



# General Terms and Conditions

of TÜV SÜD Product Service GmbH (hereinafter referred to as TÜV SÜD PS)  
for voluntary services, in particular testing, expert's advisory services and certification

## 1. General Information

- 1.1 TÜV SÜD PS supports, reviews and provides expert opinions in the development and the production of products as to safety, quality and usability, and audits management systems. TÜV SÜD PS issues safety and quality certificates.
- 1.2 In the event that an order is placed, the customer shall accept the General Terms and Conditions, the Testing and Certification Regulations and the agreed prices respectively the hourly rates which apply at the time when the order is placed. As a rule, deviating General Terms and Conditions of individual customers will not be honoured.
- 1.3 Ancillary agreements, promises and other statements made on the part of TÜV SÜD PS staff or the experts called upon by them shall be binding only if they are expressly confirmed and in writing. This shall also apply to any modifications of this clause.

## 2. Executing Orders

- 2.1 Orders accepted by TÜV SÜD PS shall be executed and/or expert opinions shall be prepared in accordance with recognized technical standards while taking the state of the art into consideration and – insofar as contrary agreements have not been made in writing – the customary handling practiced by TÜV SÜD PS. No responsibility shall be assumed for the correctness of the guidelines and standards on which testing is based unless otherwise agreed and put in writing.
- 2.2 The scope of the work performed by TÜV SÜD PS shall be specified in writing when the order is placed. If changes or extensions of the specified scope of the order result during proper execution of the order, then they shall form the subject of an advance agreement in writing. In this case the customer shall be entitled to cancel the contract, if it would no longer be reasonable to expect that the customer adhere to the contract with regard to the changes or extensions. The customer shall, however, in accordance with Section 649 of the German Civil Code [BGB] pay the agreed remuneration or, in lieu of agreement, appropriate remuneration.
- 2.3 The contractual services of TÜV SÜD PS shall be deemed as having been furnished and completed with preparation of the respective final reports or expert opinions and – where applicable – the issuance of certificates.

## 3. Deadlines, Delay, Impossibility of Performance

- 3.1 The order periods indicated by TÜV SÜD PS shall not be binding unless they are specifically agreed upon in writing.
- 3.2 If TÜV SÜD PS exceeds a binding order period for reasons for which it is responsible and defaults on performance as a result, then the customer shall be authorised – to the extent that he has suffered damage because of the delay – to assert claims to damages for delay for each completed week of delay of 1% of the order value overdue as a result of such delay or a maximum amount of up to 25% of the order value overdue as a result of such delay. The regulations in 4.5 and 5 shall apply to any other claims to compensation in damages.

- 3.3 If, after the service becomes due, the customer grants TÜV SÜD PS an appropriate grace period and if TÜV SÜD PS allows this period to elapse or if it becomes impossible for TÜV SÜD PS to provide the service, then the customer shall be entitled to cancel the contract and – to the extent that TÜV SÜD PS proves to be culpable – assert claims to compensation in damages instead of the service in the amount of the damages for delay specified in Subclause 3.2. Sections 281 and 323 of the German Civil Code [BGB] shall remain unaffected.

## 4. Warranty, Liability

- 4.1 The warranty granted by TÜV SÜD PS covers only the services expressly ordered from it in accordance with Subclause 2.1. TÜV SÜD PS does not warrant for the correctness and functioning of the respective overall facilities to which the examined or tested parts belong; in particular, TÜV SÜD PS shall not be responsible for the design, choice of materials and construction of the plants examined insofar as such questions do not form the express subject matter of the order. Neither the warranty nor the legal responsibility of the manufacturer shall be limited or taken over in the latter case as well.
- 4.2 The warranty provided by TÜV SÜD PS shall initially be limited to subsequent performance within an appropriate period. If subsequent performance fails, i.e. it becomes impossible or unreasonable for the customer or in the event of unauthorized refusal by TÜV SÜD PS or undue delay, then the customer shall, at his discretion, be entitled to demand a reduction in the remuneration, or cancellation of the contract.
- 4.3 The warranty period shall amount to one year starting from passage of the risk, i.e. as of acceptance of the works.
- 4.4 TÜV SÜD PS shall only assume liability for a warranted quality of items and works, in particular that the service is suited to the purposes of the customer if the service is unsatisfactory and insofar as TÜV SÜD PS is responsible or a corresponding guarantee has been provided. Liability for consequential harm caused by a defect which results from violation of duty or with regard to a warranted quality shall be excluded if the violated duty or quality guarantee is not intended to protect against precisely such types of consequential damage. Customer warranty claims within the meaning of Section 443 of the German Civil Code [BGB] shall remain unaffected.
- 4.5 If a defect which does not involve the absence of a warranted quality, is due to a circumstance for which TÜV SÜD PS is responsible or in the event that TÜV SÜD PS violates a contractual obligation, then TÜV SÜD PS shall, per order, be liable for resultant damage to the customer in the case of only slightly negligent causation of damage up to an amount of  
1,000,000 EUR for property loss  
250,000 EUR for financial loss  
Clause 5 shall apply in the case of any other claims for damages.

4.6 Claims to repayment of expenses in accordance with Section 635 Subclause 2 of the German Civil Code [BGB] shall remain unaffected.

4.7 The limitations of liability of Subclauses 4.4 and 4.5 shall also apply with regard to the personal liability of TÜV SÜD PS staff, their executing aides and, in particular, experts.

## 5. Other Liability

Except in cases of intention and gross negligence, bodily injury or liability as defined by product liability law, any other claims asserted on the part of the customer for direct and indirect damages for any legal reason whatsoever, in particular, claims for payment of damages because of violation of duty or unlawful acts and compensation for damage which has not occurred on the subject of the order itself shall be excluded, insofar as they go beyond the warranty and liability provided for by TÜV SÜD PS in Subclauses 3.2, 3.3 and 4.2 to 4.7. This shall also apply to the personal liability of TÜV SÜD PS staff, their executing aides and, in particular, experts.

## 6. Terms of Payment and Prices

6.1 Services will be charged on the basis of prices resp. hourly rates agreed when the contract was concluded, unless a fixed price or some other assessment basis has been agreed upon. If a period of more than 4 months has elapsed between placement and confirmation of the order, and prices have increased in the meantime, then the modified price shall be the basis of calculation as of the 5th month.

6.2 Appropriate advances on costs may be required and/or partial invoices may be submitted for services already furnished.

6.3 The fees invoiced in accordance with Subclause 6.2 and/or the final invoice after acceptance of the works shall be payable within 14 days after billing, insofar as no other agreement has been made.

TÜV SÜD PS shall be entitled to charge interest of 8 percentage points above the basic interest rate during any delay on the part of the customer to pay an open invoice. The customer shall become in arrears by way, of a reminder, or 30 days after receipt of the invoice at the latest. If a particular date of payment is agreed upon based on the calendar, then the customer shall become in arrears at the end of the payment term. Section 286 of the German Civil Code [BGB] shall remain unaffected.

6.4 The respective fees do not include the legally valid value added tax. The value added tax is shown separately in the invoice.

6.5 Objections to TÜV SÜD PS invoices shall be communicated and justified in writing within a fixed period of exclusion of 14 days after receipt of the invoice.

## 7. Obligation to Maintain Secrecy, Copyright, Data Privacy Protection

7.1 TÜV SÜD PS shall be authorized to make file copies of written documents which have been made available to it for review and which are important for processing the order.

7.2 Insofar as expert opinions, test results, calculations, etc. are prepared in the course of processing the order and which are subject to the protection of copy right,

then TÜV SÜD PS shall grant a simple, non-transferable right to use to the customer, insofar as this is necessary and in accordance with the contractually presupposed purpose. Other rights shall not be transferred; in particular, the customer shall not be entitled to modify expert opinions, test results, calculations or the like (edit) or to make use of such outside of his business premises.

7.3 TÜV SÜD PS, its staff and any experts which may be called in shall not disclose and use trade and business matters about which they have gained knowledge during the performance of their work without proper authorisation.

7.4 TÜV SÜD PS processes and uses personal data exclusively for its own purposes. It also uses automatic data processing systems for this purpose. In order to fulfil the data security requirements of the Annex to Section 9 of the Federal Data Protection Law [BDSG], it has taken technical and organizational measures which ensure the security of the data and the data processing operations. TÜV SÜD PS staff involved in data processing are obliged to strictly comply with the BDSG and all data protection regulations.

## 8. Jurisdiction, Place of Performance, Applicable Law

8.1 The place of jurisdiction for the assertion of any claims for both parties to the contract shall be Munich, insofar as the prerequisites as specified in Section 38 of the Code of Civil Procedure are given.

8.2 The place of performance for any obligations arising out of this contract shall be Munich, the principal place of business of TÜV SÜD PS.

8.3 The contractual relationship and all attendant legal relations shall be exclusively governed by the law prevailing in the Federal Republic of Germany between domestic contracting parties under the exclusion of the United Nations (Vienna) Convention on Contracts for the International Sale of Goods (CISG.).

## 9. Scope of Application

9.1 These General Terms and Conditions shall apply both to businesses as well as all legal entities under public law and special funds under public law within the meaning of Section 310 of the German Civil Code [BGB], insofar as deviations have not been expressly determined.

9.2 If the customer does not belong to the category designated in Subclause 9.1 of Section 310 of the German Civil Code [BGB], then these General Terms and Conditions shall apply with the following stipulations:

- Contrary to Subclause 3.1, the order periods indicated by TÜV SÜD PS shall be binding.
- Subclause 6.3 shall apply under the condition that the interest on arrears amounts to 5 percentage points per annum above the basic interest rate.
- Clause 8.1 shall apply under the condition that Munich is agreed upon as the place of jurisdiction in the even that the customer moves his principal place of business, domicile or customary place of residence outside of the scope of application for the law prevailing in the Federal Republic of Germany or his principal place of business, domicile or customary place of residence is not known at the time that action is brought.

Subclause 8.2 shall not apply.