

# General Terms and Conditions of Business of TÜV SÜD Middle East (hereinafter referred to as “TÜV SÜD”)



## 1. General; Scope

- 1.1. These General Terms and Conditions of Business (hereinafter referred to as the “GTC”) are applicable to all activities involving testing, inspection, certification, and associated services, including technical guidance and other services offered by TÜV SÜD (hereinafter referred to as the “Services”) for TÜV SÜD Middle East LLC company in the United Arab Emirates and its subsidiaries and branches including, but not limited to TÜV SÜD Middle East LLC in Sultanate of Oman, TÜV SÜD for Safety Engineering in the Kingdom of Saudi Arabia and its branches, TÜV SÜD Middle East LLC in State of Qatar, and the branches of TÜV SÜD Middle East LLC in Republic of Egypt, Kingdom of Bahrain, and State of Kuwait and any new legal entity or branch that may be established, acquired in Middle East ( hereinafter referred to as “TÜV SÜD”).
- 1.2. These GTC and, as applicable, the proposal, the application, the codes of practice, TÜV SÜD Testing, Certification, Validation, Verification Regulations (TCVVR) available online at <https://www.tuvsud.com/en-ae/terms-and-conditions/group-testing-and-certification-regulation> shall 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 or even if TÜV SÜD does not explicitly object to them.
- 1.3. Additional terms and conditions may apply to services offered via an online store of TÜV SÜD or another TÜV SÜD group undertaking.
- 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 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.
- 2.4. The Customer shall supply the necessary accessories, information and / or documents, for the Services including any foreign test reports, company test reports, product specifications, catalogues and instruction manuals. Until all necessary accessories, information or documents are supplied, TÜV SÜD will not commence the Services.
- 2.5. TÜV SÜD, at its sole discretion, reserves the right not to undertake the Services and terminate the agreement for the same in the event the Customer fails to comply with the terms and conditions set out herein.

## 3. Deadlines, Delay, 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 text form.
- 3.2. TÜV SÜD shall not be liable for any delay or failure in respect of its contractual performance arising from any cause outside its control.
- 3.3. In the event that TÜV SÜD’s contractual performance is delayed due to any cause outside its control, TÜV SÜD shall have the option at its sole discretion to either (i) extend the period for performance in accordance to the period of delay or (ii) terminate the agreement for Services.

## 4. Warranty

- 4.1. Warranty by TÜV SÜD only covers Services with which it has been explicitly commissioned as per Section 2.1. 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. TÜV SÜD warrants that it will exercise reasonable care and diligence in performing the service herein. Save as provided herein, all other warranties by TÜV SÜD, whether expressed or implied, are hereby expressly excluded.
- 4.4. The Customer warrants that all information and/or documents supplied to TÜV SÜD are accurate and correct in all aspects and shall indemnify TÜV SÜD for all loss and damages arising from the Services herein caused by incorrect information and/or documents supplied by the Customer.

## 5. Liability

- 5.1. TÜV SÜD shall only be liable for damages, irrespective of the legal ground, in the context of fault-based liability in the event of intent or gross negligence or if TÜV SÜD has negligently breached a substantial contractual obligation (“material obligation”). In the event that TÜV SÜD is in breach of any substantial contractual obligations, TÜV SÜD shall only be liable for the damage related to and typically foreseeable under the particular contract at the time of entering into the contract.
- 5.2. Whilst all reasonable care will be taken where the product / equipment is in TÜV SÜD’s custody, TÜV SÜD shall not under any circumstances be responsible for any loss or damage to the product / equipment during transit or while in the custody of TÜV SÜD. The Customer shall arrange for all necessary insurance against accidental loss or damage to the product / equipment, either in transit or at TÜV SÜD premises.
- 5.3. Unless there is a written request made for the return of the product / equipment at the time when they are delivered to TÜV SÜD for testing or the agreement for testing expressly provides for the return of the product/ equipment, all product / equipment provided to TÜV SÜD for testing will be disposed after 1 month from the date of testing.
- 5.4. In the case of claims for damages under the Nuclear Energy Law of the country of TÜV SÜD office, arising out of the handling, and in particular the transport, of radioactive substances under a license issued to TÜV SÜD to carry out such activities outside nuclear power stations, TÜV SÜD shall only be liable up to the officially insured amount in each case of damage. Any claims for damages based on other legal provisions shall be governed by Sections 5 , 5.7 and 5.11.
- 5.5. TÜV SÜD shall not be liable for any damages caused as a result of a negligent breach of a non-substantial contractual obligation.
- 5.6. “Substantial contractual obligations” are those obligations that protect the Customer’s legal interests deemed to be substantial to the contract, which the contract, based on its content and purpose, must specifically grant to the Customer; further, such contractual obligations are substantial which are deemed to be prerequisites for proper performance of a contract and upon the observance of which the Customer has generally relied and may rely.
- 5.7. TÜV SÜD shall not be liable for any incidental, indirect, special or consequential loss or damage whatsoever, including, but not limited to, loss of revenue, profits, contracts, business or anticipated savings, or loss of goodwill or reputation, whether foreseeable or not and whether arising from any act or omission on the part of TÜV SÜD in the provision of the Services.
- 5.8. Any person making claims under this contract shall without delay inform TÜV SÜD in in text form about any potential damage for which TÜV SÜD could be liable.
- 5.9. If claims for damages against TÜV SÜD are excluded or limited, this shall extend to any personal liability of any statutory organs, experts, miscellaneous employees, vicarious agents or any other auxiliary personnel of TÜV SÜD.
- 5.10. 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.
- 5.11. TÜV SÜD’s total liability to the Customer under or in connection with the agreement for Services provided and/or in tort (including negligence) in any event shall not exceed the amount of fees paid by the Customer to TÜV SÜD in respect of the Services.

## 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 with the prices valid at the time of contract conclusion. In the absence of a valid schedule of prices, contractual provisions must be agreed on a case-by-case basis.
- 6.2. If there is a period of more than 4 months between placement of the order and completion of the order by TÜV SÜD and there has been a price increase in the meantime, then the modified price shall be used as the basis of calculation as of the 5th month.
- 6.3. 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.
- 6.4. Unless otherwise agreed the remuneration invoiced in accordance with Section 6.3 and/or the final invoice after acceptance of work shall be due for payment immediately upon invoicing.
- 6.5. Companies who are not given any credit terms by TÜV SÜD have to pay in advance. For companies who are given credit terms by TÜV SÜD, an invoice will be issued when a job is completed, and the fees shall be remitted to TÜV SÜD within thirty days of presentation of the invoice.
- 6.6. Payments shall be made net and without any deductions of the invoice amount(s).
- 6.7. Any objections to invoices must be made in writing to TÜV SÜD within a 14-day preclusion period after receipt of invoice, with reasons stated.
- 6.8. If any scheduled Services are cancelled, rescheduled, suspended or the specification or scope of work (“changes”) is amended for reasons not solely attributable to TÜV SÜD, unless a notice is given in writing to TÜV SÜD within three working days (six weeks for audits) after confirmation of the order, the Customer will be charged for all Services performed prior to such changes. If TÜV SÜD does not receive any written notice of such changes within this period, the full fee for the Services will be charged.

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- 6.9. Any Other Taxes on the remuneration (hereinafter "Other Taxes") shall be borne by the Customer. Other Taxes mean any charges, duties, customs, imposts (e.g. withholding taxes, business taxes, stamp duties) or other charges of a similar nature (including any related penalty or interest) to be levied on behalf of TÜV SÜD under the tax laws of the country where the Customer is located, or this agreement becomes subject to taxes. Client shall bear the said Other Taxes to the extent required by law and in addition gross up payments to TÜV SÜD until equaling the remuneration due.
- 6.10. The Customer agrees to indemnify and pay TÜV SÜD for all taxes, levies and duties including, but not limited to, goods and services tax or withholding tax which TÜV SÜD may be liable to pay as a result of providing the services to the Customer herein.

## 7. Force Majeure

- 7.1. 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.

## 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 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. In case of contracts for the performance of continuing obligations, either party has the right to terminate the contract 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 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. This transfer of copyright explicitly shall not include the transfer of any other rights; the Customer shall, in particular, not be entitled to change (process) or use expert opinions, audit reports, test results, calculations and the like outside its business. 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 use any confidential information belonging to the Customer which they become cognizant during their activities provided that this section shall not apply to information that is already known to TÜV SÜD prior to such disclosure; or passes into the public domain otherwise than as a result of a breach of this confidentiality obligation on the part of TÜV SÜD or was received from a third party who is not under any confidentiality obligations or who did not acquire the information in confidence; or was independently conceived or developed by TÜV SÜD without reference to the disclosed confidential information.
- 9.4. By engaging TÜV SÜD for the Services, the Customer permits TÜV SÜD to use and/or process data, including personal data, for the proper performance of the Services and for other permissible purposes. TÜV SÜD agrees to comply with applicable personal data protection laws.
- 9.5. 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.
- 9.6. When TÜV SÜD is legally compelled by law or authorized by contractual commitments to disclose any Confidential Information, TÜV SÜD will be entitled to do so only to the extent required, legally. Unless prohibited by law, prompt notice of that fact shall be given to the Customer so that the Customer may seek an appropriate remedy to prevent disclosure or waive compliance with the provisions of this letter preventing disclosure.

## 10. Lien

- 10.1. In addition to any right of lien to which TÜV SÜD may be entitled by law, TÜV SÜD shall be entitled to a general lien on all product / equipment submitted for the Services.

## 11. Indemnity

- 11.1. The Customer shall indemnify TÜV SÜD fully against all loss or damages suffered and cost and expenses incurred by TÜV SÜD and all claims by any third parties as a result of provision of the Services (including but not limited to the improper use of the test reports, supply of inaccurate information and/or documents to TÜV SÜD or any claim by third party for infringement or intellectual property rights and/or for discovery of information and/or for delivery of documents or products / equipment) unless the same is caused by the act of gross negligence of TÜV SÜD.

## 12. Court Appearance

- 12.1. In the event any of the employees of TÜV SÜD is requested by the Customer or summoned by the court upon application by the Customer or any other parties for his attendance in court as an expert witness on the subject of the Services provided, the Customer agrees and shall pay TÜV SÜD for such attendance in court based on TÜV SÜD's prevailing rates for court attendance. TÜV SÜD may at its sole discretion revise its rates for court attendance from time to time.

## 13. Jurisdiction, Place of Performance, Applicable law

- 13.1. The place of jurisdiction for the assertion of claims by both contractual partners shall be the domicile of TÜV SÜD.
- 13.2. Place of performance for any obligations arising out of the contract shall be the domicile of TÜV SÜD.
- 13.3. The contractual relationship and all legal relations arising from it shall be exclusively governed by, and construed in accordance with, the laws of the country of TÜV SÜD office 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.

## 14. Compliance

- 14.1. The Customer hereby confirms its awareness and compliance of the TÜV SÜD Code of Conduct available online at <https://www.tuvsud.com/en/about-us/compliance/code-of-conduct>
- 14.2. Customer confirms that neither he himself nor any of its employees have accepted or offered any bribes in connection with the conclusion or execution of this agreement and that neither he himself nor any of its employees will accept or offer any bribes in the future. Customer hereby represents that it shall refrain from activities, which could constitute a criminal act of fraud, fraudulent breach of trust, money laundering, criminal offence under insolvency law, criminal offence under unfair competition law, granting of an undue advantage or bribery. To prevent the abovementioned violations, Customer shall implement and maintain reasonable measures.
- 14.3. In the event of any violation of these provisions beyond an insignificant extent and attributable to Customer's fault, TÜV SÜD shall be entitled to stop all negotiations with Customer, and to terminate the contractual agreement with Customer or withdraw from this agreement, both without notice period.
- 14.4. In the event that TÜV SÜD is held liable by any third party based on a culpable violation of these provisions by Customer, Customer hereby agrees to indemnify TÜV SÜD from any such claims. In addition, Customer hereby agrees to reimburse TÜV SÜD for all damages caused by such third-party claims (including indirect damages).

## 15. Complaints and Appeals

- 15.1. Any complaints and Appeals can be addressed to "The Complaint Manager, TÜV SÜD MIDDLE EAST L.L.C, P.O. Box 45117, Plot No. 129SR37, Ahl Al Ilm Street, ICAD III, Mussafah, Abu Dhabi, UAE and at [Complaints.AppealsME@tuvsud.com](mailto:Complaints.AppealsME@tuvsud.com).