

## **General Terms and Conditions of AMD TÜV Arbeitsmedizinische Dienste GmbH (hereinafter referred to as "TÜV Rheinland")**

### **1 Scope of application**

- 1.1 The following General Terms and Conditions of TÜV Rheinland ("GTC") apply to the services agreed between TÜV Rheinland and the client, including the ancillary services and other ancillary obligations ("services") provided as part of the execution of the order.
- 1.2 Clients within the meaning of these terms and conditions are entrepreneurs. An entrepreneur is a natural or legal person or a partnership with legal capacity which, when concluding a legal transaction with TÜV Rheinland, is acting in the exercise of its commercial or independent professional activity (Section 14 BGB). Legal entities under public law and special funds under public law shall also be considered entrepreneurs within the meaning of these Terms and Conditions.
- 1.3 Conflicting, deviating or supplementary general terms and conditions of the client shall not apply and are hereby excluded. The client's general terms and conditions shall not become part of the contract even if TÜV Rheinland does not expressly object to them, accepts payments without reservation or provides services without reservation.
- 1.4 In the context of an ongoing business relationship with entrepreneurs, these General Terms and Conditions shall also apply to future contracts with these entrepreneurs without TÜV Rheinland having to refer to them separately in each individual case.
- 1.5 Insofar as these GTC refer to "accreditor", "accreditation" or "accreditation procedure", this also includes accreditation and recognition organisations and their specifications, requirements and procedures.
- 1.6 Insofar as these GTC refer to a written form requirement, text form within the meaning of Section 126b BGB is sufficient to fulfil the written form requirement.
- 1.7 Individual agreements made with the client in individual cases (including collateral agreements, supplements and amendments) shall take precedence over these General Terms and Conditions and the Special Terms and Conditions. Subject to proof to the contrary, the content of such agreements shall be governed by a written contract or written confirmation from TÜV Rheinland.

### **2 Offers and conclusion of contract; term**

- 2.1 The contract is concluded when the letter of offer from TÜV Rheinland or a separate contractual document is signed by both parties or when TÜV Rheinland provides the services requested by the client. If the client commissions TÜV Rheinland without a prior offer from TÜV Rheinland, TÜV Rheinland is authorised, at its sole discretion, to accept the order by means of a written declaration of acceptance or by providing the commissioned services.
- 2.2 If a specific term of the contract has been agreed, this shall be based on what has been agreed in TÜV Rheinland's offer or in the contract. An agreed term shall be extended by the term stipulated in the offer or contract if the contract is not terminated in writing by one of the parties six months before expiry. Notwithstanding the above provision, the contract shall continue to exist until all rights and obligations arising from the contractual relationship have been fulfilled.

### **3 Service provision and scope, third parties**

- 3.1 The scope and nature of the services to be provided by TÜV Rheinland are set out in TÜV Rheinland's contractually agreed service description. If there is no separate service description from TÜV Rheinland, the last offer from TÜV Rheinland shall determine the services to be provided.
- 3.2 The parties may only mutually agree in writing on changes to the specification of services and necessary adjustments to the contract to reflect changes to the basis for testing after the contract has come into force. The client may not unreasonably withhold its consent to the amendment of the contract in the event of changes to the test specifications.
- 3.3 The test principles in the version applicable at the time the contract comes into force shall apply to the provision of the services.
- 3.4 The contractually owed services are agreed exclusively with the client and are owed only to the client. The contractual relationship shall not extend to third parties even if the client passes on performance results to third parties in full or in part within the scope of the rights of use granted to it under the contract.
- 3.5 The parties shall not include any third party beneficiaries in the scope of protection of the contract unless the parties have expressly agreed in writing to include the third party by name.

### **4 Performance deadlines and dates**

- 4.1 The performance deadlines and dates stated in the contract or offer are non-binding unless they are expressly labelled as binding in the contract or offer.
- 4.2 The client may only withdraw from the contract due to delays in performance in accordance with the statutory provisions if TÜV Rheinland is responsible for the delay in performance. Any statutory rights of cancellation shall remain unaffected by this. TÜV Rheinland shall not be responsible for a delay in performance in particular if the client has failed to fulfil its contractually agreed obligations to cooperate or has failed to do so in good time.
- 4.3 If the provision of services by TÜV Rheinland is delayed by the events of force majeure regulated in these GTC, TÜV Rheinland shall be entitled to postpone the provision of services for a reasonable period of time, which shall at least correspond to the duration of the delay plus any period of time required to resume the provision of services.
- 4.4 If the client is obliged to comply with legal or official deadlines or deadlines specified by the accreditor, it is the client's responsibility to agree to service deadlines with TÜV Rheinland that allow the service to be provided within these deadlines. TÜV Rheinland accepts no responsibility in this respect.
- 4.5 In the event that the client refuses to have a service performed on the agreed date, the client is obliged to cancel appointments that have already been agreed or confirmed by TÜV Rheinland in writing to TÜV Rheinland at least five calendar days in advance. If the client fails to provide this lead time for cancelling an appointment, TÜV Rheinland shall be entitled to charge the applicable or agreed price for the cancelled service, less any expenses actually saved. The client reserves the right to provide evidence that the expenses saved by TÜV Rheinland are higher in the specific individual case.

## **5 Cooperation of the client**

- 5.1 The client shall perform or provide all necessary acts of cooperation, supplies and/or information, in particular in accordance with the requirements of the Special Terms and Conditions, which enable TÜV Rheinland to provide the contractual services in accordance with the contract ("duties to cooperate"). The client is responsible for ensuring that the obligations to cooperate on its part, on the part of its vicarious agents or other third parties attributable to its sphere of responsibility are fulfilled in good time or with a reasonable lead time and free of charge for TÜV Rheinland.
- 5.2 The client must ensure that the relevant statutory provisions, standards, safety regulations and accident prevention regulations are complied with regarding its obligations to cooperate.
- 5.3 The client shall bear any additional expenses and pay separately for each additional service if these become necessary because services must be repeated or are delayed as a result of incorrect, incomplete or delayed fulfilment of obligations to cooperate. Even if a fixed or maximum price has been agreed, TÜV Rheinland shall be entitled to invoice this additional expenditure and to receive separate remuneration for additional services from the client.

## **6 Prices; service billing**

- 6.1 If TÜV Rheinland and the client have agreed to a fixed lump-sum price in the contract, this is what shall be invoiced. If the scope of services is not conclusively defined in writing when the contract is concluded, the services provided by TÜV Rheinland shall be invoiced on the basis of time spent at the rate agreed in the contract.
- 6.2 If the amount of the fee is not agreed in writing in the contract, invoicing shall be based on the TÜV Rheinland price list valid at the time the service is provided.
- 6.3 Insofar as mandatory statutory regulations, standards, or official accreditation requirements relating to the agreed services change after conclusion of the contract, TÜV Rheinland shall be entitled to additional remuneration for the resulting additional expenditure. For the avoidance of doubt, the parties agree that TÜV Rheinland is not obliged to provide further services at the old prices until an agreement has been reached on the recalculated price.
- 6.4 Unless otherwise agreed, all prices are subject to VAT at the applicable rate.
- 6.5 TÜV Rheinland is entitled to demand instalment payments for services already rendered in accordance with the contract in the amount of the value of the services rendered by it and owed under the contract.

## **7 Terms of payment, default, offsetting, etc.**

- 7.1 All invoice amounts are due for payment immediately without deduction upon receipt of the invoice. Discounts and rebates are not granted unless expressly agreed in writing.
- 7.2 Payments must be made to the TÜV Rheinland bank account specified on the invoice, stating the invoice and customer number.
- 7.3 In the event of default, TÜV Rheinland is entitled to demand default interest at the statutory rate. The right to claim further damages remains reserved.
- 7.4 If the client is in arrears with payment of the invoice, TÜV Rheinland is entitled, after the expiry of a reasonable grace period, to withdraw from the contract with the client or to terminate it without notice and to withdraw a certificate or test mark that has already been issued, to reclaim performance results, such as test reports, and to declare declarations of conformity invalid.
- 7.5 If, after conclusion of the contract, TÜV Rheinland becomes aware of circumstances that result in insolvency or other significant deterioration of the client's financial circumstances or threaten to do so, and if this jeopardises the fulfilment of the contractual obligations, TÜV Rheinland shall be entitled to refuse the corresponding services under the contract. The right to refuse performance shall lapse if the client fulfils the contractual obligations or provides security in the amount of the payment claim at risk.
- 7.6 Complaints about invoices from TÜV Rheinland must be made in writing within two weeks of receipt of the invoice.
- 7.7 Only legally established or undisputed claims may be offset against TÜV Rheinland's claims. This restriction on offsetting shall not apply to claims and counterclaims of TÜV Rheinland and the client that are based on the same legal relationship. The same applies to the assertion of rights of retention by the client.

## 8 Acceptance

- 8.1 In the case of agreed services under a contract for work and labour, the client is obliged to accept the services immediately after completion, including self-contained partial services. The client is not entitled to refuse acceptance due to insignificant defects.
- 8.2 If the client does not fulfil its acceptance obligation, acceptance shall be deemed to have taken place two weeks after completion of the services by TÜV Rheinland, unless the client justifiably refuses acceptance within this period.

## 9 Confidentiality

- 9.1 "Confidential Information" means all information, documents, images, drawings, know-how, data, samples and project documents that are handed over or otherwise transmitted by one party ("Disclosing Party") to the other party ("Receiving Party") in connection with the contractual relationship ("Confidential Information") from the start of the contract. This also includes copies of this information in paper and electronic form. If it is provided electronically, in writing or in another physical form, Confidential Information must be labelled "confidential" or a similar formulation indicating the confidential nature of the information. In the case of Confidential Information that is passed on verbally, appropriate prior notice must be provided.
- 9.2 Confidential information
- 9.2.1 may only be used by the Receiving Party for the fulfilment of the contract, unless otherwise expressly agreed in writing with the Disclosing Party, and
- 9.2.2 must be treated confidentially by the Receiving Party in the same way as the Receiving Party treats its own confidential information, but in no case less carefully than reasonably necessary, and
- 9.2.3 may not be passed on to third parties or made accessible to third parties in any other form without the prior written consent of the disclosing party. Third parties within the meaning of this agreement are not employees of the parties and affiliated companies pursuant to Sections 15 et seq. AktG, subcontractors and consultants of the parties, including their respective employees, who require this Confidential Information for the fulfilment of the contract.
- 9.3 Such confidential information is excluded from the confidentiality obligation,
- 9.3.1 which were already generally known at the time of transmission or become generally known without a breach of this agreement, or
- 9.3.2 which were demonstrably known to the receiving party at the time of conclusion of the contract or are thereafter legitimately disclosed by a third party, or
- 9.3.3 which were already in the possession of the Receiving Party prior to transmission by the Disclosing Party, or
- 9.3.4 independently developed by the Receiving Party independently of transmission by the Disclosing Party, or
- 9.3.5 which must be passed on due to judicial, official, accreditation and/or legal regulations or orders, or
- 9.3.6 which must be passed on to TÜV Rheinland in connection with an accreditation procedure or at the request of supervisory authorities or accreditors.
- 9.4 Confidential Information shall remain the property of the Disclosing Party. The Receiving Party hereby agrees that at any time upon request of the Disclosing Party
- 9.4.1 return all Confidential Information, including all copies thereof, to the Disclosing Party; or
- 9.4.2 destroy the Confidential Information, including all copies thereof, and confirm in writing to the Disclosing Party the fact of such destruction.
- 9.5 The aforementioned obligation to return or destroy does not apply to Confidential Information,
- 9.5.1 which form the basis for the reports, certificates and other performance results drawn up in the course of the provision of services. In this respect, TÜV Rheinland is authorised to retain copies as proof of the proper execution of the contract and for documentation purposes, or
- 9.5.2 which are stored on backup servers or in the generation principle during routine data backups as part of standard archiving processes, or

- 9.5.3 insofar as laws, regulations, orders and/or requirements of a court, an administrative or supervisory authority or an accreditor conflict with this.
- 9.6 This confidentiality obligation shall apply from the start of the contract and shall continue to apply for a period of five years after termination of the contract.
- 10 Rights of use to performance results and technical data, etc.**
- 10.1 The rights to the performance results produced under the contract, in particular but not limited to reports, test reports, test results, certificates, expert opinions, calculations, illustrations, data, know-how, inventions (regardless of whether patentable or not), etc. ("Performance Results") shall remain with TÜV Rheinland. Performance Results shall be the property of TÜV Rheinland.
- 10.2 TÜV Rheinland shall grant the client a simple, unlimited, non-transferable, non-sublicensable right of use to the content of the performance result exclusively for reproduction, distribution and making available to the public, unless otherwise agreed in writing in individual cases. The right of use is limited in terms of content to the contractual purpose (e.g. use of test reports or audit reports as proof of tests or audits carried out, in the case of a contractually agreed review of a management system, e.g. for conformity with certification criteria as proof of the corresponding decision).
- 10.3 The granting of rights of use to the performance result described in this section is subject to full payment of the remuneration agreed in favour of TÜV Rheinland.
- 10.4 The client may only reproduce, distribute and/or make publicly accessible the performance result in its complete form - including for advertising purposes. Any other use of the performance result is prohibited, in particular
- 10.4.1 the use of extracts or
- 10.4.2 processing and remodelling.
- 10.5 For the avoidance of doubt, the client shall be responsible for any distribution, reproduction and public access to the results of the service, including for advertising purposes.
- 10.6 The client grants TÜV Rheinland a simple, worldwide, sub-licensable, transferable and free right of use to the anonymised technical data obtained in the course of the provision of services (such as comparative data sets, statistical analyses, measurable or statistically collected values or data, e.g. in the form of figures, information or findings) for the purpose of implementing the contract and for analysing, improving and further developing existing services as well as for analysing, improving and developing new services.
- 10.7 The client is permitted to use TÜV Rheinland trademarks reproduced on the performance result as part of the performance result within the scope of the authorisation of use described above in unchanged form and only on the performance result itself. Any further use, e.g. of the TÜV Rheinland group logo, also registered as a Union trade mark (Reg. No.: 00587116), or of the corporate design, e.g. as reference advertising, is expressly prohibited and requires a separate written agreement.
- 10.8 The provisions in this clause shall take precedence over the confidentiality obligation of the parties, unless the parties have reached a written agreement to the contrary.
- 11 Warranty and limitation period**
- 11.1 The statutory warranty claims shall apply, unless otherwise regulated in these GTC.
- 11.2 Defects must be reported in writing and without delay.
- 11.3 The client's claims for defects regulated in this clause shall become time-barred within one year from the start of the statutory limitation period. Notwithstanding this, the statutory limitation period shall apply
- 11.3.1 insofar as a case of § 634a Para. 1 No. 2 BGB should exist,
- 11.3.2 if TÜV Rheinland has fraudulently concealed the defect or has assumed a guarantee for the quality of an item or work,
- 11.3.3 in the case of defect-related claims for damages due to injury to life, limb or health, and
- 11.3.4 for defects caused by gross negligence or wilful misconduct.

## **12 Liability and compensation**

- 12.1 TÜV Rheinland shall be liable in accordance with the statutory provisions, unless otherwise stipulated in these GTC.
- 12.2 TÜV Rheinland shall be liable without limitation in the event of wilful intent or gross negligence on its part and in the event of wilful intent or gross negligence on the part of its representatives and vicarious agents.
- 12.3 In the event of simple negligence, TÜV Rheinland shall only be liable for damages due to the breach of essential contractual obligations, i.e. obligations whose fulfilment is essential for the proper execution of the contract and on whose compliance the client regularly relies and may rely on. In this case, however, liability is limited to the foreseeable damage typical of the contract.
- 12.4 The exclusions and limitations of liability in the above Section 12.3 do not apply to liability for
- 12.4.1 due to the provisions of the Product Liability Act,
- 12.4.2 due to culpable injury to life, limb or health, and
- 12.4.3 as a result of a defect in an item sold by TÜV Rheinland or a work manufactured by TÜV Rheinland, insofar as TÜV Rheinland has fraudulently concealed the defect or has assumed a guarantee for the quality of the item or work.
- 12.5 Unless otherwise contractually agreed in writing, TÜV Rheinland shall only be liable under the contract to the client. Contractual liability - in particular from the point of view of the protective effect of the contract - towards third parties not named as beneficiaries in the contract is excluded.

## **13 Cancellation**

- 13.1 The contract may be terminated by either party at any time for good cause. TÜV Rheinland may terminate the contract for good cause in particular if
- 13.1.1 the client is in default with the fulfilment of its obligations to cooperate, finally refuses to do so or the obligations to cooperate are not fulfilled for a total of more than three months for reasons for which TÜV Rheinland is not responsible,
- 13.1.2 a significant deterioration in the client's financial circumstances occurs, TÜV Rheinland's payment claims are jeopardised as a result and the client neither fulfils the contractual obligations nor provides appropriate security within a reasonable period of time,
- 13.1.3 the client's business activities seriously jeopardise TÜV Rheinland's reputation or image in the public eye; such a threat exists in particular in the event of a significant violation of ethical or social standards or in the event of unfair or harmful actions or omissions by the client that are likely to significantly damage TÜV Rheinland's reputation in the public eye;
- 13.1.4 the client attempts in an unauthorised manner to influence the measurement or test results of TÜV Rheinland, e.g. through misrepresentation or deception, or to influence the integrity of TÜV Rheinland,
- 13.1.5 TÜV Rheinland is temporarily (for a period of at least three months) or permanently not authorised or not in a position to provide, continue or complete the contractual service for reasons for which it is not responsible, e.g. in the event of force majeure, loss of accreditation or discontinuation of test bases.
- 13.2 The cancellation must be in writing.

## **14 Assignment and subcontractors**

- 14.1 TÜV Rheinland is authorised to assign its rights and obligations under the contract in whole or in part to companies affiliated with it in accordance with Sections 15 et seq. AktG (German Stock Corporation Act).
- 14.2 TÜV Rheinland is authorised to commission third parties to provide services in accordance with the contract.

**15 Force majeure**

In cases of force majeure, the parties shall be released from their mutual performance obligations insofar as and for as long as the impediment to performance persists. All circumstances independent of the will and influence of the party obliged to perform which are unforeseeable, serious and cannot be averted even with the utmost, reasonably expected care and which occur after the conclusion of the contract, such as, but not limited to: natural disasters, blockades, war, civil unrest, terrorist attacks, strikes, sanctions, embargoes, pandemics, epidemics, official measures and material shortages ("force majeure"), shall be deemed to be cases of force majeure.

**16 Export control**

- 16.1 When passing on the services provided by TÜV Rheinland or parts thereof to third parties in Germany or abroad, the client must comply with the applicable provisions of national and international (re-)export control law.
- 16.2 The fulfilment of a contract with the client is subject to the proviso that there are no obstacles to fulfilment due to national or international regulations of foreign trade law and no embargoes and/or sanctions.

**17 Partial invalidity, place of fulfilment, place of jurisdiction, etc.**

- 17.1 Should one or more provisions of these GTC be invalid or should these GTC contain a loophole, the remaining provisions of these GTC shall remain unaffected and valid. The invalid provision shall be replaced by a valid provision whose effect comes closest to the economic purpose intended by the parties with the invalid provision. The same applies if there is a loophole in these GTC.
- 17.2 The place of fulfilment for all obligations under these GTC or the contract, including subsequent performance, is the registered office of the respective TÜV Rheinland company providing the contractually owed service.
- 17.3 The place of jurisdiction for all disputes arising from and in connection with the contractual relationship is Cologne, provided that the client is a merchant, a legal entity under public law or a special fund under public law. However, TÜV Rheinland is entitled to sue the client at its general place of jurisdiction or at another competent court. The above provisions shall not apply if the law provides for an exclusive place of jurisdiction. In relation to non-merchants, Cologne shall be the place of jurisdiction if the client moves his domicile or habitual residence abroad after conclusion of the contract or if his domicile or habitual residence is not known at the time TÜV Rheinland's claims are asserted in court.
- 17.4 The legal and business relations between TÜV Rheinland and the Client shall be governed by the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Sales Convention).

**18 Information on data protection**

- 18.1 TÜV Rheinland processes the client's personal data for the purpose of fulfilling the contract. If personal data is processed beyond this, this is done for legitimate purposes in accordance with the relevant legal basis. The client's personal data will only be disclosed to other natural or legal persons if the legal requirements for this are met. This also applies to transfers to third countries. The personal data will be deleted immediately as soon as a corresponding reason for deletion arises. Statutory retention periods are taken into account.
- 18.2 The persons affected by the data processing can exercise their rights as data subjects in accordance with the respective data protection laws. Data subjects have the right to withdraw their consent at any time with effect for the future, as well as the right to lodge a complaint with the competent data protection supervisory authority. Further details on the processing of personal data can be found in the respective TÜV Rheinland data protection notices. TÜV Rheinland's Group Data Protection Officer can be contacted by e-mail at [dataprotection@tuv.com](mailto:dataprotection@tuv.com) or by post at TÜV Rheinland AG, Group Data Protection Officer, Am Grauen Stein, 51105 Cologne, Germany.

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