

1. Scope and Definitions

- 1.1 These General Tender Conditions ("Conditions") apply to all tenders, Requests for Proposal (RFP), Requests for Quotation (RFQ) and Requests for Information (RFI) ("Tender") conducted by TÜV Rheinland Service GmbH or an affiliated company within the meaning of Sections 15 et seq. of the German Stock Corporation Act (AktG) (collectively or individually referred to as "TÜV Rheinland"). These Conditions govern the tendering procedure up to the possible conclusion of a contract.
- 1.2 A 'Tenderer' is any natural or legal person who submits a tender as part of a tendering procedure.
- 1.3 These terms and conditions apply exclusively. The Bidder's general terms and conditions shall not apply, even if TÜV Rheinland does not specifically object to their validity in individual cases. Any deviating terms and conditions of the Bidder shall only apply if TÜV Rheinland expressly agrees to their validity in writing.

2. TÜV Rheinland's freedom to conduct the procedure and discretion

- 2.1 TÜV Rheinland conducts the tender as a selection procedure under private law. It is not a formal procurement procedure under the Act against Restraints of Competition (GWB) or the Public Procurement Regulation (VgV), unless explicit reference is made in individual cases to the application of public procurement law provisions.
- 2.2 TÜV Rheinland reserves the unrestricted right to:
 - 2.2.1 to discontinue, amend or repeat the tender procedure in whole or in part at any time without giving reasons;
 - 2.2.2 to exclude tenderers from further participation, in particular in the event of incomplete or late tenders, conflicts of interest, or where there are doubts as to the tenderer's reliability or capability;
 - 2.2.3 to accept tenders that do not meet all formal requirements or deviate from the tender documents;
 - 2.2.4 to conduct negotiations with one or more tenderers in parallel or in succession;
 - 2.2.5 to divide the contract amongst several tenderers (award of partial lots);
 - 2.2.6 to invite additional tenderers to join the tendering procedure at a later stage.
- 2.3 The tenderer has no right to participate in the tender procedure, to have their tender considered, or to be awarded the contract. TÜV Rheinland acts at its sole discretion in the selection process, in accordance with the principles of good faith (Section 242 of the German Civil Code (BGB)).
- 2.4 By submitting their tender, the tenderer waives any claims for damages arising from the termination or modification of the tendering procedure. This also applies to claims for reimbursement of expenses. The waiver of such claims does not apply in cases of wilful misconduct or gross negligence on the part of TÜV Rheinland, nor in cases of damage resulting from injury to life, limb or health.

3. Confidentiality and data protection

- 3.1 All documents provided as part of the tendering process (tender documents, terms of reference, technical specifications, price

information, company data, tenders, presentations, etc.) or any other confidential information provided by one party ('Disclosing Party') to the other party ('Receiving Party') or otherwise disclosed ('Confidential Information') shall be treated as confidential. It may only be used for the purposes of conducting the tender process and participating in the tender process, and must not be disclosed to any third party.

- 3.2 The Receiving Party undertakes to protect Confidential Information with the same degree of care that it applies to its own confidential information, but at least with due commercial care. It shall only make Confidential Information available to those employees and advisers who require it for the purposes of the tender procedure and who are bound by the same obligations of confidentiality as the Receiving Party.
- 3.3 The confidentiality obligation shall not apply to information which (a) is in the public domain, (b) was lawfully known to the Receiving Party prior to receipt, (c) is lawfully disclosed by third parties without any obligation of confidentiality, or (d) was independently developed by the Receiving Party.
- 3.4 At the request of TÜV Rheinland, the Tenderer must immediately return or destroy all documents received, including copies and extracts, and confirm this in writing to TÜV Rheinland.
- 3.5 TÜV Rheinland and the tenderer undertake to comply with the relevant and applicable data protection regulations in the context of this tendering procedure.

4. Preparation and Submission of Tenders

- 4.1 The Tenderer shall bear all costs associated with the preparation and submission of the tender, including costs for on-site visits, presentations, due diligence reviews and contract negotiations. There is no entitlement to reimbursement of costs.
- 4.2 The tender must comply with the requirements set out in the tender documents, be submitted in the specified format and language, meet the deadline and be sent to the designated address. Tenders received after the deadline will not be considered.
- 4.3 Any deviations from the requirements set out in the tender documents must be clearly marked and justified.
- 4.4 By submitting a tender, the tenderer confirms:
 - 4.4.1 that they have thoroughly reviewed and understood the tender documents;
 - 4.4.2 that their tender is based on their own calculations and does not contain any unauthorised agreements with third parties;
 - 4.4.3 that there are no conflicts of interest that could compromise their independence;
 - 4.4.4 that they accept the contract terms and conditions of TÜV Rheinland set out in the tender documents at and have expressly indicated any deviations in the tender.
- 4.5 The tender shall be binding for the period specified in the tender documents from the expiry of the submission deadline. TÜV Rheinland may extend the submission deadline once by a further 30 days by notifying the tenderer in writing before the expiry of the submission deadline.

5. Review, evaluation and negotiation

- 5.1 TÜV Rheinland checks the tenders for completeness, formal correctness and suitability of content. Incomplete or formally deficient tenders may be rejected, or TÜV Rheinland may request the tenderer to rectify the deficiencies.
- 5.2 The evaluation is carried out in accordance with the criteria and requirements set out in the tender documents. TÜV Rheinland is not bound to any specific evaluation method and may adapt the criteria and requirements during the tender process, provided that all tenderers are notified of such changes in the same manner.
- 5.3 TÜV Rheinland may conduct negotiations with one or more tenderers. TÜV Rheinland determines the content, duration and participants in the negotiations. There is no entitlement to be invited to negotiations.
- 5.4 The tenderer is obliged to provide full information and submit supplementary documents in response to enquiries from TÜV Rheinland within a reasonable period.
- 5.5 In all other respects, the provisions of the tender documents shall apply.

6. Award of the Contract and Conclusion of the Contract

- 6.1 The contract is awarded by written notification from TÜV Rheinland to the selected tenderer. The contract comes into effect upon receipt of the notification of the award, subject to the provisions set out in clauses 6.2 and 6.3.
- 6.2 If the award deviates from the content of the tender ('**modified award**'), a contract shall only come into effect once the tenderer has accepted this new proposal. In the event of a modified award, the contracting authority shall expressly request the tenderer to declare their acceptance without delay. Acceptance by the tenderer must be in writing or in text form.
- 6.3 If key contractual points have not yet been definitively clarified at the time the contract is awarded and TÜV Rheinland and the tenderer have agreed to supplement these at a later date, the award of the contract constitutes merely a declaration of intent. The contract is concluded upon completion of the negotiations by the signing of the contract.
- 6.4 If, upon receipt of the award, the tenderer declares that they no longer wish to uphold their tender, or if they refuse to sign the contract, TÜV Rheinland shall be entitled to commission the next-ranked tenderer and to demand compensation from the first tenderer for the additional costs incurred as a result.
- 6.5 TÜV Rheinland is not obliged to select the most economically advantageous tender. It may decide not to award the contract at all.

7. Intellectual property rights and rights of use in relation to tender documents

- 7.1 All rights to the tender documents provided by TÜV Rheinland remain with TÜV Rheinland. The tenderer shall not be granted any right of use beyond the preparation of the tender.
- 7.2 With regard to the tender documents prepared by the tenderer (concepts, proposed solutions, pricing models, etc.) the tenderer grants TÜV Rheinland a simple, irrevocable, perpetual and worldwide right, free of charge, to reproduce, distribute and edit them for the purposes of evaluation, documentation and internal use within the framework of the tendering procedure. This also applies in the event that no contract is concluded.
- 7.3 The tenderer guarantees that its tender documents do not infringe any third-party rights. It shall indemnify the client against all claims by third parties arising from infringements caused by the tender documents.

8. Final Provision, Partial Invalidity, Jurisdiction, Form Requirements

- 8.1 Should any provisions of these terms and conditions be or become, in whole or in part, legally invalid or unenforceable, this shall not affect the validity of the remaining provisions. The same shall apply should it transpire that a provision contains a loophole. In place of the invalid or unenforceable provision, or to fill the gap, an appropriate provision shall apply which most closely approximates what would have been intended in accordance with the spirit and purpose of these terms and conditions.
- 8.2 The place of jurisdiction for all disputes arising from and in connection with the tendering procedure shall be Cologne, provided that the tenderer is a trader, a legal entity under public law or a special fund under public law. TÜV Rheinland shall, however, be entitled to bring proceedings against the tenderer at the place of its registered office or general place of jurisdiction, or at any other competent court at the tenderer's registered office. The above provisions shall not apply where the law provides for an exclusive place of jurisdiction.
- 8.3 German substantive law shall apply exclusively to the business relations between TÜV Rheinland and the tenderer, to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- 8.4 Any amendments or additions to these terms and conditions must be made in writing to be legally valid; this also applies to amendments or additions to this requirement for written form. The primacy of individual agreements between the parties remains unaffected by this.