



Add Value.  
Inspire trust.

## General terms and conditions

of TÜV SÜD Landesgesellschaft Österreich GmbH (hereinafter referred to as "TÜV SÜD")  
for freely agreed services, in particular inspection, consulting and expert opinions

### 1 General, applicability

- 1.1 In accordance with its Articles of Association, TÜV SÜD provides technical services, in particular in the form of expert opinions, inspections, measurements/laboratory services, consulting/conceptualisation and special training, and develops services and related products in the field of new technologies (hereinafter referred to as "services").
- 1.2 TÜV SÜD predominantly provides services to entrepreneurs (Section 1 of the Commercial Code [UGB]), legal entities under public law or special funds under public law. These General Terms and Conditions (hereinafter referred to as "GT&C") have therefore been drafted principally for transactions with these groups of persons and apply to all business relationships of TÜV SÜD with such clients. Notwithstanding this, they also apply to TÜV SÜD's business relationships with consumers (Section 1 of the Consumer Protection Act [KschG]). In this case, however, the GT&C apply with the following provisos:
  - The delivery and completion deadlines specified by TÜV SÜD are binding, contrary to what Clause 3.1 states.
  - Clause 4.3 does not apply.
  - Clause 5.2 applies with the proviso that the limitation of liability for case (ii) does not apply.
  - Clause 5.6 does not apply.
  - Clause 9.1 applies with the proviso that TÜV SÜD's registered office is agreed as the place of jurisdiction in the event that the client does not have its place of residence, habitual abode or place of employment in Austria at the time the action is brought.
  - Clause 9.2 does not apply.
  - Clause 10 does not apply.
  - TÜV SÜD shall not participate in dispute resolution proceedings before a consumer arbitration board.

Additional terms and conditions may apply to services that are provided via a TÜV SÜD online shop or another TÜV SÜD company.

- 1.3 The GT&C apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions stipulated by the client shall only become part of the contract if and to the extent that TÜV SÜD expressly consents to their applicability. This requirement of consent applies in any event, e.g. even if TÜV SÜD unconditionally renders services to the client in awareness of the client's GT&C.
- 1.4 Individual agreements reached with the client in specific cases (including ancillary agreements, supplements and amendments) shall take precedence over these GT&C.
- 1.5 For the purposes of these GT&C, "in text form" means that a legible statement identifying the individual making the declaration must be made using a durable medium. A durable medium is any medium that (i) enables the recipient to keep or store a declaration addressed to them personally on the medium in such a way that it is accessible to them for a period of time adequate to its purpose, and (ii) is capable of reproducing the declaration unchanged.

### 2 Performance of the contract

- 2.1 Unless otherwise agreed, services shall be rendered in compliance with the provisions applicable thereto at the time of conclusion of the contract. TÜV SÜD is entitled to determine the method or type of examination or inspection at its own professional discretion, unless otherwise agreed in text form or unless mandatory provisions require a specific procedure. TÜV SÜD assumes no responsibility for the correctness of the safety programmes or safety provisions on which the inspections are based, unless expressly agreed otherwise in text form.
- 2.2 TÜV SÜD is also entitled to employ subcontractors for the performance of the contract.
- 2.3 The scope of TÜV SÜD's services shall be specified in text form when the contract is awarded. If, in the course of the proper performance of the contract, there proves to be a need to expand or otherwise amend the contract originally agreed upon, this shall be additionally agreed in advance and in text form.

### 3 Deadlines, delay, impossibility

- 3.1 Performance and completion deadlines specified by TÜV SÜD are non-binding unless their binding nature is expressly agreed in text form.
- 3.2 If the client sets TÜV SÜD a reasonable grace period after the service is due and TÜV SÜD fails to meet this deadline, or if TÜV SÜD is unable to provide the service, the client is entitled to withdraw from the contract and – if TÜV SÜD is at fault – to claim damages in lieu of the service. Sections 918 and 920 et seq. of the General Civil Code (ABGB) remain unaffected.

### 4 Warranty

- 4.1 TÜV SÜD's warranty only covers the services for which it is expressly commissioned in accordance with Clauses 2.1 and 2.3. TÜV SÜD assumes no warranty for the correctness and operation of the overall system concerned to which the inspected or tested parts belong; in particular, TÜV SÜD bears no responsibility for the design, choice of materials and construction of the examined systems, unless these items are expressly the subject of the contract. In the latter instance, too, the manufacturer's warranty obligations and legal responsibility are neither limited nor assumed.
- 4.2 TÜV SÜD's warranty obligations are primarily limited to subsequent performance (improvement or replacement) within a reasonable period of time. If the subsequent performance fails, i.e. if it is impossible or unreasonable for the client, or if TÜV SÜD unjustifiably refuses or unduly delays it, the client is entitled to demand, at its own discretion, a reduction in price or rescission (Section 932 of the General Civil Code [ABGB], Section 12 of the Consumer Guarantee Act [VGG] for transactions with consumers).
- 4.3 Any claims for improvement, replacement, price reduction or rescission shall become statute-barred one year after the statutory commencement of the limitation period, unless TÜV SÜD fraudulently concealed the defect.

### 5 Liability

- 5.1 Unless otherwise set out in these GT&C, including the following provisions, TÜV SÜD is liable for any breach of duty pursuant to the statutory provisions.
  - 5.2 TÜV SÜD is liable for damages, irrespective of the legal grounds, within the scope of culpability in cases of intent and gross negligence. In cases of minor negligence, TÜV SÜD is liable, subject to a more lenient standard of liability pursuant to the statutory provisions (e.g. for diligence in its own affairs), only (i) in the event of personal injury, (ii) in the event of damage resulting from a not insignificant breach of a principal obligation; in the latter instance, however, TÜV SÜD's liability is limited to compensation for the damage typically foreseeable at the time the contract is concluded.
  - 5.3 The limitation of liability pursuant to Clause 5.2 also applies to breaches of duty by or in favour of persons for whom TÜV SÜD is legally responsible and to any personal liability of TÜV SÜD's executive bodies, experts and other employees. It does not apply if TÜV SÜD or the aforementioned persons have fraudulently concealed a defect, nor does it apply to claims arising from a guarantee of quality or to claims under the Product Liability Act.
  - 5.4 For claims for damages as defined in the Atomic Liability Act arising in connection with TÜV SÜD's operations involving the handling of a radioactive substance, in particular its transport, TÜV SÜD is liable for pecuniary loss per claim up to the amount of the legally prescribed liability insurance (cf. Section 7 of the Atomic Liability Act [AtomHG]). For claims for damages arising from other legal provisions, Clauses 5.1 to 5.3 apply.
  - 5.5 The client must immediately notify TÜV SÜD in text form of any damage for which TÜV SÜD is to be held liable.
  - 5.6 Insofar as claims for damages are limited pursuant to this Clause 5, they shall become statute-barred after one year from the statutory commencement of the limitation period.
- ### 6 Remuneration and payment terms
- 6.1 Unless a fixed price or another basis of assessment is expressly agreed, remuneration shall be based on TÜV SÜD's applicable prices at the time of performance.
  - 6.2 TÜV SÜD may request reasonable advance payments and/or issue partial invoices in accordance with the services already rendered. Partial invoices need not be designated as such. Receipt of an invoice does not signify that TÜV SÜD has fully completed its billing of the contract.
  - 6.3 The remuneration charged in accordance with Clause 6.2 and/or by final invoice after acceptance of the work is due for payment directly upon issuance of the invoice, unless otherwise agreed. Section 1334 of the General Civil Code (ABGB) remains unaffected.



- 6.4 The client shall be in default of payment if it does not settle within 30 days of the due date and receipt of an invoice or equivalent payment schedule; for consumers, TÜV SÜD shall make special reference to these consequences in the invoice or payment schedule. If the date of receipt of the invoice or payment schedule is uncertain, the debtor who is not a consumer shall be in default no later than 30 days after the due date and acceptance of the service performed.
- 7 Force majeure**
- Should one of the parties be unable to meet its contractual obligations to the other party in full or in part or in a timely manner due to an unusual and unforeseeable event over which that party has no control and the consequences of which could not have been avoided despite exercising due diligence (force majeure), the affected contractual obligations of the party invoking force majeure shall be suspended for as long as the event and its consequences continue; any reciprocal obligations on the part of the other party shall also lapse for this period of time. Claims, in particular claims for damages asserted by the other party, shall not be valid in this respect. However, the party invoking force majeure is required to inform the other party of the event, the suspended performance of services and the expected duration of the suspension of the performance of services in text form without undue delay. The same shall apply if the party invoking force majeure should become aware during the suspension of the performance of services, while exercising due diligence, that the anticipated duration of the suspension as communicated is subject to significant change. If the event persists for more than six months from the first notification provided to the other party, both parties shall be entitled to withdraw from the contract. For continuing obligations, the right of withdrawal shall be replaced by the right of termination. The suspension of a payment obligation may not be based on force majeure, except in cases prescribed by law or if it is a reciprocal obligation within the meaning of sentence 1. The debtor's liability for fortuitous events during the debtor's default shall remain unaffected.
- 8 Export control and embargoes**
- 8.1 TÜV SÜD is not obligated to provide services in due time if and as long as this would lead to violations of export control and embargo restrictions. In this event, TÜV SÜD must immediately inform the client in text form of the hindrance to performance.
- 8.2 Should TÜV SÜD be prevented from providing a service in due time as a result of export control and embargo restrictions, necessary approval, licensing or other official procedures, the binding delivery and completion deadlines agreed upon by TÜV SÜD with the client shall be extended appropriately to reflect the duration of the delay caused thereby. In this event, TÜV SÜD must immediately inform the client in text form of the delay.
- 8.3 Should the impediment to performance as per Clause 8.1 or the delay as per Clause 8.2 persist for more than six months from the date on which TÜV SÜD first informs the client, both parties shall be within their rights to withdraw from the contract. The right of withdrawal shall be replaced by the mutual right of termination for continuing obligations. There are no further claims on the part of the client on the grounds of Clauses 8.1 and 8.2, in particular claims for damages.
- 8.4 When using or passing on the services provided by TÜV SÜD, the client is required to observe any applicable export control and embargo restrictions. The client must obtain any necessary permits or licences from the competent authorities. Violations of export control and embargo restrictions on the part of the client entitle TÜV SÜD to withdraw from the contract. For continuing obligations, the right of withdrawal shall be replaced by the right of termination.
- 8.5 Upon request, the client is obliged to immediately provide TÜV SÜD with comprehensive information on the intended use, end recipient and end use of the services to be provided by TÜV SÜD, in particular to issue or provide so-called end-use certificates.
- 8.6 The client indemnifies TÜV SÜD to the full extent against any and all claims asserted against TÜV SÜD by authorities or other third parties due to culpable violations of export control and embargo restrictions by the client and undertakes to compensate TÜV SÜD for any and all damages and expenses incurred in this regard.
- 9 Secrecy, copyright, confidentiality, data protection**
- 9.1 TÜV SÜD may keep on file copies of written documents that have been made available to TÜV SÜD for inspection and that are relevant to the performance of the contract.
- 9.2 To the extent that expert opinions, inspection results, calculations and other documents or work results, including in electronic form and including drafts, are produced in the course of the performance of the contract and are subject to copyright protection (hereinafter referred to as "works"), TÜV SÜD grants the client a non-exclusive, non-transferable and non-sublicensable right of use thereof to the extent required for the purpose of performing the contract. No other rights are granted or transferred. The client may only use works in their entirety as well as otherwise in unchanged form and only for the purpose of the contract. In particular, publication or reproduction for advertising purposes requires TÜV SÜD's prior written consent on a case-by-case basis.
- 9.3 TÜV SÜD shall not disclose and utilise without authorisation any business and trade secrets of which it becomes aware during the performance of the contract outside of the performance thereof.
- 9.4 TÜV SÜD shall disclose confidential information only if legally obliged to do so or authorised to do so under a contract.
- 9.5 TÜV SÜD shall process the client's personal data for the proper performance of the contract and otherwise for permitted purposes only. To this end, TÜV SÜD also uses automatic data processing systems. When processing data, TÜV SÜD complies with all applicable data protection requirements.
- 10 Place of jurisdiction, place of performance, applicable law**
- 10.1 The place of jurisdiction for the assertion of claims for both contracting parties is exclusively the registered office of TÜV SÜD (general place of jurisdiction pursuant to Section 75 of the Law on Jurisdiction [JN]).
- 10.2 The place of performance for all obligations arising from the contract is the registered office of TÜV SÜD.
- 10.3 The contractual relationship and any legal relations arising therefrom shall be governed exclusively by Austrian law, to the exclusion of any conflict-of-law provisions, international private law (IPR) and the UN Convention on Contracts for the International Sale of Goods (CISG).
- 11 Severability clause**
- Should any provision of these GT&C be invalid, ineffective, impracticable or unenforceable in whole or in part, the validity, effectiveness, practicability and enforceability of the remaining provisions shall not be affected thereby. In this case, such valid and enforceable agreements shall be deemed to have been made that most closely approximate the economic purpose of the void or invalid provisions, as well as the intention of the parties.