

# TUV Rheinland Rail Sciences, Inc.

## GENERAL TERMS AND CONDITIONS



### 1. Scope.

These General Terms and Conditions (these "Terms") are applicable to all customers (the "Customers" and each, individually, a "Customer") of TUV Rheinland Rail Sciences, Inc. ("TRRSI") who have entered into an agreement with TRRSI for any of the services (the "Services") indicated in TRRSI's Proposal.

### 2. No Waiver.

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

### 3. Offer and Acceptance.

3.1. The ordering of work from TRRSI shall constitute acceptance of the terms of TRRSI's Proposal and these General Terms and Conditions.

3.2. TRRSI shall have no obligation to provide services if the Customer is in breach of any of its obligations hereunder, or any other agreement between the Customer and TRRSI, at the time such services were scheduled to be provided.

### 4. Payment Conditions and Fees.

4.1. Work performed on a time-and-expense basis will be charged in accordance with TRRSI's most current "Schedule of Rates and Charges".

4.2. Work performed under fixed-fee contracts will be charged at the agreed fixed amount. Any unusual types of work not specifically covered by the "Schedule of Rates and Charges" are charged at a rate determined to be reasonable in relation to the type of work performed.

4.3. At the discretion of TRRSI, a suitable retainer may be required from Customer in advance. Such amounts will be held by TRRSI until final bill at which time the Customer account will be reconciled.

4.4. Evidence shall not be stored after closure of TRRSI services, the case file will be responsibility of the Customer. Upon Customer request, TRRSI will provide storage space for a reasonable fee, which Customer agrees to reimburse monthly upon presentation of TRRSI invoice.

4.5. If not otherwise specified in the quotation, invoices are typically rendered monthly. In case of services that are rendered under fixed-fee arrangements, no detailed statement of services shall be provided. All invoice amounts shall be due for payment upon receipt. A service charge of 1.5% per month or the highest rate permitted by law will be added to those accounts not paid within 30 days of invoice date. If collection procedures are required the Customer will pay for all reasonable expenses including court and attorneys fees. The accrual or receipt by TRRSI of interest under this subsection shall not constitute a waiver by TRRSI of any right it may have to declare Customer in default under its agreement or to terminate its agreement.

4.6. TRRSI without liability may withhold delivery of reports and other data and may suspend performance of its obligations to Customer pending full payment of all charges. Furthermore, TRRSI reserves the right to decline further work with any Customer having been delinquent in its payment of charges due to TRRSI for previous work, until such balances are paid in full.

4.7. Payments shall be made to the bank account of TRRSI as indicated on the invoice, stating the invoice and client numbers. Objections to any invoice shall be submitted in writing within two weeks from receipt of the invoice.

4.8. Fees for services rendered hereunder do not include any relevant VAT, excise or similar taxes, which are payable by the Customer, where required.

4.9. Travel fees and expenses and other material and additional costs are charged separately, unless such costs were included in the quotation. Material and additional costs are external costs (including, for example, subcontractor costs) associated with the contract, costs incurred for the use of special laboratories or special measuring equipment (use of equipment costs) and miscellaneous costs (e.g. photographic work, disposal of test samples (hazardous waste), packaging, shipping and customs duties). Travel expenses incurred in connection with services rendered in the field will be charged at cost, unless such costs were included in the quotation. Travel expenses include a per diem allowance, transportation expenses, TRRSI's applicable standard mileage rate and any other costs incurred.

### 5. No Right of Setoff.

Customer shall have no right of setoff against any payments due, whether on account of any claims or alleged claims against TRRSI under these Terms or otherwise.

### 6. Execution of Scope of Services

6.1. TRRSI shall perform all work in accordance with generally accepted professional engineering practice and in accordance with any and all underlying standards and regulations applicable to the services, as such are in force at the time of TRRSI's confirmation of the Customer's order. No other warranty, express or implied is made concerning work performed under the agreement, including TRRSI findings, recommendations, specifications or professional advice.

6.2. TRRSI will diligently proceed with the contracted work and report to Customer in a timely manner, except for delays occasioned by factors beyond its control, or by factors which were not reasonably foreseeable, or by factors initiated by the Customer.

6.3. Time of Performance and deadlines shall be binding only if written confirmation that they are binding has been provided to the Customer by TRRSI.

6.4. The scope of the services to be provided and the nature of deliverables, e.g. reports, if any, shall be governed by the proposal issued by TRRSI and the order placed by the Customer for the specific services required.

6.5. Work will be terminated upon receipt by TRRSI of written notice from the Customer. Customer will be billed only for the work in progress before the termination date. Notwithstanding the preceding provision, TRRSI may complete analyses, records, and reports as are reasonably necessary to protect professional reputation and adequately document the work performed through termination. Charges for such work will be kept to a reasonable minimum, not exceeding ten percent of total charges incurred through date of termination.

6.6. TRRSI, unless specific or other arrangements are made or required differently by applicable regulations, will maintain its technical files for thirty days after final payment is received and the case file is closed. Financial records will be retained according to IRS requirements, or one year after the date final payment is received and the case file is closed.

### 7. Customer Cooperation.

Customers shall guarantee that all cooperation required of the Customer, the Customer's agents, employees or any third party in connection with the Services, as such may be specified in the underlying contract for services or order, shall be provided in a timely manner and at no cost to TRRSI. All documentation and materials, supplies, auxiliary staff, etc., necessary and reasonably required for the performance of the services shall be made available to TRRSI free of charge. In cooperating with TRRSI, the Customer shall comply with all legal requirements and applicable industry regulations and standards. The Customer shall bear any additional cost incurred as a result of work 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, TRRSI shall be entitled to charge additional fees to offset additional expenses incurred as a result of such lack of proper cooperation.

### 8. Confidentiality.

8.1. As used in this Agreement, "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,

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at the time of disclosure all such Confidential Information that is disclosed in writing or other tangible form.

8.2. Each Party agrees (a) to keep confidential the Confidential Information of the other Party and the terms of this Agreement, (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 its and their directors, employees, consultants, sub-contractors and agents in each case who 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.

8.3. Except to the extent required by Applicable Law, neither Party shall make any public statements or releases concerning this Agreement or the transactions contemplated by this Agreement without obtaining the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

### 9. Provision of Product Samples.

Customer shall provide TRRSI with appropriate product samples if the services ordered from TRRSI include testing and/or certification of such samples. Such samples shall be provided at the sole cost of Customer, including shipping and handling. TRRSI shall not be responsible for damage to or loss of product samples while in transit or during the performance of the services under this agreement.

### 10. Disposal of Product Samples.

Customer agrees that product samples submitted for evaluation, testing and/or certification may be destroyed or damaged during the testing and/or certification process. Unless TRRSI receives instructions from the Customer that the Customer wishes to reclaim the product samples, TRRSI shall be free to donate such product samples to educational institutions and community organizations at TRRSI's discretion or to dispose of such product samples in any manner it deems appropriate. All costs associated with the safe and proper disposal of hazardous materials shall be borne solely by the Customer. All shipping and handling costs associated with the return of product samples to the Customer, shall be borne solely by the Customer.

### 11. Copyrights.

The copyrights to all documents, including joint copyrights in certifications, expert opinions, reports, test results, raw data, calculations, descriptions, etc., which are produced by TRRSI during the performance of the services shall remain the sole property of TRRSI. All such documents, certifications, expert opinions, reports, test results, raw data, calculations, descriptions, etc., may be used by the Customer only for their intended purpose. Unless otherwise expressly agreed in writing, TRRSI shall retain exclusive rights to all proprietary information, technologies, trade secrets, inventions, or patentable ideas developed during performance of this agreement.

### 12. Acceptance of Services.

Reports and work product generated by TRRSI shall be examined by the Customer within five (5) business days beginning on the date of delivery to the Customer. The date of transmission of any notice by TRRSI shall be deemed to be the date of such notice. The Services and TRRSI's work products shall be deemed to be accepted unless a written notice describing the deficiency is received by TRRSI within the applicable time period set forth above.

### 13. Warranty and Limitation of Liability.

13.1. Customer assumes full and complete responsibility for all uses and/or applications of TRRSI's recommendations or work under this agreement, or failure to use these recommendations or work.

13.2. TRRSI 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 TRRSI was subsequently modified without TRRSI's written consent or (c) the Customer shall not have disclosed to TRRSI all material facts known to the Customer with respect to object of the services.

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

13.4. 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.

13.5. THE LIABILITY OF TRRSI, THEIR EMPLOYEES, AGENTS, MANAGERIAL STAFF, CONSTITUENT BODIES OR SHAREHOLDERS, FOR ALL DAMAGES IN CONNECTION WITH THE PROVISION OF THE SERVICES SHALL IN ALL EVENTS BE LIMITED TO A TOTAL OF THE LESSER OF TEN TIMES THE PO OR SOW VALUE AND ONE MILLION UNITED STATES DOLLARS (\$1,000,000), UNLESS SUCH DAMAGES WERE CAUSED INTENTIONALLY OR AS THE RESULT OF GROSS NEGLIGENCE. THE LIABILITY OF TRRSI AND THE TRRSI AFFILIATES HEREUNDER IS EXPRESSLY LIMITED TO DIRECT DAMAGES INCURRED WITH RESPECT TO THE SERVICES BY TRRSI. IN NO EVENT SHALL TRRSI 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.

### 14. Indemnification

14.1. Customer shall indemnify and hold harmless TRRSI and TRRSI's officers, directors, employees, affiliates, suppliers and agents (each a "TRRSI Indemnified Person") against any losses, claims, damages, liabilities, penalties, actions, proceedings or judgments of any kind whatsoever (including all reasonable legal and attorneys fees and expenses) to which a TRRSI Indemnified Person may become subject out of claims by anyone including but not limited to Customer's customers or any third party related to or arising out of any breach by Customer of any provision of the Service Agreement, these Terms or the Certification and Testing Regulations; any misrepresentation in, or breach of, any of Distributor's representations and warranties contained in the Service Agreement; any activities or performance by the Customer related to the Services Agreement, other than as expressly authorized in such Service Agreement.

### 15. Governing Law and Jurisdiction; Place of Performance.

15.1. The construction and validity of these Terms shall be governed by the laws the State of Georgia, 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.

15.2. All Services provided by TRRSI shall be deemed to be provided in Scottdale, Georgia, USA. The Customer agrees to the exclusive jurisdiction of the federal and state courts located in the State of Georgia, with respect to the adjudication of any dispute arising out of or in connection with the provision of the services, the Service Agreement or these Terms.

15.3. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT.

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15.4. 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.

16. 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.

17. Revisions.

TRRSI may change, revise, amend or modify these Terms from time to time. TRRSI shall provide Customers 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.

18. Entire Agreement; Modifications or Waivers.

These Terms, together with TRRSI's proposal and any applicable Testing and Certification Regulations, if any, shall be the complete and exclusive statement of the agreement between the parties with respect to the subject matter hereof and supersede any oral or written communications, understandings, acknowledgements or representations or agreements relating thereto.