically unfeasible, the Principal shall be entitled to an alteration of agreement or price reduction. An alteration of agreement on the grounds of immaterial, irremediable defects shall be excluded. In that case an appropriate reduction of price shall be effected.

7.3. Warranty claims of the Principal — even for so-called incorporeal works, such as, for instance, expert opinions or software development — shall expire within a year of completion of the services performed by TÜV AUSTRIA (SHANGHAI) CO., LTD. The warranty period shall neither be extended nor interrupted by rectifications or attempts at rectification, in particular not if these fall outside the herewith stipulated warranty period.

7.4. Should the Principal fail to give timely complaint according to clause 7.1, then warranty claims for compensation for the claim itself as well as for erring about the defective delivery shall expressly be excluded, unless employees of TÜV AUSTRIA (SHANGHAI) CO., LTD by acts of intent or severe gross negligence are responsible for such claims.

8. Liability

8.1. IF THE CONTRACTUAL PARTNER LODGES AGAINST TÜV AUSTRIA (SHANGHAI) CO., LTD CLAIMS FOR COMPENSATION, HE SHALL BE OBLIGED TO FURNISH PROOF IN RESPECT OF CAUSE, ILLEGALITY, FAULT AND DEGREE OF FAULT. THE RELINQUISHMENT OF WARRANTY CLAIMS AND CLAIMS FOR COMPENSATION TO THIRD PARTIES SHALL BE INADMISSIBLE.

8.2. IF THE PRINCIPAL INCURS DAMAGES DUE TO A BINDINGLY STIPULATED PERFORMANCE PERIOD HAVING BEEN EXCEEDED THROUGH THE FAULT OF TÜV AUSTRIA (SHANGHAI) CO., LTD, THE CLAIM SHALL NOT EXCEED A MAXIMUM OF 5% OF THAT PART OF THE CONTRACT AFFECTED BY THE DELAY.

8.3. THE FOLLOWING DISCLAIMERS OF WARRANTY AND LIMITED WARRANTIES SHALL ALSO APPLY TO DELICTUAL CLAIMS INSOFAR AS THESE COMPETE WITH CONTRACTUAL CLAIMS.

8.4. THE LIABILITY OF TÜV AUSTRIA (SHANGHAI) CO., LTD IS EXCLUDED IN CASE OF SLIGHTLY NEGLIGENTLY CAUSED PROPERTY OR FINANCIAL DAMAGES. THE LIABILITY OF TÜV AUSTRIA (SHANGHAI) CO., LTD SHALL IN CASES OF SIMPLE GROSS NEGLIGENCE FOR PROPERTY DAMAGES BE LIMITED TO RMB 200,000 AND FOR PURE FINANCIAL DAMAGES TO RMB 100,000. THIS EXCLUSION SHALL NOT APPLY TO PROPERTY OR FINANCIAL DAMAGES WHICH TÜV AUSTRIA (SHANGHAI) CO., LTD HAS BROUGHT ABOUT INTENTIONALLY OR WITH SEVERE GROSS NEGLIGENCE. HIGHER AMOUNTS THAN THOSE ABOVE MAY BE AGREED UPON ON REQUEST AND AT THE EXPENSE OF THE PRINCIPAL, PROVIDED CORRESPONDING COVERAGE OF TÜV AUSTRIA (SHANGHAI) CO., LTD IS POSSIBLE WITH ITS LIABILITY INSURER.

8.5. THE EXCLUSION OF LIABILITY AND THE LIABILITY LIMITATION SHALL NOT APPLY TO PERSONAL INJURIES.

8.6. IN ALL CASES LIABILITY OF TÜV AUSTRIA (SHANGHAI) CO., LTD SHALL, MOREOVER, WITH THE EXCEPTION OF INJURY TO LIFE, LIMB AND HEALTH, BE LIMITED TO DAMAGES TYPICAL OF THIS TYPE OF AGREEMENT AND FORESEEABLE FOR TÜV AUSTRIA (SHANGHAI) CO., LTD ON COMPLETION OF THE AGREEMENT OR ON BREACH OF DUTY BEING COMMITTED.

8.7. LEGAL DISCLAIMERS AND LIMITATIONS OF LIABILITY UNDER CLAUSES 8.1 TO 8.6 SHALL ALSO APPLY TO THE LIABILITY OF TÜV AUSTRIA (SHANGHAI) CO., LTD FOR ITS AGENCIES AND EMPLOYEES AS WELL AS THE PERSONAL LIABILITY OF AGENCIES AND EMPLOYEES OF TÜV AUSTRIA (SHANGHAI) CO., LTD AND VICARIOUS AGENTS.

8.8. THE PRECEDING LEGAL DISCLAIMERS AND LIMITATIONS OF LIABILITY UNDER CLAUSES 8.1 TO 8.7 SHALL NOT APPLY TO CLAIMS PURSUANT TO THE PRODUCT QUALITY LAW, INSOFAR AS LIABILITY IS MANDATORY UNDER THIS ACT.

8.10. INASMUCH AS TÜV AUSTRIA (SHANGHAI) CO., LTD IS LIABLE VIS-À- VIS THE PRINCIPAL FOR ACTS OF INTENT OR SEVERE GROSS NEGLIGENCE OR OMISSIONS OF ITS AGENCIES, EMPLOYEES AND VICARIOUS AGENTS,

IT MAY DEMAND THE ASSIGNMENT OF ANY POSSIBLE CLAIM FOR COMPENSATION OF THE PRINCIPAL VIS-À-VIS THE AGENCY, EMPLOYEE AND VICARIOUS AGENT OF TÜV AUSTRIA (SHANGHAI) CO., LTD.

8.11. IF THIRD PARTIES, WHO NEITHER HAVE A CONTRACTUAL RELATIONSHIP WITH TÜV AUSTRIA (SHANGHAI) CO., LTD NOR WITH THE PRINCIPAL, ON THE BASIS OF AN AGREEMENT BETWEEN TÜV AUSTRIA (SHANGHAI) CO., LTD AND THE PRINCIPAL, ASSERT CLAIMS AGAINST TÜV AUSTRIA (SHANGHAI) CO., LTD, ITS AGENCIES, EMPLOYEES AND VICARIOUS AGENTS, WHICH ARE NOT ATTRIBUTABLE TO ACTS OF INTENT OR SEVERE GROSS NEGLIGENCE ON THE PART OF TÜV AUSTRIA (SHANGHAI) CO., LTD, ITS AGENCIES, EMPLOYEES AND SUBCONTRACTORS, THE PRINCIPAL SHALL INDEMNIFY AND HOLD HARMLESS TÜV AUSTRIA (SHANGHAI) CO., LTD OR ITS VICARIOUS AGENTS.

8.12. TÜV AUSTRIA (SHANGHAI) CO., LTD SHALL NOT BE HELD LIABLE FOR DAMAGES TO DEVICES UNDER TEST THAT ARE CAUSED THROUGH INSPECTIONS, TESTS AND SUCHLIKE AND WHICH WERE CARRIED OUT IN ACCORDANCE WITH TECHNICAL RULES AT THE POINT IN TIME OF INSPECTION.

8.13. LIABILITY FOR CONSEQUENTIAL DAMAGES DUE TO DEFECTS, IN PARTICULAR FOR MISSED PROFITS, LACK OF SAVINGS, LOSS OF EARNINGS, OTHER PECUNIARY DAMAGES, LOSS OF INTEREST ETC. SHALL BE EXPRESSLY WAIVED. ANY LIABILITY THAT MAY NEVERTHELESS APPLY AT LAW, SHALL BE SUBJECT TO THE LIMITATIONS SET FORTH UNDER THE CLAUSE 'LIABILITY'.

9. Copyright

Any copyrights on inspection and monitoring reports, certificates, expert opinions, calculations and suchlike prepared by TÜV AUSTRIA (SHANGHAI) CO., LTD shall remain with TÜV AUSTRIA (SHANGHAI) CO., LTD. The distribution, utilization and/or publication of the services beyond the contractually stipulated purpose shall require prior written authorization by TÜV AUSTRIA (SHANGHAI) CO., LTD. In distribution, utilization, and/or publication the Principal shall be liable to comply with legal provisions. He shall in this respect indemnify and hold harmless TÜV AUSTRIA (SHANGHAI) CO., LTD from any possible claims by third parties.

10. Non-disclosure/confidentiality/data protection

10.1. TÜV AUSTRIA (SHANGHAI) CO., LTD shall oblige its employees and other vicarious agents to secrecy in respect of any facts they may obtain knowledge of through the agreement.

10.2. The Principal shall consent to TÜV AUSTRIA (SHANGHAI) CO., LTD making copies for the records of TÜV AUSTRIA (SHANGHAI) CO., LTD of written documents, drawings and plans etc. which are left with TÜV AUSTRIA (SHANGHAI) CO., LTD for its perusal and which are necessary for the completion of the agreement.

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10.3. TÜV AUSTRIA (SHANGHAI) CO., LTD shall when dealing with personal data comply with the provisions of the laws, regulations regarding data protection, and adopt the required technical and organizational arrangements for data protection within the scope of responsibility of TÜV AUSTRIA (SHANGHAI) CO., LTD.

10.4. The data protection statement can be seen on the website (cn.tuvaustria.com).

10.5. Information or data of the Principal shall be forwarded to third parties exclusively in case of statutory, regulatory or court ordered disclosure. The Principal is obliged to create the prerequisites required by applicable laws, so that TÜV AUSTRIA (SHANGHAI) CO., LTD may, for the purposes of performing the contract and/or purchase order(s), collect, process/entrust a third party to process, use, transfer personal information provided by the Principal to a third party, share it with a third party, disclose or transfer abroad it without any violation of the applicable laws.

11. Additional material

Costs for additional material and test equipment not commonly used within TÜV AUSTRIA (SHANGHAI) CO., LTD will be additionally charged to the client.

12. Provision of Infrastructure during inspection

Clients are responsible for the provision of electrical energy, water, lighting, scaffolding, etc. suitable for the required testing activities in conformance with any statutory regulations, in time.

13. Delivery and safekeeping of test objects

Test objects, type samples etc. to be inspected at test facilities owned by TÜV AUSTRIA (SHANGHAI) CO., LTD have to be delivered franco domicile (free of any charge). The client agrees to accept the storage costs or disposal costs for test objects which are not returned.

14. Severance Clause

Ineffective provisions of this agreement shall not affect the effective- ness of the other provisions. In the event of the ineffectiveness of one provision of this agreement, the parties to the agreement shall agree to replace it with an effective one that in spirit and purpose comes closest to the ineffective provision.

15. Place of jurisdiction and applicable law

For this agreement and the entire legal relationship between the parties Law of People's Republic of China shall apply with the exception of reference norms. Applicability of the UN Convention on Contracts for the International Sale of Goods, CISG, shall consensually be excluded.
Any disputes arising from this agreement shall be submitted to China International Economy and Trade Arbitration Commission, Shanghai Sub-commission for arbitration. Place of arbitration shall be Shanghai. Arbitration language shall be Chinese. The arbitral award shall be final and binding upon the Parties.