

# General terms and conditions of business of TÜV Pfalz Anlagen und Betriebstechnik GmbH

## 1. Scope

- 1.1 The following terms and conditions apply to agreed services of TÜV Pfalz Anlagen und Betriebstechnik GmbH (hereinafter called TPA) as well as ancillary services and other secondary obligations provided by TPA within the scope of contract performance.
- 1.2 No general terms and conditions of the client including any general purchase conditions shall apply and these are hereby excluded. These general terms and conditions of the client shall not form part of the contract, even if these are not expressly rejected by TPA.

## 2. Offers

All offers by TPA are subject to change without notice, unless otherwise agreed.

## 3. Conclusion and duration of agreements

- 3.1 Agreements are concluded on signature of the offer submitted by TPA or a special agreement by both contracting parties or on performance of the work requested by the client by TPA. If the client contracts the services of TPA without a prior written offer from TPA (Offer), TPA is permitted to accept the order, at its discretion, by providing written (including electronic) confirmation of acceptance or by performing the contracted services.
- 3.2 The agreement shall commence on signature in accordance with 3.1 and shall end on termination of the period detailed in the agreement.
- 3.3 If the agreement provides for an extension to the duration, the agreement shall be extended by the duration specified in the agreement unless termination in writing by either contracting party at least six weeks prior to expiry.

## 4. Scope of services

- 4.1 The scope of services shall be determined by a joint declaration submitted by both parties. If no such declaration exists, the written order confirmation provided by TPA shall be binding.
- 4.2 The agreed services shall be performed in accordance with the provisions in force at the time the agreement is concluded.
- 4.3 Moreover, TPA is permitted to specify the method and nature of testing at its discretion, unless otherwise agreed in writing, or if mandatory regulations stipulate a specific mode of procedure.
- 4.4 The performance of services does not offer any guarantee for the compliance (acceptable condition) and functioning of any inspected or tested parts or the complete system and any upstream or downstream processes, organisations, proper application and use, or the underlying systems; in particular no guarantee shall be given for the design, material selection and construction and the proper application and use of the tested systems, unless expressly stipulated in the order.
- 4.5 When performing test assignments TPA is not responsible for the accuracy or review of the safety programmes or safety

regulations applicable to the tests, unless otherwise agreed in writing.

## 5. Performance periods/deadlines

- 5.1 The performance periods and deadlines set out in the agreement shall be based on estimates of the scope of work detailed by the client. These shall only be classed as binding once confirmed as binding in writing by TPA.
- 5.2 If performance periods have been agreed, these shall only commence once the client has provided TPA with all of the necessary documentation. This also applies to performance deadlines, which shall be extended by the period of any delays not caused by TPA without the express approval of the client.

## 6. Obligation of cooperation by the client

- 6.1 The client guarantees that any cooperation required on its part or on the part of its vicarious agents or third parties, shall be provided promptly and at no cost to TPA.
- 6.2 Any design documents, auxiliary supplies, support staff, etc. required for the performance of services must be provided at no cost. Moreover, the client must provide cooperation in accordance with current legal regulations, standards, safety regulations and accident prevention regulations.
- 6.3 The client is liable for all additional costs incurred as a result of work being delayed or having to be repeated due to late, incorrect or incomplete information or as a result of improper cooperation. TPA is permitted to charge said additional costs even if a fixed/top price has been agreed.

## 7. Billing

- 7.1 If the scope of services is not set down in writing when the order is placed, services shall be billed on the basis of time spent. If no fee is agreed in writing, services shall be billed on the basis of the prices charged by TPA at the time of performance.
- 7.2 Unless otherwise agreed, services shall be billed in milestone payments.
- 7.3 If performance of a service extends beyond one month and the order value or fixed price agreed is more than €2,500, TPA can demand advance payments or instalments.

## 8. Payment terms/Costs/Offsetting

- 8.1 All invoice amounts shall be due for payment on receipt without deduction. Discounts will not be given.
- 8.2 Payments must be made with reference to the client's invoice and customer numbers to the bank account of TPA as stated on the invoice.
- 8.3 If payment is delayed, TPA is entitled to charge interest at the rate of 9 % above the base rate set by the German Bundesbank. Substantiation of further damages is reserved.
- 8.4 If the client fails to make payment despite the setting of a grace period, TPA is permitted to terminate the agreement, to withdraw the certificate, to seek damages

for non-fulfilment and to delay the performance of any future services.

- 8.5 The provision laid down in 8.4 also applies in the event of non-payment of a cheque, cessation of payment, institution of insolvency proceedings against the client or rejection of a respective application due to lack of funds.
- 8.6 Complaints regarding invoices issued by TPA must be submitted in writing within two weeks of receipt of the invoice.
- 8.7 TPA is permitted to demand an appropriate advance payment.
- 8.8 TPA is permitted to increase its prices at the start of any month if its overheads and/or purchasing costs also increase. Any price increases must be notified in writing at least one month (amendment period) in advance of the intended date of enforcement. As long as the price increase does not exceed 5% per year of agreement, the client shall have no special right of termination due to said price increase. If a price increase exceeds 5% per year of agreement, the client is permitted to terminate the agreement at the end of the amendment period. Otherwise the amended prices shall be considered to have been accepted on expiry of the amendment period.
- 8.9 The client can only offset the claims of TPA against undisputed and/or legally binding claims.

## 9. Acceptance

- 9.1 TPA can present each separate part of the services requested for acceptance as part performance. The client is bound to provide prompt acceptance.
- 9.2 If the client fails to meet its acceptance obligations promptly, acceptance will be deemed to have been granted four weeks following service performance, if TPA specifically notifies the client of the aforementioned deadline on performance.

## 10. Confidentiality

- 10.1 "Confidential information" within the meaning of this agreement includes all information, documents, images, drawings, expertise, data, samples and project documents supplied, transferred or otherwise disclosed to by either Party ("disclosing party") to the other Party ("receiving party") during the specified period. This also includes copies of said information in printed and electronic format.
- 10.2 All confidential information sent in writing must be marked as confidential by the disclosing party prior to transmission to the receiving party; this also applies to confidential information sent by e-mail. Confidential information that is transmitted verbally must be indicated as such.
- 10.3 All confidential information sent or otherwise made accessible to the receiving party by the disclosing party in accordance with this agreement,
- a) Must be used by the receiving party exclusively for the defined purpose of the agreement unless otherwise

- expressly agreed in writing with disclosing party,
- b) Must not be copied, transmitted, published or otherwise passed on by the receiving party, if this is not required for the purpose of the agreement or if TPA is bound by legal or statutory regulations to pass on confidential information, test reports and documentation to the authorities or to third parties involved in the performance of the agreement,
- c) Must be handled confidentially by the receiving party in the same way that the receiving party would handle its own confidential information, namely with due care and diligence.
- 10.4 The receiving party shall only disclose the confidential information provided by the disclosing party to employees who require such information for the provision of services in accordance with the purpose of this agreement. The receiving party must bind its employees to the same degree of confidentiality as set out in this confidentiality agreement.
- 10.5 Confidential information within the meaning of this agreement does not include information for which the receiving party can reasonably prove that
- a) The information was already generally known or publicly known at the time of disclosure without any breach of this agreement, or
- b) The receiving party obtained the information from a third party authorised to pass on such information to the receiving party, or
- c) The information was already known to the receiving party before being disclosed by the disclosing party, or
- d) The receiving party devised the information itself independently of the information being sent by disclosing party.
- 10.6 Confidential information shall remain the property of the disclosing party. The receiving party hereby agrees to immediately return (i) all confidential information, including copies, to the disclosing party when requested by the disclosing party or automatically on termination or expiry of this agreement or to (ii) destroy all confidential information, including copies, when requested by the disclosing party and to confirm completion of this destruction in writing to the disclosing party. This excludes the reports and certificates prepared for the client exclusively for the purpose of fulfilling the contractual obligations set out under this agreement; these shall remain with the client. However, TPA is permitted to take copies of these documents and the confidential information used to prepare these reports and certificates for its files as evidence of the accuracy of its results and for general documentation purposes.
- 10.7 The receiving party agrees to handle confidential information with the strictest confidence from the start of this agreement for a period of three years following termination, to keep the confidential information secure from third-party access and to refrain from using the confidential information for its own purposes.
- 11. Copyright**
- 11.1 TPA shall retain all copyrights and joint-copyrights on expert reports, test results, calculations, drawings, presentations and the like issued by TPA.
- 11.2 The client may only use the expert reports, test results, calculations, drawings, presentations and so on prepared as part of services solely for the purpose laid down under the terms of the agreement.
- 11.3 The client may use test reports, test results, expert reports, etc. only complete and unshortened. Any publication or duplication for advertising purposes needs the prior written approval of TPA.
- 12. Liability of TPA**
- 12.1 Irrespective of the legal basis and in particular in the event of a breach of contractual obligations and tort, the liability of TPA for all damage, loss and reimbursement of expenses caused by legal representatives and/or employees of TPA shall be limited to: (i) in the case of contract with a fixed overall fee, three times the overall fee for the entire contract; (ii) in the case of contracts for annually recurring services, to the agreed annual fee; (iii) in the case of contracts expressly charged on a time and material basis to a maximum of 20,000 Euro and (iv) in the case of framework agreements that provide for the possibility of placing individual orders, to an amount equal to three times the fee for the individual order under which the damage occurred. The maximum liability of TPA is limited in any event of damage or loss to 2.5 Mio Euro..
- 12.2 This limitation of liability under 12.1 shall not apply to damages resulting from the intent or gross negligence or bad faith of TPA or its vicarious agents, or to damages resulting from a breach of obligations that TPA guaranteed to fulfil and to damages caused by death, physical injury or health or damages for which liability applies in accordance with the Product Liability Act.
- 12.3 In case of the breach of a cardinal obligation TPA shall also be liable in the event of slight negligence. Cardinal obligations within this context refer to material obligations that must be met in order to ensure the proper performance of this agreement and that the client rely on to be met. In the case of a breach of a cardinal obligation, any claim to compensation for damages shall be limited to the value of damages that are reasonable and foreseeable as a possible consequence of a contractual breach at the time of breach of obligation (reasonably foreseeable damages), if none of the cases stipulated in 12.2 apply.
- 12.4 TPA shall not be liable for labour, which the client provides as support for the services to be performed by TPA in accordance with this agreement, unless the labour provided are classed as vicarious agents of TPA. If TPA is not liable for any labour provided in accordance with the previous sentence, the client must release TPA from any third party claims.
- 12.5 The period of limitation for claims for compensation shall be based on statutory regulations.
- 12.6 Any change to the burden of evidence to the detriment of the client shall not be linked to the aforementioned regulations.
- 13. Partial invalidity, written form, place of jurisdiction**
- 13.1 No additional agreements have been made.
- 13.2 Amendments and additions shall only be valid in issued in writing; this also applies to amendments and additional to this clause.
- 13.3 In the event that one or more provisions of this agreement are invalid, the contracting parties shall agree another valid provision, which best reflects the intended legal and commercial purpose of the invalid provision.
- 13.4 The place of jurisdiction for all disputes that arise in relation to this agreement shall be Kaiserslautern.
- 13.5 The client acknowledges and agree that TPA is entitled to storage and process personal data pursuant to the German data protection act for TPA own purposes.
- 13.6 This contract is governed by German substantive law.