

General Terms and Conditions of Business of TÜV SÜD Informatik und Consulting Services GmbH



Informatik und
Consulting Services

1. Scope

- 1.1 These General Terms and Conditions of Business of TÜV SÜD INFORMATIK UND CONSULTING SERVICES GmbH (hereinafter referred to as TÜV SÜD ICS) govern the performance of defined work and services by TÜV SÜD ICS. Included are work and services in the field of information and communication technology (ICT), in particular consultancy, planning, development, assistance, the provision and operation of systems and system solutions and their maintenance and support.
- 1.2 Seminars, training courses and training sessions are governed by our special Terms and Conditions for Training Services
- 1.3 The following terms and conditions form part of all quotations and the basis for all services and performance by TÜV SÜD ICS to the exclusion of any terms and conditions of business, contract, delivery and purchase of the client.
- 1.4 With respect to work performed, TÜV SÜD ICS will be responsible for the work itself and for supervising, monitoring, and controlling work performance.
- 1.5 Services are aimed at advising and assisting the client and are provided independently by, and under the responsibility of, TÜV SÜD ICS.
- 1.6 Any performance commissioned by the client which is not expressly defined as work will be treated as services.
- 1.7 Work and services to be performed by TÜV SÜD ICS (service performance) refer exclusively to the equipment or system configurations specified by the client by stating manufacturer and type and serial number and equipment number, and approved by TÜV SÜD ICS.

2. Quotation and contract conclusion

- 2.1 Service performance is based on the written quotation and/or contract documentation and/or the service level agreements (SLAs) which will become valid upon being signed by both the client and TÜV SÜD ICS.
- 2.2 Unless specified otherwise, any quotation submitted to the client will be binding for TÜV SÜD ICS for a period of 30 working days.
- 2.3 The client will thoroughly examine the quotation documentation before placing a contract. If contractual performance includes the preparation of performance specifications and/or a rough or detailed technical plan, such documentation will become part of the contractually agreed service specifications and the basis for any further services built thereon, following preliminary approval by the client where appropriate.
- 2.4 TÜV SÜD ICS will notify the client without delay if, within the course of contract performance, it becomes aware of circumstances that may jeopardize the success of contract performance.
- 2.5 TÜV SÜD ICS will perform the contract in accordance with the generally accepted state of the art.
- 2.6 TÜV SÜD ICS reserves the right to employ sub-contractors (parties called in by TÜV SÜD ICS and assisting the latter in contractual performance) at its own discretion.

3. Performance periods and service times

- 3.1 Any information about the expected performance date and service times will be provided by TÜV SÜD ICS to the best of its knowledge and is based on the delivery and order situation at the time. Unless a binding date of performance was agreed in

writing, any information about the time of performance may only be regarded as a rough estimate.

- 3.2 A prerequisite for contractual performance by the defined deadlines is the timely and appropriate fulfilment of the client's contractual duties and its duties of co-operation. In cases involving delayed performance on the part of the client, the performance period and the service time will be suspended. A further prerequisite for the contractual performance on the part of TÜV SÜD ICS is that the required spare parts or equipment are generally available and kept in stock by the manufacturers.
- 3.3 If TÜV SÜD ICS is prevented from performing its contractual obligations by force majeure or other unforeseeable and extraordinary events which cannot be avoided even with a reasonable degree of diligence, the performance date and the service times will be extended accordingly.
- 3.4 If the client defines further service requirements exceeding the agreed service levels or service times, TÜV SÜD ICS will initiate reasonable measures of service performance within an agreed period and as fast as possible. The agreed service level times do not apply to these extra service requirements.

4. Acceptance of work The client undertakes to carry out final acceptance of work immediately upon completion of the work. If necessary, a functional test will be carried out for a duration defined in writing in advance.

- 4.2 If the client has not declared its acceptance of the work in writing or asserted any grounds for refusal of acceptance within ten working days of completion of the functional test, or if the client has used a work result in the productive environment over a total period of more than ten working days, the work will be deemed accepted.
- 4.3 Minor deviations from the agreed performance characteristics and acceptance criteria do not entitle the client to refuse acceptance. The obligation to remedy any defects will not be affected by the above provision.
- 4.4 TÜV SÜD ICS may demand the acceptance of clearly definable work packages.

5. Customer's duties of co-operation

- 5.1 The client will assist TÜV SÜD ICS to the extent required in contractual performance and in the identification and remediation of defects. The client will in particular hand over the required information free of charge and in a timely manner and will provide the required premises and technical infrastructure (including telephone and data transmission lines etc.) to TÜV SÜD ICS free of charge.
- 5.2 The client will provide a sufficient number of adequately qualified staff to fulfil its duty of co-operation. These members of staff will inform TÜV SÜD ICS of their own accord of sector- or company-specific requirements in particular and will support TÜV SÜD ICS as much as possible.
- 5.3 The client is responsible for providing an adequate working environment and appropriate use of the equipment and programs included in the contract. Before work is carried out on the client's equipment and/or programs, the client will, of its own accord and independently, create backups of all programs and data and store them on external data carriers.

6. Changes in contractually agreed performance

- 6.1 Up to final acceptance, the client may request changes in the contractual performance if such

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- changes are necessary on technical grounds to achieve the purpose of the contract. The client will notify TÜV SÜD ICS without delay of such a change request. TÜV SÜD ICS reserves the right to accept or refuse such change requests.
- 6.2 Binding deadlines may be postponed accordingly if they cannot be met due to change requests on the part of the client. Any additional efforts caused will be invoiced separately to the client.
- 6.3 Changes exceeding the required costs and expenses and/or changes resulting in an increase in remuneration must be agreed in writing. This also applies to cases in which a binding deadline will be significantly exceeded.
- 7. Prices and terms of payment**
- 7.1 Unless otherwise agreed, TÜV SÜD ICS will be paid for the number of days worked in the form of per diem rates plus any material costs that may be incurred in line with the currently valid schedule of prices of TÜV SÜD ICS. A per diem rate covers a period of eight working hours per day. If more or less time is needed for performing the work, this time will be remunerated on a pro-rata basis. For time outside the normal working hours of TÜV SÜD ICS, a surcharge will be charged.
- 7.2 The applicable schedule of prices as amended may be adjusted during the term of the contract but four months after conclusion of the contract at the earliest, if changes in payroll costs in the IT sector cause the actual costs to rise or fall. TÜV SÜD ICS must furnish plausible proof to the client of the basis for the price adjustment.
- 7.3 Travel costs, travel times, expenses and accommodation costs may be charged separately, where applicable.
- 7.4 Price estimates given in the quotation for work and services which are based on the working time and material needed are non-binding. The time estimates underlying costing are based on an evaluation of the service scope which TÜV SÜD ICS carried out to the best of its knowledge. TÜV SÜD ICS will notify the client without delay if it becomes aware in the course of contractual performance that the time estimated will be exceeded. TÜV SÜD ICS will only exceed the time estimates underlying the costing with the client's prior written approval.
- 7.5 All prices are net prices and subject to the applicable rate of value added tax (VAT).
- 7.6 Unless otherwise agreed, all payments are due in full immediately on receipt of invoice without deduction.
- 7.7 In cases involving default of payment by the client, TÜV SÜD ICS will be entitled to claim penalty interest on the outstanding invoice amount of 8% p.a. above the base interest rate from the client. The client will be in default of payment upon receipt of a reminder or 30 days after receipt of invoice at the latest. Article 286 of the BGB (German Civil Code) will not be affected by this clause.
- 7.8 If the client is in default of payment and an appropriate period of grace expires without result, TÜV SÜD ICS will be entitled to withdraw from the respective contract and may, at its own discretion, claim either lump-sum damages of 30 per cent of the outstanding invoice amount or compensation of the established damage caused by the non-performance of the contract. If TÜV SÜD ICS claims lump-sum damages, the client will be entitled to prove that the actual damages caused by non-performance of the contract were lower than the sum claimed.
- 7.9 The client is only entitled to offset charges if its own claims are uncontested and legally established. The client is only entitled to withhold payment if the client's counterclaim is based on the same contractual relationship as the charges at issue.
- 8. Warranty**
- 8.1 At the current state of the art, the correct functioning of IT equipment and equipment combinations cannot be guaranteed in all possible applications and software errors cannot be excluded. For work performed, however, TÜV SÜD ICS grants a statutory warranty covering the functional suitability and technical usability of its work and services as set forth in the contractual agreements and also including any amendments or addenda agreed in writing.
- 8.2 The client must notify TÜV SÜD ICS immediately and in writing of any defects detected and specify these defects in concrete terms. If the client fails to notify TÜV SÜD ICS of a defect within the agreed deadlines, the client will not be entitled to file any claims based on this defect. If the client notifies TÜV SÜD ICS of a defect within the stipulated deadlines, TÜV SÜD ICS will be entitled to inspect and verify the defect in an unchanged condition
- 8.3 In case of a defect, TÜV SÜD ICS must remedy the defect within a reasonable period of time. In as far as reasonable, the client must permit several attempts of remediation. Only when remediation has finally failed is the client entitled to set an additional period of performance in writing and threaten to rescind from the contract if the defect is not remediated. In this case, the client may also opt to have the defect remediated by a third party or to reduce the price as appropriate.
- 8.4 TÜV SÜD ICS will not assume any warranty for the uninterrupted availability of hardware and/or software unless expressly otherwise agreed in writing.
- 8.5 The warranty period for work performed is 1 year as of the date of acceptance.
- 8.6 No warranty will be given if the goods delivered or the subject of performance has been changed by the client or a third party.
- 8.7 No warranty is given for services.
- 9. Liability**
- 9.1 TÜV SÜD ICS will only assume full liability for any damage suffered by the client which is caused intentionally or by gross negligence on the part of TÜV SÜD ICS or any parties called in by, and assisting, the latter in contractual performance, or for personal injuries or claims under the product liability law. In all other cases, the regulations outlined below will apply:
- 9.2 In cases involving material breach of contract due to minor negligence, TÜV SÜD ICS will only be liable for typically foreseeable direct damage to a maximum of
- EUR 500,000.00 for damage to property
 - EUR 50,000.00 for economic loss
- per contract.
- 9.3 Liability for damage caused by breach of a non-material contractual obligation due to minor negligence will be excluded.
- 9.4 Material contractual obligations are essential for contract performance and the other contractual party must be able to rely on the fact that these material contractual obligations will be fulfilled.
- 9.5 This limitation of liability applies equally to all employees, executives and entities of TÜV SÜD

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- ICS and any parties called in by, and assisting, the latter in contract performance.
- 9.6 TÜV SÜD ICS will not accept liability for any damage if the client interferes with the work performed without written approval by TÜV SÜD ICS.
- 9.7 The client's obligation to prevent damage, in particular in cases involving the loss of data or files, remains unaffected thereby. No compensation can be made for the loss of data unless regular backup copies have been created on separate data carriers at least daily.
- 9.8 TÜV SÜD ICS will not assume any liability for damage or disadvantages arising out of the fact that an IT system or part thereof was switched off for, or otherwise affected by, repair or maintenance. However, the client may, at its own responsibility, expressly request TÜV SÜD ICS to carry out any required repair or maintenance work at a time acceptable to the client. Any additional costs incurred by TÜV SÜD ICS on these grounds may be billed separately.
- 9.9 If TÜV SÜD ICS exceeds a binding deadline for reasons for which it is to blame and is therefore in default of performance, the client will be entitled to claim compensation for any damage due to delayed performance. Compensation will amount to 1% of the value of the contract whose performance is delayed under the terms of the contract for each completed week of delayed performance up to a total maximum of 10% of the above value. Any further claims of damages that may be applicable under statute law shall be excluded.
- 9.10 Should the client, in the case of delayed performance, grant a reasonable additional period within which performance is to take place and should TÜV SÜD ICS fail to observe this new deadline, or should performance be no longer possible for reasons for which TÜV SÜD ICS is to blame, the client will have the right to withdraw from the contract. The client will only be entitled to claim damages for non-performance up to an amount of damages for delayed performance set forth in Section 9.9.
- 10. Retention of title**
- 10.1 TÜV SÜD ICS will retain ownership in all goods, parts and software supplied to the client until the purchase price and all charges that have arisen or will arise out of the business relations with the client have been paid in full.
- 10.2 As long as ownership is retained by TÜV SÜD ICS, the client must treat the supplied goods with due care.
- 10.3 Any right to resell these goods on the part of the client must be arranged separately and in writing.
- 11. Copyrights and rights of use**
- 11.1 As a matter of principle, TÜV SÜD ICS retains all copyrights.
- 11.2 The client must comply with the conditions of licences and copyrights defined by third parties (manufacturers and suppliers).
- 11.3 Agreements concerning the transfer of rights of use and the issue of licenses will be set forth in separate contracts.
- 12. Non-disclosure**
- 12.1 The contracting parties undertake to refrain from disclosing any information about the other contracting party that they have obtained under this contract for an unlimited period of time. This applies in particular to all information that is referred to as confidential or identifiable as business and company secrets and to the company's organizational processes. Unless required by the purpose of the contract, the contracting parties will not disclose any records or information to third parties. Forwarding of such information to third parties and any type of disclosure must be approved in writing by the other contracting party.
- 12.2 TÜV SÜD ICS will maintain any documentation handed over to it at a secure place without access by third parties. Following termination of the contract and upon the client's request, TÜV SÜD ICS will return any documentation submitted without delay.
- 12.3 The contracting parties comply with all statutory data-protection requirements.
- 13. Termination**
- 13.1 Both contracting parties will be entitled to terminate a contract if the other contracting party fails to fulfil its contractual obligations, even after being granted an additional period of performance.
- 13.2 Following termination in accordance with Art. 13.1 above, TÜV SÜD ICS will discontinue all its activities related to contract performance either immediately or in accordance with a schedule agreed with the client. The client will pay the agreed price minus the pro-rata share for that part of the agreed performance that was not provided due to termination of the contract.
- 13.3 If the client terminates the contract for reasons for which TÜV SÜD ICS is to blame, the client will only pay the pro-rata price based on those parts of contract performance that can be used by the client.
- 14. General provisions**
- 14.1 TÜV SÜD ICS will be entitled to arrange for the contractual performance to be completed in full or in part by third parties unless this is opposed by the client on important grounds.
- 14.2 Any assignment of rights or transfer of duties set forth in a contract must be approved in writing by both contractual parties.
- 14.3 Any amendments, addenda or ancillary agreements to this contract must be in writing to be effective. This also applies to a waiver of the obligation of the written form.
- 14.4 The place of jurisdiction is Munich.
- 14.5 The agreement is governed exclusively by German law.
- 14.6 Should individual provisions of these General Terms and Conditions be or become null and void, the validity of the other provisions hereunder will remain unaffected. In this case, the contracting parties will endeavour to replace the invalid provision with another provision that is valid, legal and enforceable and most nearly approaches the content of the invalid provision.