



## **General Terms and Conditions of Business**

of TÜV SÜD Benelux vzw (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**

- 1.1. As laid down in its articles of association, TÜV SÜD provides technical services 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.
- 1.2. The customer shall accept TÜV SÜD's General Terms and Conditions of Business and schedule of fees valid at the time of order placement. Deviating terms and conditions of business of individual customers cannot be recognized as a matter of principle, unless such terms and conditions have expressly been confirmed in writing.
- 1.3. Ancillary agreements, promises and other statements by TÜV SÜD employees or officially authorized experts called in by TÜV SÜD shall only be considered binding if expressly confirmed by TÜV SÜD in writing. This shall also apply to any amendments to this clause.

### **2. Contractual Performance**

- 2.1. Unless otherwise agreed, the contractual 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. TÜV SÜD shall perform the contractual services and/or prepare expert reports in accordance with the established state of the art and unless otherwise agreed in text form in the manner customary at TÜV SÜD. 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. 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 modification or extension of the defined scope of order prove necessary within the context of due performance of the contract, they shall be additionally agreed upon in advance and in text form. In such cases, customers shall have the right to withdraw from the contract, if they can no longer be expected to remain a party to the contract in view of the modification or extension.

### **3. Deadlines, Default, Impossibility of performance**

- 3.1. The deadlines for contractual performance quoted by TÜV SÜD shall be binding only if this has been explicitly agreed upon in text form.
- 3.2. Should TÜV SÜD, for reasons for which it is to blame, has exceeded a binding deadline for contractual performance and thus be in default of its contractual obligations, the customer shall have the right to claim compensation for any damage due to delayed performance. Compensation shall amount to 1 % of the value of the contract whose performance is delayed under the terms of the contract for each completed week of delayed performance up to a total of 25 % of the above value. Any further claims for damages shall be governed by the provisions set out in Section 5.
- 3.3. Should TÜV SÜD's customer, in the case of delayed performance, grants 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 instead of performance.

### **4. Warranty**

- 4.1. Warranty by TÜV SÜD only covers contractual 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.

### **5. Liability**

- 5.1. TÜV SÜD shall only be liable for damages – regardless of their legal basis – if TÜV SÜD has caused any damage as a result of an intentional or grossly negligent act 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. In the event that TÜV SÜD is liable under no. 1 above for damages caused as a result of having breached, by an act of negligence, a substantial contractual obligation, its liability shall be limited in each single case to: 50,000.00 EUR.
- 5.3. In the case of claims for damages under the Atomic Energy Act (AtG), Article 13 (5), 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 further liability by TÜV SÜD shall be governed by Section 5.1 hereabove.
- 5.4. TÜV SÜD shall not be liable for any damages caused as a result of a negligent breach of a non-substantial contractual obligation.
- 5.5. "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.
- 5.6. The liability exemption contained in Section 5.1-5.5 and/or the liability limits shall not apply to damage to life, person, or health; nor shall it apply for claims under a warranty.
- 5.7. Any person making claims under this contract shall without delay inform TÜV SÜD in text form about any potential damage for which TÜV SÜD could be liable.
- 5.8. 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.
- 5.9. Save for the instances governed by Section 5.6, any claims for damages shall be time-barred after one year following the beginning of the statutory limitation period.
- 5.10. Notwithstanding the above provisions of Sections 5.1-5.9, the customer shall be obliged to obtain standard insurance cover for direct or indirect damage.

## 6. Terms of Payment and 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 within 30 days after the invoice date in the name of TÜV SÜD Benelux. In case of delayed payment, a legal surcharge of 1% per month will be added. When the invoice remains unpaid on the expiry date, the balance will be increased with 10%, with a minimum of € 125 and a maximum of € 2.000.
- 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. Any objections to invoices must be made in text form to TÜV SÜD within a 14-day preclusion period after receipt of invoice, with reasons stated.

## 7. Secrecy, copyright, Data Protection

- 7.1. TÜV SÜD shall have the right to copy and file any written documents submitted for perusal which are important for performance of the order. It will not keep these documents longer than necessary.
- 7.2. In as far as expert opinions, test results, calculations etc. are protected by copyright are prepared within the scope of contractual performance, TÜV SÜD shall grant the customer a simple, non-transferable right of use, if this is required by the underlying purpose of the contract. 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, test results, calculations etc. outside its business. Any publication or duplication for marketing purposes shall require TÜV SÜD's prior consent in writing. When required by the contract or by legislation, expertise's and inspection results may be forwarded to the governmental and/or public instances. The client or person concerned will be informed in advance of the information provided, unless this would be prohibited by law.
- 7.3. TÜV SÜD, its employees, and the expert engineers called in by TÜV SÜD shall not without authorization, disclose or turn to use any business or company circumstances of which they become cognizant during their activities.
- 7.4. TÜV SÜD shall store, process and use customer personal data for the proper implementation of the order and for its own purposes. To this end, TÜV SÜD will also use automated data processing systems. In order to meet the data protection requirements. TÜV SÜD has taken technical and organizational measures to ensure the security of its data and data pro-



cessing operations. The employees engaged in data processing are bound by the data protection legislation and are expected to observe all data protection regulations strictly.

#### **8. Jurisdiction, Place of Performance, Applicable law**

- 8.1. The place of jurisdiction for the assertion of claims by both contractual part partners shall be the domicile of TÜV SÜD.
- 8.2. Place of performance for any obligations arising out of the contract shall be the domicile of TÜV SÜD.
- 8.3. On all business agreements, the Belgian laws are applicable. Only the court of law of Leuven are competent.