

## TERMS AND CONDITIONS

### 1. Applicability

Any agreement between TÜV ÖSTERREICH and its Principals (clients) shall be concluded under these Terms and Conditions. Terms and Conditions once concluded shall also be valid—until revoked by TÜV ÖSTERREICH—for any future contractual agreements. The applicability of the Principal's purchase and other terms and conditions of business shall hereby be excluded for the entire professional association. As far as agreements are concluded with consumers in terms of the Consumer Protection Act (*KSchG*), indispensable legal provisions shall take precedence over these Terms and Conditions.

### 2. Quotations

- 2.1. Quotations issued by TÜV ÖSTERREICH shall, unless agreed otherwise in writing, be subject to change and non-binding. A mutually binding agreement shall come into force only with the receipt by the Principal of the written confirmation of the order by TÜV ÖSTERREICH or the commencement of the provision of services through TÜV ÖSTERREICH. Changes and additions to the agreement shall have to be made in writing. This shall also apply to any agreement to waive the requirement to make such amendments in writing. Verbal information, ancillary arrangements and undertakings by agencies or employees of TÜV ÖSTERREICH shall, at any stage of the contractual process, be binding only if confirmed in writing.
- 2.2. Upon notification of inspections and their performance TÜV ÖSTERREICH shall not assume the obligation incumbent upon the Principal to adhere to this or follow-up inspection appointments.

### 3. Geographical applicability

Fees quoted shall be, unless expressly stated otherwise, applicable only for services provided in Austria.

### 4. Implementation of agreement

- 4.1. TÜV ÖSTERREICH shall be liable to provide services only as expressly set out in the agreement, which services shall be provided in compliance with generally acknowledged technical regulations. TÜV ÖSTERREICH shall not assume any liability for the accuracy of laws, directives and standards on which the agreements are based.
- 4.2. On conclusion of agreement, the volume of orders shall be set down in writing. If in the course of the proper implementation of the contract changes or excesses to the agreed contract volume should become necessary, TÜV ÖSTERREICH shall be entitled to carry these out on the basis of the Terms and Conditions in hand, even without written notification, provided that the charges last agreed upon shall not be exceeded by more than 15%. If the modification exceeds 15%, then these shall need to be agreed upon in writing prior to the provision of the additional services. If the modified contractual volume raises the charges last agreed upon by more than 50%, the Principal shall be entitled to withdraw from the contract within three days from notification of the new fees. The Principal however shall pay for the services that have already been provided in accordance with the amount agreed on.
- 4.3. TÜV ÖSTERREICH shall not assume any liability for the proper operation and functionality of objects inspected exclusively for technical safety, unless specifically stated in the agreement. In particular, design, choice of materials and construction of equipment and installations shall be subject to inspection only if the agreement specifically provides for such services. The same shall apply likewise to safety programmes or safety regulations.
- 4.4. On conclusion of agreement the Principal shall provide TÜV ÖSTERREICH with all the required documents such as drawings, plans, calculations and certifications, obtain any authorizations and clearances that may be required, provide contract-related information at any time, and carry out, prior to the commencement of inspections, the required preparations, in particular to make the object of inspection accessible. The

Principal shall undertake to make all reasonable efforts to provide the required documents or authorizations on time. If the Principal fails to fulfil these obligations, despite a deadline having been set by TÜV ÖSTERREICH, the agreement shall be revoked on expiry of the deadline. In this event TÜV ÖSTERREICH shall be entitled to claim damages for non-fulfilment.

- 4.5. TÜV ÖSTERREICH shall not be obliged to verify the accuracy of documents provided as a basis for inspection or the accuracy of verbal statements provided by the Principal or his employees, but it shall presume the accuracy of such information.
  - 4.6. TÜV ÖSTERREICH shall be entitled to determine the method and type of inspection at its discretion on the basis of professional criteria.
  - 4.7. TÜV ÖSTERREICH shall be entitled to produce copies of the written documents provided to it for the purposes of inspection and to keep them in its records and to save the Principal's data and data arising from the business dealings for its own purposes in an electronic data processing installation. In accordance with clause 10 of Terms and Conditions the Principal shall hereto expressly give his consent.
  - 4.8. TÜV ÖSTERREICH shall carry out inspections, unless agreed otherwise in individual cases, with one inspector per area of expertise. Any assistance required or useful for the inspection shall be provided to TÜV ÖSTERREICH by the Principal or a third party on behalf of the Principal, free of charge. The Principal shall undertake to make every reasonable effort to provide the required or useful assistance. In providing such assistance the Principal shall monitor and adhere to applicable legal or official provisions, in particular in the area of employee protection.
- ### 5. Terms and deadlines/delays
- 5.1. Terms and deadlines as stipulated in the agreement shall be based on estimates of the volume of work as per information provided by the Principal. These deadlines shall become binding only when expressly stipulated in writing as 'binding' by TÜV ÖSTERREICH. Delays shall not entitle the Principal to claim damages, irrespective of legal title.
  - 5.2. Terms stipulated as binding shall commence with the complete accord in all parts of the agreement and about all conditions of the services to be provided and end with the provision of services by TÜV ÖSTERREICH. They shall cease to be binding when the Principal is in default with his obligations according to the provisions of the Terms and Conditions in hand, in particular with regard to clauses 4.4. to 4.8, for whatever reason.
  - 5.3. If fulfilment of the agreement is delayed by circumstances which TÜV ÖSTERREICH is not accountable for (e.g. operational disruptions, strike, force majeure, transport impediments etc.) TÜV ÖSTERREICH shall be entitled, under exclusion of warranties, rescission for mistakes and/or claims for damages, either to withdraw from the agreement or to extend the deadline by an appropriate period of time. This shall also apply when the events occur at a point in time at which TÜV ÖSTERREICH is already in default. TÜV ÖSTERREICH shall notify the Principal of this in good time. In the event of withdrawal from the agreement TÜV ÖSTERREICH shall be entitled to charge the Principal for partial services rendered up to that point in time at the prices agreed upon.
- ### 6. Terms of payment
- 6.1. Services shall be charged in accordance with the price lists valid on conclusion of the agreement. If the provision of services extends over a period of more than one year or if services are provided repeatedly, services shall be charged in accordance with price lists as valid at the point in time when individual services are provided. Services shall not be charged according to price lists if a fixed price or flat rate has been agreed upon.

- 6.2. If TÜV ÖSTERREICH provides services for a period of time extending to more than 4 weeks, TÜV ÖSTERREICH shall be entitled to issue monthly invoices for partial provision of services. Partial and total payment of invoices shall be effected promptly and without deduction upon receipt of the invoice, stating invoice and customer numbers.
- 6.3. Objections to invoices shall be made and substantiated in writing within a period of two weeks following receipt of the invoice, failing which the invoice shall be deemed to have been accepted.
- 6.4. The Principal shall not be entitled to offset claims, of whatever kind, unless these have been ascertained in a legally binding manner by a court of law or acknowledged by TÜV ÖSTERREICH in writing.
- 6.5. In the event of default of payment, even if only one item is outstanding, all outstanding claims—even those from other agreements and regardless of any diverging payment terms—shall fall due immediately and TÜV ÖSTERREICH may opt to demand immediate payment of the outstanding claims and suspend the fulfilment of the agreement while awaiting the receipt of such payment, or else withdraw from the agreement without notice and claim compensation for damages on the grounds of non-fulfilment.

Default of payment shall entitle TÜV ÖSTERREICH to charge interest on late payments of 8% p.a. above the base interest rate of the Austrian National Bank and also to charge dunning costs of EUR 4.00/per reminder.

- 6.6. The Principal shall furthermore undertake to reimburse TÜV ÖSTERREICH for costs and expenses incurred de facto through the default of payment and appropriately required for the purposes of asserting its legal rights. This shall include, without prejudice to any obligations to pay cost of proceedings, in particular extrajudicial costs, dunning costs, the costs for a debt collection agency (in accordance with the remunerations for debt collection services as set forth in the regulation issued by the Federal Ministry for Economic Affairs, Federal Law Gazette (*BGBI*) 141/96 and valorised in terms of § 4 par. 2 of this regulation) as well as the costs for intervening lawyers insofar as they were expedient and necessary.
- 6.7. When in doubt prices shall be exclusive of the legal rate of value added tax, which shall be borne by the Principal at the applicable rate.
- 6.8. Several contractual partners shall be liable jointly and severally.

## 7. Warranty

- 7.1. If the Principal is not a consumer in terms of the Consumer Protection Act (*KSchG*) he shall on completion of the agreement examine the works or services of TÜV ÖSTERREICH without delay and assert in writing, without any delay, but at any rate not later than seven calendar days following the supply of the expert opinion or inspection report or such like, any defects detected or detectable, under exclusion of any liability of TÜV ÖSTERREICH. Concealed defects shall upon identification be objected to in writing without any delay, but at any rate within the warranty period. Notifications of defects shall not confer entitlement to withhold payment of invoiced amounts in whole or in part.
- 7.2. Warranty claims of the Principal shall, at the choice of TÜV ÖSTERREICH, be limited to rectification or supply of a replacement. TÜV ÖSTERREICH shall be entitled to carry out an appropriate number of attempts, at any rate a minimum of two, at rectification or supply of replacements.

If attempts at rectification or the supply of a replacement do not lead to success within an appropriate period of time or if the rectification or supply of replacement is economically un-

feasible, the Principal shall be entitled to an alteration of agreement or price reduction. An alteration of agreement on the grounds of immaterial, irremediable defects shall be excluded. In that case an appropriate reduction of price shall be effected.

- 7.3. Warranty claims of the Principal—even for so-called incorporal works, such as, for instance, expert opinions or software development—shall expire within a year of completion of the services performed by TÜV ÖSTERREICH. The warranty period shall neither be extended nor interrupted by rectifications or attempts at rectification, in particular not if these fall outside the herewith stipulated warranty period.
- 7.4. Compensation for damages and claims on and from rescission on the grounds of a mistake that arise from a defective delivery or performance of services, shall expressly be excluded, unless employees of TÜV ÖSTERREICH by acts of intent or gross negligence are responsible for such claims.

## 8. Liability

- 8.1. If the contractual partner lodges against TÜV ÖSTERREICH claims for compensation, he shall be obliged to furnish proof in respect of cause, illegality, fault and degree of fault. The relinquishment of warranty claims and claims for compensation to third parties shall be inadmissible.
- 8.2. If the Principal incurs damages due to a bindingly stipulated performance period having been exceeded through the fault of TÜV ÖSTERREICH, the claim shall not exceed a maximum of 5% of that part of the contract affected by the delay.
- 8.3. The following disclaimers of warranty and limited warranties shall also apply to delictual claims insofar as these compete with contractual claims.
- 8.4. TÜV ÖSTERREICH shall not be liable for damages of any kind. This exclusion shall not apply
  - to damages caused by TÜV ÖSTERREICH with intent or through gross negligence;
  - in cases of minor negligence for damages from injury to life, limb or health; however only insofar as this is provided for in the respective insurance cover taken out by TÜV ÖSTERREICH, consequently up to the maximum amounts stated in clause 8.7.
- 8.5. In all cases liability of TÜV ÖSTERREICH shall, moreover, with the exception of injury to life, limb and health, be limited to damages typical of this type of agreement and foreseeable for TÜV ÖSTERREICH on completion of the agreement or on breach of duty being committed.
- 8.6. Legal disclaimers and limitations of liability under clauses 8.1 to 8.5 shall also apply to the liability of the company for its agencies and employees as well as the personal liability of agencies and employees of the company.
- 8.7. TÜV ÖSTERREICH shall not be held liable for minor negligence on the part of vicarious agents who are not agencies or employees. Furthermore, liability of TÜV ÖSTERREICH for vicarious agents who are not agencies or employees, as well as from misconduct of agencies and employees, insofar as liability in their regard can be established contrary to the provisions of these Terms and Conditions, vis-à-vis all persons who are not consumers in terms of the Consumer Protection Act (*KSchG*), shall be limited to:
  - € 7,500,000 for personal injury and material damage
  - € 3,000,000 for pecuniary damage, in each case per contract and in total.

Amounts in excess of those stated above may be agreed upon at the request and expense of the Principal, provided that TÜV ÖSTERREICH shall be able to obtain the corresponding insurance cover from its insurance company.

- 8.8. Claims for damages by the Principal, except for acts of intent on the part of TÜV ÖSTERREICH or its agencies/executives, shall be excluded unless asserted in a court of law within a period of three months following rejection of the claims with a corresponding notice by TÜV ÖSTERREICH or its insurers. Any possible claims for damages by the Principal vis-à-vis TÜV ÖSTERREICH (except for acts of intent on the part of the company or its agencies/executives) expire within a year of the Principal having obtained knowledge of these claims, unless provisions elsewhere or the law provide for shorter prescription. This shall not apply to delictual claims.
- 8.9. The preceding legal disclaimers and limitations of liability under clauses 8.1 to 8.8 shall not apply to claims pursuant to the Product Liability Act, insofar as liability is mandatory under this Act.
- 8.10. Inasmuch as TÜV ÖSTERREICH is liable vis-à-vis the Principal for acts of intent or gross negligence or omissions of its agencies, employees and vicarious agents, it may demand the assignment of any possible claim for compensation of the Principal vis-à-vis the agency, employee and vicarious agent of TÜV ÖSTERREICH.
- 8.11. If third parties, who neither have a contractual relationship with TÜV ÖSTERREICH nor with the Principal, on the basis of an agreement between TÜV ÖSTERREICH and the Principal, assert claims against TÜV ÖSTERREICH, its agencies, employees and vicarious agents, which are not attributable to acts of intent or gross negligence on the part of TÜV ÖSTERREICH, its agencies, employees and subcontractors, the Principal shall indemnify and hold harmless TÜV ÖSTERREICH or its vicarious agents.
- 8.12. TÜV ÖSTERREICH shall not be held liable for damages to devices under test that are caused through inspections, tests and suchlike and which were carried out in accordance with technical rules at the point in time of inspection.
- 8.13. Liability for consequential damages due to defects, in particular for missed profits, lack of savings, loss of earnings, other pecuniary damages, loss of interest etc. shall be expressly waived. Any liability that may nevertheless apply at law, shall be subject to the limitations set forth under the clause 'Liability'.

## 9. Copyright

Any copyrights on inspection and monitoring reports, certificates, expert opinions, calculations and suchlike prepared by TÜV ÖSTERREICH shall remain with TÜV ÖSTERREICH. The distribution, utilization and/or publication of the services beyond the contractually stipulated purpose shall require prior written authorization by TÜV ÖSTERREICH. In distribution, utilization, and/or publication the Principal shall be liable to comply with legal provisions. He shall in this respect indemnify and hold harmless TÜV ÖSTERREICH from any possible claims by third parties.

## 10. Non-disclosure/confidentiality/data protection

- 10.1. TÜV ÖSTERREICH shall oblige its employees and other vicarious agents to secrecy in respect of any facts they may obtain knowledge of through the agreement.
- 10.2. The Principal shall consent to TÜV ÖSTERREICH making copies for the records of TÜV ÖSTERREICH of written documents, drawings and plans etc. which are left with TÜV ÖSTERREICH for its perusal and which are necessary for the completion of the agreement.
- 10.3. The Principal shall permit TÜV ÖSTERREICH to store and electronically process personal data in terms of the Austrian Data Protection Act.
- 10.4. In the case of legally mandatory disclosure of information the Principal or the affected person will be informed about the transfer of such information, unless it is prohibited by law.

## 11. Additional material

Costs for additional material and test equipment not commonly used within TÜV ÖSTERREICH will be additionally charged to the client.

## 12. Provision of Infrastructure during inspection

Clients are responsible for the provision of electrical energy, water, lighting, scaffolding, etc. suitable for the required testing activities in conformance with any statutory regulations, in time.

## 13. Delivery and safekeeping of test objects

Test objects, type samples etc. to be inspected at test facilities owned by TÜV ÖSTERREICH have to be delivered *franco domicile* (free of any charge). The client agrees to accept the storage costs or disposal costs for test objects which are not returned.

## 14. Severance Clause

Ineffective provisions of this agreement shall not affect the effectiveness of the other provisions. In the event of the ineffectiveness of one provision of this agreement, the parties to the agreement shall agree to replace it with an effective one that in spirit and purpose comes closest to the ineffective provision. These Terms and Conditions shall only be applicable vis-à-vis consumers (in terms of the Consumer Protection Act) as far as mandatory provisions of the Consumer Protection Act, Federal Law Gazette (*BGB*), No. 140/1979 do not run contrary to them.

## 15. Place of jurisdiction and applicable law

For this agreement and the entire legal relationship between the parties Austrian Law shall apply with the exception of reference norms. Applicability of the UN Convention on Contracts for the International Sale of Goods, CISG, shall consensually be excluded. Any disputes arising from this agreement shall exclusively be referred to the competent court in Vienna, whereby TÜV ÖSTERREICH shall be entitled to institute legal proceedings with other courts for which the contractual partner has a legal venue.