

**General Terms and Conditions of Business  
of TÜV SÜD Battery Testing GmbH (hereinafter referred to as "TÜV SÜD")  
governing freely agreed (= non-regulated) services, in particular activities involving testing and  
inspection, consultancy and expert opinions**

## **1 General; Scope**

- 1.1 As laid down in its articles of association, TÜV SÜD provides technical services in particular in the form of expert opinions, tests and inspections, measurements/laboratory services, consultancy/concept planning and specialized training courses and develops services and the associated products in the field of new technologies (hereinafter referred to as the "Services")
- 1.2 TÜV SÜD 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 TÜV SÜD and those customers. Regardless of the foregoing, they also apply to business relations between TÜV SÜD and consumers (Section 13 of the German Civil Code (BGB)). In this case, however, the GTC apply with the following provisos:

- The delivery and completion periods stated by TÜV SÜD are binding, contrary to the provisions in Section 3.1.
- Section 4.3 shall not apply.
- Section 5.6 shall not apply.
- Section 10.1 applies with the proviso that the place where the registered office of TÜV SÜD 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 10.2 shall not apply.
- TÜV SÜD 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 TÜV SÜD 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 TÜV SÜD has explicitly approved their application. This approval requirement applies in any event and even if TÜV SÜD 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 statute law applicable at the time of entry into force of the contract. TÜV SÜD 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 textual 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 TÜV SÜD 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 TÜV SÜD shall be defined in textual form on placement of order. If any extension or other modification of the originally agreed order prove necessary within the contextual of due performance of the contract, they shall be additionally agreed upon in advance and in textual form. Sections 648 and 648a of the German Civil Code (BGB) shall not be affected thereby.

## **3 Deadlines, Default, Impossibility of Performance**

- 3.1 Any delivery or completion periods stated by TÜV SÜD shall be binding only if this has been explicitly agreed upon in textual form.
- 3.2 Should TÜV SÜD's customer, in the case of delayed performance, grant a reasonable additional period within which performance is to take place and should TÜV SÜD 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 TÜV SÜD is at fault – claim damages in lieu of performance. Sections 281, 323 of the German Civil Code (BGB), shall remain unaffected hereby.

## **4 Warranty**

- 4.1 Warranty by TÜV SÜD only covers Services with which it has been explicitly commissioned as per Section 2.1 or 2.3. Warranty regarding the proper condition and overall functioning of the plants to which the inspected or tested parts belong shall therefore be excluded. In particular, TÜV SÜD shall not assume any responsibility for the design, materials and construction of the examined plants unless these issues have been explicitly included in the contract. Even if the latter is the case, the warranty and the legal responsibility of the manufacturer shall be neither restricted nor assumed.
- 4.2 Any warranty given by TÜV SÜD 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 TÜV SÜD, 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 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 TÜV SÜD has maliciously concealed the defect.
- 4.4 Any claims for repayment of expenses covered by Section 635 (2) of the German Civil Code (BGB), shall not be affected by this clause.

## **5 Liability**

- 5.1 Unless otherwise provided by these GTC, including the provisions below, TÜV SÜD shall be liable for breaches of duty in accordance with the statutory provisions.
- 5.2 TÜV SÜD 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 TÜV SÜD is responsible pursuant to the statutory provisions and to any personal liability of executive bodies, experts and other employees of TÜV SÜD. It does not apply where TÜV SÜD 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 [not applicable]

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5.5 Any person making claims under this contract shall without delay inform TÜV SÜD in textual form about any potential damage for which TÜV SÜD could be liable.

5.6 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 Section 438 (1) No. 2 or Section 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 TÜV SÜD.

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 immediately upon invoicing. Section 286 of the German Civil Code (BGB) shall not be affected by this clause.

#### **7 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 textual 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, 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 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.

#### **8 Export control and embargoes**

8.1 TÜV SÜD 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, TÜV SÜD 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).

8.2 In the event that TÜV SÜD 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 TÜV SÜD and the customer with binding effect shall be adequately extended by the duration of the delay caused thereby. In such a case, TÜV SÜD agrees to notify the customer without undue delay in textual form about the delay.

8.3 Where the impediment to performance pursuant to Section 8.1 or the delay pursuant to Section 8.2 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 8.1 and 8.2, including, but not limited to, claims for damages.

8.4 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, TÜV SÜD has the right to rescind the contract. In case of contracts for the performance of continuing obligations, TÜV SÜD has the right to terminate the contract (Kündigung) instead.

8.5 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).

8.6 The customer agrees to indemnify TÜV SÜD to the full extent against any and all claims that may be asserted against TÜV SÜD 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 TÜV SÜD for and against any and all losses sustained, damage, suffered and expenses incurred as a result.

#### **9 Secrecy, Copyright, Data Protection**

9.1 TÜV SÜD shall have the right to copy and file any written documents submitted for perusal which are important for performance of the order.

9.2 In as far as expert opinions, test results, 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, TÜV SÜD 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 TÜV SÜD's prior consent in writing.

9.3 TÜV SÜD shall not, without authorization, disclose or turn to use any business or trade secrets of which TÜV SÜD becomes aware in the course of performing the order.

9.4 TÜV SÜD processes the customer's personal data for the proper performance of the order and otherwise only for permissible purposes. TÜV SÜD also uses automatic data processing systems for this. During data processing, TÜV SÜD meets all applicable data protection requirements.

#### **10 Jurisdiction, Place of Performance, Applicable law**

10.1 In as far as the prerequisites outlined in Section 38 of the Code of Civil Procedure have been fulfilled, the registered office of TÜV SÜD (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 to the contract.

10.2 The registered office of TÜV SÜD is the place of performance for any and all obligations arising out of the contract.

10.3 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 its provisions on the conflict of laws and the UN Treaty on the International Sale of Goods (CISG) which is expressly agreed to be excluded.