

General Terms and Conditions of Business governing Audit Services

of TÜV SÜD Management Service GmbH (hereinafter referred to as "MS")

1 General; Scope

1.1 MS provides customer-specific services and company-specific test procedures, so called Audit Services (hereinafter referred to as the "Services" or "Audit Services"). These Services are no Certification Services; certification marks or certificates are not granted.

1.2 MS predominantly provides Services for entrepreneurs (Section 14 of the German Civil Code (BGB), legal entities under public law and special funds under public law. These General Terms and Conditions of Business (hereinafter referred to as the "GTC") are therefore in principle drafted for transactions with those groups of persons and apply to all business relations between MS and those customers. Regardless of the foregoing, they also apply to business relations between MS and consumers (Section 13 of the German Civil Code (BGB)). In this case, however, the GTC apply **with the following provisos:**

- The order periods stated by MS are binding, contrary to the provisions in Section 4.1.
- Section 5.3 shall not apply.
- Section 6.5 shall not apply.
- Section 7.4 shall not apply.
- Section 11.1 applies with the proviso that the place where the registered office of MS is located is agreed to be the place of jurisdiction in the event that the registered office, residence or habitual abode of the customer is transferred outside the scope of application of the laws of the Federal Republic of Germany or the customer's registered office, residence or habitual abode is unknown at the time when action is brought.
- Section 11.2 shall not apply.
- MS does not engage in any dispute resolution procedures before any consumer conciliation body.

Additional terms and conditions may apply to services offered via an online store of MS or another TÜV SÜD group undertaking.

1.3. These GTC apply exclusively. Any general terms and conditions of the customer which deviate from, conflict with or supplement these GTC will become part of the contract only if and to the extent that MS has explicitly approved their application. This approval requirement applies in any event and even if MS for example renders the Services to the customer without reservation despite being aware of the customer's general terms and conditions of business.

1.4. Individual agreements made with the customer in a specific case (including ancillary agreements, supplements and changes) have priority over these GTC.

2 Contractual Performance

2.1 Unless otherwise agreed, the Services will be rendered in accordance with the performance specification agreed with the customer or the test regulation agreed with the customer. No responsibility is taken over for a test regulation given by the customer. MS shall be entitled to exercise its reasonable discretion in determining the method or type of investigation or assessment, provided that no conflicting written agreements have been made or that no specific course of action is required by mandatory law.

2.2 MS shall be entitled to make use of sub-contractors in the implementation of the order.

2.3 The scope of contractual activities to be performed by MS shall be defined in text form on placement of order. If any extension or other modification of the originally agreed order prove necessary within the context of due performance of the contract, they shall be additionally agreed upon in advance and in text form. Sections 648 and 648a of the German Civil Code (BGB) shall not be affected thereby.

2.4 The contractual services of MS shall be deemed as fulfilled and completed with delivery of the test reports and/or other reports to the customer.

3 Duty of Cooperation

3.1 In order to provide the audit services, it may be necessary to contact employees, customers or suppliers of the customer. In advance, the customer shall ensure that MS receives the data required for this purpose and is allowed to use it within the scope of the contractual services, for example by obtaining appropriate permission. The customer shall inform MS about this in text form beforehand.

3.2 If the customer forwards the data to MS without corresponding permission, the customer shall indemnify MS from any claims of third parties.

4 Deadlines, Default, Impossibility of Performance

4.1 The deadlines for contractual performance quoted by MS shall be binding only if this has been explicitly agreed upon in text form.

4.2 Should MS's customer, in the case of delayed performance, grant a reasonable additional period within which performance is to take place and should MS fail to observe this new deadline or ascertain that performance is no longer possible, the customer shall have the right to withdraw from the contract and – if MS is at fault – claim damages in lieu of performance. Sections 281, 323 of the German Civil Code (BGB), shall remain unaffected hereby.

5 Warranty

5.1 Warranty by MS only covers Services with which it has been explicitly commissioned as per Section 2.1 or 2.3.

5.2 Any warranty given by MS shall initially be restricted to supplementary performance to be completed within a reasonable time limit. Should such supplementary performance fail, i.e. be impossible or unacceptable for the customer or be unjustifiably refused or delayed by MS, the customer shall be entitled, at its discretion, either to a reduction of the price or rescission of the contract.

5.3 Notwithstanding the sale and purchase of consumer goods and the consumer contracts which fall within the scope of Section 651 of the German Civil Code (BGB), any claims for supplementary performance, reduction of price or rescission of the contract, which are not subject to the limitation periods of Section 438 (1) No. 2 or Section 634a (1) No. 2 of the German Civil Code (BGB), shall be time-barred after one year following the beginning of the statutory limitation period, unless MS has maliciously concealed the defect.

5.4 Any claims for repayment of expenses covered by Section 635 (2) of the BGB (German Civil Code), shall not be affected by this clause.

6 Liability

6.1 Unless otherwise provided by these GTC, including the provisions below, MS shall be liable for breaches of duty in accordance with the statutory provisions.

6.2 MS shall be liable for damages, irrespective of the legal ground, in the context of fault-based liability in the event of intent or gross negligence. In the event of simple negligence, subject to a more lenient standard of liability provided by law (e.g. care applied in one's own affairs), MS shall only be liable (i) for damage arising from an injury to life, body or health, (ii) for damage arising from a not insignificant breach of a material contractual duty (an obligation the fulfilment of which enables the proper performance of the contract in the first place and on the fulfilment of which the other party to the contract usually relies and may rely); in the latter case liability of MS is limited to the compensation of damage which was foreseeable and typical when the contract was concluded.

6.3 The limitation of liability according to Section 6.2 also applies to breaches of duty by or for the benefit of persons for whose fault MS is responsible pursuant to the statutory provisions and to any personal liability of executive bodies, experts and other employees of MS. It does not apply where MS or any of the persons mentioned above has fraudulently concealed a defect and with respect to claims arising from a guarantee of a specific quality or claims under the German Product Liability Act (Produkthaftungsgesetz).

6.4 Any person making claims under this contract shall without delay inform MS in in text form about any potential damage for which MS could be liable.

6.5 Where claims for damages are limited under this Section 6, they shall be time-barred after one year following the beginning of the statutory limitation period unless subject to the limitation periods of Section 438 (1) No. 2 or Section 634a (1) No. 2 of the German Civil Code (BGB).

7 Terms of Payment, Prices

7.1 Unless a fixed price or other calculation basis has been explicitly agreed upon, Services shall be billed in accordance at the prices valid at the time of performance.

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- 7.2 Reasonable advance payments may be requested and/or partial invoices covering Services already rendered may be made out. Partial invoices need not be designated as such. The receipt of an invoice does not mean that the order has been billed completely by MS.
- 7.3 Unless otherwise agreed the remuneration invoiced in accordance with Section 7.2 and/or the final invoice after acceptance of work shall be due for payment within 14 days upon invoicing. Section 286 of the German Civil Code (BGB) shall not be affected by this clause.
- 7.4 The remuneration shall be subject to the value added tax at the applicable statutory rate. The amount of value added tax shall be shown separately on the invoice.
- 7.5 In cases involving short-term cancellation or postponement of audit/test date within six weeks in advance of the scheduled audit/test date, MS reserves the right to charge the customer any additional costs incurred by MS in connection with such cancellation/postponement. This shall also apply if the cancellation or postponement is necessary because the customer has not complied with his duty of cooperation in accordance with paragraph 3.1.
- 7.6 In cases involving termination of the contract prior to expiry of the respective test report, MS reserves the right to charge 15% of the remaining contract value to be invoiced - additional to the payment for Services provided up to the date of termination.
MS reserves the right to charge 30% of the remaining contract value, if the contract is terminated between 2 months and 2 weeks before a bindingly agreed date set for the Service; 70% if the contract is terminated 2 weeks or less before this date, and 100% in the case of contract termination on the target date or a bindingly agreed date set for the Service. MS reserves the right to furnish proof of higher damage. The party terminating the contract shall be entitled to furnish proof that damage suffered by MS is less than the above amount.
- ## 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 persists; 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 information to the other party, 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. § Section 287 sentence 2 of the German Civil Code (liability for coincidence during default of the debtor) shall remain unaffected.
- ## 9 Export control and embargoes
- 9.1 MS does not have the obligation to provide services in due time to the extent that and for as long as such provision of services would result in violations of export control and embargo restrictions. In such a case, MS agrees to notify the customer without undue delay in textual form (as defined in the German Civil Code, BGB) about the fact that services may not be provided (impediment to performance).
- 9.2 In the event that MS is prevented from timely provision of services because permits, licenses or other official procedures imposed by restrictions under export control and embargo law need to be obtained, the delivery and completion deadlines agreed by MS and the customer with binding effect shall be adequately extended by the duration of the delay caused thereby. In such a case, MS agrees to notify the customer without undue delay in textual form about the delay.
- 9.3 Where the impediment to performance pursuant to Section 9.1 or the delay pursuant to Section 9.2 lasts longer than six months beyond the date of initial notification of the customer by TÜV SÜD, either party has the right to rescind the contract (Rücktritt). In case of contracts for the performance of continuing obligations, either party has the right to terminate the contract (Kündigung) instead. The customer may not assert any additional claims based on Sections 9.1 and 9.2, including, but not limited to, claims for damages.
- 9.4 The customer has the obligation to observe the export control and embargo law restrictions, as applicable and in effect at the time, when making use of or passing on services provided by TÜV SÜD. The customer has the obligation to obtain any permits or licenses that may have to be obtained from the competent authorities, if and where necessary. In case of a violation of export control and embargo restrictions by the customer, MS has the right to rescind the contract. In case of contracts for the performance of continuing obligations, MS has the right to terminate the contract (Kündigung) instead.
- 9.5 To the extent requested to do so, the customer has the obligation to provide TÜV SÜD, without undue delay, with any and all information on the intended use, final recipient and end use of the services to be provided by TÜV SÜD, including, without limitation, the obligation to issue or provide what is referred to as end-user certificates (EUC).
- 9.6 The customer agrees to indemnify MS to the full extent against any and all claims that may be asserted against MS by authorities or other third parties on the grounds of intentional or negligent violations of export control and embargo restrictions by the customer and undertakes to indemnify MS for and against any and all losses sustained, damage suffered and expenses incurred as a result.
- ## 10 Secrecy, Copyright, Data Protection
- 10.1 MS shall have the right to copy and file any written documents submitted for perusal which are important for performance of the order.
- 10.2 In as far as expert opinions, test results, test reports and other reports, calculations and other documents or work products that are protected by copyright (hereinafter referred to as "Work") are prepared within the scope of contractual performance, including in electronic form and drafts, MS shall grant the customer a simple, non-transferable and non-sub-licensable right of use, if this is required by the purpose of the contract. Other rights are not granted or transferred. The use of Works or the naming of the MS or the TÜV SÜD for advertising purposes is not permitted.
- 10.3 MS shall not, without authorization, disclose or turn to use any business or trade secrets of which MS becomes aware in the course of performing the order.
- 10.4 TÜV SÜD processes the customer's personal data for the proper performance of the order and otherwise only for permissible purposes. MS also uses automatic data processing systems for this. During data processing, MS meets all applicable data protection requirements.
- ## 11 Jurisdiction, Place of Performance, Applicable law
- 11.1 In as far as the prerequisites outlined in Section 38 of the Code of Civil Procedure have been fulfilled, party to the contract the registered office of MS (general venue according to Section 17 of the German Code of Civil Procedure, ZPO) is agreed to be the place of jurisdiction for the assertion of claims by either party of the contract.
- 11.2 The registered office of MS is the Place of performance for any and all obligations arising out of the contract.
- 11.3 The contractual relationship and any and all legal relations arising from it shall be exclusively governed by, and construed in accordance with, the laws of the Federal Republic of Germany excluding to its provisions on the conflict of laws and the UN Treaty on the International Sale of Goods (CISG) which expressly agreed to be excluded.