General Terms and Conditions of Business of TÜV Technische Überwachung Hessen GmbH (hereinafter referred to as “TÜV HESSEN”) governing freely agreed (non-regulated) services, in particular activities involving testing and inspection, consultancy and expert opinions

1 General: Scope
1.1 As laid down in its articles of association, TÜV HESSEN provides technical services in particular in the form of expert opinions, tests and inspections, measurements/laboratory services, consultancy/concept planning and specialized training courses and develops services and the associated products in the field of new technologies (hereinafter referred to as the “Services”).

1.2. TÜV HESSEN’s predominately provides Services for entrepreneurs (Art. 14 of the German Civil Code (BGB)) and legal entities under public law and special funds under public law. These General Terms and Conditions of Business (hereinafter referred to as the “GTC”) are therefore in principle drafted for transactions with those groups of persons and apply to all business relationships between TÜV HESSEN and those customers. Regardless of the foregoing, they also apply to business relations between TÜV HESSEN and consumers (Art. 13 of the German Civil Code (BGB)). In this case, however, the GTC apply with the following exceptions:

- The delivery and completion periods stated by TÜV HESSEN are binding, contrary to the provisions in Section 3.1.
- Section 4.3 shall not apply.
- Section 5.6 shall not apply.
- Section 8.1 applies with the proviso that the place where the registered office of TÜV HESSEN is located is agreed to be the place of jurisdiction in the event that the registered office, residence or habitual abode of the customer is transferred outside the state of Hessen or the place of application of the laws of the Federal Republic of Germany.
- The customer’s registered office, residence or habitual abode is unknown at the time when action is brought.
- Section 8.2 shall not apply.
- TÜV HESSEN does not engage in any dispute resolution procedures before any consumer conciliation body.

1.3. These GTC apply exclusively. Any general terms and conditions of the customer which do not form part of or supplement these GTC shall become part of the contract only and to the extent that TÜV HESSEN has explicitly approved their application. This approval requirement applies in any event and even if TÜV HESSEN for example renders the Services to the customer without reservation despite being aware of the customer’s general terms and conditions of business.

1.4. Individual agreements made with the customer in a specific case (including ancillary agreements, supplements and changes) have priority over these GTC. For the content of such agreements a written contract or written confirmation by TÜV HESSEN is authoritative, subject to proof to the contrary.

2 Contractual Performance
2.1. Unless otherwise agreed, the Services will be rendered in accordance with the statute law applicable at the time of entry into force of the contract. TÜV HESSEN shall be entitled to exercise its reasonable discretion in determining the method or type of investigation or performance to be carried out.

2.2. TÜV HESSEN shall be entitled to make use of sub-contractors in the implementation of the order.

2.3. The scope of contractual activities to be performed by TÜV HESSEN shall be defined in text form on placement of order. If any extension or other modification of the originally agreed scope of order or activity within the context of due performance of the contract, they shall be additionally agreed upon in advance and in text form. Articles 648 and 648a of the German Civil Code (BGB) shall not be affected thereby.

3 Liability, Impossibility of Performance
3.1. Any delivery or completion periods stated by TÜV HESSEN shall be binding only if this has been explicitly agreed upon in text form.

3.2. Should TÜV HESSEN’s customer, in the case of delayed performance, grant a reasonable additional period within which performance is to take place and should TÜV HESSEN fail to observe this new deadline or ascertain that performance is no longer possible, the customer shall have the right to withdraw from the contract and – if TÜV HESSEN is at fault – claim damages in lieu of performance. Articles 318, 323 of the German Civil Code (BGB) shall remain unaffected hereby.

4 Warranty
4.1. Warranty by TÜV HESSEN only covers Services with which it has been explicitly commissioned as per Section 2.1 or 2.3 Warranty regarding the proper condition and overall functioning of the plants to which the inspected or tested parts belong shall therefore be excluded. In particular, TÜV HESSEN shall not assume any responsibility for the design, materials and construction of the examined plants unless these issues have been explicitly included in the contract. Even if the latter is the case, the warranty and the legal responsibility of the manufacturer shall be neither restricted nor assumed.

4.2. Any warranty given by TÜV HESSEN shall initially be restricted to supplementary performance to be completed within a reasonable time limit. Should such supplementary performance fail, i.e. be impossible or unacceptably late for the customer or be unjustifiably refused or delayed by TÜV HESSEN, the customer shall be entitled, at its discretion, either to a reduction of the price or rescission of the contract.

4.3. Notwithstanding the sale and purchase of consumer goods and the consumer contracts which fall within the scope of Article 651 of the German Civil Code (BGB), any claims for supplementary performance, reduction of price or rescission of the contract, which are not subject to the limitation periods of Articles 438 (1) No. 2 or Article 634a (1) No. 2 of the German Civil Code (BGB), shall be time-barred after one year following the beginning of the statutory limitation period, unless TÜV HESSEN has maliceaneously concealed the defect.

4.4. Any claims for repayment of expenses covered by Article 635 (2) of the German Civil Code (BGB), shall not be affected by this clause.