

## General Terms and Conditions of the TÜV Hannover/Sachsen-Anhalt e.V.

### 1. General

- 1.1 The TÜV Hannover/Sachsen-Anhalt e.V. - hereinafter referred to as „TÜV“ - is a commercial organisation dealing with technical safety, the commercial efficiency of plant and environmental protection.
- 1.2 In accordance with its statutes and organisation, TÜV conducts its business on a non-profit basis. This status is reflected in the following Terms and Conditions as follows:  
Customers' general terms and conditions which are inconsistent with or supplement TÜV's General Terms of Conditions are not applicable because such terms and conditions presuppose that the contract to be concluded represents normal business for both parties and that the trading partners associate this with the aim of achieving a profit. Variations to these Terms and Conditions are valid only if they are expressly confirmed in writing by TÜV. Furthermore, the reasonableness of the limits of liability set out in Section 7 of the General Terms and Conditions is to be judged in the light of the non-profit status.
- 1.3 This contract is governed exclusively by these General Terms and Conditions. The customer's terms and conditions are not applicable.

### 2. Offers

- 2.1 Offers of TÜV are not binding - unless otherwise stated - until receipt of acceptance.
- 2.2 If the customer is a businessman, an entrepreneur, a legal person under public law or a special fund under public law, TÜV must generally confirm orders and agreements in writing. This also applies to any ancillary agreements, commitments or other declarations of whatsoever kind on the part of employees of TÜV and of experts employed by TÜV. In contrast, TÜV may accept an order from private customers without written confirmation.
- 2.3 On announcing the dates for upcoming tests, TÜV shall not assume the operators' legal responsibility for adherence to such test dates.

### 3. Performance of Contract

- 3.1 Orders accepted by TÜV or opinions to be provided by TÜV shall be carried out or prepared in accordance with accepted engineering standards and in conformity with the laws in force at the time of acceptance of the order and in accordance with the usual procedures of TÜV.
- 3.2 TÜV assumes no responsibility for the correctness of the safety rules, regulations and programmes underlying the inspection or opinion, unless such rules and regulations are themselves the subject matter of the test.
- 3.3 TÜV is not responsible for the adequacy and functioning of the objects tested for technical safety unless this is expressly made part of the contract. In particular, construction, choice of materials and construction of plant will only be subject to inspection if the contract specifically includes such tasks.
- 3.4 The customer shall in a timely manner provide TÜV with all necessary documentation such as drawings, plans, calculations and certificates, obtain any approvals and clearances required, at all times provide information of relevance for the contract, and shall carry out the necessary preparatory work prior to the start of the inspections, i.e. it shall above all make the items to be inspected accessible. If the customer fails to comply with these obligations despite having been set a period within which to do so by TÜV, the contract shall be cancelled at the end of such period. TÜV is entitled to claim damages for non-performance.
- 3.5 TÜV may copy for its own files documents provided to it which are important for the implementation of the contract.
- 3.6 TÜV will store data relating to business transactions with the customer in a data processing system for its own purposes.
- 3.7 TÜV and its experts shall not without authorisation pass on to third parties or use business and operating information gained during their activities.
- 3.8 TÜV is entitled to sub-contract any part of the contract to a carefully selected sub-contractor which it considers suitable.
- 3.9 Unless otherwise agreed, TÜV retains copyright in all opinions, inspection reports, calculations, certificates, etc.

### 4. Scope of order

- 4.1 Having regard to the provision in 2.2, the nature and scope of work to be performed by TÜV are to be clearly defined in writing by the customer on the placing of the order and must be accepted as binding by TÜV in its written confirmation. Oral ancillary agreements do not exist. Such agreements are legally ineffective without written confirmation.
- 4.2 Assistance from the customer or third parties which is usual must be provided to TÜV even though this is not agreed on in writing. In providing assistance the customer shall observe applicable legal and official regulations.
- 4.3 Part performance of the contract by TÜV, insofar as it is identifiable and of use to the customer, shall be accepted by the customer.

### 5. Time limits

- 5.1 In the case of contracts with customers who are businessmen, entrepreneurs, legal persons under public law or special funds under public law, order-related time limits or dates are binding only if they are expressly agreed on as binding.
- 5.2 Binding periods begin when there is complete agreement between the parties on all parts and terms of the work and shall end when TÜV makes available its work.
- 5.3 Binding time limits/dates are only valid if all obligations under 3.4. are performed in good time.
- 5.4 TÜV is liable in damages only for delay or for non-performance for which it is responsible in accordance with the provisions of section 7.

### 6. Warranties

- 6.1 Warranty claims of the customer are limited to a claim to rectification or replacement. TÜV is entitled to select one of these. TÜV is entitled to carry out a reasonable number - at least two in any event - of rectification attempts or replacements. If the rectification or replacement is a failure or if it does not lead to success within a reasonable period, the customer is entitled at his option either to cancel the contract or to reduce the remuneration.
- 6.2 Warranty claims become time-barred one year from the date of delivery/acceptance. The one-year warranty period also applies to so-called non-physical work (e.g. the preparation of an opinion or the development of customized software). The one-year warranty period does not apply to building structures or movable items which are used for building structures; in such cases the statutory regulation applies.
- 6.3 If the customer is an entrepreneur, a businessman, a legal person under public law or a special fund under public law, any complaints must be notified to TÜV in writing without delay after determination of the defects. A preclusive period of seven days applies after delivery of the opinion, inspection report, inspection result or the like. Hidden defects must be notified without delay after discovery - and in any event within the statutory warranty period.
- 6.4 The above warranty limitations and restrictions do not apply if the warranty claims are based on deliberate acts or gross negligence on the part of TÜV, its legal representatives, employees or vicarious agents or if the fault of TÜV, its legal representatives, employees or vicarious agents causes injury to life, body or health. More extensive claims, in particular claims for damages, are subject to the restrictions imposed by the provisions of section 7 (liability).

### 7. Liability

- 7.1 If the customer suffers loss or damage as a result of delayed performance for which TÜV is responsible, no more than 5% of the value of the affected part of the contract may be claimed. In the case of delay, the customer may withdraw from the contract after having set a period for performance and having threatened to withdraw if performance is not effected

within the additional period.

- 7.2 The following exclusions and limitations in 7.2 to 7.8 also apply to claims under tort as far as these compete with contractual claims.
- 7.3 TÜV is not liable for loss or damage of any kind whatsoever.  
This exclusion does not apply to loss or damage which TÜV causes deliberately or by gross negligence; in cases of minor negligence to loss or damage based on injury to life, body or health or to loss or damage based on TÜV's breach of fundamental contractual obligations.
- 7.4 In the event of a minor breach of fundamental contractual obligations TÜV's liability - except for damage to life, body or health - is limited to typical loss or damage foreseeable for TÜV at the time of the conclusion of the contract or the breach of the obligation.
- 7.5 TÜV's liability for damage or loss caused in the context of authorised activity with nuclear fuel and other radioactive substances outside nuclear power stations is limited to a total amount of € 1.040.000 for each occurrence of loss for statutory claims for damages under sec. 13 (5) of the Nuclear Power Station Act. More extensive claims for damages for whatever reason are excluded.
- 7.6 The exclusions and limitations in clauses 7.3 to 7.5 also apply to TÜV's liability for its officers and employees and to the personal liability of its officers and employees.
- 7.7 TÜV is not liable for minor negligence on the part of vicarious agents who are not officers or employees. Furthermore, TÜV's liability for vicarious agents who are not officers or employees to customers who are businessmen, entrepreneurs, legal persons under public law or special funds under public law is limited per occurrence of loss to:
  - € 2.600.000 for bodily injury
  - a maximum of € 1.040.000 per individual
  - € 2.600.000 for damage to property and pecuniary loss.Amounts in excess of the above may be agreed on at the request and cost of the customer provided appropriate cover is available from TÜV's liability insurer. The statutory limits on liability apply if the customer is not a businessman, an entrepreneur, a legal person under public law or a special fund under public law. The limitations in this section 7.7 do not apply if vicarious agents have infringed fundamental contractual obligations deliberately or by gross negligence or have culpably caused injury to life, body or health.  
The limitations in this section 7.7 also apply to the personal liability of vicarious agents.
- 7.8 Save in the case of deliberate acts by TÜV or its officers/senior executives, claims for damages on the part of the customer are excluded unless legal action is brought within a period of three months after TÜV or its insurer has rejected the claim, thereby referring to the three-month period. All claims for damages on the part of the customer against TÜV (save in the case of deliberate acts by TÜV or its officers/senior executives) become time-barred one year after the customer becomes aware of the claim unless other conditions or the law provide for a shorter time-limit. This does not apply to claims under tort.
- 7.9 The above exclusions and limitations under clause 7.1 to 7.8 do not apply to claims under the Product Liability Act insofar as mandatory liability is provided for.

### 8. Remuneration

- 8.1 TÜV works on the principle of covering costs. Changes in costs, in particular personnel costs, therefore require that the remuneration be adjusted. If the customer is not a businessman, an entrepreneur, a legal person under public law or a special fund under public law, this price adjustment clause applies only to continuous obligations or long-term contracts relating to work which is to be performed more than four months after conclusion of the contract.
- 8.2 Unless otherwise agreed, remuneration is payable in accordance with TÜV's current remuneration schedule.
- 8.3 For work charged at fixed rates, the rates current at the date of completion of the work apply. For work charged on an hourly basis, the hourly rates current at the time of the hours worked apply.  
If the customer is not a businessman, an entrepreneur, a legal person under public law or a special fund under public law, TÜV's remuneration schedule and hourly rates in force at the time of the conclusion of the contract apply.
- 8.4 If „fixed prices“ are expressly agreed on in writing, these apply regardless of the time of performance of the work.
- 8.5 For agreed advance payments for work, the applicable rate is that current at the time of receipt of the payment.
- 8.6 The cost of work performed by a third party in accordance with the contract will be passed on in full plus an administration fee of 15%.
- 8.7 The statutory value added tax at the respective current rate is to be shown separately in invoices and added to the remuneration.

### 9. Terms of payment

- 9.1 Complaints regarding invoices shall be made and substantiated to TÜV in writing within a period of two weeks after receipt of invoice. Otherwise the invoice is considered accepted. TÜV undertakes, at the beginning of the said period, to draw the customer's attention to the intended significance of allowing the period to expire.
- 9.2 Payments shall be made immediately upon receipt of invoice without deductions and with the correct invoice and customer number.
- 9.3 The customer has a right of set off only if its counterclaims are recognised by a final and absolute court judgement, undisputed or acknowledged by TÜV. The same applies correspondingly to rights of retention if the customer is an entrepreneur, a businessman, a legal person under public law or a special fund under public law. If the customer is not an entrepreneur, businessman, legal person under public law or a special fund under public law, it has a right of retention insofar as its claims are based on the same legal relationship as its obligations.
- 9.4 The customer is in default if he fails to effect payment after a reminder from TÜV sent after the claim for payment has become due. Regardless thereof he is in default if he fails to effect payment by a date which is determined or determinable in the contract on a calendar basis. This does not affect the statutory provision under which a debtor is automatically in default thirty days after payment falls due and after receipt of an invoice.
- 9.5 When the customer is in default, TÜV may - without prejudice to further possible claims - demand interest on the sum due at 8 percent above the current base rate plus a cost contribution amounting to € 3 for each reminder. The customer may prove that TÜV has not suffered further damage or has suffered substantially less damage and/or that the costs of the reminder are lower. If the customer is a businessman, default interest is payable on the claim from the due date at eight percentage points above the then current base rate.

### 10. Miscellaneous

- 10.1 This contract is governed by German law.
- 10.2 Place of jurisdiction for both parties is Hamburg if the customer is a businessman (Vollkaufmann) or if the other requirements in section 38 paragraph 1 ZPO (German Code of Civil Procedure) are fulfilled. Place of performance is also Hamburg. TÜV is also entitled to bring action against the customer before the court having jurisdiction at the customer's place of business or residence.  
Even if the customer is not a businessman (Vollkaufmann), Hamburg is the place of jurisdiction if the customer has no general place of jurisdiction in Germany, moves his place of residence or habitual abode outside Germany after conclusion of the contract or if TÜV is unaware of his place of residence or habitual abode at the time it brings legal action.