



## I. General Terms and Conditions of TÜV Rheinland DIN CERTCO GmbH

(Version: 1<sup>st</sup> May 2020)

### 1 Scope

- (1) The following General Terms and Conditions ("GTC") of TÜV Rheinland DIN CERTCO GmbH (hereinafter „TÜV“) apply to the services agreed between TÜV and the client, including the ancillary services and other ancillary obligations provided within the framework of the execution of the contract (hereinafter jointly referred to as "services"). In addition and overriding to these General Terms and Conditions, the Special Terms and Conditions and the Testing-, Registration- and Certification Regulations shall apply.
- (2) Both consumers and entrepreneurs may be clients within the meaning of these GTC.
- (3) A consumer is any natural person who concludes a legal transaction with TÜV for purposes which can predominantly not be attributed to his commercial or self-employed professional activity. (§ 13 BGB).
- (4) An entrepreneur is a natural or legal person or partnership with legal capacity who, when concluding a legal transaction with TÜV, acts in the exercise of its commercial or self-employed professional activity (§ 14 BGB). Legal entities under public law and special funds under public law shall also be considered entrepreneurs within the meaning of these conditions.
- (5) If the client is a consumer, the "Special Terms and Conditions for Consumers" shall apply in addition and overriding to the General Terms and Conditions and the Special Terms and Conditions.
- (6) Conflicting or deviating terms and conditions of the client do not apply and are hereby excluded. General terms and conditions of the client shall not become part of the contract even if TÜV does not expressly object to them or accepts payments of the client without reservation or performs the services without reservation.
- (7) In the context of an ongoing business relationship with entrepreneurs, these GTC and the Special Terms and Conditions shall also apply to future contracts with these entrepreneurs without TÜV having to refer to them separately in each individual case.
- (8) Insofar as these GTC or the Special Terms and Conditions refer to the term "accreditation body", this also includes authorisation and recognition organisations; the terms "accreditation specifications", "accreditation requirements" and "accreditation procedures" apply accordingly to the specifications, requirements and procedures of the authorization or recognition organisations.
- (9) Insofar as these GTC or the Special Terms and Conditions refer to a written form requirement, written form within the meaning of § 126b BGB is sufficient to observe the written form requirement.
- (10) Individual agreements made with the client in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GTC. Subject to evidence to the contrary, a written contract or written confirmation from TÜV is authoritative for the content of such agreements.

### 2 Quotations and conclusion of contract; term of contract

- (1) The contract is concluded by signing of the completed, signed and stamped application form from TÜV or a separate contract document by both contracting parties or by TÜV providing the services requested by the client commissions TÜV without a prior offer from TÜV, TÜV is entitled, at its sole discretion, to accept the order by a written declaration of acceptance or by rendering the services ordered.
- (2) Insofar as a certain term of the contract has been agreed upon, this shall be based on what has been agreed in the offer of TÜV or in the contract. An agreed term shall be extended by the term provided for in the offer or in the contract if the contract is not terminated in writing by one of the contracting parties three (3) months prior to its expiration date.

### 3 Service Provision and scope of services

- (1) Scope and type of services to be provided by TÜV are specified in the contractually agreed service description of TÜV. If no separate service description of TÜV is available, the last offer of TÜV is decisive for the services to be provided. The parties can only agree on changes to the service description in writing. Unless otherwise agreed, services beyond the scope of the service description (e.g. checking the correctness and functionality of parts, products, processes, installations, organisations not listed in the service description, as well as the intended use and

application of such) are not owed. In particular, no responsibility is assumed for the design, selection of materials, construction or intended use of an examined part, product, process or plant, unless this is expressly stated in the order.

- (2) TÜV is entitled to determine the method of service provision including examinations or tests carried out at its own discretion if not otherwise agreed in writing or mandatory regulations require a certain procedure.
- (3) If mandatory legal regulations and standards or official requirements for the agreed services change after conclusion of the contract, TÜV shall be entitled to additional remuneration for resulting additional expenses.
- (4) Unless contractually agreed, when testing, TÜV does not guarantee the accuracy of the safety programs or safety regulations on which the tests are based, which have been made available by the client or by third parties.
- (5) The services owed under the contract are agreed exclusively with the client. A contact of third parties with the services of TÜV, as well as making available of and justifying confidence in the performance results is not part of the agreed services. This also applies if the client passes on performance results - in full or in extracts - to third parties in accordance with Section 10.4.
- (6) The parties shall not include any third parties in the scope of protection of the contract, unless the parties have expressly agreed to such inclusion in writing, naming the third party.

### 4 Performance periods/dates

- (1) The performance periods and dates specified in the contract are non-binding, unless the performance periods and dates are expressly marked as binding in the contract.
- (2) If performance is delayed, the client may only withdraw from the contract in accordance with the statutory provisions if TÜV is responsible for the delay in performance. Any statutory rights of termination (e.g. according to §§ 648 f. BGB) remain unaffected. TÜV is not responsible for a delay in performance, in particular if the client has not fulfilled his duties to cooperate in accordance with clause 5.1 or has not done so in time and, in particular, has not provided TÜV with all documents and information required for the performance of the service as specified in the contract.
- (3) If TÜV's performance is delayed due to unforeseeable circumstances such as strikes, business disruptions, governmental regulations, transport obstacles, etc., TÜV is entitled to postpone performance for a reasonable period of time which corresponds at least to the duration of the hindrance plus any time period which may be required to resume performance.
- (4) If the client is obliged to comply with legal, officially prescribed and/or by the creditor prescribed deadlines, it is the client's responsibility to agree on performance dates with TÜV, which enable the client to comply with the legal and/or officially prescribed deadlines. TÜV assumes no responsibility in this respect.

### 5 Cooperation obligation of the client

- (1) The client shall carry out or provide all necessary cooperation and/or provisions, in particular the cooperation and/or provisions specified in Part 2 (Special Terms and Conditions), and shall provide information which enable TÜV to render the contractual services in conformity with the contract. The client is responsible for ensuring that all necessary cooperation actions, provisions and information on his part, his vicarious agents or other third parties assigned to his sphere are provided in good time and free of charge for TÜV.
- (2) All cooperation, provisions and information mentioned under item 5.1 must comply with the relevant statutory regulations, standards, safety regulations and accident prevention regulations.
- (3) The client shall bear any additional costs incurred as a result of services having to be repeated or being delayed due to delayed, incorrect or incomplete information or improper cooperation. Even if a lump-sum or a maximum price has been agreed, TÜV is entitled to invoice these additional costs.

### 6 Prices; accounting of services

- (1) Insofar as TÜV and the client have agreed a fixed lump-sum price in the contract, this shall be invoiced. If the scope of services is not completely defined in writing when the contract is concluded, the services provided by TÜV are invoiced according to the expenditure of time and the fee agreed in the contract.

- (2) If the amount of the fee has not been agreed in writing in the contract, invoicing shall be based on the TÜV price list valid at the time the service is provided, which will be made available to the client upon request.
- (3) Unless otherwise agreed, the applicable value added tax has to be added to the agreed upon price.
- (4) Partial acceptance is possible. In the event of partial acceptance, the partial remuneration is due after successful acceptance of individual work parts.
- (5) TÜV is entitled to demand down payments for services already provided in accordance with the contract in the amount of the value of the services provided and owed under the contract.
- (6) The provisions of § 632a para. 1 sentences 2 to 5 BGB shall apply accordingly.

### 7 Payment terms/costs/offsetting

- (1) All invoice amounts are due for payment immediately without deduction upon receipt of the invoice.
- (2) Discounts and rebates are not granted.
- (3) Payments shall be made to the bank account of TÜV stated in the invoice, indicating the invoice number and client number.
- (4) In the event of default, TÜV is entitled to charge default interest at the statutory rate. TÜV reserves the right to claim further damages.
- (5) If the client is in default with the payment of the invoice, TÜV is entitled to withdraw from the contract with the client after expiry of a reasonable period of grace and a) to withdraw an already issued certificate/an already issued notice of registration or test mark, to demand back work results, such as test reports, and to declare declarations of conformity invalid b) to terminate the contract without notice in the event that the contract is a continuing obligation or a contract with an agreed term.
- (6) Insofar as the TÜV becomes aware of circumstances after conclusion of the contract from which insolvency or other significant deterioration of the client's financial circumstances occurs or threatens to occur and the fulfilment of the contractual obligations is thereby endangered, TÜV is entitled to refuse the corresponding services under the contract. The right to refuse performance shall cease to apply if the client effects the contractual obligations or provides security in the amount of the endangered payment claim. If the client does not provide the services owed or adequate security within a reasonable period of time, TÜV is entitled to terminate the contract while maintaining its claims for compensation.
- (7) Objections regarding TÜV's invoices must be made in writing within 2 weeks of receipt of the invoice. TÜV will make special reference to the aforementioned deadline in its invoices.
- (8) TÜV is entitled to demand an appropriate advance payment, insofar as this is reasonable for the client taking into account the order value and the scope of the service owed by TÜV.
- (9) Only legally established or undisputed claims may be offset against claims of TÜV. This limitation of set-off does not apply if the claims and counterclaims of TÜV and the client are based on the same legal relationship. The same applies to the assertion of rights of retention by the client.

### 8 Acceptance

- (1) In the case of agreed contractual services or if acceptance of the work has been contractually agreed, the client is obliged to accept immediately after notification of completion, even in the case of partial performance or completion of self-contained parts. The costs of acceptance shall be borne by the client.
- (2) If the client does not meet his acceptance obligation without delay, acceptance shall be deemed to have taken place four (4) calendar weeks after the performance of the service if TÜV specifically refers the client to the aforementioned period when the service is performed.
- (3) The client is not entitled to refuse acceptance due to insignificant defects.

### 9 Confidentiality

- (1) "Confidential Information" means all information, documents, pictures, drawings, know-how, data, samples and project documents handed over by one party ("Disclosing Party") to the other party ("Receiving Party") or otherwise

- disclosed 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 other physical form, Confidential Information must be identified by the words "confidential" or a similar wording indicating the confidential nature of the information.
- (2) In the case of confidential information that is passed on orally, appropriate prior information must be provided.
- (3) Confidential information is expressly not the 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 purposes of developing new services, improving services and analysing the provision of services.
- (4) 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 governmental regulations; this concerns in particular the Confidential Information to be passed on to supervisory authorities and/or accreditors of TÜV within the framework of an accreditation procedure or, within the framework of the provision of services, to affiliated companies of TÜV in accordance with §§ 15 et seqq. German Stock Corporations Act (AktG) or subcontractors or their respective employees.
- c) must be treated confidentially 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 and attention.
- (5) 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 Agreement. These persons include advisors to the receiving party and its affiliated companies within the meaning of Section 15 et seq. of the German Stock Corporation Act (AktG).
- (6) Such information is excluded from the confidentiality obligation,
- a) the information was already generally known at the time of publication or becomes known to the general public without a violation of this agreement, or
- b) which were 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) the information was already in the possession of the receiving party prior to transmission by the disclosing party; or
- d) the receiving party has independently developed the information irrespective of the transmission by the disclosing party.
- (7) 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 to the Disclosing Party the fact of such destruction.
- The above-mentioned obligation to return or destroy does not apply
- a) for the 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 this and the Confidential Information, which form 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;
- b) for 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;
- c) to the extent contrary to laws, regulations, orders of a competent court or an administrative or supervisory authority or an accreditation body.
- (8) This confidentiality obligation exists from the beginning of the contract and continues to apply for a period of five years after termination of the contract.
- 10 Copyrights and rights of use, publication**
- (1) The copyrights of the reports, test reports, test results, expert opinions, results, calculations, representations, etc. prepared within the scope of the order (hereafter "performance results") are owned by TÜV. As the owner of the copyrights, he is free to grant others the right to use the performance results for individual or all types of use ("right of use").
- (2) The client receives a simple, unlimited, non-transferable, non-sublicensable right of use to the contents of the service results produced within the scope of the order, unless otherwise contractually agreed in individual cases. The right of use is limited to the contractual purpose (e.g. use of test reports, audit reports as proof of audits carried out or in the case of a contractually agreed review of a management system for conformity with certification conditions as proof of the corresponding decision).
- (3) The transfer of rights of use of the generated performance results regulated in Section 10.2. of these General Terms and Conditions is subject to full payment of the remuneration agreed in favour of TÜV.
- (4) The client may only pass on the performance results in full unless TÜV has given its prior written consent to the partial passing on of performance results.
- (5) Any publication or reproduction of the service results for advertising purposes or any further use of the service results beyond the scope regulated in Section 10.2 requires the prior written consent of TÜV in each individual case. It is clarified that the client is responsible for any publication or duplication of the service results for promotion purposes.
- (6) TÜV may revoke a once given approval according to section 10.5 at any time without stating reasons. In this case, the client is obliged to stop the transfer of the service results immediately at his own expense and, as far as possible, to withdraw publications.
- (7) The consent of TÜV and DIN CERTCO to publication does not entitle the client to use the corporate logo of TÜV, also registered as a Union trademark (Reg.-No. 005871116) and the company logo DIN CERTCO or the corporate design of TÜV and DIN CERTCO as reference advertising.
- 11 Defects**
- (1) The legal warranty rights shall apply, unless otherwise regulated in these conditions.
- (2) In the event of a defect, the client has a claim to supplementary performance. Supplementary performance shall be effected at the discretion of TÜV either by rectification or new delivery. Generally, supplementary performance by TÜV is carried out as a gesture of goodwill and without recognition of a legal obligation. Acknowledgement with the consequence of a new start of the statute of limitations shall only exist if TÜV has expressly declared this to the client. If the supplementary performance fails, the client is entitled to either withdraw from the contract or to reduce the price. Supplementary performance shall be deemed to have failed after the second unsuccessful attempt, unless the nature of the item or the defect or other circumstances in particular indicate otherwise.
- (3) The notification of defects by the client must be in writing.
- (4) The client's claims for defects regulated in this section 11 shall become statute-barred within one (1) year from the beginning of the statutory limitation period; a corresponding exclusion period within the meaning of para. 218 BGB (German Civil Code) shall apply to rights based on a defect. Notwithstanding the foregoing, the statutory limitation period shall apply a) in respect of all claims and rights of the client in cases of para. 438 para. 1 no. 1 BGB, para. 438 para. 1 no. 2 BGB, para. 445b para. 1 BGB and para 634a para. 1 no. 2 BGB and in the event of fraudulent concealment of the defect or b) in the event of claims for damages in the event of injury to life, body or health, claims under the Product Liability Act as well as grossly negligent or intentional breaches of duty.
- (5) Apart from the claims mentioned in section 11, the client is not entitled to any further claims and rights due to defects, with the exception of claims for damages and reimbursement of expenses. Liability for damages and reimbursement of expenses shall be governed by section 12 of these Terms and Conditions.
- 12 Damages and Reimbursement of Expenses**
- (1) TÜV is not liable for damages or reimbursement of expenses on whatever legal grounds - in particular due to defects, breach of duties arising from the contractual relationship or tort. This applies in particular, but not exclusively, to claims for damages due to lost sales or profits, financing costs as well as damages as a result of business interruption or loss of production.
- (2) This exclusion of liability according to section 12.1 does not apply in the case of a) intent or gross negligence, b) liability for guaranteed quality characteristics, c) liability on the basis of the Product Liability Act and d) culpable injury to life, body or health. In addition, TÜV is also liable in accordance with legal provisions in the event of a breach of essential contractual obligations, i.e. obligations whose fulfilment is essential for the proper execution of the contract and on whose observance the client regularly relies and may rely.
- (3) Insofar as TÜV is not liable for intent or gross negligence, injury to life, body or health, for guaranteed quality characteristics or under the Product Liability Act, TÜV's liability in the event of a breach of essential contractual obligations is limited to the foreseeable damage typical for the contract.
- (4) Insofar as liability under this section 12 is excluded or limited, this shall also apply to the personal liability of the employees, representatives, organs and other employees of TÜV and its assistant and vicarious agents.
- (5) The limitation period for claims for damages and reimbursement of expenses shall be governed by legal provisions.
- (6) No change in the burden of proof to the detriment of the client shall be construed with the above-mentioned provisions.
- (7) Unless otherwise contractually agreed in writing, TÜV shall only be liable under the contract to the client and, if applicable, to a third party explicitly named in writing in the contract. Liability towards other third parties is excluded with the exception of liability in tort.
- 13 Export control**
- (1) When passing on the services provided by TÜV or parts thereof to third parties in Germany or abroad, the client must comply with the respectively applicable regulations of national and international export control law.
- (2) The performance of a contract with the client is subject to the proviso that there are no obstacles to performance due to national or international foreign trade legislations or embargos and/or sanctions.
- 14 Partial invalidity, place of performance, jurisdiction**
- (1) In the event that one or more provisions of these GTC should be invalid, the remaining provisions of these terms and conditions shall remain unaffected.
- (2) The place of performance for all obligations under these GTC or the contract, including supplementary performance, shall be the registered office of the respective TÜV company providing the service owed under the contract.
- (3) The place of jurisdiction for all disputes arising from and in connection with the contractual relationship is Berlin (Germany), insofar as the client is a merchant, a legal entity under public law or a special fund under public law. However, TÜV is entitled to sue the client at his general place of jurisdiction or at another competent court. The above provisions do not apply if the law provides for an exclusive place of jurisdiction. In relation to non-merchants, Berlin shall be the place of jurisdiction if the client moves his place of residence or usual abode abroad after conclusion of the contract or his place of residence or usual abode is not known to TÜV at the time the claims are asserted in court.
- (4) The legal and business relations between TÜV and the client shall be governed exclusively by German substantive law to the exclusion of private international law and the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Sales Convention).
- 15 Data protection notice**
- TÜV processes personal data of the contractual partner for the purpose of fulfilling this contract. In addition, TÜV also processes the data for other legal purposes in accordance with the relevant legal basis (e.g. balancing of interests / consent). The personal data of the contractual partner will only be disclosed to other natural or legal persons if the legal requirements 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. Legal record retention periods, which result e.g. from the German Commercial Code (HGB) or the Tax Code (AO), are taken into account. Data subjects may exercise the following rights: right of information, right of rectification, right of deletion, right of processing limitation, right of objection, right of data transferability. In addition, persons concerned by the data processing have the right to revoke their consent at any time with effect for the future, as well as the right to file a complaint with the competent data protection supervisory authority. For further details on the processing of personal data by TÜV as the person responsible or contract processor, please refer to the respective data protection information. You can contact the Group Data Protection Officer of TÜV by e-mail at [datenschutz@de.tuv.com](mailto:datenschutz@de.tuv.com) or by post at the following address: TÜV Rheinland AG, c/o Group Data Protection Officer, Am Grauen Stein, 51105 Cologne, Germany.

## II. Special Terms of Business of DIN CERTCO GmbH

The following regulations apply in addition to the general terms and conditions of TÜV Rheinland DIN CERTCO GmbH and take precedence over these in case of contradictions.

### 1 General

- (1) DIN CERTCO offers test services, certifications, registrations, as well as recognition services. These services are certified in the form of a certificate, notice of registration, recognition certificate (called a licence) and test reports.
- (2) These Terms & Conditions of Business are deemed to have been agreed as binding when then application is submitted. The current versions of all the required documents are written down for example in certification schemes and are published online at [www.din-certco.de/gtc](http://www.din-certco.de/gtc) or are available from DIN CERTCO on request.

### 2 Application and service processing

DIN CERTCO shall decide whether or not to award a licence on the basis of its assessment of the complete application documents. A licence shall be issued for a service in the client's name or in the certificate holder's name after successful conformity assessment.

### 3 Payment Terms

- (1) Unless otherwise expressly agreed, the customer shall acknowledge the fees set by DIN CERTCO in accordance with the respective schedule of fees in the latest version, which can be found on the Website [www.dincertco.de](http://www.dincertco.de) on the respective product sites.
- (2) If a procedure is aborted, an administrative fee amounting to the costs incurred, albeit at least amounting to 3 fee units, shall be charged.

### 4 Termination

Termination by the customer must be reported to DIN CERTCO in writing with notice of one month to the end of each calendar year.

### 5 Acceptance

In amendment to clause 8 of the General Terms and Conditions, the following regulation applies to contracts between DIN CERTCO and the client:

- (1) If an acceptance is excluded according to the nature of the work performed by DIN CERTCO, the completion of work shall be deemed as an acceptance.
- (2) If acceptance is required in individual cases or is contractually agreed, this is deemed to have taken place two (2) weeks after completion and handover of the work, unless the client refuses acceptance within this period stating at least one defect