

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

## 1 General

- 1.1 These General Terms apply to all TÜV SÜD's offers and agreements with customers. Deviating or additional terms and conditions of individual customers cannot be recognized as a matter of principle, unless expressly confirmed by TÜV SÜD in text form.
- 1.2 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 text form. This shall also apply to any amendments to this clause.
- 1.3 All agreements are exclusively concluded between customer and TÜV SÜD. The articles 7:404 and 7:407, paragraph 2 of the Dutch Civil Code, are expressly excluded.

## 2 Contractual performance, TÜV SÜD's obligations, termination of the agreement, force majeure

- 2.1 In case TÜV SÜD has confirmed the scope of its contractual activities at the time the agreement was concluded or thereafter without undue delay, the defined scope is binding on parties. In case the customer requests TÜV SÜD for additional work or such additional work proves necessary within the context of due performance of the contract, TÜV SÜD is entitled to a compensation for the additional work in accordance with article 7:405, paragraph 2 of the Dutch Civil Code, unless parties have expressly agreed otherwise in text form.
- 2.2 TÜV SÜD's obligations by virtue of an agreement with customer are obligations to take best efforts and do not imply any obligation to achieve a specific result, unless expressly agreed otherwise in text form.
- 2.3 TÜV SÜD shall be entitled to make use of sub-contractors in the implementation of the order. TÜV SÜD is authorised by the customer to accept on its behalf any liability limitations of third parties.
- 2.4 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 expressly 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; or
  - the proper condition and overall functioning of the plants to which the inspected or tested parts belong. 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.
- 2.5 Any warranty given by TÜV SÜD shall be restricted to supplementary performance (in Dutch: "nakoming") to be completed within a reasonable time limit. Should such supplementary performance fail, the customer shall exclusively be entitled, at its discretion, either to a reduction of the price or to terminate the contract by cancellation (in Dutch: "opzegging").
- 2.6 In case the agreement between the customer and TÜV SÜD is concluded for a definite period of time or will end automatically upon the completion of a specific task, each party can only in the interim cancel (in Dutch: "opzeggen") the agreement unilaterally in case of serious reasons (in Dutch: "gewichtige redenen"), unless stipulated otherwise in these General Terms or expressly agreed between parties. Regardless whether such qualifies as serious reasons, TÜV SÜD may unilaterally cancel such agreement in the interim in case the customer is in default (in Dutch: "verzuim", as meant in article 6:81 of the Dutch Civil Code) in connection with the payment of any invoice of TÜV SÜD.
- 2.7 The customer is not entitled to wholly or partly rescind (in Dutch: "ontbinden") the agreement or have the agreement wholly or partly rescinded under article 6:265 of the Dutch Civil Code, unless stipulated otherwise in these General Terms or expressly agreed between parties.
- 2.8 TÜV SÜD is not obliged to perform any obligation and cannot be held liable in any way in case of a temporary or permanent force majeure. Force majeure includes, but is not limited to, war, terror attacks, (personnel) strikes, governmental interventions, diseases, domestic unrest, transport delays, equipment failure, accidents, embargo, export restrictions and other circumstances that are beyond the reasonable control of TÜV SÜD. If the force majeure event lasts longer than six months, both parties shall be entitled to terminate the contract.

## 3 Deadlines, Delay or Impossibility of Performance

- 3.1 The deadlines for contractual performance quoted by TÜV SÜD shall only be indicative and non-binding, unless it has been expressly agreed otherwise in text form.
- 3.2 In the event TÜV SÜD has exceeded a binding or non-binding deadline for contractual performance, the customer will grant TÜV SÜD a reasonable additional period within which performance is to take place. Only after TÜV SÜD failed to observe this new deadline for reasons it is to blame and do not constitute a force majeure under Section 2.9, second sentence, of these General Terms, TÜV SÜD can be in default (in Dutch: "verzuim", as meant in article 6:81 of the Dutch Civil Code). If TÜV SÜD has exceeded a binding deadline for contractual performance or ascertains that performance is (temporarily or definitely) not possible, both the customer and TÜV SÜD shall have the right to terminate the contract by cancellation (in Dutch: "opzegging"). Any claims for damages shall be governed by the provisions set out in Section 5. In addition to Section 5 of these General Terms, TÜV SÜD's liability will not exceed 1 % of the value of the contract for each completed week of delayed performance up to a total of 10 %. In the event performance is no longer possible at all, TÜV SÜD's liability will not exceed 10 % of the value of the contract.

## 4 Complaints, Claims

- 4.1 The customer must file complaints with TÜV SÜD in text form within ten (10) calendar days after the customer discovered any irregularity in TÜV SÜD's performance, and in any case no later than ten (10) calendar days after the customer was reasonably able to discover the irregularity. The description of the irregularity must be as detailed as reasonable possible to qualify as a valid complaint. In the event this period expires, the customer will lose any cause of action as well as the possibility to use the underlying facts to constitute a defence against any claim from TÜV SÜD.
- 4.2 Furthermore, the customer will lose any cause of action as well as the possibility to use the underlying facts to constitute a defence against any claim from TÜV SÜD, in the event:
- an expert investigation takes place without explicitly inviting TÜV SÜD and giving TÜV SÜD without delay the opportunity to conduct a counter-investigation; or
  - the customer has not initiated legal proceedings against TÜV SÜD within one year after the customer discovered or was reasonably able to discover the irregularity in TÜV SÜD's performance or – regardless whether the irregularity could be discovered within this timeframe – two years after TÜV SÜD has performed the service that gave rise to the irregularity.

## 5 Liability

- 5.1 TÜV SÜD cannot be liable for any damages a result of decisions taken by the customer based on TÜV SÜD's expert opinions, tests and inspections, measurements/laboratory services, or specialized training courses.

- 5.2 TÜV SÜD cannot be liable for damages – regardless of their legal basis, e.g. unlawful act and breach of contract – in any other case than if TÜV SÜD has caused any damage as a result of gross negligence or deliberate misconduct by its supervisors.

- 5.3 The liability of TÜV SÜD is limited to the amount actually paid out by TÜV SÜD's insurers for the case in question.

- 5.4 In any case the total liability of TÜV SÜD is limited to an amount of EUR 1.500.000 with a maximum of EUR 1.000.000 for property damage and EUR 500.000 for other damage.

- 5.5 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.

- 5.6 The customer indemnifies TÜV SÜD against all claims relating to the execution of the agreement between customer and TÜV SÜD made by third parties, including but not limited to group entities and personnel of customer, and compensate TÜV SÜD for all costs, damages and interest arising from such claim, unless such is the result of gross negligence or deliberate misconduct on the part of TÜV SÜD. This compensation includes, but is not limited to, any reasonable costs of legal assistance which relate in any way to the work carried out on behalf of the customer.

## 6 Offers, Prices, Terms of Payment

- 6.1 Unless expressly stated in text form, all TÜV SÜD's offers are non-binding (in Dutch: "nrijblijvend" as meant in article 6:219, paragraph 2 of the Dutch Civil Code).

- 6.2 Services shall be billed in accordance at the prices valid at the time of performance. This is unless a fixed price or other calculation basis has been explicitly agreed upon in text form. However, in the event the costs underlying the contract increase, whether or not foreseeable, TÜV SÜD has the right to increase the agreed price or calculation basis accordingly.

- 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 6.2 and/or the final invoice after acceptance of work shall be due for payment immediately upon invoicing, without suspension or setoff being permitted. In the event the customer fails pay the outstanding amount in accordance with the payment term mentioned in the invoice, the customer is in default (in Dutch: "verzuim", as meant in article 6:81 of the Dutch Civil Code). In that case the customer will forfeit a compound interest of 1,5 % per month and will be liable for all the actual judicial and extra-judicial costs of TÜV SÜD relating to the collection. In that case TÜV SÜD will have, notwithstanding any other legal rights, the right to suspend performance of any obligation until the customer has paid the outstanding amount, as well as costs and interest.

- 6.6 Any objections to invoices must be made in in text form to TÜV SÜD within a 14-day preclusion period after receipt of invoice, with reasons stated. In the event this period expires, the invoice qualifies as accepted by the customer.

## 7 Export control and embargoes

- 7.1 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).

- 7.2 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.

- 7.3 Where the impediment to performance pursuant to Section 7.1 or the delay pursuant to Section 7.2 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 7.1 and 7.2, including, but not limited to, claims for damages.

- 7.4 The customer has the obligation and warrants 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 and warrants 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.

- 7.5 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).

- 7.6 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.

## 8 Secrecy, Copyright, Data Protection

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

- 8.2 In as far as expert opinions, test results, calculations and the like that 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 and the like outside its business. Any publication or duplication for marketing purposes shall require TÜV SÜD's prior consent in text form.

- 8.3 TÜV SÜD may store, process and use customer personal data for the proper implementation of the order under the responsibility of the customer. To this end, TÜV SÜD may also use automated data processing systems. In order to meet the data protection requirements, TÜV SÜD has taken technical and organisational measures to ensure the security of its data and data processing operations. The employees engaged in data processing are expected to observe all data protection regulations strictly.

## 9 Jurisdiction, Applicable law

- 9.1 The court in the first instance of Gelderland, location Amhem, has exclusive jurisdiction, also for injunctions or any comparable interim relief procedure, to hear disputes that arise from or in connection with relationship between the customer and TÜV SÜD.
- 9.2 The contractual relationship and all legal relations arising from it shall be exclusively governed by, and construed in accordance with Dutch law. In as far the UN Treaty on the International Sale of Goods (CISG) would be applicable, the application thereof is expressly excluded.

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