

## **1. General**

**1.1** The following terms and conditions apply to agreed services of TÜV Rheinland Energie und Umwelt GmbH (hereinafter called TEU) as well as ancillary services and other secondary obligations provided by TEU within the scope of contract performance.

**1.2** The client's general terms and conditions and purchase terms, if any, are not applicable and are hereby excluded. Even if not expressly objected to by TEU, the client's terms and conditions of contract will not become an element of the contract.

## **2. Offers**

Until final conclusion of the contract or written confirmation of the order, offers made by TEU, particularly as regards scope, execution, prices and time limits, will remain conditional and will not be binding.

## **3. Conclusion and duration of contracts**

A contract is concluded if the client signs TEU's tender letter or if both parties to the contract sign a separate contract document or if TEU performs the work demanded by the client. In case the client places an order with TEU without TEU having submitted a tender first, it is in TEU's sole discretion to accept the purchase order by written declaration of acceptance (including a declaration by electronic means) or by execution of the services detailed in the purchase order.

## **4. Scope of performance**

**4.1** The scope of performance needs to be defined in a unanimous declaration which is made by both parties. If no such declaration exists, the written confirmation of the order by TEU shall be decisive.

**4.2** The services will be performed in accordance with the generally recognised rules of technology and in compliance with the regulations in force at the time of confirmation of the order.

**4.3** If not agreed otherwise in writing and if no peremptory rules require a certain approach to be adopted, it is left to the expert discretion of TEU to decide on the method to be applied and the type of examination(s) to be carried out.

**4.4** TEU has the right to call in one or several subcontractors to meet its contractual obligations. The express consent of the client to this is not required.

**4.5** After the acceptance of results, TEU is under no obligation to keep and return any test items, materials, samples etc. handed over to it if there are no statutory obligations and / or contractual arrangements to that effect. Hazardous waste generated as a result of the execution of the contract will be disposed of for account of the client or returned to the client at his / her expense after previous notice. This provision also applies if the disposal of a test item causes expenses.

**4.6** Unless otherwise expressly agreed in writing, TEU is not liable for the correctness or checking of documents, information, safety programs or safety regulations on which the tests are based. On execution of the operations there shall be no simultaneous assumption of any guarantee of the correctness (proper quality) and working order of either tested or examined parts nor of the installation as a whole, including design, choice of materials and building of installations examined, unless these questions are expressly covered by the contract.

**4.7** In the case of inspection work, TEU will not be responsible for the accuracy or checking of the regulations, standards, rules of technology and programmes on which its inspections and assessments are based, unless otherwise expressly agreed in writing.

## **5. Performance times and deadlines**

**5.1** The performance times and deadlines agreed in the contract shall be based on experiences and estimates of the extent of the work according to particulars supplied by the client. They shall be binding only if TEU gives express, written confirmation that they are binding.

**5.2** If performance periods have been agreed, these shall only commence once the client has provided TEU 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 TEU without the express approval of the client.

## **6. Client's obligation to cooperate**

**6.1** The client shall guarantee that all cooperation required of him, his agents or third persons will be provided in good time and at no cost to TEU.

**6.2** Test objects, documents, design documents, auxiliary materials and staff, etc. shall be made available free of charge. Moreover, the cooperative acts of the client must correspond to the legal provisions, standards, safety regulations and accident prevention rules applicable in each case. The client shall bear any additional cost incurred on account of work having to be redone or being delayed as a result of tardy, incorrect or incomplete information or lack of proper cooperation. Even where a fixed or maximum price is agreed, TEU shall be entitled to charge extra for such additional expenses.

## **7. Invoicing**

**7.1** If the scope of performance is not laid down in writing when the order is placed, invoicing shall be based on expenses. If no fee is agreed in writing, invoicing shall be in accordance with the TEU schedule of fees valid at the time of performance.

**7.2** If the execution of a contract extends over more than one month and the value of the contract or the agreed fixed price exceeds € 2,500 (two thousand five hundred euros), TEU may demand payments on account or pro rata instalments.

## **8. Payment terms**

**8.1** All amounts invoiced shall be due for payment without deduction on receipt of the invoice. No discounts will be granted.

**8.2** Payments shall be made to the bank account of TEU as indicated on the invoice, stating the invoice and client numbers.

**8.3** If the client falls into arrears, TEU is entitled to demand an interest rate of 9% (nine per cent) above the base lending rate of the German Central Bank. In addition to that, it reserves the right to assert a claim for damages.

**8.4** If the client is in arrears although he has been granted a reasonable extension of time, TEU is entitled to withdraw from the contract, to claim damages for non-performance and to refuse to render the contractually agreed services.

**8.5** The provision of 8.4 above is also applicable if cheques are dishonoured, payments suspended, bankruptcy proceedings against the client are instituted or if a petition in bankruptcy is dismissed for lack of assets.

**8.6** Objections to the invoices of TEU shall be submitted in writing within 2 (two) weeks of receipt of the invoice.

**8.7** TEU is entitled to demand an adequate advance on costs.

**8.8** If there is a rise in overheads and/or purchase costs, TEU is entitled to raise its prices at the beginning of a month. TEU has to notify the client thereof in writing 1 (one) month prior to the intended coming into effect (transitional period). If the prices are raised to less than 5% (five per cent) per contract year, the client cannot derive from that a special right of notice. If the prices are raised to more than 5% (five per cent) per contract year, the client has the right to give notice of termination of the contract to take effect at the end of the transitional period. If no notice of termination is given, the adjusted prices are deemed agreed upon as soon as the transitional period has expired.

**8.9** Only legally established and undisputed claims may be offset against claims of TEU.

## **9. Acceptance**

**9.1** Any part of the work ordered which is complete in itself may be presented by TEU for acceptance as an instalment. The client is obliged to accept it immediately.

**9.2** If the client fails to fulfil his acceptance obligation immediately, acceptance shall be deemed to have taken place 4 (four) calendar weeks at the latest after performance in full or in part of the work agreed upon, provided TEU has particularly pointed out to the client the aforementioned deadline upon performance of the service.

## **10. Confidentiality**

**10.1** For the purposes of this agreement "confidential information" means any information, documents, photographs, illustrations, drawings, know-how, data, samples and project-related documents that are made available, transmitted or disclosed in any other way by one party ("disclosing party") to the other party ("receiving party") while this agreement is in effect. This also includes the copying of this information as hard copy or by electronic means.

**10.2** Prior to transmitting confidential information in writing to the receiving party, the disclosing party has to clearly mark such information "Confidential". This is also true of confidential information that is sent by e-mail. In case confidential information is transmitted verbally, the receiving party must be advised that the information is confidential.

**10.3** All confidential information that is transmitted or made accessible in any other way by the disclosing party to the receiving party

**a)** shall be used by the receiving party solely to fulfil the purpose of the contract provided no different express agreement in writing has been concluded with the disclosing party,

**b)** must not be copied, disseminated, published or passed on in any other way by the receiving party if this is not necessary for the fulfilment of the purpose of the contract or if TEU is obliged due to statutory and regulatory requirements to pass on confidential information, test reports and documentations to authorities or to third parties who are involved in the performance of the contract,

**c)** must be treated confidentially by the receiving party which is required to use the same degree of precaution and safeguards as it uses to protect its own confidential information of like importance, but in no case less than the objectively necessary care.

**10.4** The receiving party undertakes to make available the confidential information received from the disclosing party only to those members of staff within the receiving party's organisation who have a need to know this information to perform the services in the framework of this agreement. The receiving party is under the obligation to bind its members of staff to this secrecy agreement.

**10.5** For the purposes of this agreement confidential information does not include information which the receiving party can prove

**a)** to have been part of the public domain at the time of disclosure or to have been generally available to the public otherwise through no violation of this agreement, or

**b)** to have received from a third party having the legal right to disclose such information, or

**c)** to have been in its possession prior to transmission by the disclosing party, or

**d)** to have developed independently of the transmission by the disclosing party.

**10.6** Confidential information remains the property of the disclosing party. The receiving party agrees to promptly return to the disclosing party, upon the disclosing party's request, but in any case and without being requested to do so, after termination or expiry of this agreement (i) all confidential information, including any copies or to have (ii) all confidential information including any copies destroyed if requested by the disclosing party to do so and to confirm this destruction in writing to the disclosing party. Exempted from this are reports and certificates which were generated for the client solely for the fulfilment of obligations under

this contract. Such reports and certificates remain with the client. As such reports and certificates are prepared with reference to the contractual obligations and confidential information, TEU has the right to retain copies to prove the correctness of results and to ensure proper documentation in general.

**10.7** The receiving party undertakes to keep strictly confidential, not to disclose to third parties and not to use the confidential information for its own purposes for a period commencing when the contract comes into effect and ending 3 (three) years after its termination.

## **11. Copyrights**

**11.1** All copyrights including joint copyrights to expert opinions, test results, calculations, descriptions, etc. produced by TEU remain with TEU.

**11.2** Expert reports, test results, calculations, descriptions, etc. produced in connection with the order may be used by the client only for their agreed intended purposes.

**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 TEU.

## **12. Liability of TEU**

**12.1** Irrespective of the legal basis and in particular in the event of a breach of contractual obligations and tort, the liability of TEU for all damage, loss and reimbursement of expenses caused by legal representatives and/or employees of TEU 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 TEU is limited in any event of damage or loss to 2.5 Mio Euro.

**12.2** The limitation of liability according to article 12.1 above shall not apply to all damage and losses caused by malice, intent or gross negligence on the part of any of the legal representatives of TEU or their vicarious agents. Such limitation shall also not apply to damages arising from a violation of obligations which TEU has guaranteed to perform, damages caused by a person's death, physical injury or illness, or damages for which liability is assumed under the German Product Liability Act (Produkthaftungsgesetz).

**12.3** If a cardinal duty is neglected, TEU is liable even in cases of slight negligence. For the purposes of this agreement cardinal duties mean material duties under a contract the fulfilment of which is essential to the performance of the contract and the fulfilment of which is something the client can depend on. If a cardinal duty is neglected, the amount of a claim for damages is limited to the damage that was typical and foreseeable (typically foreseeable damage) at the time the cardinal duty was neglected provided none of the cases referred to in 12.2 applies.

**12.4** TEU will not be liable for personnel made available to it by the client for the execution of the order unless the personnel made available are deemed to be agents of TEU. Where TEU is not liable for the personnel made available in accordance with the preceding sentence, the client shall indemnify TEU for any claims by third parties.

**12.5** The limitation period for compensation claims shall be in accordance with the statutory provisions.

**12.6** The above provisions do not constitute a change in the onus of proof to the disadvantage of the client.

## **13. Partial invalidity, written form, place of jurisdiction, data protection**

**13.1** No subsidiary agreements to this contract have been entered into.

**13.2** To be effective, amendments and supplements including amendments and supplements to this written form clause must be made in writing.

**13.3** Should one or several provisions of this contract become ineffective in law, the parties shall agree an appropriate provision which shall, so far as is legally possible, be as close as possible to the one which the parties would have wanted to safeguard their legal and economic interests.

**13.4** The place of jurisdiction for all disputes arising from and in connection with this contract shall be Cologne. This contract shall be governed by German substantive law.

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