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**Client:** HAPPY ARTS&CRAFTS(NINGBO)CO., LTD.  
HAPE INTERNATIONAL(NINGBO) LTD.  
9-27Nanhai Road, Dagang industrial City,Beilun,Ningbo,China

**Test item(s):** Toy

**Identification/** Refer to detail

**Model No(s):**

**Sample Receiving date:** 2018-09-18 & 2018-10-11

**Testing Period:** 2018-09-18 to 2018-11-05

<b>Test Specification:</b>	<b>Test result:</b>
1. ASTM F963-17: Mechanical and physical	PASS
2. ASTM F963-17: Flammability on solids and soft toys	PASS
3. CPSIA Sect 103: Tracking label	PASS
4. ASTM F963-17 Sect. 4.3.5.1 and CPSIA Sect. 101: Total lead content in paint and coating materials	PASS
5. ASTM F963-17 Sect. 4.3.5.2 and CPSIA Sect. 101: Total lead content in substrate materials	PASS
6. ASTM F963-17 Sect. 4.3.5.1 and 4.3.5.2 : Soluble heavy metal	PASS

**Other information:**

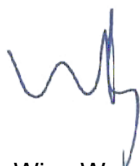
Packaging provided: Yes

The provided age grade of the item: (M005)Over 18 months; (M006)Over 24 months; (Others)Over 10 months.

The appropriate age grade of the item: (M005)Over 18 months; (M006)Over 24 months; (Others)Over 10 months.

The item was tested (M005)Over 18 months; (M006)Over 24 months; (Others)Over 10 months.

For and on behalf of  
TÜV Rheinland (Shanghai) Co., Ltd.




2018-11-07 Wice Wang / Department Manager

*Date* *Name/Position*

*Test result is drawn according to the kind and extent of tests performed.  
This test report relates to the a. m. test sample. Without permission of the test center this test report is not permitted to be duplicated in extracts. This test report does not entitle to carry any safety mark on this or similar products.*

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Item NO.	Item Description EN	Age
E0050,E0050A	Little Plane	10M+
E0051,E0051A	Little Copter	10M+
E0052,E0052A	Mini Van, Red	10M+
E0057,E0057A	Little Auto	10M+
E0438,E0438A,E0438B	fast Flip Racetrack	18M+
E0416,E0416A	Twist and Turnables	24M+



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**Material List:**

Item: Refer to detail

Material No.	Material	Color	Location	Remark
M001	Whole Product	Multi-color	E0050,E0050A	
M002	Whole Product	Multi-color	E0051,E0051A	
M003	Whole Product	Multi-color	E0052,E0052A	
M004	Whole Product	Multi-color	E0057,E0057A	
M005	Whole Product	Multi-color	E0438,E0438A,E0438B	
M006	Whole Product	Multi-color	E0416,E0416A	
M007	Textile	White	Elastic string, E0050/E0051/E0438	
M008	Coating	Brown	On wood	
M009	Plastic	Grey	PA screw, E0416	
M010	Coating	Lt.pink	On wood, E0416	
M011	Paper + printing	White/Red	Paper bag, E0416	
M012	Coating	Dk.grey	On wood, E0438	
M013	Plastic	Red	PP wheel, E0438	
M014	Plastic	Dk.blue	PP wheel, E0438	
M015	Plastic	Lt.green	PP wheel, E0438	
M016	Wood	Nature	Solid wood	Refer to 0154358367/M003
M017	Wood	Nature	Plywood	Refer to 0154358367/M002
M018	Coating	Orange	On wood	Refer to 0154358367/M007
M019	Coating	Transparent	On wood	Refer to 0154358367/M009

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M020	Coating	Black	On wood	Refer to 0154358367/M004
M021	Coating	Yellow	On wood	Refer to 0154358367/M006
M022	Coating	Red	On wood	Refer to 0154361701/M006
M023	Coating	Orange red	On wood	Refer to 0154361701/M018
M024	Coating	Dk.green	On wood	Refer to 0154361701/M021
M025	Coating	Lt.green	On wood	Refer to 0154361701/M007
M026	Coating	Dk.blue	On wood	Refer to 0154361701/M008
M027	Coating	Lt.blue	On wood	Refer to 0154361701/M019
M028	Rubber	White	Elastic string(rubber core)	Refer to 0154361704/M007
M029	Coating	White	On wood	Refer to 0154361701/M023
M030	Coating	Brown/Red	On wood, E0057	
M031	Metal	Silver	Axis	
M032	Metal	Silver	Round nail, E0051	
M033	Metal	Silver	Wheel, E0438	
M034	Metal	Silver	Screw, E0438	



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**1.ASTM F963-17: Mechanical and physical**
**Test result:**

Test No:	T001
Material No:	M001-M006
<b>4. Safety requirements</b>	
4.1 Material Quality (visual check)	PASS
4.6 Small objects	PASS
4.7 Accessible edges	PASS
4.8 Projections	PASS*1
4.9 Accessible points	PASS
4.11 Nails and fasteners	PASS*2
4.17 Wheels, tires and axles	PASS*3
<b>5. Labeling requirements</b>	
5.16 Promotional materials	PASS
<b>6. Instructional literature</b>	
6.1 Definition and description	PASS
<b>7. Producer's markings</b>	
7.1 Name and address of the producer or the distributor	PASS

**Use and Abuse Tests:**

The submitted samples were undergone the use and abuse tests in accordance with FHSA 16 CFR and whichever is applicable the tested age grade.

Age Category	Impact Test	Flexure Test	Torque Test	Tension Test	Compression Test
0-18 Months 16 CFR 1500.51	10 x 4.5 ft	120 Arc 30 Cycles 10 lbs	2 in-lbs	10 lbs	20 lbs
19-36 Months 16 CFR 1500.52	4 x 3 ft	120 Arc 30 Cycles 15 lbs	3 in-lbs	15 lbs	25 lbs
37-96 Months 16 CFR 1500.53	4 x 3 ft	120 Arc 30 Cycles 15 lbs	4 in-lbs	15 lbs	30 lbs

The clause and/or sub-clause would be indicated only in the test report whichever applicable. The comprehensive result report is available upon request.

**Remark:**

- \*1 This clause is only applicable to M006
- \*2 This clause is only applicable to M002,M005
- \*3 This clause is only applicable to M001,M002,M003,M004,M005



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**2.ASTM F963-17: Flammability on solids and soft toys**
**Test result:**

	Test No:	T001
	Material No:	M001-M006
<b>4.2 Flammability on solids and soft toys</b>		PASS

The burning rate of the most severe part = DNI

Note: Maximum permissible burning rate = 0.1 Inch/sec.

**Abbreviation:** DNI = Did Not Ignite / IBE = Ignite But Self-extinguish


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**3.CPSIA Sect 103: Tracking label**

**Test Result:**

	Test No:	T001
	Material No:	M001-M006
Present On Packaging		PASS
Present On Product		PASS



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**4.ASTM F963-17 Sect. 4.3.5.1 and CPSIA Sect. 101: Total lead content in paint and coating materials**

Test method: CPSC-CH-E1003-09.1 (Microwave method)

Test result:

Test No.	Material No.	Test Parameter	Unit	RL	Regulatory Requirement	Test Result
T001	M010	Lead Content	ppm	10	90	n.d.
T002	M018	Lead Content	ppm	10	90	n.d.
T003	M019	Lead Content	ppm	10	90	n.d.
T004	M020	Lead Content	ppm	10	90	n.d.
T005	M021	Lead Content	ppm	10	90	n.d.
T006	M022	Lead Content	ppm	10	90	n.d.
T007	M023	Lead Content	ppm	10	90	n.d.
T008	M024	Lead Content	ppm	10	90	n.d.
T009	M025	Lead Content	ppm	10	90	n.d.
T010	M026	Lead Content	ppm	10	90	n.d.
T011	M027	Lead Content	ppm	10	90	n.d.
T012	M029	Lead Content	ppm	10	90	n.d.
T013	M030	Lead Content	ppm	10	90	n.d.

 Abbreviation: n.d. = Not Detected (< RL)  
 RL = Reporting Limit  
 ppm = parts per million




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**5.ASTM F963-17 Sect. 4.3.5.2 and CPSIA Sect. 101: Total lead content in substrate materials**

Test method: CPSC-CH-E1001-08.3 and CPSC-CH-E1002-08.3 (Microwave method)

Test result:

Test No.	Material No.	Test Parameter	Unit	RL	Regulatory Requirement	Test Result
T001	M009	Lead Content	ppm	10	100	n.d.
T002	M011	Lead Content	ppm	10	100	n.d.
T003	M013	Lead Content	ppm	10	100	n.d.
T004	M014	Lead Content	ppm	10	100	n.d.
T005	M015	Lead Content	ppm	10	100	n.d.
T006	M017	Lead Content	ppm	10	100	n.d.
T007	M028	Lead Content	ppm	10	100	n.d.
T008	M031	Lead Content	ppm	10	100	n.d.
T009	M032	Lead Content	ppm	10	100	n.d.
T010	M033	Lead Content	ppm	10	100	n.d.
T011	M034	Lead Content	ppm	10	100	n.d.

Abbreviation: n.d. = Not Detected (< RL)  
 RL = Reporting Limit  
 ppm = parts per million



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**6.ASTM F963-17 Sect. 4.3.5.1 and 4.3.5.2 : Soluble heavy metal**

Test method: For paint and similar surface-coating materials: ASTM F963-17 Section 8.3.2 - 8.3.4 Method to Dissolve Soluble Matter for Surface Coatings, Preparation of Test Samples and Test Procedures

For substrate: ASTM F963-17 Section 8.3.5 Soluble Element Test Method for Substrate Materials

This requirement applies to the coating and substrate materials which the sample weight is greater than 10 mg

Test result:

Test No.	Material No.	[mg/kg]							
		Sb	As	Ba	Cd	Cr	Pb	Hg	Se
		Maximum Permissible Limit of Any Toy Materials except Modelling Clay							
		60	25	1000	75	60	90	60	500
		Maximum Permissible Limit of Modelling Clay							
		60	25	250	50	25	90	25	500
		RL							
		2.5	2.5	2.5	2.5	2.5	2.5	2.5	
T001	M007	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.
T002	M009	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.
T003	M010	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.
T004	M011 (*2)	n.d.	n.d.	4.2	n.d.	n.d.	n.d.	n.d.	n.d.
T005	M012	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.
T006	M013	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.
T007	M014	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.
T008	M015	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.
T009	M016 (*2)	n.d.	n.d.	12.1	n.d.	n.d.	n.d.	n.d.	n.d.
T010	M017 (*2)	n.d.	n.d.	4.0	n.d.	n.d.	n.d.	n.d.	n.d.
T011	M018	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.
T012	M019 (*2)	n.d.	n.d.	5.7	n.d.	n.d.	n.d.	n.d.	n.d.
T013	M020 (*2)	n.d.	n.d.	2.5	n.d.	n.d.	n.d.	n.d.	n.d.
T014	M021	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.
T015	M022 (*2)	n.d.	n.d.	2.8	n.d.	n.d.	n.d.	n.d.	n.d.
T016	M023 (*2)	n.d.	n.d.	10.2	n.d.	n.d.	n.d.	n.d.	n.d.
T017	M024 (*2)	n.d.	n.d.	7.6	n.d.	n.d.	n.d.	n.d.	n.d.
T018	M025 (*2)	n.d.	n.d.	5.3	n.d.	n.d.	n.d.	n.d.	n.d.
T019	M026 (*2)	n.d.	n.d.	6.7	n.d.	n.d.	n.d.	n.d.	n.d.
T020	M027 (*2)	n.d.	n.d.	9.7	n.d.	n.d.	n.d.	n.d.	n.d.



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Test No.	Material No.	[mg/kg]							
		Sb	As	Ba	Cd	Cr	Pb	Hg	Se
		Maximum Permissible Limit of Any Toy Materials except Modelling Clay							
		60	25	1000	75	60	90	60	500
		Maximum Permissible Limit of Modelling Clay							
		60	25	250	50	25	90	25	500
		RL							
		2.5	2.5	2.5	2.5	2.5	2.5	2.5	
T021	M028	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.	
T022	M029	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.	

Abbreviation: n.d. = Not Detected (< RL)  
 RL = Reporting Limit  
 mg/kg = milligram per kilogram

## Remark:

- \*1 The weight of test portion M008 marked (\*1) available was less than 10 mg, the test for soluble heavy metal content was not performed.
- \*2 The material is deemed comply with the requirement of ASTM F963-17 cl. 8.3.4.3 after analytical correction.

## Analytical Correction

Element	Sb	As	Ba	Cd	Cr	Pb	Hg	Se
Analytical Correction (in %)	60	60	30	30	30	30	50	60



Sample Photos



E0050,E0050A



E0051,E0051A



E0052,E0052A



E0057,E0057A



E0416,E0416A



E0438,E0438A,E0438B

- END -



# General Terms and Conditions of Business of TÜV Rheinland in Greater China

## 1. Scope

- 1.1 These General Terms and Conditions of Business of TÜV Rheinland in Greater China is made between the client and one or more member entities of TÜV Rheinland in Greater China as applicable as the case may be ("TÜV Rheinland").
- 1.2 The following terms and conditions apply to agreed services including consultancy services, information, deliveries and similar services as well as ancillary services and other secondary obligations provided within the scope of contract performance.
- 1.3 Any standard terms and conditions of the client of any nature shall not apply and shall hereby be expressly excluded. No standard contractual terms and conditions of the client shall form part of the contract even if TÜV Rheinland does not explicitly object to them.

## 2. Quotations

- Unless otherwise agreed, all quotations submitted by TÜV Rheinland can be changed by TÜV Rheinland without notice prior to its acceptance and confirmation by the other party.

## 3. Coming into effect and duration of contracts

- 3.1 The contract shall come into effect for the agreed terms upon the quotation letter of TÜV Rheinland or a separate contractual document being signed by both contracting parties, or upon the works requested by the client being carried out by TÜV Rheinland. If the client instructs TÜV Rheinland without receiving a quotation from TÜV Rheinland (quotation), TÜV Rheinland is, in its sole discretion, entitled to accept the order by giving written notice of such acceptance (including notice sent via electronic means) or by performing the requested services.
- 3.2 The contract term starts upon the coming into effect of the contract in accordance with article 3.1 and shall continue for the term agreed in the contract.
- 3.3 If the contract provides for an extension of the contract term, the contract term will be extended by the term provided for in the contract unless terminated in writing by either party with a six-week notice prior to the end of the contractual term.

## 4. Scope of services

- 4.1 The scope of the services shall be decided solely by a unanimous declaration issued by both parties. If no such declaration exists, then the written confirmation of order by TÜV Rheinland shall be decisive.
- 4.2 The agreed services shall be performed in compliance with the regulations in force at the time the contract is entered into.
- 4.3 TÜV Rheinland is entitled to determine, in its sole discretion, the method and nature of the assessment unless otherwise agreed in writing or if mandatory provisions require a specific procedure to be followed.
- 4.4 On execution of the work there shall be no simultaneous assumption of any guarantee of the correctness (proper quality) and working order of either tested or examined parts nor of the installation as a whole and its upstream and/or downstream processes, organisations, use and application in accordance with regulations, nor of the systems on which the installation is based. In particular, TÜV Rheinland shall assume no responsibility for the construction, selection of materials and assembly of installations examined, nor for their use and application in accordance with regulations unless these questions are expressly covered by the contract.
- 4.5 In the case of inspection work, TÜV Rheinland shall not be responsible for the accuracy or checking of the safety programmes or safety regulations on which the inspections are based, unless otherwise expressly agreed in writing.

## 5. Performance periods/dates

- 5.1 The contractually agreed periods/dates of performance are based on estimates of the work involved which are prepared in line with the details provided by the client. They shall only be binding if being confirmed as binding by TÜV Rheinland in writing.
- 5.2 If binding periods of performance have been agreed, these periods shall not commence until the client has submitted all required documents to TÜV Rheinland.
- 5.3 Articles 5.1 and 5.2 also apply, even without express approval by the client, to all extensions of agreed periods/dates of performance not caused by TÜV Rheinland.

## 6. The client's obligation to cooperate

- 6.1 The client shall guarantee that all cooperation required on its part, its agents third parties will be provided in good time and at no cost to TÜV Rheinland.
- 6.2 Design documents, supplies, auxiliary staff, etc. necessary for performance of the services shall be made available free of charge by the client. Moreover, collaborative action of the client must be undertaken in accordance with legal provisions, standards, safety regulations and accident prevention instructions.
- 6.3 The client shall bear any additional cost incurred on account of work having to be redone or being delayed as a result of late, incorrect or incomplete information provided by or lack of proper cooperation from the client. Even where a fixed or maximum price is agreed, TÜV Rheinland shall be entitled to charge extra fees for such additional expense.
7. Invoicing of work
- 7.1 If the scope of performance is not laid down in writing when the order is placed, invoicing shall be based on costs actually incurred. If no price is agreed in writing, invoicing shall be made in accordance with the price list of TÜV Rheinland valid at the time of performance.
- 7.2 Unless otherwise agreed, work shall be invoiced according to the progress of the work.
- 7.3 If the execution of an order extends over more than one month and the value of the contract or the agreed fixed price exceeds €2,500.00 or equivalent value in local currency, TÜV Rheinland may demand payments on account or in instalments.

## 8. Payment terms

- 8.1 All invoice amounts shall be due for payment without deduction on receipt of the invoice. No discounts shall be granted.
- 8.2 Payments shall be made to the bank account of TÜV Rheinland as indicated on the invoice, stating the invoice and customer numbers.
- 8.3 In cases of default of payment, TÜV Rheinland shall be entitled to claim default interest at the applicable short term loan interest rate publicly announced by a reputable commercial

bank in the country where TÜV Rheinland is located. At the same time, TÜV Rheinland reserves the right to claim further damages.

- 8.4 Should the client default in payment of the invoice despite being granted a reasonable grace period, TÜV Rheinland shall be entitled to cancel the contract, withdraw the certificate, claim damages for non-performance and refuse to continue performance of the contract.
- 8.5 The provisions set forth in article 8.4 shall also apply in cases involving returned cheques, cessation of payment, commencement of insolvency proceedings against the client's assets or cases in which the commencement of insolvency proceedings has been dismissed due to lack of assets.
- 8.6 Objections to the invoices of TÜV Rheinland shall be submitted in writing within two weeks of receipt of the invoice.
- 8.7 TÜV Rheinland shall be entitled to demand appropriate advance payments.
- 8.8 TÜV Rheinland shall be entitled to raise its fees at the beginning of a month if overheads and/or purchase costs have increased. In this case, TÜV Rheinland shall notify the client in writing of the rise in fees. This notification shall be issued one month prior to the date on which the rise in fees shall come into effect (period of notice of changes in fees). If the rise in fees remains under 5% per contractual year, the client shall not have the right to terminate the contract. If the rise in fees exceeds 5% per contractual year, the client shall be entitled to terminate the contract by the end of the period of notice of changes in fees. If the contract is not terminated, the changed fees shall be deemed to have been agreed upon by the time of the expiry of the notice period.
- 8.9 Only legally established and undisputed claims may be offset against claims by TÜV Rheinland.

## 9. Acceptance

- 9.1 Any part of the work ordered which is complete in itself may be presented by TÜV Rheinland for acceptance as an instalment. The client shall be obliged to accept it immediately.
- 9.2 If the client fails to fulfil its acceptance obligation immediately, acceptance shall be deemed to have taken place 4 calendar weeks after completion of the work provided that TÜV Rheinland has specifically made the client aware of the aforementioned deadline upon completion of the work.

## 10. Confidentiality

- 10.1 For the purpose of these terms and conditions, "confidential information" means all information, documents, images, drawings, know-how, data, samples and project documentation which one party (the "disclosing party") hands over, transfers or otherwise discloses to the other party (the "receiving party"). Confidential information also includes paper copies and electronic copies of such information.
- 10.2 The disclosing party shall mark all confidential information disclosed in written form as confidential before passing it onto the receiving party. The same applies to confidential information transmitted by e-mail. If confidential information is disclosed orally, the receiving party shall be appropriately informed in advance and the disclosing party shall confirm in writing the confidentiality nature of the information within five working days of oral disclosure. Where the disclosing party fails to do so within the stipulated period, the receiving party shall not take any confidentiality obligations hereunder towards such information.
- 10.3 All confidential information which the disclosing party transmits or otherwise discloses to the receiving party during performance of work by TÜV Rheinland:
- a) may only be used by the receiving party for the purposes of performing the contract, unless expressly otherwise agreed in writing by the disclosing party;
- b) may not be copied, distributed, published or otherwise disclosed by the receiving party, unless this is necessary for fulfilling the purpose of the contract or TÜV Rheinland is required to pass on confidential information, inspection reports or documentation to the government authorities, judicial court, accreditation bodies or third parties that are involved in the performance of the contract;
- c) must be treated by the receiving party with the same level of confidentiality as the receiving party uses to protect its own confidential information, but never with a lesser level of confidentiality than that which is reasonably required.
- 10.4 The receiving party may disclose any confidential information received from the disclosing party only to those of its employees who need this information to perform the services required for the contract. The receiving party undertakes to oblige these employees to observe the same level of secrecy as set forth in this confidentiality clause.
- 10.5 Information for which the receiving party can furnish proof that:
- a) it was generally known at the time of disclosure or has become general knowledge without violation of this confidentiality clause by the receiving party; or
- b) it was disclosed to the receiving party by a third party entitled to disclose this information; or
- c) the receiving party already possessed this information prior to disclosure by the disclosing party; or
- d) the receiving party developed it itself, irrespective of disclosure by the disclosing party, shall not be deemed to constitute "confidential information" as defined in this confidentiality clause.
- 10.6 All confidential information shall remain the property of the disclosing party. The receiving party hereby agrees to immediately (i) return all confidential information, including all copies, to the disclosing party, and/or (ii) on request by the disclosing party, to destroy all confidential information, including all copies, and confirm the destruction of this confidential information to the disclosing party in writing, at any time if so requested by the disclosing party but at the latest and without special request after termination or expiry of the contract. This does not extend to include reports and certificates prepared for the client solely for the purpose of fulfilling the obligations under the contract, which shall remain with the client. However, TÜV Rheinland is entitled to make file copies of such reports, certificates and confidential information that forms the basis for preparing these reports and certificates in order to evidence the correctness of its results and for general documentation purposes required by laws, regulations and the requirements of working procedures of TÜV Rheinland.
- 10.7 From the start of the contract and for a period of three years after termination or expiry of the contract, the receiving party shall maintain strict secrecy of all confidential information and

shall not disclose this information to any third parties or use it for itself.

## 11. Copyrights

- 11.1 TÜV Rheinland shall retain all exclusive copyrights in the expert reports, test results, calculations, presentations etc. prepared by TÜV Rheinland.
- 11.2 The client may only use such expert reports, test results, calculations, presentations etc. prepared within the scope of the contract for the contractually agreed purpose.
- 11.3 The client may use test reports, test results, expert reports, etc. only complete and unshortened. Any publication or duplication for advertising purposes needs the prior written approval of TÜV Rheinland.

## 12. Liability of TÜV Rheinland

- 12.1 Irrespective of the legal basis, in the event of a breach of contractual obligations or tort, the liability of TÜV Rheinland for all damages, losses and reimbursement of expenses caused by TÜV Rheinland, its legal representatives and/or employees shall be limited to: (i) in the case of a contract with a fixed overall fee, three times the overall fee for the entire contract; (ii) in the case of a contract for annually recurring services, the agreed annual fee; (iii) in the case of a contract expressly charged on a time and material basis, a maximum of 20,000 Euro or equivalent amount in local currency; and (iv) in the case of a framework agreement that provides for the possibility of placing individual orders, three times of the fee for the individual order under which the damages or losses have occurred. Notwithstanding the above, in the event that the total and accumulated liability calculated according to the foregoing provisions exceeds 2.5 Million Euro or equivalent amount in local currency, the total and accumulated liability of TÜV Rheinland shall be only limited to and shall not exceed the said 2.5 Million Euro or equivalent amount in local currency.
- 12.2 The limitation of liability according to article 12.1 above shall not apply to damages and/or losses caused by malice, intent or gross negligence on the part of TÜV Rheinland or its vicarious agents. Such limitation shall not apply to damages for a person's death, physical injury or illness.
- 12.3 In cases involving a fundamental breach of contract, TÜV Rheinland will be liable even where minor negligence is involved. For this purpose, a "fundamental breach" is breach of a material contractual obligation, the performance of which permits the due performance of the contract. Any claim for damages for a fundamental breach of contract shall be limited to the amount of damages reasonably foreseen as a possible consequence of such breach of contract at the time of the breach (reasonably foreseeable damages), unless any of the circumstances described in article 12.2 applies.
- 12.4 TÜV Rheinland shall not be liable for the acts of the personnel made available by the client to support TÜV Rheinland in the performance of its services under the contract, unless such personnel made available is regarded as vicarious agent of TÜV Rheinland. If TÜV Rheinland is not liable for the acts of the personnel made available by the client under the foregoing provision, the client shall indemnify TÜV Rheinland against any claims made by third parties arising from or in connection with such personnel's acts.
- 12.5 The limitation periods for claims for damages shall be based on statutory provisions.
- 12.6 None of the provisions of this article 12 changes the burden of proof to the disadvantage of the client.
13. Partial invalidity, written form, place of jurisdiction and dispute resolution
- 13.1 All amendments and supplements must be in writing in order to be effective. This also applies to amendments and supplements to this clause 13.1.
- 13.2 Should one or several of the provisions under the contract and/or these terms and conditions be or become ineffective, the contracting parties shall replace the invalid provision with a legally valid provision that comes closest to the content of the invalid provision in legal and commercial terms.
- 13.3 Unless otherwise stipulated in the contract, the governing law of the contract and these terms and conditions shall be chosen following the rules as below:
- a) if TÜV Rheinland in question is legally registered and existing in the People's Republic of China, the contracting parties hereby agree that the contract and these terms and conditions shall be governed by the laws of the People's Republic of China.
- b) if TÜV Rheinland in question is legally registered and existing in Taiwan, the contracting parties hereby agree that the contract and these terms and conditions shall be governed by the laws of Taiwan.
- c) if TÜV Rheinland in question is legally registered and existing in Hong Kong, the contracting parties hereby agree that the contract and these terms and conditions shall be governed by the laws of Hong Kong.
- 13.4 Any dispute in connection with the contract and these terms and conditions or the execution thereof shall be settled friendly through negotiations.
- Unless otherwise stipulated in the contract, if no settlement or no agreement in respect of the extension of the negotiation period can be reached within two months of the arising of the dispute, the dispute shall be submitted:
- a) in the case of TÜV Rheinland in question being legally registered and existing in the People's Republic of China, to China International Economic and Trade Arbitration Commission (CIETAC) to be settled by arbitration under the Arbitration Rules of CIETAC in force when the arbitration is submitted. The arbitration shall take place in Beijing, Shanghai, Shenzhen or Chongqing as appropriately chosen by the claiming party.
- b) in the case of TÜV Rheinland in question being legally registered and existing in Taiwan, to Chinese Arbitration Association Taipei Branch to be arbitrated in accordance with its then current Rules of Arbitration. The arbitration shall take place in Taipei.
- c) in the case of TÜV Rheinland being legally registered and existing in Hong Kong, to Hong Kong International Arbitration Centre (HKIAC) to be settled by arbitration under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted in accordance with these rules. The arbitration shall take place in Hong Kong.
- The decision of the relevant arbitration tribunal shall be final and binding on both parties. The arbitration fee shall be borne by the losing party.