

Terms and Conditions

TÜV AUSTRIA Deutschland GmbH



1. Applicability

- 1.1. Any agreement between TÜV AUSTRIA Deutschland GmbH and its Principals (clients) shall be concluded under these Terms and Conditions. Terms and Conditions once concluded shall also be valid — until revoked by TÜV AUSTRIA Deutschland GmbH — for any future contractual agreements. The applicability of the Principal's purchase and other terms and conditions of business shall hereby be excluded for the entire professional association. TÜV AUSTRIA Deutschland GmbH provides services to companies (§ 14 BGB) or legal entities under public law. Insofar as the contracts are exceptionally concluded with consumers within the meaning of § 13 BGB, indispensable statutory provisions shall take precedence over these Terms and Conditions.
- 1.2. These Terms and Conditions are supplemented by the Terms and Conditions of TÜV AUSTRIA SERVICES GMBH because TÜV AUSTRIA Deutschland GmbH operates on basis of TÜV AUSTRIA SERVICES GMBH's accreditation. The Terms and Conditions of TÜV AUSTRIA Deutschland GmbH are expressly given priority.

2. Quotations

- 2.1. Quotations issued by TÜV AUSTRIA Deutschland GmbH shall, unless agreed otherwise in writing, be subject to change and non-binding. A mutually binding agreement shall come into force only with the receipt by the Principal of the written confirmation of the order by TÜV AUSTRIA Deutschland GmbH or the commencement of the provision of services through TÜV AUSTRIA Deutschland GmbH. Changes and additions to the agreement shall have to be made in writing. This shall also apply to any agreement to waive the requirement to make such amendments in writing. Verbal information, ancillary arrangements and undertakings by agencies or employees of TÜV AUSTRIA Deutschland GmbH shall, at any stage of the contractual process, be binding only if confirmed in writing.
- 2.2. Upon notification of inspections and their performance TÜV AUSTRIA Deutschland GmbH shall not assume the obligation incumbent upon the Principal to adhere to this or follow-up inspection appointments.

3. Geographical applicability

Fees quoted shall be, unless expressly stated otherwise, applicable only for services provided in Germany.

4. Implementation of agreement

- 4.1. TÜV AUSTRIA Deutschland GmbH shall be liable to provide services only as expressly set out in the agreement, which are provided in compliance with the generally acknowledged rules of technology, the safety regulations and the quality standards in accordance with its accreditation. TÜV AUSTRIA Deutschland GmbH shall not assume any liability for the accuracy of laws, directives and standards on which the agreements are based.
- 4.2. On conclusion of agreement, the volume of orders shall be set down in writing. If in the course of the proper implementation of the contract changes or excesses to the agreed contract volume should become necessary, TÜV AUSTRIA Deutschland GmbH shall be entitled to carry these out on the basis of the Terms and Conditions in hand, even without written notification, provided that the charges last agreed upon shall not be exceeded by more than 15%. If the modification exceeds 15%, then these shall need to be agreed upon in writing prior to the provision of the additional services. If the modified contractual volume raises the charges last agreed upon by more than 50%, the Principal shall be entitled to withdraw from the contract within three days from notification of the new fees. The Principal however shall pay for the services that have already been provided in accordance with the amount agreed on.
- 4.3. TÜV AUSTRIA Deutschland GmbH shall not assume any liability for the proper operation and functionality of objects inspected exclusively for technical safety, unless specifically

stated in the agreement. In particular, design, choice of materials and construction of equipment and installations shall be subject to inspection only if the agreement specifically provides for such services. The same shall apply likewise to safety programs or safety regulations.

- 4.4. On conclusion of agreement the Principal shall provide TÜV AUSTRIA Deutschland GmbH with all the required documents such as drawings, plans, calculations and certifications, obtain any authorizations and clearances that may be required, provide contract-related information at any time, and carry out, prior to the commencement of the order fulfillment, the required preparations, in particular to make the object of inspection accessible. The Principal shall undertake to make all reasonable efforts to provide the required documents or authorizations on time. If the Principal fails to fulfil these obligations, despite a deadline having been set by TÜV AUSTRIA Deutschland GmbH, the agreement shall be revoked on expiry of the deadline. In this event TÜV AUSTRIA Deutschland GmbH shall be entitled to claim damages for non-fulfilment.
- 4.5. If tests are to take place directly at TÜV AUSTRIA Deutschland GmbH, the tested items are to be delivered to TÜV AUSTRIA Deutschland GmbH free of charge and collected there again after testing. The risk shall pass to the Principal upon handover or dispatch, but no later than one week after TÜV AUSTRIA Deutschland GmbH has notified the Principal of completion or readiness for dispatch.
- 4.6. TÜV AUSTRIA Deutschland GmbH shall not be obliged to verify the accuracy of documents provided as a basis for inspection or the accuracy of verbal statements provided by the Principal or his employees, but it shall presume the accuracy of such information.
- 4.7. TÜV AUSTRIA Deutschland GmbH shall be entitled to determine the method and type of inspection at its discretion on the basis of professional criteria.
- 4.8. TÜV AUSTRIA Deutschland GmbH shall be entitled to produce copies of the provided documents and to keep them in its records and to save the Principal's data and data arising from the business dealings for its own purposes in an electronic data processing installation. In accordance with clause 10 of these Terms and Conditions the Principal shall hereto expressly give his consent.
- 4.9. TÜV AUSTRIA Deutschland GmbH provides the service, unless agreed otherwise in individual cases, with one employee per area of expertise. Any assistance required or useful for the order fulfillment shall be provided to TÜV AUSTRIA Deutschland GmbH by the Principal or a third party on behalf of the Principal, free of charge. The Principal shall undertake to make every reasonable effort to provide the required or useful assistance. In providing such assistance the Principal shall monitor and adhere to applicable legal or official provisions, in particular in the area of employee protection.
- 4.10. The Principal allows the accreditation body to accompany and observe (audit) the conformity assessment activities, which are covered by contract, of TÜV AUSTRIA Deutschland GmbH.

5. Terms and deadlines/delays

- 5.1. Terms and deadlines as stipulated in the agreement shall be based on estimates of the volume of work as per information provided by the Principal. These deadlines shall become binding only when expressly stipulated in writing as 'binding' by TÜV AUSTRIA Deutschland GmbH. Delays in binding performance dates shall only entitle the Principal to claim damages if TÜV AUSTRIA Deutschland GmbH has caused the damage intentionally or through gross negligence.
- 5.2. Terms stipulated as binding shall commence with the complete accord in all parts of the agreement and about all conditions of the services to be provided and end with the provision of services by TÜV AUSTRIA Deutschland GmbH. They shall cease to be binding when the Principal

- is in default with his obligations according to the provisions of the Terms and Conditions in hand, in particular with regard to clauses 4.4. and 4.8, for whatever reason.
- 5.3. If fulfilment of the agreement is delayed by circumstances which TÜV AUSTRIA Deutschland GmbH is not accountable for (e.g. operational disruptions, strike, force majeure, transport impediments etc.) TÜV AUSTRIA Deutschland GmbH shall be entitled, under exclusion of warranties, rescission for mistakes and/or claims for damages, to extend the deadline by an appropriate period of time. If the circumstances leading to the delay in fulfilment of the order last longer than four months, TÜV AUSTRIA Deutschland GmbH is entitled to withdraw from the contract. Extension of deadline and right of withdrawal shall also apply when the events occur at a point in time at which TÜV AUSTRIA Deutschland GmbH is already in default. TÜV AUSTRIA Deutschland GmbH shall inform the Principal of this in good time. In the event of withdrawal from the agreement TÜV AUSTRIA Deutschland GmbH shall be entitled to charge the Principal for partial services rendered up to that point in time at the prices agreed upon.
- 6. Terms of payment**
- 6.1. Services shall be charged in accordance with the offers, price lists and so on valid on conclusion of the agreement. If the provision of services extends over a period of more than one year or if services are provided repeatedly, services shall be charged in accordance with prices as valid at the point in time when individual services are provided.
- 6.2. If TÜV AUSTRIA Deutschland GmbH provides services for a period of time extending to more than 4 weeks, TÜV AUSTRIA Deutschland GmbH shall be entitled to issue monthly invoices for partial provision of services. Partial and total payment of invoices shall be paid promptly and without deduction upon receipt of the invoice, stating invoice and customer numbers.
- 6.3. Objections to invoices shall be made and substantiated in writing within a period of two weeks following receipt of the invoice, failing which the invoice shall be deemed to have been accepted.
- 6.4. The Principal shall not be entitled to offset claims, of whatever kind, unless these have been ascertained in a legally binding manner by a court of law or acknowledged by TÜV AUSTRIA Deutschland GmbH in writing.
- 6.5. In the event of default of payment, even with only one due claim, all outstanding claims — even those from other orders and regardless of any deviating payment terms — shall become due immediately and TÜV AUSTRIA Deutschland GmbH may, at its discretion, demand immediate payment of the outstanding claims and withhold performance of the order until payment or withdraw from the agreement without notice and demand damages for non-performance. In the event of default in payment, TÜV AUSTRIA Deutschland GmbH shall be entitled to charge default interest in the amount of 9 percentage points above the base interest rate in accordance with § 288 Abs. 2 BGB if a consumer is not involved. If the Principal is a consumer, the default interest shall be 5 percentage points above the base interest rate in accordance with § 288 Abs. 1 BGB. If the debtor is not a consumer, the creditor is also entitled to payment of a penalty of € 40 in accordance with § 288 Abs. 5 BGB.
- 6.6. The Principal shall furthermore undertake to reimburse TÜV AUSTRIA Deutschland GmbH for costs and expenses incurred de facto through the default of payment and appropriately required for the purposes of asserting its legal rights. This shall include, without prejudice to any obligations to pay cost of proceedings, in particular extrajudicial costs, dunning costs, the costs for a debt collection agency as well as the costs for intervening lawyers insofar as they were expedient and necessary.
- 6.7. In case of doubt, prices shall be understood to be exclusive of the statutory value added tax, which shall be paid by the Principal in the respective amount.
- 6.8. Several contractual partners shall be liable jointly and severally.
- 6.9. TÜV AUSTRIA Deutschland GmbH shall be entitled to send the Principal invoices in electronic form as well. The Principal declares his explicit consent to having invoices sent to him in electronic form by TÜV AUSTRIA Deutschland GmbH.
- 7. Warranty**
- 7.1. If the Principal is not a consumer according to § 13 BGB, he shall inspect the work or services of TÜV AUSTRIA Deutschland GmbH immediately after the service has been provided and notify TÜV AUSTRIA Deutschland GmbH in text form of any defects discovered or detectable, otherwise excluding any liability, immediately, but at the latest within three calendar days after delivery of the expertise, test report or similar. Hidden defects must be reported in text form immediately after their discovery, but no later than within three calendar days thereafter and in any case still within the warranty period. Any notices of defects shall not entitle the Principal to withhold payment of invoiced amounts in whole or in part.
- 7.2. Warranty claims of the Principal are limited to improvement or replacement at the discretion of TÜV AUSTRIA Deutschland GmbH. TÜV AUSTRIA Deutschland GmbH is entitled to make two attempts at improvement or replacement delivery. If attempts at improvement or replacement delivery do not lead to success within a reasonable period of time or if the improvement or replacement delivery is economically unfeasible, the Principal has the right to withdraw from the contract or reduce the purchase price. Withdrawal from the contract due to insignificant, irremediable defects is excluded. In this case, an appropriate reduction of price shall be granted.
- 7.3. Warranty claims of the Principal — even for so-called incorporeal works, such as, for instance, expertise or software development — shall expire within a year of completion of the services performed by TÜV AUSTRIA Deutschland GmbH. The warranty period shall not be extended or interrupted by improvements or attempts of improvement, especially if these are made outside the warranty period hereby agreed.
- 7.4. If the Principal fails to give notice of defects in due time in accordance with clause 7.1, claims for warranty, for damages due to the defect itself as well as due to an error regarding the defect-free nature of the item are expressly excluded, unless employees of TÜV AUSTRIA Deutschland GmbH have justified such claims intentionally or through severe gross negligence.
- 8. Liability**
- 8.1. If the Principal asserts claims for damages against TÜV AUSTRIA Deutschland GmbH, he shall be obliged to prove both causation and illegality, unless a shift in the burden of proof is expressly stipulated by law. The assignment of warranty claims and claims for damages to third parties etc. is not permitted.
- 8.2. If the Principal suffers damages as a result of TÜV AUSTRIA Deutschland GmbH exceeding a bindingly agreed performance deadline through its own fault, this damage may be claimed up to a maximum of 5% of the part of the order affected by the delay. This does not apply in the event of a breach of duty caused by TÜV AUSTRIA Deutschland GmbH intentionally or through gross negligence.
- 8.3. The following exclusions and limitations of liability also apply to delictual claims insofar as these compete with contractual claims.
- 8.4. The liability of TÜV AUSTRIA Deutschland GmbH is limited to EUR 7,500,000.00 for property damage and EUR 3,000,000.00 for pure financial loss in the event of simple negligence. This exclusion shall not apply to damage to property or financial loss caused by TÜV AUSTRIA Deutschland GmbH intentionally or through gross negligence or insofar as material contractual obligations (cardinal obligations - Kardinalpflichten) are breached. In the

- event of a breach of cardinal obligations (Kardinalpflichten), clause 8.6. shall apply. Higher amounts than those mentioned above can be agreed upon on request and at the expense of the Principal, provided corresponding coverage of TÜV AUSTRIA Deutschland GmbH is possible with its liability insurer.
- 8.5. The above exclusion and limitation of liability shall not apply to personal injuries.
- 8.6. The liability of TÜV AUSTRIA Deutschland GmbH for damage to property or financial loss caused by negligence, insofar as cardinal obligations (Kardinalpflichten) are breached, shall be limited to the damage typical for the contract and foreseeable for TÜV AUSTRIA Deutschland GmbH when the contract was concluded or the breach of obligation was committed.
- 8.7. The exclusions and limitations of liability under clauses 8.1 to 8.6 shall also apply to the liability of TÜV AUSTRIA Deutschland GmbH for its executive bodies and employees as well as the personal liability of the executive bodies and employees of TÜV AUSTRIA Deutschland GmbH and other vicarious agents.
- 8.8. Claims for damages by the Principal are excluded, except in the case of intent or gross negligence on the part of TÜV AUSTRIA Deutschland GmbH or its executive bodies/ executive employees, if they are not asserted in court within a period of three months after rejection of the claims with a corresponding notice by TÜV AUSTRIA Deutschland GmbH or its insurers. All possible claims for damages by the Principal against TÜV AUSTRIA Deutschland GmbH (except in the case of intent or gross negligence on the part of TÜV AUSTRIA Deutschland GmbH or its executive bodies/ executive employees) shall become statute-barred within one year of the Principal's knowledge of his claim, unless these Terms and Conditions elsewhere or the law stipulate a shorter period of limitation. The foregoing shall not apply to claims of the Principal due to injury to life, body and health.
- 8.9. The preceding exclusions and limitations of liability under clauses 8.1 to 8.8 shall also not apply to claims under the Product Liability Act, insofar as liability is mandatory thereunder.
- 8.10. Inasmuch as TÜV AUSTRIA Deutschland GmbH is liable to the Principal for intentional or grossly negligent actions or omissions of its bodies, employees and vicarious agents, it may demand the assignment of any possible claim for damages of the Principal against the body, employee and vicarious agent of TÜV AUSTRIA Deutschland GmbH.
- 8.11. Insofar as third parties who have no contractual relationship with either TÜV AUSTRIA Deutschland GmbH or the Principal assert claims based on the contract between TÜV AUSTRIA Deutschland GmbH and the Principal for material or financial damage against TÜV AUSTRIA Deutschland GmbH, its executive bodies, employees and vicarious agents which are not attributable to the intentional or grossly negligent actions of TÜV AUSTRIA Deutschland GmbH, its executive bodies, employees and vicarious agents, the Principal shall indemnify and hold harmless TÜV AUSTRIA Deutschland GmbH or its vicarious agents from liability.
- 8.12. In the absence of fault, TÜV AUSTRIA Deutschland GmbH shall not be liable for damage to test specimens caused by inspections, tests and suchlike that were carried out in accordance with the rules of technology at the time of the test.
- 8.13. All limitations listed under clause 8 (Liability) shall also apply to liability for consequential damages, in particular for loss of profit, loss of savings, loss of earnings, other pecuniary losses, interest damages etc., as well as for damages arising from the use of the test object.
- 9. Copyright**
All copyrights to the test, inspection and monitoring reports, certificates, expert opinions, calculations and suchlike issued by TÜV AUSTRIA Deutschland GmbH shall remain with TÜV AUSTRIA Deutschland GmbH. The
- passing on, exploitation and/or publication of the services beyond the contractually specified purpose shall require the prior written consent of TÜV AUSTRIA Deutschland. In the event of passing on, exploitation and/ or publication of the services, the Principal shall be responsible for compliance with the statutory provisions. In this respect, he shall indemnify and hold harmless TÜV AUSTRIA Deutschland GmbH against claims from third parties.
- 10. Non-disclosure/confidentiality/data protection**
- 10.1. TÜV AUSTRIA Deutschland GmbH has obliged its employees and other vicarious agents to maintain secrecy about all facts which they become aware through the order, including personal data of which they become aware during data processing.
- 10.2. The Principal permits TÜV AUSTRIA Deutschland GmbH to make copies of written documents, drawings, plans, etc. which are made available to TÜV AUSTRIA Deutschland GmbH for inspection and which are necessary for the fulfilment of the order for the use of TÜV AUSTRIA Deutschland GmbH.
- 10.3. When handling persona data, TÜV AUSTRIA Deutschland GmbH shall observe the provisions of the General Data Protection Regulation (GDPR) and the Federal Data Protection Act (BDSG) and take the technical and organisational measures required for data protection in the area of responsibility of TÜV AUSTRIA Deutschland GmbH.
- 10.4. The data protection declaration in accordance with Art. 13 and 14 GDPR is available on the website (<https://www.tuv-ad.de/datenschutzerklaerung>).
- 10.5. Information and data of the Principal shall only be disclosed to third parties with the Principal's consent or in the event of disclosure ordered by law, the authorities or by court.
- 11. Additional material**
The costs for additional material that are not part of the standard equipment of TÜV AUSTRIA Deutschland GmbH shall be borne by the Principal.
- 12. Provision of Infrastructure during inspection**
The provision (connection and delivery) of water, electricity, lighting to the required extent and working scaffolds suitable for the execution of the testing work and which comply with the applicable statutory and other regulations shall be borne by the Principal, who shall ensure that they are provided in good time.
- 13. Delivery and safekeeping of test objects**
In the case of tests at the TÜV AUSTRIA Deutschland test centres, the test objects, samples etc. to be examined must always be delivered free to the Principal's premises. Insofar as they are not handed over to the Client or another body after the tests, costs for storage or disposal may be demanded in an appropriate amount for the further safekeeping.
- 14. Severance Clause**
Ineffective provisions of this agreement shall not affect the effectiveness of the remaining provisions. In the event that a clause of this agreement is invalid, the contracting parties agree to replace it with a valid clause that comes as close as possible to the meaning and purpose of the invalid provision. The Terms and Conditions shall only apply to consumers in accordance with § 13 BGB insofar as they do not conflict with mandatory provisions of consumer law.
- 15. Place of jurisdiction and applicable law**
This agreement and the entire legal relationship between the contracting parties shall be governed by German Law, excluding its conflict of law provisions. The application of the UN Convention on Contracts for the International Sale of Goods, CISG, is excluded by mutual agreement

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For all disputes arising from the contract, it is agreed that the court with subject-matter jurisdiction in the Higher Regional Court district of Stuttgart shall have exclusive jurisdiction.