

TERMS AND CONDITIONS

for the performance of examining and certification services of the Certification Body for Persons of the TÜV SÜD Akademie GmbH



Akademie

Hereinafter the contractual partner of TÜV SÜD Akademie GmbH shall be referred to as "Principal", and TÜV SÜD Akademie GmbH shall be referred to as "Academy". The Principal and the Academy shall be jointly referred to as "Parties".

1 General Remarks, Scope of Application

- 1.1 These Terms & Conditions shall apply in respect of carrying out inspection, examining and certification services by the Academy (hereinafter "Services"). Services for the purpose of these Terms and Conditions shall refer both to services within the meaning of services provided under a contract for services, as per section 611 of the German Civil Code [BGB] and to work done under a contract to produce a work as per section 631 et seq. of the German Civil Code [BGB].
- 1.2 The Academy mostly provides Services for entrepreneurs (section 14 of the German Civil Code - BGB), legal persons under public law or special funds under public law. Accordingly, these Terms and Conditions (hereinafter Terms and Conditions) have been drafted principally for dealings with this group of persons, and shall apply in respect of all business relations between the Academy and such principals. Notwithstanding the above, these Terms and Conditions shall also apply to the business relations between the Academy and consumers (section 13 of the German Civil Code - BGB). However, in such cases the following provisos shall apply to the Terms and Conditions:
 - Contrary to the stipulation at 4.1 the deadlines given by the Academy shall be binding.
 - Section 6.3 shall not apply.
 - Section 7.5 shall not apply.
 - Section 11.1 shall apply with the proviso that the Registered Office of the Academy shall be agreed as place of jurisdiction, where the Principal's Registered Office, place of residence or place of usual abode is moved outside the remit of the Federal Republic of Germany, or where their Registered Office, place of residence or place of usual abode is unknown at the time a claim is filed.
 - Section 11.2 shall not apply.
 - The Academy does not participate in any alternative dispute resolution procedure before a consumer conciliation body.
- 1.3 These Terms and Conditions shall apply exclusively. Any Terms and Conditions of the Principal, which run contrary to these Terms and Conditions, or which amend them, shall only become a part of the Agreement, where the Academy has explicitly consented to this. This consent requirement shall apply in all cases, including in situations where the Academy is aware of the Principal's Terms and Conditions and provides Services for the Principal without reservation.
- 1.4 Any individual agreements entered into with the Principal (including any ancillary agreements, amendments or changes) shall have precedence over these Terms and Conditions. The content of any such agreements shall be proven by way of a written contract, or, as the case may be, the written confirmation of the Academy, subject to proof to the contrary.
- 1.5 The employees of the Academy or any external invigilators working for the Academy shall act exclusively on behalf and in the name of the Academy during the performance of their work. Any additional, follow-up and new assignments with any of the invigilators used must be entered into exclusively via the Academy.

2 Performance of the Contract

- 2.1 Unless anything is agreed to the contrary, Services shall be performed in compliance with the applicable regulations therefor as valid at the time the Contract is entered into. The Academy shall be entitled to determine and decide on the method or the type of any exams as the Academy sees fit in its own reasonable discretion, provided that nothing to the contrary was agreed in writing, and that there are no mandatory provisions that would demand that a particular approach be taken.
- 2.2 The Academy shall be entitled to make use of subcontractors to perform the contract.
- 2.3 The scope of the services rendered by the Academy shall be stipulated in writing at the time the order is placed. In the event that it transpires that there is a demand for expanding or otherwise amend the services while they are being performed, then any such changes must be additionally agreed in writing before any such changes take place. Sections 648 and 648a of the German Civil Code - BGB shall remain unaffected.

3 Principal's Obligation to Participate

The Principal shall provide the Academy with the necessary information and materials in good time and free of charge, and shall make available the requisite rooms and technological environments free of charge.

4 Deadlines, Delay, Frustration

- 4.1 Any deadlines given by the Academy shall be non-binding, unless they are explicitly agreed in writing to be binding.
- 4.2 Where the Principal grants the Academy a reasonable grace period after the service having become due, and where the Academy fails to comply with this grace period, or where it has become impossible for the Academy to perform these services, then the Principal shall be entitled to rescind the Contract and, where the Academy is at fault, to claim damages instead of the services. Sections 281 and 323 of the German Civil Code - BGB shall remain unaffected.

5 Cancellation and Rescheduling of Exam Dates

- 5.1 The Academy shall be entitled to cancel or reschedule agreed dates for examinations or certifications, without having to give reasons, up to ten days before the planned date. The Academy shall also be entitled to cancel up until the day of the exam, if, and to the extent that, it is forced to adapt and amend its examining and/or certification processes, either due to its status as an examinations institute or for other reasons, and where, due to this, it is no longer possible to offer the examination/certification as originally planned. In such cases the Principal shall not be eligible for any claims for damages or reimbursement for any other disbursements.
- 5.2 If a test date is missed due to illness of the tester/test supervisor or other unforeseeable events, there shall be no claim for the test to be carried out. The contractual parties shall mutually agree on alternative dates for the test. If an event is missed and is not replaced, the test fees that the customer has already paid shall be reimbursed to them. Any claims over and above this by the customer and/or persons participating in the test shall be excluded.
- 5.3 Once the Contract has been awarded by the Principal, or, as the case may be, after written confirmation of the Contract has been provided by the Academy, the Principal may cancel the examination / certification date without incurring any charge, up to 8 working days prior to that date. Where the Principal cancels later than this, cancellation fees shall fall due, in the sum of €400 per cancelled examination / certification event. In the case of individual registrations (individual participants) the full examination fee shall fall due in cases of late cancellation. The Principal shall be free to prove that the actual losses incurred were less than that.

6 Warranty in Relation to Work produced under a Contract to produce a Work ("werkvertragliche Leistung")

- 6.1 The warranty given by the Academy shall only encompass the Work which it was explicitly commissioned to produce as per sections 2.1 or 2.3, as the case may be. This shall not constitute any warranty as to the proper set-up of the respective entire machinery of which the inspected, examined or tested parts form a part, nor that this functions correctly; in particular, the Academy shall not accept any liability for the construction, selection of materials and building of any such examined items of machinery, unless these questions are expressly part of the job description. In the latter case too, the obligation of the manufacturer to provide a warranty shall be neither restricted nor assumed.
- 6.2 The Academy's obligation to provide a warranty shall initially be limited to rectification within a reasonable period. In the event that rectification fails, i.e. where it becomes either impossible or where it would be unreasonable for the Principal, or where the Academy refuses or unreasonably delays such rectification without justification, the Principal shall, at their discretion, be entitled to demand either a reduction in price or rescission of the Contract.
- 6.3 Any claims to damages that are limited pursuant to this section 5 shall become statute barred one year after the statutory period of limitation begins to run, unless the Academy fraudulently kept silent about the defect, or where such claims are subject to the limitation provisions stipulated in section 438 (1)(2) or section 634a (1)(2) of the German Civil Code [BGB].
- 6.4 Claims for reimbursements pursuant to section 635 (2) of the German Civil Code shall remain unaffected.

7 Liability

- 7.1 Unless these Terms and Conditions, including the following provisions, stipulates otherwise, the liability of the Academy shall be governed by the relevant statutory provisions.
- 7.2 Irrespective of the legal basis, the Academy shall be liable on the basis of fault-based liability in cases of intent or gross negligence. In cases of conduct that is merely negligent, and subject to more favourable, statutory provisions (e.g. for due care in one's own affairs), the Academy shall only be liable for (i) losses arising from death, personal injury or damage to health, or (ii) for losses arising from a significant breach of an essential contractual obligation (an obligation, the performance of which is essential in order to properly perform the contract, and the compliance with which the contractual partner can reasonably rely on); in the latter case, however, the Academy's liability is limited to those losses as were typically foreseeable at the time of entering into the contract.

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- 7.3 The limitation on liability as per section 7.2 shall also apply in cases where there an obligation is breached by, or, as the case may be, in favour of persons whose actions the Academy is statutorily responsible for, or in cases where organs of the company, experts or other employees of the Academy are personally liable, if applicable. It shall not apply where the Academy, or, as the case may be, the abovementioned person deceitfully failed to disclose a defect, or in cases of a specifically agreed quality guarantee, or in respect of claims as per the German Product Liability Act (ProdHaftG).
- 7.4 The Principal must notify the Academy in writing and without delay in respect of any losses for which the Academy is to be held liable.
- 7.5 Any claims to damages that are limited pursuant to this section 7 shall become statute barred one year after the statutory period of limitation begins to run, unless they are subject to the limitation provisions stipulated in section 438 (1)(2) or section 634a (1)(2) of the German Civil Code [BGB].

8 Force Majeure

In the event that either party is unable to perform its obligations to the other party in whole or in part or not in a timely manner due to an unusual and unforeseeable event beyond the control of that party (force majeure event), the affected obligations of the party relying on the force majeure event shall be suspended for as long as the force majeure event and its consequences persist; any obligations of the other party to provide consideration during this time shall lapse. Claims of the other party, in particular claims for damages, shall not arise in this respect. The party invoking force majeure shall, however, be obliged to inform the other party without delay in text form of the event, the suspended performance obligations and the expected duration of the suspension of the performance obligations. The same shall apply if, by observing a reasonable duty of care, the party invoking force majeure recognizes, whilst the performance obligations are suspended, that the notified probable duration of the suspension will change significantly. If the force majeure event lasts longer than six months from the first time the other party is informed, both parties shall be entitled to withdraw from the contract. The right of withdrawal shall be replaced by a right of termination for continued obligations. The suspension of a payment obligation – except in scenarios prescribed by law or if such payment obligation represents a consideration within the meaning of sentence 1 – cannot be based on force majeure. Article 287 sentence 2 of the German Civil Code (liability for coincidence during default of the debtor) shall remain unaffected.

9 Payment Terms

- 9.1 Unless a fixed rate or some other basis for assessing the fee has been expressly agreed, the fees shall be those as are the valid Academy fees at the date the services are provided.
- 9.2 The Academy shall be entitled to demand reasonable advances and/or invoice for part-payments in respect of services rendered already. Invoices for part-payment do not need to be described as such. Receipt of an invoice shall not mean that this constitutes the full and final amount the Academy is charging in respect of that job.
- 9.3 The remuneration due as per section 8.2 or as per a final invoice after the work has been accepted shall fall due for payment immediately upon invoicing, provided that no other agreement has been reached. Section 286 of the German Civil Code - BGB shall remain unaffected by this.
- 9.4 Where applicable, any travel expenses, travel times, disbursements and overnight expenses shall be additionally invoiced.

10 Confidentiality, Copyright, Data Protection

- 10.1 The Academy shall be entitled to make copies of written materials which have been made available to the Academy for its information and which are relevant for performing the services, and may keep such copies on file.
- 10.2 Where examination results and certificates are also produced in electronic form in the course of performing the services, and where such are subject to copyright (hereinafter referred to as "Works"), the Academy grants the Principal a simple, non-transferrable and non-licensable right of use, where this is necessary for the purposes of performing the contract. No further rights are granted or assigned. The Principal may only use the Works in their entirety, only in an unaltered form and only for the contractual purpose. In particular, any publication or reproduction for advertising purposes shall require the prior written consent of the Academy for each individual case.
- 10.3 The Academy shall not disclose or utilise any business or trade secrets of which it becomes aware in the course of performing the job, beyond using it in order to perform that job, unless authorised to do so.
- 10.4 The Academy processes the customer's personal data for the proper performance of the order and otherwise only for permissible purposes. Amongst others, the Academy uses automated data processing machines for this. The Academy complies with all applicable data protection requirements in its data processing.

11 Place of Jurisdiction, Place of Performance, Applicable Law:

- 11.1 The place of jurisdiction for either Party asserting any claims shall be the place of the Registered Office of the Academy, provided that the prerequisites as per section 38 of the German Code of Civil Procedure [Zivilprozessordnung] have been met.
- 11.2 The place of performance for all obligations arising from the Contract shall be the place of the Registered Office of the Academy.
- 11.3 The contract and any legal relationship arising therefrom shall be governed exclusively by the laws of the Federal Republic of Germany, and excluding the conflict of law provisions of international private law (IPR) and of the UN Convention on the International Sale of Goods (CISG).