

General Terms and Conditions of Business of TÜV Rheinland Kuwait WLL

1. Scope

- 1.1 The following terms and conditions apply to agreed services including consultancy services, information, deliveries and similar services as well as ancillary services and other secondary obligations provided within the scope of contract performance.
- 1.2 The client's General Terms and Conditions of Business, including the client's Terms and Conditions of Purchasing, if any, shall not apply and shall hereby be expressly excluded. No contractual terms and conditions of the client shall form part of the contract even if TÜV Rheinland Kuwait WLL does not explicitly object to them.

2. Quotations

Unless otherwise agreed, all quotations submitted by TÜV Rheinland Kuwait WLL shall be subject to change without notice.

3. Coming into effect and duration of contracts

- 3.1 The contract shall come into effect for the agreed term upon the quotation letter of TÜV Rheinland Kuwait WLL or a separate contractual document being signed by both contracting parties, or upon the works requested by the client being carried out by TÜV Rheinland Kuwait WLL. If the client instructs TÜV Rheinland Kuwait WLL without receiving a prior quotation from TÜV Rheinland Kuwait WLL (quotation), TÜV Rheinland Kuwait WLL is – in its sole discretion – entitled to accept the order by giving written notice of such acceptance (including notice sent via electronic means) or by performing the requested services.
- 3.2 The contract term starts upon the coming into effect of the contract in accordance with article 3.1 and shall continue for the term agreed in the contract.
- 3.3 If the contract provides for an extension of the contract term, the contract term will be extended by the term provided for in the contract unless terminated in writing by either party with a six-week notice to the end of the contractual term.

4. Scope of services

- 4.1 The scope of the services shall be decided solely by a unanimous declaration issued by both parties. If no such declaration exists, then the written confirmation of order by TÜV Rheinland Kuwait WLL shall be decisive.
- 4.2 The agreed services shall be performed in compliance with the regulations in force at the time the contract is entered into.
- 4.3 Furthermore, TÜV Rheinland Kuwait WLL is entitled to determine (in its sole discretion) the method and nature of the assessment unless otherwise agreed in writing or if mandatory provisions require a specific procedure to be followed.
- 4.4 On execution of the work 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 and its upstream and/or downstream processes, organisations, use and application in accordance with regulations, nor of the systems on which the installation is based; in particular, no responsibility shall be assumed for the construction, selection of materials and assembly of installation, nor for their use and application in accordance with regulations unless these questions are expressly covered by the contract.
- 4.5 In the case of inspection work, TÜV Rheinland Kuwait WLL shall not be

responsible for the accuracy or checking of the safety programmes or safety regulations on which the inspections are based, unless otherwise expressly agreed in writing.

5. Performance periods/dates

- 5.1 The contractually agreed periods and dates of performance are based on estimates of the work involved which are prepared in line with the details provided by the client. They shall only be binding if confirmed as binding by TÜV Rheinland Kuwait WLL in writing.
- 5.2 If binding periods of performance have been agreed, these periods shall not commence until the client has submitted all required documents to TÜV Rheinland Kuwait WLL. This also applies, even without express approval by the client, to all extensions of agreed dates for performance not caused by TÜV Rheinland Kuwait WLL.

6. The client's obligation to cooperate

- 6.1 The client shall guarantee that all cooperation required on its part, its agents or third parties will be provided in good time and at no cost to TÜV Rheinland Kuwait WLL.
- 6.2 Design documents, supplies, auxiliary staff, etc. necessary for performance of the services shall be made available free of charge by the client. Moreover, collaborative action of the client must be undertaken in accordance with legal provisions, standards, safety regulations and accident prevention instructions.
- 6.3 The client shall bear any additional cost incurred on account of work having to be redone or being delayed as a result of late, incorrect or incomplete information or lack of proper cooperation. Even where a fixed or maximum price is agreed, TÜV Rheinland Kuwait WLL shall be entitled to charge extra for such additional expense.

7. Invoicing of work

- 7.1 If the scope of performance is not laid down in writing when the order is placed, invoicing shall be based on costs incurred. If no payment is agreed in writing, invoicing shall be in accordance with the TÜV Rheinland Kuwait WLL price list valid at the time of performance.
- 7.2 Unless otherwise agreed, work shall be invoiced according to the progress of the work.
- 7.3 If the execution of an order extends over more than one month and the value of the contract or the agreed fixed price exceeds KD 1,000/-, TÜV Rheinland Kuwait WLL may demand payments on account or in instalments.

8. Payment terms

- 8.1 All invoice amounts shall be due for payment without deduction on receipt of the invoice. No discounts shall be granted.
- 8.2 Payments shall be made to the bank account of TÜV Rheinland Kuwait WLL as indicated on the invoice, stating the invoice and customer numbers.
- 8.3 In cases of default of payment, TÜV Rheinland Kuwait WLL shall be entitled to claim default interest at a rate of 12%. At the same time, TÜV Rheinland Kuwait WLL reserves the right to claim further damages.
- 8.4 Should the client default in payment of the invoice despite being granted a reasonable grace period, TÜV Rheinland Kuwait WLL shall be entitled

to cancel the contract, withdraw the certificate, claim damages for non-performance and refuse to continue performance of the contract without prejudice to rights of TÜV Rheinland Kuwait WLL to institute any and all legal proceedings and pursue any remedies available under applicable law against the client

- 8.5 The provisions set forth in article 8.4 shall also apply in cases involving returned and/or dishonoured cheques, cessation of payment, and commencement of insolvency proceedings against the client's assets or cases in which the commencement of insolvency proceedings has been dismissed due to lack of assets.
- 8.6 Objections to the invoices of TÜV Rheinland Kuwait WLL shall be submitted in writing within two weeks of receipt of the invoice.
- 8.7 TÜV Rheinland Kuwait WLL shall be entitled to demand appropriate advance payments.
- 8.8 TÜV Rheinland Kuwait WLL shall be entitled to raise its fees at the beginning of a month if overheads and/or purchase costs have increased. In this case, TÜV Rheinland Kuwait WLL shall notify the client in writing of the rise in fees. This notification shall be issued one month prior to the date on which the rise in fees shall come into effect (period of notice of changes in fees). If the rise in fees remains under 5% per contractual year, the client shall not have any special right of termination. If the rise in fees exceeds 5% per contractual year, the client shall be entitled to terminate the contractual relationship by the end of the period of notice of changes in fees. On the earlier of where contract is not terminated or where client does not object within one week of notification of the rise in fees, the changed fees shall be deemed to have been agreed upon expiry of the above period.
- 8.9 Only legally established and undisputed claims may be offset against claims by TÜV Rheinland Kuwait WLL

9. Acceptance

- 9.1 Any part of the work ordered which is complete in itself may be presented by TÜV Rheinland Kuwait WLL for acceptance as an instalment. The client shall be obliged to accept it immediately.
- 9.2 If the client fails to fulfil its acceptance obligation immediately, acceptance shall be deemed to have taken place 4 calendar weeks or such other time constraint as indicated in writing by TÜV Rheinland Kuwait WLL to the client, after performance of the work if TÜV Rheinland Kuwait WLL has specifically made the client aware of the aforementioned deadline upon performance of the service.

10. Confidentiality

10.1 "Confidential Information" means all information, documents, pictures, drawings, know-how, data samples and project documents handed over by one Party (hereinafter "Disclosing Party") or otherwise disclosed to the other party (the "Receiving Party") from the beginning of the contract. This also includes copies of this information in paper and electronic form. When provided in writing or in any physical form, Confidential Information must be identified by the words "confidential" or a similar wording indicating the confidential nature of the information.

In the case of Confidential Information that is passed on orally, the Receiving

Party shall be appropriately informed thereof in advance. Confidential information is expressly excluded data and know-how collected, compiled or otherwise obtained by TÜV (non-personal) within the scope of the provision of Services by TÜV. TÜV is entitled to store, use, further develop and pass on the data obtained in connection with the provision of Services for the purpose of developing new Services, improving Services and analysing the provision of Services.

10.2 Confidential Information

- a) may only be used by the Receiving Party to fulfil the purpose of the contract, unless otherwise expressly agreed in writing with the Disclosing Party,
- b) may not be duplicated, distributed, published or passed on in any other form by the Receiving Party, with the exception of such Confidential Information necessary to fulfil the purpose of the contract or such Confidential Information which the Receiving Party must pass on the basis of judicial instructions or legal or government regulations; this concerns in particular the Confidential Information to be passed on to supervisory authorities and/or accreditors of TÜV within the framework of the provision of Services to Affiliated Companies of TÜV or subcontractors or their respective employees. "Affiliated Companies" shall mean all companies, directly or indirectly, owned or controlled by, or owning or controlling, or under common control with a Party. For purpose of this definition "control" of a company shall mean to have, directly or indirectly, (i) the ownership of the majority of shares or voting rights or (ii) the right to elect or appoint, directly or indirectly, the majority of the managing directors, the board of directors, or a similar managing body or (iii) the power to direct or cause the direction of the management and policies of a corporation, company or other entity.
- c) Must be treated confidential by the Receiving Party in the same way as it treats its own Confidential Information, but in no case less carefully than with requisite care & attention.

10.3 The Receiving Party shall make the Confidential Information received from the Disclosing Party available only to those persons who need it to provide Services under this GTC. These persons include advisors to the receiving Party and its Affiliates.

10.4 The term "Confidential Information" does not include information which:

- a) Was already generally known at the time of publication or becomes known to the general public without a violation of this GTC, or
- b) Was demonstrably known to the Receiving Party at the time of conclusion of the contract or are thereafter disclosed in a justified manner by a third Party; or
- c) Was already in the possession of the Receiving Party prior to transmission by the Disclosing Party; or
- d) The Receiving Party has independently developed irrespective of the transmission by the Disclosing Party.
- e) Is mandatory by law or by an order of the Courts to disclose such information.

10.5 Confidential information remains the property of the respective Disclosing Party. The Receiving Party hereby agrees to immediately (i) return all Confidential Information, including all copies thereof, to the Disclosing Party at any time upon the request of the Disclosing Party, or to (ii) destroy the Confidential Information, including all copies thereof, upon the request of the Disclosing Party, and to confirm in writing the Disclosing Party the fact of such destruction.

The above mentioned obligation to return or destroy does not apply to:

- a) Reports and certificates drawn up exclusively for the purpose of fulfilling the contractual obligations under the contract for the client, which remain with the client. However, TÜV is entitled to take copies of these and the Confidential Information, which forms the basis for the preparation of these reports and certificates, as proof of proper performance of the contract and for general documentation purposes for its files; or
- b) Confidential Information that is stored on backup servers or in analog backup systems on a generational basis during routine data backups as part of normal archiving processes; or
- c) The extent contrary to laws, regulation, orders of a competent court, an administrative or supervisory authority or an accreditation body.

10.6 This confidentiality obligation exists from the beginning of the contract and continues to apply for a period of five years after termination of contract.

11. Copyrights

11.1 TÜV Rheinland Kuwait WLL shall retain all exclusive and joint copyrights in the expert reports, test results, calculations, presentations etc. prepared by TÜV Rheinland Kuwait WLL.

11.2 The client may only use expert reports, test results, calculations, presentations etc. prepared within the scope of the contract for the contractually agreed purpose.

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 TÜV Rheinland Kuwait WLL.

12. Liability of TÜV Rheinland Kuwait WLL

12.1 Irrespective of the legal basis and in particular in the event of a breach of contractual obligations and tort, the liability of TÜV Rheinland Kuwait WLL for all damage, loss and reimbursement of expenses caused by legal representatives and/or employees of TÜV Rheinland Kuwait WLL shall be limited to: (i) in the case of contract with a fixed overall fee, up to a maximum of ten times of the overall fee paid for by the client for the entire contract; (ii) in the case of contracts for annually recurring services, up to maximum of the actual paid portion of the agreed annual fee; (iii) in the case of contracts expressly charged on a time and material basis up to a maximum of KD 8,000 and (iv) in the case of framework agreements that provide for the possibility of placing individual orders, up to a maximum amount equal to three times the fee for the individual order under which the damage occurred. The maximum liability of TÜV Rheinland Kuwait WLL is limited in any event of proven damage or

actual loss to the lesser of the amount of fees paid by the Client or such amount as awarded by the competent court.

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 TÜV Rheinland Kuwait WLL or their vicarious agents. Such limitation shall also not apply to damages arising from a violation of obligations which TÜV Rheinland Kuwait WLL has guaranteed to perform, damages caused by a person's death, physical injury or illness or damages for which liability is assumed under the Kuwait Consumer Protection Laws.

12.3 In cases involving a proven Fundamental Breach of contract, TÜV Rheinland Kuwait WLL will be deemed liable under the applicable law even where minor negligence is involved. For this purpose, a "fundamental breach" is a material contractual obligation, the performance of which permits the due performance of the contract and which the client may, with reasonable expectation, rely on being complied with. Any claim for damages for a fundamental breach of contract shall be limited to the amount of damage reasonably foreseen as a possible consequence of such breach of contract at the time of the breach (reasonably foreseeable damage), unless any of the circumstances described in article 12.2 apply.

12.4 TÜV Rheinland Kuwait WLL shall not be liable for personnel made available by the client to support TÜV Rheinland Kuwait WLL in the performance of its services regulated under this contract, unless personnel made available may be regarded as vicarious agents of TÜV Rheinland Kuwait WLL. If TÜV Rheinland Kuwait WLL is not liable for personnel made available by the client under the foregoing provision, the client shall indemnify TÜV Rheinland Kuwait WLL against any claims made by third parties.

12.5 The limitation periods for claims for damages shall be based on statutory provisions.

12.6 None of the provisions of this article 12 changes the burden of proof to the disadvantage of the client.

13. Partial invalidity, written form, place of jurisdiction

13.1 No ancillary agreements to this contract have been concluded.

13.2 All amendments and supplements must be in writing in order to be effective; this also applies to amendments and supplements to the requirement for the written form.

13.3 Should one or several of the provisions under this contract be or become ineffective, the contracting parties shall replace the invalid provision with a legally valid provision that comes closest to the content of the invalid provision in legal and commercial terms.

13.4 The place of jurisdiction for all disputes arising in connection with this contract shall be the State of Kuwait. This contract is governed by the laws of the State of Kuwait. This clause shall in no way prejudice the absolute discretion of Kuwait law, however, the German Product Liability Act, shall apply.

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