

These General Terms & Conditions are adopted by TÜV Rheinland Nederland BV and are filed at the office of the Clerk for civil affairs at the Court in Zutphen (the Netherlands) under number 35/2010, dated November 17th 2010.

## 1 Definitions

The following definitions apply in these General Terms & Conditions:

**1.1 contractor:** the private limited liability company TÜV Rheinland Nederland B.V., with its registered office in Arnhem, established at the address Westervoortsedijk 73, gebouw SB (6827 AV) Arnhem, together with any businesses run by the said company, the company and/or businesses hereinafter referred to as: **TÜV Rheinland Nederland**;

**1.2 client:** the natural or legal person that has instructed contractor to perform certain activities within the context of an agreement;

**1.3 activities:** all services to be provided and/or provided and inspections and/or tests to be conducted and/or conducted by or on behalf of contractor for the client;

**1.4 agreement:** any agreement entered into between TÜV Rheinland Nederland and the client, any additions or amendments to this agreement, as well as all (juristic) acts in preparation for and in execution of or in connection with said agreement;

**1.5 instruction:** any instruction issued by the client to TÜV Rheinland Nederland;

**1.6 price:** the total amounts and/or payments due by the client to contractor for an instruction;

## 2 Applicability of these Terms & Conditions

**2.1** These General Terms & Conditions apply to all offers made by contractor and to all agreements entered into by contractor within the framework of an instruction and the performance of the activities arising there from. The client accepts the applicability of these General Terms & Conditions by the mere fact of its instruction.

**2.2** Any General Terms & Conditions stipulated by the client will only apply to any agreement concluded with contractor if they have been validly intimated as such to contractor and specifically accepted in writing to the client, and insofar as not conflicting with these General Terms & Conditions. Where doubt exists as to whether or not there is any such conflict, contractor's General Terms & Conditions will take precedence.

**2.3** Provisions deviating from these General Terms & Conditions are only valid insofar as they have been explicitly confirmed by contractor. Any deviations from these General Terms & Conditions which are applied or tolerated at any time by contractor in the client's favour will never entitle the latter to rely on such deviations at a later date, or to demand the application of such a deviation as something to which the client is entitled.

**2.4** The annulment or nullity of any provision in these General Terms & Conditions does not affect the validity of the remaining provisions of these General Terms & Conditions. In the event of the annulment or nullity of any provision in these General Terms & Conditions, the provision most similar in effect to the void provision will be deemed valid.

**2.5** These General Terms & Conditions also apply to agreements between the client and any person or legal entity associated with contractor and engaged by contractor to perform an instruction with the approval of the client. If and insofar as such an engaged third party applies its own independent terms & conditions, contractor's General Terms & Conditions will continue in full force and effect in relation to the client.

**2.6** These General Terms & Conditions will continue to apply after the termination or dissolution of the whole or any part of the agreement.

## 3 Scope of instructions, quotations and order forms

**3.1** All offers and tenders are made without obligation unless otherwise specifically agreed. Unless otherwise stated, offers and tenders are valid for a period of three (3) months.

**3.2** Tenders prepared by contractor are based on information provided by the client. The client warrants that it has provided all essential information to allow contractor to set up and undertake the activities in the context of the instruction.

**3.3** The scope of the instruction is determined by the description of the activities contained in the tender, order form and/or the agreement, including all amendments subsequently added in writing, following consultation.

**3.4** The agreement to undertake the instruction will be finalized when the client confirms the tender issued by contractor or when the completed and signed order form has been received by contractor. The parties are at liberty to prove the conclusion of the agreement by other means. If the tender, the order form and/or the agreement is/are not confirmed by the client for some reason, and if contractor nevertheless embarks on performance of the activities with agreement from the client, the contents of the tender will be deemed to have been agreed. The

agreement, with all appendices, contains all agreements made between the parties and takes the place of all other and earlier arrangements, commitments and agreements between the parties.

**3.5** The agreement is entered into for an indefinite period unless the nature and scope of the instruction which is issued necessitates a fixed-term continuing performance contract.

**3.6** The tender, order form and/or the agreement will indicate the prospective results of the activities that have been instructed; written opinion, report, certificate, written statement, internet publication, model, software, etc.

**3.7** Amendments, additions and/or extensions of the instruction and/or agreement, or deviations from these General Terms & Conditions, will only be binding if they have been agreed in writing between the parties, and will relate only to the instruction for which they are made.

**3.8** The client will only use the tender issued by contractor and the knowledge and ideas contained therein for the purpose of assessing its interest in issuing the instruction. This provision also applies to proposals for changing, adding to and/or extending the instruction.

#### **4 Performance of the instruction, results**

**4.1** The Client is obliged to provide contractor with all data and documents which contractor considers are necessary for the proper performance of the issued instruction, in good time and in the desired format and manner. The client is obliged to make immediate intimation of any changes to this data to contractor. The client is responsible for the accuracy and completeness of the data and documents it provides to contractor, and also for the research methods and safety regulations on which the investigation is based in terms of its instruction

**4.2** The instruction will be carried out within such (estimated) time limit as may be agreed with the client in the tender, the order form and/or the agreement, unless this proves to be impossible. If there is a risk of the time limit being exceeded, contractor is obliged to consult with the client as quickly as possible. Contractor will not be in default merely due to the expiry of the time limit, unless a notice of default is issued.

**4.3** Contractor will determine the method by which the instruction which has been issued will be carried out. Contractor will keep the client informed regarding the performance of the instruction and, on request, will provide explanations to the client insofar as this is reasonably practicable, given the nature of the activities.

**4.4** Contractor is entitled to arrange for certain activities to be undertaken by third parties with whom contractor collaborates systematically, without intimation to the client. Delegation of activities to parties other than the said third parties may only take place with the approval of the client, except in cases where the instruction to the other party must be presumed to fall within the normal performance of contractor's duties.

**4.5** By accepting the instruction, contractor undertakes no more than to endeavor to secure a result which the client can use, by means of carrying out the instructed and agreed activities.

**4.6** If the instruction includes the supply of a material object, contractor grants no warranty in relation to that material object other than what is described in the tender, the order form and/or the agreement.

**4.7** If the instruction relates (in part) to the investigation of samples, and except where it has been agreed that the sampling will be carried out under the responsibility of contractor, the client alone will be responsible for the selection and representative nature of the samples to be investigated, the indication of codes and mark or product names on them, and for providing them to contractor.

**4.8** Contractor is not obliged to commence work under the instruction until all materials to be provided to it by the client have actually been provided to contractor in the agreed format and numbers. The time limit specified in clause 4.2 will automatically be extended by any delay caused as a result of this.

**4.9** The client bears the risk of any misunderstandings in relation to the content and performance of the instruction if these reasonably ought to be a matter for the client's risk, or if the reason for such misunderstandings is that contractor has not received specifications or other messages or has received them late or incomplete, if made verbally or by an individual designated for that purpose by the client, or if they are transmitted by any technical equipment such as, for example, telephone, fax, email or similar transmission media.

**4.10** Contractor will inform the client of any indisputably evident shortcomings in the agreed (investigation) methods and other peculiarities apparent from the activities, which contractor considers to be of significance to the client.

#### **5 Confidentiality**

**5.1** Contractor undertakes to observe confidentiality regarding the name of the client and the fact that activities are being undertaken.

**5.2** Contractor undertakes to observe confidentiality regarding the results of the instruction, as provided to the client by contractor, except insofar as relating to calculation methods, software and experimental working methods whose development was not immediately contemplated when the instruction was issued. For tests,

analyses, measurements or literature research, the obligation of confidentiality does not extend beyond the results of the tests, analyses, measurements or literature research that is undertaken.

**5.3** Contractor is subject to an obligation of confidentiality in relation to the client's data which contractor becomes aware of while performing the instruction and which is explicitly designated by the client as having to be kept confidential. The said obligation of confidentiality does not apply:

- to data already in the possession of contractor at the point when the data is intimated to contractor;
- to data which is or could reasonably be presumed to be a matter of general knowledge, unless such general knowledge results from any culpable act or omission on the part of contractor;
- to data which contractor obtains lawfully from a third party or from contractor's own research, without in any way having used confidential data for that purpose.

**5.4** If any misunderstanding should arise as a result of the client publishing results from the activities (research), this will absolve contractor from the obligation of confidentiality to the extent reasonably required by contractor to provide explanations regarding the results to third parties.

**5.5** Contractor's obligation of confidentiality does not apply if and insofar as contractor establishes serious danger to persons or property. In that case, contractor will enter into consultation with the client, if possible, before informing those whose persons or property are threatened and/or the competent authorities about the dangerous situation.

**5.6** The client's permission is required to enlist third parties for the performance of the instruction, if and insofar as this gives rise to a foreseeable risk with regard to confidentiality.

## **6 Rights to results**

**6.1** Within the scope of the instruction and/or agreement, the client has the full and free right to use the results of the instruction, as supplied by contractor to the client.

**6.2** Contractor has the right to use, for its own purposes and/or for the purposes of third parties and/or to allow third parties to use:

- a. the knowledge and experience available to contractor at the time of accepting the instruction;
- b. the knowledge and experience acquired through performance of the instruction, but outside the scope of the instruction;
- c. calculation methods, programming and experimental methods of working which arise from the performance of the instruction, insofar as the development of these was not immediately contemplated when the instruction was issued.

**6.3** Reports, drawings and other material objects, which are the result of the activities undertaken in accordance with clause 3.6, accrue to or are the property of the client - without prejudice to the terms of clause 11.7 - subject to contractor's copyright.

**6.4** TÜV Rheinland Nederland will, prior to publishing a report, inform the relation in writing that a report will be released / published. Where relevant and applicable, the relation will be asked for written permission for publishing the report or extracts of its.

**6.5** Contractor is entitled to use numerical results obtained after processing, provided that these results cannot be traced back to individual clients, for statistical or similar purposes.

## **7 Publicity**

The client is not permitted, without the prior written consent of contractor:

- a. to duplicate and/or publish part of a report, certificate with annexes or written statement produced by contractor by means of printing, photocopying, microfilm, in electronic form or in any other way, or to store such materials in a retrieval system; only an original and complete report, certificate or statement may be duplicated or published.
- b. to allow persons to examine any report produced by contractor who are outside the circle of immediately interested parties, bearing in mind the scope of the instruction;
- c. to use or allow others to use the whole or any part of a report produced by contractor for the instigation of claims, for taking legal proceedings, for advertising or negative advertising or for recruitment in a more general sense;
- d. to use the name of contractor in any context when any part(s) or all of the report produced by contractor is being published, and/or for one or more of the purposes mentioned at sub-clause c.;
- e. to make reference to a report produced by contractor in the context of advertising, negative advertising or recruitment in the more general sense, if and insofar as such a reference might suggest an inaccurate and/or incomplete picture of the results apparent from the report produced by contractor;

- f. to use the, or any image mark of TÜV Rheinland and/or TÜV Rheinland Nederland;
- g. if the client acts in contravention of the provisions in this clause, it will immediately forfeit a non-reducible penalty of € 15,000 (fifteen thousand euro's) per infringement per day, without the need for any notice of default and without prejudice to the obligation upon the client to fully indemnify contractor against all possible losses arising through infringement of the provisions in this clause.

## **8 Protection of knowledge**

To the extent that contractor's performance of the instruction gives rise to any patentable material, contractor is entitled to apply for patents

in its own name and at its own expense. In doing so, contractor will observe the obligation of confidentiality in clause 5.

## **9 Price**

**9.1** If a "fixed-price" is mentioned in the tender, the order form and/or agreement, such price will operate as the agreed price.

**9.2** If no "fixed-price" is mentioned in the tender, the order form and/or the agreement, then it is established between the client and contractor that the amount payable will be determined by means of subsequent calculation based on the contractually agreed rates.

**9.3** If no rates have been agreed in advance, then they will be determined on the basis of contractor's normal methods.

**9.4** If the quotation contains a "guide price", then the stated amount represents no more than an estimate of the costs, which is not binding. In such cases, contractor is entitled, if the period between the date of the tender and the date on which the activities are completed is one year or more, to index that part of the price for the instruction which has not yet been invoiced on 1 January each year in line with the annual adjustment of the rates used by contractor.

**9.5** With regard to instructions involving €15,000 (fifteen thousand euro's) or more with an anticipated duration of works of three months or more, contractor may apply a limit to its costs if the client so requests. This automatically absolves contractor of the obligation to continue the activities to the extent that doing so would result in more being spent on performance of the activities than has been agreed with this limit on costs.

**9.6** In the event that no "fixed-price" is incorporated in the tender and the instruction involves more than €25,000 (twenty-five thousand euro's), contractor will specify the relevant account in man hours and man hour rates, direct material costs and (where applicable) equipment use and rates as well as compensation for the use of background information, if asked to do so by the client when the instruction is issued.

**9.7** Unless otherwise stated, all amounts mentioned by contractor in the tender exclude VAT.

**9.8** Contractor reserves the right to submit interim invoices. Contractor is entitled to demand advance payments at any time.

## **10 Force majeure**

**10.1** If contractor fails to fulfil its obligations under the agreement in respect of the client, fails to do so in time or fails to do so properly due to a cause which cannot be attributed to contractor, including but not restricted to stagnation of the normal course of business within client's company, these obligations will be suspended until contractor is again in a position to fulfil the terms of the agreement in the agreed manner, without the client being entitled to enforce a claim for fulfilment and/or compensation. Contractor will inform the client as quickly as possible in relation to any situation or condition of force majeure, or any threat thereof.

**10.2** In cases of force majeure, contractor and the client are entitled to cancel the agreement in full or in part, with immediate effect. If the agreement ends before the instruction is completed, the provisions in clause 9.2 will apply.

**10.3** Cancellation must be intimated to the other party in writing.

## **11 Payment**

**11.1** The client is obliged to pay accounts in the currency specified in the tender, without resorting to reduction or offset, within fourteen (14) days after the date of the invoice, and to pay both statutory interest for commercial agreements and also the cost of collection if the client exceeds fourteen (14) day payment time limit. The payment date on the bank or giro statements is definitive and is regarded as the date of payment.

**11.2** Payments made by the client will always be applied in the first instance to settlement of all due interest and collection costs and secondly towards the longest outstanding invoices, even if the client asserts that the payment relates to a later invoice.

**11.3** If the client has not made payment within the time limits specified above, it will be in default by operation of law and, without further warning or notice of default, contractor will be entitled to charge the client with a payment for loss of interest equivalent to statutory interest from the due date, subject however to a minimum of two per cent (2%) per month, with interest for part of a month being calculated as a full month, until the date of final payment, all without prejudice to any other rights available to contractor.

**11.4** All costs incurred by contractor in connection with and as a result of judicial or extra-judicial collection of its claim against the client will be payable by the client. The extra-judicial costs are set at fifteen percent (15%) of the amount to be claimed, subject to a minimum of €250 (two hundred and fifty euro's).

**11.5** If contractor is successful in any legal proceedings, either in whole or in part, all costs incurred and to be incurred by contractor in connection with these proceedings will be payable by the client.

**11.6** In case of instructions issued jointly, and in so far as the activities are undertaken for the joint clients, those clients are jointly and severally liable for payment of invoice amounts.

**11.7** Contractor reserves ownership of all goods provided by contractor to the client in the context of the instruction, including material objects as specified in clause 6.3, until the point when the amount(s) due by the client to contractor in connection with the instruction has/have been fully paid.

**11.8** Contractor is entitled to suspend fulfilment of its obligations, including the issue of documents or other goods to the client or third parties, until the date when all outstanding claims against the client have been fully paid.

## **12 Liability**

**12.1** Contractor is only liable for losses directly consequent upon a culpable failure by contractor to fulfil its obligations. If contractor is liable in terms of the contractual liability specified in the previous sentence and/or for some other reason, contractor will only be liable for the client's direct losses up to a maximum amount of the price due by the client in terms of clause 9. Neither contractor nor persons used and/or engaged by contractor for performance of the instruction are liable for losses sustained by the client arising from the application or use of the results of contractor's activities, unless there has been misconduct or gross negligence on the part of contractor and/or on the part of the persons used and/or engaged by contractor for performance of the instruction.

**12.2** The client indemnifies contractor against all possible claims and/or liability arising from incorrect or incomplete data or documents supplied by the client to contractor.

**12.3** The client indemnifies contractor and/or persons used and/or engaged by contractor for performance of the instruction against all claims by third parties in respect of losses sustained by those third parties arising from the client's application or use of the results of contractor's activities or use thereof by anyone else to whom the client has supplied the results, unless there has been misconduct or gross negligence on the part of contractor and/or on the part of persons used and/or engaged by contractor for performance of the instruction.

**12.4** In the event that persons used and/or engaged by contractor for performance of the instruction are situated on the premises of the client and/or third parties, then contractor and/or the persons engaged by contractor for performance of the instruction will not be bound by the provisions contained in gate passes, etc, if they contain a full or partial limitation of the client's liability arising under the agreement.

**12.5** Contractor accepts no liability for loss resulting from defects in goods, including software, supplied to contractor and passed on by contractor to the client, unless and to the extent that such losses can be recovered from contractor's own supplier.

## **13 Storage of samples**

Unless otherwise agreed at the time of giving the instruction, contractor will store items, including samples supplied to contractor in connection with the instruction, or residues thereof, for a period of two weeks after the date on which the results of the research had been intimated to the client, if reasonably possible. Any associated costs are deemed to be included in the price stated in the tender. If the client has not made arrangements within this period to have said items returned, contractor will be free to take appropriate steps. Any costs associated with this, including costs involved in storing the goods for longer, will be charged to the client.

## **14 Miscellaneous**

**14.1** During activities connected with the instruction undertaken on the client's premises, the client will place auxiliary staff and equipment at contractor's disposal, free of charge, if contractor asks for this in good time.

**14.2** During their stay in the buildings and/or premises belonged to contractor, the client and/or its personnel are obliged to observe "house rules" applicable to the users of those buildings or premises. The client will arrange for its personnel to conduct themselves in accordance with the foregoing provision.

**14.3** If either the client or contractor fails to fulfil any essential obligation under the agreement, the other party will send written notification of this fact to the defaulting party, and will offer the defaulting party a reasonable period within which to resume fulfilment of its obligations. In the event that the defaulting party fails to resume fulfilment of its obligations within the stated time limit, its rights under the agreement will lapse and the other party will no longer be obliged to fulfil any obligation incumbent upon it.

**14.4** Claims by the client against contractor arising from or connected with the performance of an instruction by contractor and/or by persons used and/or engaged by contractor during performance of the instruction will lapse entirely if such claims are not specifically intimated within one year after the date of the final invoice, unless the client proves it to have been impossible for it to comply with this duty of intimation within the stated time limit.

**14.5** In the event that contractor has anything in its possession for the purpose of carrying out its investigations, contractor is entitled to retain such items until all amounts due by the client in terms of the instruction have been fully paid, unless the client has provided adequate security for those amounts.

## **15 Complaints**

The client will not be entitled to rely further on a defect in the performance by contractor in the context of the instruction and/or agreement, if the client has not complained to contractor in writing about the matter within fourteen (14) days after the defect has been discovered or ought reasonably to have been discovered.

## **16 Cancellation**

**16.1** The client and contractor may cancel the agreement at any time, subject to a reasonable period of notice. If the agreement ends before the instruction is completed, the provisions in clause 9.2 will apply.

**16.2** Cancellation must be intimated to the other party in writing.

**16.3** Provisions in the agreement concluded between the parties which are explicitly or tacitly intended to remain in force even after termination of the agreement will continue in force beyond termination and will continue to bind both parties.

## **17 Termination**

In the event that the client withdraws the instruction and/or wishes to dissolve the agreement after contractor has embarked upon the activities in the context of the instruction, without there having been a culpable failure on the part of contractor, and if contractor agrees in writing to such withdrawal and/or dissolution, the agreement will be terminated by mutual agreement in writing. In such cases, contractor will be entitled to receive payment of all financial damage such as losses sustained, loss of profit and costs incurred.

## **18 Disputes**

**18.1** All disputes which may arise in relation to the agreement or in relation to further agreements consequent upon the agreement will be filed with the competent court for its exclusive determination.

**18.2** Dutch Law applies to the instruction and agreement as defined in these General Terms & Conditions and to their implementation.

**18.3** In the context of its statutory inspection and certification activities, contractor will observe the grievance procedure and appeal procedure applicable to administrative bodies, as included in Chapters 6 and 7 of the General Administrative Law Act [*Algemene Wet Bestuursrecht*].