

General Terms and Conditions of TÜV AUSTRIA Deutschland GmbH

I. General Remarks

1. The General Terms and Conditions of TÜV AUSTRIA Deutschland GmbH apply to all services provided by TÜV AUSTRIA Deutschland GmbH (including but not limited to expert assessments, testing, inspection and consulting services) and to all obligations resulting from the contractual relationship with the Client. These Terms and Conditions shall also apply to all future business relations with entrepreneurs and legal entities under public law. Any conflicting or differing terms and conditions of the Client shall not be recognized by TÜV AUSTRIA Deutschland GmbH unless it has expressly agreed to their validity in writing.

2. The "Contractor" is TÜV AUSTRIA Deutschland GmbH.

The "Client" is the customer retaining the Contractor's services.

"In writing" is the submission of a statement by letter or fax, unless otherwise expressly stated in these General Terms and Conditions.

"Entrepreneur" shall mean any contractual partner who, at the time of conclusion of the contract, is acting in the exercise of his/her/its commercial or self-employed professional activity.

II. Conclusion of Contract

1. A contract with the Contractor shall not be deemed concluded until the Client receives a written order confirmation from the Contractor.

2. All agreements made between the Client and the Contractor for the execution of the contract shall be set down in writing in full in the contract, including these General Terms and Conditions.

Amendments, supplements and oral collateral agreements of any form must be made in writing. This applies in particular to information and promises made by staff members of the Contractor as well as by authorized experts called in by the Contractor. The written form requirement shall also apply to any amendment or cancellation of this written form clause.

3. The scope of the Contractor's services shall be specified in writing when an order is placed. If any changes or extensions to the defined scope of an order occur during proper execution of an order, they must be agreed in addition and in writing in advance. In such a case, the Client shall have the right to withdraw from the contract if it can no longer be reasonably expected to adhere to the contract with regard to the changes or extensions. However, the Client must pay the agreed remuneration or, in the absence of an agreement, an appropriate remuneration. § 649 of the BGB (German Civil Code) shall apply accordingly.

III. Execution of Orders and Cooperation Obligations of the Client

1. Orders accepted by the Contractor, including expert assessments, shall be prepared impartially, neutrally and to the best of our knowledge and belief in accordance with the recognized rules of technology, taking into account the state of the art and – unless otherwise agreed in writing – in the manner customary for the Contractor.

2. If the performance of services owed by the Contractor in accordance with a contract is associated with operations on objects of the Client, the Contractor shall not provide any compensation for any damage to or destruction of said objects resulting from performance in accordance with the contract.

3. If its own equipment should be damaged, destroyed or lost as a result of or on the occasion of proper performance by the Contractor through no fault of the Contractor, then the Contractor shall be entitled to demand compensation from the Client.

4. Any transport and, if applicable, return transport of the Client's objects shall be at the Client's expense and risk; however, the return transport shall only be carried out at the express request of the Client. In cases of safekeeping, the Contractor's liability shall be limited to its customary diligence.

5. The Client shall provide the Contractor with all information and documents relevant to the performance of the Contractor's services. The Client must on his/her/its own initiative point out all processes and circumstances which could be of significance in executing the order. The Contractor is generally not obligated to check the completeness and correctness of data, information or other services provided by the Client, as long as there is no reason to do so, taking into account the respective circumstances of the individual case, unless the order expressly includes this. The Contractor shall not assume any guarantee for the correctness of the safety/security rules, safety/security regulations or safety/security programs on which its testing/inspection and expert assessments are based, unless the said rules, regulations or programs originate from the Contractor or are themselves the subject of the order for testing/inspection. If the Contractor has been commissioned to test/inspect an object for technical safety/security, it shall assume no warranty for the freedom of the object inspected from other defects, unless this is expressly part of the order.

6. To the extent that cooperation by the Client is necessary for the performance of the Contractor's services, the Client shall provide such cooperation in good time and at his/her/its own expense. Expenses shall only be reimbursed to the Contractor if this has been expressly agreed in writing. If he/she/it does not fulfil his/her/its cooperation obligations, does not fulfil them on time or does not fulfil them properly and thereby falls into default of acceptance, the Contractor shall be entitled to invoice him/her/it for the additional expenses incurred thereby. Further legal claims of the Contractor are expressly reserved.

7. The Contractor shall have the right to have the services incumbent upon it performed by a subcontractor which it has carefully selected and deemed suitable.

8. If the Contractor operates outside its business premises, the Client shall be responsible for all measures necessary for the fulfilment of road safety obligations, unless the nature of the matter or an agreement with the Client requires otherwise. The Contractor is entitled to refuse performance of the service as long as the necessary measures have not been taken. The Client shall inform the Contractor in writing and in good time of all safety and accident prevention regulations applicable on site.

9. If the contract includes services related to the Client's IT system, the Client shall be obliged to back up data and programs in machine-readable form at intervals appropriate to the application on a regular basis of at least once a day and thus to ensure that these can be restored with a reasonable amount of time and effort. The Contractor shall only be liable for the recovery of data if and to the extent that the Client has ensured that said data can be reconstructed from data material with a reasonable amount of time and effort.

10. The contractual services of TÜV AUSTRIA Deutschland shall be deemed to have been rendered and completed upon preparation of the respective final reports, expert assessments or, if applicable, certificates.

IV. Data Protection

1. The Contractor shall observe confidentiality. The Contractor shall take precautions to ensure that neither expert assessments nor other facts or documents which become known during the performance of its service and which relate to the Client and the subject of the order are disclosed, exploited or disclosed without authorization.

2. The Contractor may make photocopies of written documents made available to it for inspection or provided to it for the execution of the order for its records.

3. The Contractor expressly reserves the copyrights to its services rendered.

4. The Client may only use the expert assessments drawn up as part of an order or of services rendered by the Contractor, with all the related details, for the purpose agreed when the order was placed.

V. Deadlines and Scheduling

1. The Contractor's order deadlines are non-binding unless their binding nature has been expressly agreed in writing.

2. Binding delivery dates for the provision of authorized services and/or the performance of services shall commence upon conclusion of the contract. If an advance payment has been agreed or documents are needed from the Client, the time limit does not begin until the advance payment and/or documents have been received. The later date shall always be decisive.

3. If a delivery date or a delivery period (whether binding or non-binding dates or periods) is exceeded, the Contractor shall only be in default after it has been granted a reasonable grace period of two weeks and if the Contractor is responsible for the delay in delivery. In the event of force majeure or other unforeseeable obstacles for which the Contractor is not responsible, no delay in delivery shall be deemed to have occurred.

4. Apart from the delivery, the Client may only demand compensation for the damage caused by delay if the Contractor is proven to have acted with intent or gross negligence.

5. With regard to the time limit for the provision of services, the Client may only withdraw from the contract or claim damages instead of performance in the event of delay in performance on the part of the Contractor or impossibility of performance for which the Contractor is responsible.

VI. Warranty

1. Where the Contractor provides services, the parties agree that the Contractor shall not owe any specific success but rather only services and that it is solely within the decision-making and risk sphere of the Client to make any necessary decisions arising therefrom on the basis of the services provided.

2. Otherwise, in the event of defects occurring within the warranty, the Contractor shall initially be entitled to make use of its right to subsequent performance. Any subsequent performance shall be effected at the discretion of the Contractor either by remedying the defect (subsequent improvement) or by replacement (subsequent delivery). If and only if said supplementary performance is definitively and seriously rejected, is not carried out on time or should fail, shall the Client have the right, at his/her/its discretion, to demand reduction of the remuneration or rescission of the contract under the statutory prerequisites.

3. In case of only a minor breach of contract, in particular in case of only minor defects, the Client shall not be entitled to withdraw from the contract. If the Contractor is not responsible for a breach of duty resulting from a defect, the Client shall also not be entitled to withdraw from the contract.

4. The Client shall be obligated to notify the Contractor in writing of any obvious defects immediately upon discovery, but no later than within two weeks, and of any concealed defects immediately upon discovery, but no later than within one year of handover of the matter. Otherwise warranty rights shall be excluded.

5. Any claims for damages shall remain unaffected if warranted characteristics are lacking.

6. All warranty rights shall be excluded if they are not asserted within one year of the transfer of risk, i.e., upon delivery of the performance unless otherwise agreed in writing between the parties.

VII. Liability

1. The Contractor shall only be liable for any damage – irrespective of the legal basis – if the Contractor, its legal representative or vicarious agent has intentionally or grossly negligently caused the said damages by breaching a material contractual obligation. If material contractual obligations are breached, the Contractor's obligation to pay compensation shall be limited to the foreseeable damage typical for the contract.

2. The liability for indirect consequential damages including consequential damages typical for the contract shall be excluded. Furthermore, the Contractor's liability shall be limited to the fixed sum insured in the amount of € 10,000,000:

3. The above exclusions and limitations of liability shall not apply to damages resulting from injury to life, limb or health, nor to other damages resulting from a grossly negligent breach of duty on the part of the Contractor or from an intentional grossly negligent breach of duty on the part of a legal representative or vicarious agent of the Contractor, nor to damages resulting from a culpable breach of material contractual rights and obligations as defined in § 307 II No. 2 of the German Civil Code (BGB).

4. Material contractual obligations are obligations which protect legal positions of the Client that are material to the contract and, according to its content and purpose, are precisely what the contract must guarantee him/her/it. Material contractual obligations are also obligations the fulfilment of which makes possible proper execution of the contract in the first place and the observance of which the Client has regularly relied on and may rely on.

5. The Client shall immediately notify the Contractor in writing of any damage for which the Contractor is liable.

6. Insofar as claims for damages against the Contractor are excluded, this shall also apply with regard to the personal liability of the Contractor's employees.

7. Claims for damages, which are not subject to the short statutory period of limitation according to § 634 a of the German Civil Code (BGB), shall become time-barred one year after the Client has received the expert assessment and/or performance.

VIII. Terms of Payment

1. The prices and/or hourly rates agreed upon when the contract was concluded shall apply for calculating performance unless a fixed price or other basis for assessment has been expressly agreed.

2. After completion of the order or upon presentation of the invoice, the contractual consideration shall be due for payment immediately or, if a due date is stated on the invoice, without deduction on the date stated on the invoice, this being two weeks after issue of the invoice, at the latest. The crediting to the Contractor's account shall be decisive for the punctuality of the receipt of payment.

3. The sales tax valid at the time of the final execution of the order shall be shown separately in the invoicing of the Contractor's performance and shall be levied in addition to the contractual consideration.

4. The Contractor reserves the right to demand reasonable progress payments and reasonable advances.

5. Objections to the Contractor's invoices must be made in writing within a preclusion period of 14 days after receipt of the invoice.

6. If the contract is based on a cost estimate and it turns out that the costs will significantly exceed the amount estimated for the Client, the Contractor shall inform the Client of this in writing. Refer to § 650 of the German Civil Code (BGB).

7. The Client shall only be entitled to set-off or retention rights if the counterclaim has been legally established or is undisputed.

8. If it becomes apparent after conclusion of the contract that the Contractor's claims against the Client are at risk due to the Client's lack of ability to pay, the Contractor shall be entitled to perform outstanding services only against advance payment or provision of security and against settlement of any outstanding claims arising from the contract for partial performance already provided and to withdraw from the contract after the fruitless expiry of a deadline set for this purpose. The provisions of IV. no. 5 shall be applicable.

9. In the event of default in payment, the Client shall owe the statutory default interest. Refer to §§ 286, 288 & 247 of the German Civil Code (BGB). The Contractor shall be entitled to assert a further claim if it proves higher damages to the Client. In addition, the Contractor shall be entitled to charge a flat-rate fee of € 5.00 per reminder, unless the Client proves that the Contractor has suffered no damage or substantially less damage.

IX. Place of Jurisdiction, Place of Performance, Applicable Law

1. The place of jurisdiction for the assertion of claims for both contracting parties shall be the place of business of TÜV AUSTRIA Deutschland GmbH.

2. The place of performance for all obligations arising from the contract shall be the place of business of TÜV AUSTRIA Deutschland GmbH.

3. The contractual relationship and all legal relationships arising therefrom shall be governed exclusively by the laws of the Federal Republic of Germany. The uniform UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

X. Closing Provisions

Should any provision of these Terms and Conditions be or become invalid, or should a loophole become apparent, the validity of the remaining provisions shall remain unaffected. In such a case, the

Client and the Contractor shall undertake to strive for the intended purpose by agreement or substitute provision.