



TÜV SÜD PRODUCT SERVICE DIVISION TERMS AND CONDITIONS FOR TESTING & CERTIFICATION SERVICES

1 TERMS AND CONDITIONS

- 1.1 These terms and conditions, together with the written quotation ("the Quotation") issued by TÜV SÜD Limited ("TÜV SÜD"), constitute the provisions under which TÜV SÜD offers testing and certification services to the customer identified in the quotation ("the Customer").
- 1.2 In the event of any conflict between the provisions of the Quotation and these terms and conditions, the provisions of the Quotation shall prevail.
- 1.3 No terms and conditions proposed by the Customer shall apply to the contract between TÜV SÜD and the Customer unless expressly incorporated within the Quotation.

2 THE SERVICES

- 2.1 TÜV SÜD shall perform the services specified in the Quotation ("the Services") in accordance with the requirements of the Quotation and these terms and conditions.
- 2.2 Irrespective of the express requirements of the Quotation, in performing the Services TÜV SÜD shall exercise the level of skill, care and diligence reasonably expected of a supplier of technical services of a similar nature, type and complexity as the Services.

3 PRICE

- 3.1 All prices stated in the Quotation are deemed exclusive of VAT and any other sales taxes and levies ordinarily chargeable in respect of the provision of goods or services.
- 3.2 Where the period of time between the date of the Quotation and completion of the Services exceeds 12 months, TÜV SÜD shall be entitled to increase its prices commensurately with increases in the costs of labour and/or materials arising during this period. For the purposes of this sub-clause, any periods of delay attributable to TÜV SÜD's default shall be excluded.
- 3.3 In the event that any scheduled testing operation or procedure requires to be cancelled for reasons not attributable to TÜV SÜD, or the Customer requires the postponement of any scheduled testing operation or procedure, unless TÜV SÜD is given at least 5 working days advance notice in writing the Customer shall be liable to make payment in full of the charges payable for the originally scheduled testing operation or procedure.

4 INVOICING AND PAYMENT

- 4.1 Where the Services are performed in stages which are individually priced in the Quotation, TÜV SÜD may invoice the Customer for payment upon completion of each stage or otherwise in accordance with the Quotation.
- 4.2 The Customer shall pay any invoice properly rendered by TÜV SÜD in accordance with sub-clause 4.1 within 30 days of receipt. In the event payment is not made in full within 30 days, TÜV SÜD shall be entitled to charge interest on the balance outstanding at the rate of 3% above the base rate of the Bank of England prevailing from time to time.
- 4.3 In the event any invoice is disputed, the Customer shall pay any undisputed part in accordance with the provisions of sub-clause 4.1.
- 4.4 In the event any invoice becomes overdue by 30 days, TÜV SÜD may by written notice to the Customer immediately suspend further performance of the Services until payment is made in full.

5 TIMESCALES FOR PERFORMANCE

- 5.1 Time shall not be of the essence in relation to completion of the Services unless otherwise stipulated in the Quotation.
- 5.2 Any timescales in the Quotation for performance of the Services shall not begin to run until TÜV SÜD has received all items, information and data reasonably required by TÜV SÜD to enable it to commence performance of the Services.
- 5.3 TÜV SÜD shall be entitled to adjust any previously agreed dates or timescales for completion of the Services if performance is delayed or adversely affected by inaccurate or incomplete information or data supplied by the Customer.
- 5.4 Provided it notifies the Customer promptly in writing, TÜV SÜD shall have no liability for delay or non-performance of any part of the services which is attributable to Force Majeure. For the purposes of this sub-clause, "Force Majeure" means any circumstances beyond TÜV SÜD's reasonable control, the adverse effects of which could not have been avoided by the exercise of reasonable foresight or diligence. During any period of Force Majeure TÜV SÜD's obligation to perform the affected Services shall be suspended and any timescales or dates for completion of the Services shall be adjusted accordingly.

6 NOTIFICATION OF HAZARDOUS CONDITIONS

- 6.1 In the event TÜV SÜD becomes aware of potential health and safety hazards associated with the testing of Customer supplied items which were not disclosed by the Customer or reasonably contemplated before issue of the Quotation, TÜV SÜD shall be entitled to an equitable adjustment of the price and timescale for performance of the Services commensurate with the extent of any actions or safeguards undertaken by TÜV to address the additional risks.
- 6.2 The Customer shall indemnify TÜV SÜD in full for any losses, costs, expenses, damages, liabilities and claims arising from pollution, contamination or loss or damage to physical property on TÜV SÜD's premises caused by, or attributable to, the hazardous condition of any Customer supplied items not previously disclosed or otherwise reasonably apparent to TÜV SÜD.

7 RETURN OR DISPOSAL OF CUSTOMER SUPPLIED ITEMS

- 7.1 Unless otherwise stipulated in the Quotation, collections of Customer supplied items following completion of the Services (or earlier termination of the contract) shall be the responsibility of the Customer.
- 7.2 In the event Customer supplied items are not collected within fourteen (14) days of the Customer being notified of their readiness for collection, TÜV SÜD may arrange for their return at the Customer's cost or, if TÜV SÜD has reasonable cause to believe that the cost of returning any Customer supplied items exceeds their value, TÜV SÜD may proceed to dispose of such items in the most cost-effective manner it deems appropriate.
- 7.3 In the event of disposal of Customer supplied items under subclause 7.2, the Customer shall be liable for any costs incurred and shall indemnify and hold harmless TÜV SÜD in respect of any claims or liabilities arising out of disposal of the items.

8 REPORTS OR CERTIFICATES

- 8.1 Where reports or certificates are issued by TÜV SÜD in conjunction with its performance of the Services, TÜV SÜD shall not be responsible for errors attributable to inaccuracies or omissions in information or data provided by or on behalf of the Customer.
- 8.2 Ownership of any reports or certificates issued by TÜV SÜD in connection with the Services shall remain with TÜV SÜD until all outstanding invoices have been paid in full whereupon ownership shall vest in the Customer. Until ownership vests in the Customer, the Customer shall not copy reports or certificates or share their contents with other parties without the express written permission of TÜV SÜD.

9 CONFIDENTIALITY

- 9.1 TÜV SÜD and the Customer both undertake to keep confidential all matters relating to the provision of the Services and any information obtained while on the other's premises to the extent a reasonable person would ordinarily regard these as being commercially sensitive or confidential. For the avoidance of doubt, matters relating to the provision of the Services include every material aspect of the contractual relationship between TÜV SÜD and the Customer, including (but not limited to) products tested, studies carried out, methods used, and the nature and contents of any reports.
- 9.2 In fulfilling their obligations under this clause, TÜV SÜD and the Customer shall safeguard each other's information by exercising at least the level of care and diligence it applies to similar information of its own and, in any event, no less than a reasonable level of skill and care.

10 TERMINATION

- 10.1 In the event any period of suspension under sub-clause 4.4 exceeds 30 days, without prejudice to its rights to receive payment of any unpaid invoices TÜV SÜD may by written notice terminate the contract with immediate effect.
- 10.2 In the event any period of delay under sub-clause 5.4 exceeds 90 days, either party may by written notice terminate the contract with immediate effect.
- 10.3 In the event either party become insolvent or ceases to trade, the other party may by written notice terminate the contract with immediate effect.
- 10.4 In the event of termination under this clause, TÜV SÜD shall be entitled to receive payment on a fair and reasonable basis for services carried out and costs incurred up to the date of termination insofar as not already invoiced.
- 10.5 Nothing in this clause shall affect or restrict the rights of either party at common law to terminate and/or claim damages for breach of contract.

11 LIMITATION OF LIABILITY

- 11.1 TÜV SÜD shall not be liable to the Customer for any loss of revenue, profit, goodwill or business opportunity attributed to or associated with the performance or non-performance of the Services.
- 11.2 TÜV SÜD shall have no liability to the Customer for any consequential loss or damages arising from breach of contract.
- 11.3 Excluding any liability for loss, damage or destruction of the Customer's physical property (which shall be limited to £50,000), the total liability of TÜV SÜD to the Customer arising out of or associated with the performance or non-performance of the Services, whether arising in contract, tort (including negligence) or breach of statutory duty, shall not exceed the greater of the contract price or £10,000.
- 11.4 Nothing in this clause shall operate to exclude or limit the liability of TÜV SÜD for fraud or fraudulent misrepresentation, or any claim in respect of which liability cannot be limited by law.

12 GENERAL

- 12.1 Except as provided in these terms and conditions, the provisions of the contract between TÜV SÜD and the Customer shall not be varied without the written agreement of both parties.
- 12.2 A waiver of any right or remedy under the contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.
- 12.3 If any provision of the contract is or becomes invalid, illegal or unenforceable, the relevant provision shall be deemed deleted and of no effect. Any deletion of a provision under this sub-clause shall not affect the validity and enforceability of the rest of the contract.
- 12.4 Any provision of the contract that expressly or by implication is intended to continue in force on or after termination of the contract shall remain in full force and effect.
- 12.5 Unless expressly stated otherwise, the contract does not give rise to any rights to any other parties under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the contract.

13 LAW AND DISPUTE RESOLUTION

- 13.1 These terms and conditions and the contract between the parties shall be governed by English Law.
- 13.2 Any disputes between the parties relating to the contract shall be referred to an arbitrator to be appointed by agreement between the parties (or failing such agreement by the President of the Institution of Engineering and Technology) acting in accordance with the provisions of the Arbitration Act 1950 as amended or re-enacted

A larger print size version of these Terms and Conditions is available on request from info.uk@tuvsud.com or from your regular contact.

January 2020