

# General Terms and Conditions of Business governing Testing and Certification Services

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

## 1 General; Scope

- 1.1 MS provides testing and certification services, in particular in the range of management systems (hereinafter referred to as the "Services").
- 1.2 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 (Art. 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 3.1.
  - Section 4.3 shall not apply.
  - Section 5.5 shall not apply.
  - Section 6.4 shall not apply.
  - Section 8.1 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 8.2 shall not apply.
  - MS does not engage in any dispute resolution procedures before any consumer conciliation body.
- 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. For the content of such agreements a written contract or written confirmation by MS is authoritative, subject to proof to the contrary.

## 2 Contractual Performance

- 2.1 Unless otherwise agreed, the Services will be rendered in accordance with the statute law applicable at the time of entry into force of the contract. 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. Unless otherwise explicitly agreed in text form, no responsibility shall be assumed for the correctness of the safety programs and safety regulations on which the tests and inspections have been based.
- 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. Articles 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 respective audit reports.

## 3 Deadlines, Default, Impossibility of Performance

- 3.1 The deadlines for contractual performance quoted by MS shall be binding only if this has been explicitly agreed upon in text form.
- 3.2 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. Articles 281, 323 of the German Civil Code (BGB), shall remain unaffected hereby.

## 4 Warranty

- 4.1 Warranty by MS only covers Services with which it has been explicitly commissioned as per Section 2.1 or 2.3.
- 4.2 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.
- 4.3 Notwithstanding the sale and purchase of consumer goods and the consumer contracts which fall within the scope of Article 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 Article 438 (1) No. 2 or Article 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.
- 4.4 Any claims for repayment of expenses covered by Article 635 (2) of the BGB (German Civil Code), shall not be affected by this clause.

## 5 Liability

- 5.1 Unless otherwise provided by these GTC, including the provisions below, MS shall be liable for breaches of duty in accordance with the statutory provisions.
- 5.2 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), TÜV SÜD 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 TÜV SÜD is limited to the compensation of damage which was foreseeable and typical when the contract was concluded.

- 5.3 The limitation of liability according to Section 5.2 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).
- 5.4 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.
- 5.5 Where claims for damages are limited under this Section 5, they shall be time-barred after one year following the beginning of the statutory limitation period unless subject to the limitation periods of Article 438 (1) No. 2 or Article 634a (1) No. 2 of the German Civil Code (BGB).

## 6 Terms of Payment, Prices

- 6.1 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.
- 6.2 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.
- 6.3 Unless otherwise agreed the remuneration invoiced in accordance with Section 6.2 and/or the final invoice after acceptance of work shall be due for payment within 14 days upon invoicing. Article 286 of the German Civil Code (BGB) shall not be affected by this clause.
- 6.4 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.
- 6.5 In cases involving short-term cancellation or postponement of audit date within six weeks in advance of the scheduled audit date, MS reserves the right to charge the customer any additional costs incurred by MS in connection with such cancellation/postponement.
- 6.6 In cases involving termination of the certification contract prior to expiry of the respective certificate, MS reserves the right to charge 15% of the remaining contract value to be invoiced.  
MS reserves the right to charge 30% of the remaining contract value, if the contract is terminated between 2 months and 2 weeks before the target date for the next audit or the date set for the audit; 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 the date set for the audit. 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.

## 7 Secrecy, Copyright, Data Protection

- 7.1 MS shall have the right to copy and file any written documents submitted for perusal which are important for performance of the order.
- 7.2 In as far as expert opinions, test results, audit 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 customer may use any such Work only in complete and otherwise unchanged form and only for the contractual purpose. In particular, any publication or duplication for marketing purposes shall require MS' prior consent in writing.
- 7.3 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.
- 7.4 MS processes the customer's personal data for proper performance of the order and for its own purposes. MS also uses automatic data processing systems for this. During data processing, MS meets all applicable data protection requirements.

## 8 Jurisdiction, Place of Performance, Applicable law

- 8.1 In as far as the prerequisites outlined in Article 38 of the Code of Civil Procedure have been fulfilled, the place of jurisdiction for the assertion of claims by both contractual partners shall be the domicile of MS.
- 8.2 Place of performance for any obligations arising out of the contract shall be the domicile of MS.
- 8.3 The contractual relationship 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 without regard to its provisions on the conflict of laws and the UN Treaty on the International Sale of Goods (CISG) which shall be expressly excluded.