

GENERAL TERMS AND CONDITIONS of the private limited liability company TÜV Nederland QA B.V.

Filed with the registry of the 's-Hertogenbosch District Court on 25 September 2015



1. Definitions

In these Conditions:

- a. "TÜV" means: TÜV Nederland QA B.V., a private limited liability company, with its registered office and principal place of business in Best, the Netherlands, on Waal 21c, and with offices in (*inter alia*) Germany, Denmark and Poland;
- b. "Client" means: the natural or legal person who has granted TÜV an order for the provision of Services, subject to a contract;
- c. "Services" means: all services and/or advice and inspections and/or other tests provided or conducted by or on behalf of TÜV Nederland (QA) B.V. ("TÜV") to or for Client;
- d. "Contract" means: each contract concluded by and between TÜV and Client, as well as any changes in and supplements to these contracts and all (legal) acts in preparation and execution of or in connection with those contracts;
- e. "Order": each order Client grants to TÜV;
- f. "Order Amount" means: the amount payable by Client for the Order concerned;
- g. "TÜV Mark" means: the name and/or logo of TÜV;
- h. "TÜV Logo" means: all instances of the logo as used by TÜV, including any logos used in the past. The most recent versions of the logos TÜV uses are published on TÜV's website (www.tuv.nl).

2. Scope

- a. These Conditions govern all offers made by TÜV and all Contracts TÜV concludes in connection with the provision of providing the Services. By the mere placing of an Order Client accepts the applicability of these Conditions.
- b. General terms and conditions of Client, if any, only apply to the Contract concluded with TÜV where these are not in conflict with these Conditions. In case of doubt about whether such conflict exists, TÜV's Terms and Conditions shall prevail.
- c. Any stipulations that deviate from these Conditions are valid if confirmed in writing by TÜV only. Any deviations from these Conditions that TÜV at any time applies or accepts to the benefit of Client shall never confer the right to Client to subsequently rely on them or to claim these as an established right.
- d. If any of these Conditions is invalid or is declared void, this shall not affect the validity of the other provisions of these Conditions. If any of these Conditions is invalid or is declared void, the provision that comes closest to the invalid provision in purport shall be accepted as valid.
- e. These Conditions also govern contracts concluded by and between Client and a natural or legal person affiliated with TÜV who is engaged by TÜV with Client's approval for the execution of an Order. If and in so far as such third party applies general terms and conditions of its own, these Conditions of TÜV shall nevertheless remain fully applicable to Client.
- f. These Conditions shall remain in force after the Contract, or part of it, is terminated or rescinded as well.

3. Offers; Commencement and Duration of the Contract

- a. All quotations and offers are subject to contract, unless expressly otherwise agreed. Unless otherwise stated, all quotations and offers are valid for a period of one month.
- b. All offers prepared by TÜV are based on information received from Client. Client warrants that it has provided all essential information required for setting up and performing the Services.
- c. Without prejudice to what is provided in this Article under d, no Contract shall be created until TÜV has received a signed order confirmation or authorisation from Client.

- d. The parties shall be free to prove the creation of the Contract by other means.
- e. The Contract shall be concluded for an indefinite period of time, unless it follows from the nature or purport of the Order that the Contract is concluded for a definite period of time.

4. Client Data

- a. Client shall timely provide all the data and documents to TÜV it requires, at its own discretion, for the proper execution of the Order, in a form and manner to be stipulated by TÜV. Client shall promptly notify TÜV of any changes in this information.
- b. TÜV may suspend the execution of the Order until Client has fulfilled all obligations mentioned in this Article under a.
- c. Client shall see to it that the data and documents it provides to TÜV are complete and correct, including the research methods and safety regulations it prescribes for the examination. Client shall indemnify TÜV against any claims and/or liability arising from incorrect or incomplete data or documents it has provided to TÜV.
- d. Where so requested by Client, all documents it has provided to TÜV shall be returned to Client, subject to the provisions of Article 15.

5. Execution of the Order

- a. The manner in which the Order is to be executed shall be decided by TÜV. TÜV shall keep Client informed of the execution of the Order and upon request shall provide all information that may in reason be provided in view of the nature of the Services.
- b. The stipulated period within which the Order is to be executed is by way of approximation only, unless it is expressly agreed between the parties that time is of the essence or if it arises from the nature of the period that time is of the essence. The period shall commence once TÜV has received all relevant documents and/or tools from Client and, where applicable, Client has paid TÜV an advance on the Order Amount.
- c. TÜV may instruct third parties with whom TÜV works together on a regular basis to provide certain Services, without notification to Client. Services shall only be contracted out to third parties other than those referred to above with the consent of Client, except in the situation where the Order must be deemed to fall to the other party as part of the normal execution of TÜV's tasks.
- d. TÜV shall use its best efforts in the performance of the Order, which it shall execute in accordance with applicable scientific and technological practices and with due observance of the relevant statutory rules and guidelines. Unless specifically stipulated in the Contract, TÜV does not warrant the fitness for a specific purpose or the safety of any structure, choice of materials or building method examined or tested under the Contract.
- e. TÜV shall only perform more Services than stipulated in the order confirmation after this has been specifically ordered by Client, except where TÜV has a duty of care to provide these services.
- f. If during the Order Services have been performed for the benefit of Client that do not form part of the Services agreed in the order confirmation, it shall be inferred from the entries made in TÜV's records in that respect, or from the performance of the Services by TÜV, that these Services were performed on a one-off order from Client.

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6. Secrecy and exclusivity

- a. Without prejudice to what is provided in this Article under b, TÜV undertakes, except where it is under an obligation to disclose certain data by law and/or guidelines or under an administrative order issued by a competent authority, to observe secrecy towards third parties that are not involved in the execution of the Order. This obligation of secrecy encompasses the existence of the Order as well as all confidential information TÜV receives from Client and the results obtained through processing this information.
- b. TÜV may use the figures that are the result of processing for statistical or comparable purposes, provided the outcome cannot be traced to individual clients.
- c. TÜV shall use its best efforts to impose this obligation of secrecy on the third parties it engages as well.
- d. Without prejudice to what is provided in this Article under b, TÜV may not use the information that is made available to it by Client for any purpose other than the purpose for which it was provided.
- e. Unless TÜV has granted its prior written consent to do so, Client shall not disclose the content of reports, advice, or any other communications of TÜV, either made in writing or not, that are not drawn up or made with the intention to provide the information disclosed therein to third parties. Client shall furthermore ensure that it is not possible for third parties to take note of the content as referred to in the previous sentence.

7. Intellectual Property

- a. TÜV reserves all rights in respect of products of the mind it uses or has used within the context of the execution of a Contract with Client, in so far as rights may exist or be created on these products in a legal sense.
- b. Client is expressly prohibited from reproducing, disclosing, or exploiting the products referred to in this Article under a, either by itself or through the offices of third parties, including computer programs, system designs, methods, submitted reports and/or other products of the mind. This shall not be otherwise if the reports referred to above (or parts thereof) are already in the public domain.
- c. Client is expressly prohibited from making tools of the products referred to in this Article under a available to third parties, except for the purpose of seeking expert advice about the Services provided by TÜV.
- d. TÜV[sic] is expressly prohibited from using the TÜV Mark, or any sign that resembles it, except if and in so far as this right is granted to TÜV in accordance with these Conditions or under the Certification Regulations. The Certification Regulations stipulate additional conditions for the use of the TÜV Mark.
- e. Where an Order is for TÜV to assess one or more products and/or methods, Client shall be entitled, if the assessment is positive, to use the TÜV Mark, but only for as long as the assessment(s) concerned is/are valid and subject to the provisions of this Article and with due observance of any other conditions the parties might agree. If Client makes any alterations to the product(s) or method(s) assessed by TÜV the right to use the TÜV Mark shall automatically lapse, unless TÜV has expressly consented in advance to the continued use by Client of the TÜV Mark. TÜV may attach additional conditions to such consent.

- f. Client may only use the TÜV Mark in direct relationship with the products and/or methods assessed by TÜV on the instructions of Client in respect of which it has issued a positive assessment. Client is not allowed to make any statements or suggestions that create an impression that differs from TÜV's assessment. Client is not allowed to use the TÜV Mark as its own factory mark, trade mark or trade name and it may only be used in combination with Client's (trade) name and logo. The TÜV Mark may not be represented more prominently than Client's (trade) name and logo. Client may only use the TÜV Mark in the form and typographic design as applied by TÜV itself.
- g. TÜV reserves the right to revoke or terminate the right to use the TÜV Mark at any time it sees fit. TÜV shall promptly notify Client in writing if it has resolved to revoke or terminate this right. If the right is revoked or terminated, as set out above, Client shall immediately and completely cease and not resume any use, in any way, of the TÜV Mark.
- h. If any of the provisions of Article 7 b through g is breached, Client shall owe TÜV an immediately payable fine, which shall not be subject to mitigation, of € 25,000 (in words: twenty-five thousand euro) for each breach, or, at TÜV's discretion, of € 5,000 for each day or part of a day that the breach continues, without prejudice to TÜV's right to additionally claim compensation of the actually suffered loss.

8. Force Majeure

- a. If TÜV is unable to perform any of its obligations towards Client under the Contract, or to do so fully or in time, due to a cause beyond the control of TÜV, such as but not limited to interruption of Client's normal business operations, the performance of these obligations shall be suspended until such moment as TÜV is able to perform as agreed as yet, without Client being in any way entitled to claim performance and/or damages. TÜV shall notify Client at the earliest possible opportunity of a (threatened) situation of force majeure.
- b. In the event of a situation of force majeure, both Client and TÜV shall be entitled to terminate the Contract, either wholly or in part, with immediate effect. If the Contract comes prematurely to an end before the Order is completed, the provisions of Article 9b of these Conditions shall apply.
- c. Notice of termination of the Contract must be given to the other party in writing.

9. Fee

- a. Both prior to commencing the execution of the Services and during the execution thereof TÜV shall be entitled to suspend the execution of the Services until Client has paid TÜV a fair and reasonable advance for the Services to be performed, or has provided security in this regard.
- b. TÜV's fee is not linked to the outcome of the granted Order. The fee shall be calculated on the basis of TÜV's usual rates and is payable in reflection of the Services TÜV has executed for Client's benefit.
- c. TÜV's fee, plus advance payments and the invoices of third parties whose services are engaged, plus the turnover tax due, if any, shall be billed, in principle, either on a monthly basis, or after the execution of the Services is completed.
- d. The fees charged by TÜV shall be indexed in accordance with the consumer price index as published by Netherlands Statistics (CBS). An adjusted fee may be charged even if Client is not notified of the price adjustment. If the CBS ceases the publication of the said price index figure, or revises the basis for its calculation, an index figure shall be applied that most closely corresponds the original price index. In the event of a conflict about the index figure, the diligent party may ask the director of the CBS to rule on the matter, which ruling shall be binding on the parties.

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- e. If after the conclusion of the Contract there is an increase in any of the cost price factors occurs, TÜV may pass this increase on to Client. Any changes in the rates shall at all times be on market terms and shall be notified to Client in writing.

10. Payment

- a. All payments of the invoiced amounts are due within thirty (30) days after the date of the invoice by payment to a bank account to be designated by TÜV and, where payment is made for Services, without any right to deductions, discounts, set-off, or suspension. The value date as stated on the bank or giro statement shall be leading and shall be regarded as date of payment.
- b. Any payment effected by Client shall first serve as payment of all interests and collection costs due and secondly as payment of the longest outstanding payable invoices, even if Client states that payment pertains to a later invoice.
- c. Failure to pay the amounts due within the stated payment periods shall mean that Client is in default by operation of law, in which event TÜV may charge Client, without further notice of default or demand, compensation for loss of interest income as from the due date equal to the statutory interest plus a minimum of 2% per month, whereby interest in respect of part of a month will be payable for the entire month, until the date on which payment is made in full, all this without prejudice to any other rights TÜV may have.
- d. Any costs TÜV incurs in connection with and as a result of the legal and extrajudicial collection of its claims shall be for Client's account. The extrajudicial costs are set at 15% of the amount due with a minimum of € 250 (in words: two hundred and fifty euro).
- e. If in legal proceedings the court rules entirely or in part against TÜV, all costs TÜV has incurred in connection with the legal proceedings shall be for Client's account.
- f. In the event that an Order is given by two or more Clients acting jointly, these Clients shall be jointly and severally liable, in so far as the Services are executed for the benefit of the joint Clients, for the payment of the invoiced amounts.

11. Complaints

- a. TÜV must be notified of any complaint in respect of the executed Services in writing within 14 (fourteen) days after the defect in the performance is discovered, provided that Client demonstrates that it was reasonably unable to detect the defect sooner, failing which Client may no longer invoke the defect in the performance. After it has received the complaint, TÜV shall be granted a reasonable period in which to execute or remedy the Services as yet.
- b. All complaints regarding invoices sent by TÜV to Client must be submitted in writing within 7 (seven) days after the date of the invoice.
- c. Complaints as referred to in this Article under a or b, do not entitle Client to suspend payment.
- d. If a complaint is submitted too late, all rights of Client in connection with the complaint shall lapse.

12. Liability and indemnification of TÜV

- a. Irrespective of the legal basis of a claim, TÜV's liability shall be limited to:
- I. to the amount that TÜV's insurer has paid out in light of the relevant claim; but in no case an amount that supersedes
 - II. an amount of € 3,000,000 (in words: three million euro) per claim, taking into account that series of identical claims and claims that originate from the same cause will be considered as a single claim.

- b. Irrespective of the legal basis of a claim, TÜV shall in no event be liable for:
- indirect loss, including interruption of the normal business operations of Client's, that is in any way related to or caused by an error in the execution of the Services by TÜV;
 - loss or damage incurred by Client or third parties due to Client having provided false or incomplete data or information to TÜV, or that is otherwise attributable to an act or an omission on the part of Client;
 - loss or damage incurred by Client or third parties as the result of the acts or omissions of auxiliary persons hired by TÜV (excepting TÜV employees);
 - business, indirect, or consequential loss incurred by Client or by third parties;
 - damage to or destruction of goods (e.g. samples) made available or provided for processing by Client, if the nature of the Order increases the risk of damage or destruction of these goods.
- c. Where the Contract is for TÜV to inspect, test, or advise about elements of a larger operational whole, TÜV does not accept any liability in respect of the fitness for a specific purpose and/or for the proper functioning of that element within the larger whole.
- d. Claims for damages must be submitted to TÜV within one month after Client has discovered or could reasonably have discovered the damage, failing which the right to damages, if any, lapses.
- e. TÜV shall at all times be entitled, if and to the extent possible, to undo the damage Client has suffered. Client shall at all times give TÜV the opportunity to remedy any defect in the performance.
- f. TÜV shall in no event be liable for damage or destruction of documents or other goods caused by fire, theft, or breakage, etc., or during transport or transmission by post, irrespective of whether the transport or transmission was carried out by or on behalf of Client, TÜV, or third parties.
- g. If, further to shortcomings found and reported by TÜV, a further examination is required to be conducted by third parties, TÜV shall not be responsible and/or liable for the results and financial consequences thereof.
- h. TÜV shall be entitled, without prior consultation with the Client, to call in or involve third parties in the execution of the Order and TÜV is at all times entitled to invoke against the Client any limitation of liability which said third parties may rely on against TÜV.
- i. TÜV stipulates all statutory and contractual rights, which will aid TÜV to limit its liability, also on behalf of all parties – including subordinates and third parties – involved in the execution of the Order and for which parties the Client is statutory liable.
- j. TÜV is not liable for damage or loss that is caused as a result of the intent or gross negligence on the part of its subordinates or third parties that are involved in the execution of the Order, save for damages or loss that is caused as a result of intent or gross negligence of TÜV and/or its management.
- k. The Client indemnifies TÜV against liability towards third parties that is a direct or indirect result of the execution of the Order.

13. Liability and obligations on the part of Client

- a. Client shall be liable for any damage to goods belonging to or personal injury of staff of TÜV or third parties, where this damage or personal injury is caused when the personnel or goods were present at the premises, or in a ship, aircraft or system belonging to Client or a third party in connection with the Order. Client shall indemnify TÜV against any claims in this respect.

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- b. If Client is aware or ought to be aware that the properties of a substance or good that is made available to TÜV in connection with the Contract, or that is the object of the Contract, might pose a risk, Client shall notify TÜV of such properties and if possible clearly mark the substance or good, or the packaging thereof, as being hazardous. Failing this, Client shall be liable towards TÜV for all damage caused by the said properties of the substance or good and Client shall indemnify TÜV against any third-party claims.

14. Termination

- a. Client and TÜV may terminate the Contract at all times, subject to a reasonable notice period. If the Contract ends before the Order is completed, the provisions of Article 9b of these Conditions shall apply.
- b. The Contract shall be terminated by way of a written notice to the other party.
- c. Any provisions of the Contract concluded between the parties that are expressly or implicitly intended to survive the termination of the Contract shall remain in force thereafter as well and shall continue to be binding on both parties.

15. Right to suspend performance

- a. TÜV may suspend the performance of all of its obligations, including the issue of documents or other items to Client or to third parties, until Client has fully paid all outstanding amounts due.
- b. TÜV shall not be liable for any loss or damage incurred by Client as a result of the delayed completion of the Services due to such suspension.

16. Governing law; Jurisdiction

- a. All contracts concluded between Client and TÜV to which these Conditions apply are governed by and shall be interpreted in accordance with Netherlands law.
- b. Any disputes arising in respect of Contracts concluded between Client and TÜV to which these Conditions apply, shall be submitted to the competent court in the district of 's Hertogenbosch.
- c. Within the context of its statutory inspection and certification activities TÜV applies the objection and appeal procedures before administrative bodies as regulated in Sections 6 and 7 of the Dutch General Administrative Law Act.