1. Applicability
Any agreement between TÜV AUSTRIA HOLDING AG 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 HOLDING AG — 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. As far as agreements are concluded with consumers in terms of the Consumer Protection Act (KSchG), indispensable legal provisions shall take precedence over these Terms and Conditions.

2. Quotations
2.1. Quotations issued by TÜV AUSTRIA HOLDING AG 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 HOLDING AG or the commencement of the provision of services through TÜV AUSTRIA HOLDING AG. 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 HOLDING AG 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 HOLDING AG 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 Austria.

4. Implementation of agreement
4.1. TÜV AUSTRIA HOLDING AG 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 HOLDING AG 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 increases to the agreed contract volume should become necessary, TÜV AUSTRIA HOLDING AG 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 HOLDING AG 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 HOLDING AG 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 fulfill these obligations, despite a deadline having been set by TÜV AUSTRIA HOLDING AG, the agreement shall be revoked on expiry of the dead-line. In this event TÜV AUSTRIA HOLDING AG shall be entitled to claim damages for non-fulfilment.

4.5. TÜV AUSTRIA HOLDING AG 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 HOLDING AG shall be entitled to determine the method and type of inspection at its discretion on the basis of professional criteria.

4.7. TÜV AUSTRIA HOLDING AG 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 HOLDING AG 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 HOLDING AG 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. The client allows the accreditation body to accompany and observe (audit) the conformity assessment activities, which are covered by contract, of TÜV AUSTRIA HOLDING AG.

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 HOLDING AG. 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 HOLDING AG. 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 HOLDING AG is not accountable for (e.g. operational disruptions, strike, force majeure, transport impediments etc.) TÜV AUSTRIA HOLDING AG 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 HOLDING AG is already in default. TÜV AUSTRIA HOLDING AG shall notify the Principal of this in good time. In the event of withdrawal from the agreement TÜV AUSTRIA HOLDING AG 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, ser-
vices shall be charged in accordance with prices as valid at
the point in time when individual services are provided.

6.2. If TÜV AUSTRIA HOLDING AG provides services for a pe-
riod of time extending to more than 4 weeks, TÜV AUSTRIA
HOLDING AG shall be entitled to issue monthly invoices for
partial provision of services. Partial and total payment of in-
voices 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 what-
ever kind, unless these have been ascertained in a legally
binding manner by a court of law or acknowledged by TÜV
AUSTRIA HOLDING AG 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
HOLDING AG 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 HOLDING AG to
charge interest on late payments of 9.2 percentage points
p.a. above the base interest rate of the Austrian National
Bank and also to charge running costs of EUR 4.00/per re-
minder.

6.6. The Principal shall furthermore undertake to reimburse TÜV
AUSTRIA HOLDING AG 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 (in accordance
with the remunerations for debt collection services as set
forth in the regulation issued by the Federal Ministry for
Economic Affairs, Federal Law Gazette (BGBl) 141/96 and
valorised in terms of § 4 par. 2 of this regulation) as well as
the costs for intervening lawyers insofar as they were expe-
dient 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 HOLDING AG 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 HOLDING AG.

7. Warranty

7.1. If the Principal is not a consumer in terms of the Consumer
Protection Act (KSchG) he shall on completion of the agree-
ment examine the works or services of TÜV AUSTRIA
HOLDING AG 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, un-
der exclusion of any liability of TÜV AUSTRIA
HOLDING AG. Concealed defects shall upon identification be objected to in writing without any delay, at the latest within seven cal-
endar days thereafter but at any rate within the warranty pe-
riod. Notifications of defects shall not confer entitlement to
withhold payment of invoiced amounts in whole or in part.

7.2. Warranty claims of the Principal shall, at the choice of TÜV
AUSTRIA HOLDING AG, be limited to rectification or supply of
a replacement. TÜV AUSTRIA HOLDING AG shall be en-
titled to carry out two attempts at rectification or supply of re-
placements.

Claims for damages by the Principal, except for acts of in-
tent on the part of TÜV AUSTRIA HOLDING AG or its agencies/executives, shall be excluded unless asserted in a
court of law within a period of three months following re-
jection of the claims with a corresponding notice by TÜV
AUSTRIA HOLDING AG or its insurers. Any possible
claims for damages by the Principal vis-à-vis TÜV AUSTRIA
HOLDING AG (except for acts of intent on the part of
TÜV AUSTRIA HOLDING AG or its agencies/executives)
expire within a year of the Principal having obtained
knowledge of these claims, unless provisions elsewhere or the
law provide for shorter prescription. This shall not ap-
ply to delictual claims.
8.9. The preceding legal disclaimers and limitations of liability under clauses 8.1 to 8.8 shall not apply to claims pursuant to the Product Liability Act, insofar as liability is mandatory under this Act.

8.10. Inasmuch as TÜV AUSTRIA HOLDING AG is liable vis-à-vis the Principal for acts of intent or severe gross negligence or omission 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 HOLDING AG.

8.11. If third parties, who neither have a contractual relationship with TÜV AUSTRIA HOLDING AG nor with the Principal, on the basis of an agreement between TÜV AUSTRIA HOLDING AG and the Principal, assert claims against TÜV AUSTRIA HOLDING AG, its agencies, employees and vicarious agents, which are not attributable to acts of intent or severe gross negligence on the part of TÜV AUSTRIA HOLDING AG, its agencies, employees and subcontractors, the Principal shall indemnify and hold harmless TÜV AUSTRIA HOLDING AG or its vicarious agents.

8.12. TÜV AUSTRIA HOLDING AG 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 AUSTRALIA HOLDING AG shall remain with TÜV AUSTRALIA HOLDING AG. The distribution, utilization and/or publication of the services beyond the contractually stipulated purpose shall require prior written authorization by TÜV AUSTRALIA HOLDING AG. 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 AUSTRALIA HOLDING AG from any possible claims by third parties.

10. Non-disclosure/confidentiality/data protection
10.1. TÜV AUSTRIA HOLDING AG 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 HOLDING AG making copies for the records of TÜV AUSTRIA HOLDING AG of written documents, drawings and plans etc. which are left with TÜV AUSTRIA HOLDING AG for its perusal and which are necessary for the completion of the agreement.

10.3. TÜV AUSTRIA HOLDING AG shall when dealing with personal data comply with the provisions of the Data Protection Act (DSG), the General Data Protection Regulation (GDPR) and the Telecommunications Act (TKG) and adopt the required technical and organizational arrangements for data protection within the scope of responsibility of TÜV AUSTRIA HOLDING AG.

10.4. TÜV AUSTRIA HOLDING AG shall in particular be under an obligation to have its employees comply with the provisions of § 6 DSG.

10.5. The data protection statement within the meaning of articles 13 and 14 GDPR can be seen on the website (www.tuv.at/datenschutzerklaerung).

10.6. Information or data of the Principal shall be forwarded to third parties exclusively in case of statutory, regulatory or court ordered disclosure.

11. Additional material
Costs for additional material and test equipment not commonly used within TÜV AUSTRIA HOLDING AG 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 HOLDING AG 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. These Terms and Conditions shall only be applicable vis-à-vis consumers (in terms of the Consumer Protection Act) as far as mandatory provisions of the Consumer Protection Act, Federal Law Gazette (BGBI), No. 140/1979 do not run contrary to them.

15. Place of jurisdiction and applicable law
For this agreement and the entire legal relationship between the parties Austrian Law 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 exclusively be referred to the competent court in Vienna, whereby TÜV AUSTRIA HOLDING AG shall be entitled to institute legal proceedings with other courts for which the contractual partner has a legal venue.