

1. Applicability

Any agreement (and future contractual arrangement) between TÜV AUSTRIA UK Ltd ("TÜV AUSTRIA UK") and its Principals (clients) shall be governed by and subject to these Terms and Conditions. The Principal acknowledges and agrees that any general terms and conditions from the Principal are hereby excluded, even though they may not have been explicitly objected to by TÜV AUSTRIA UK upon acceptance or confirmation of a purchase order from a Principal. Notwithstanding the above, nothing in these Terms and Conditions shall impair Principals to exercise rights they might hold in accordance with the Consumer Rights Act 2015 or any other consumers law or regulation applying to them, which cannot be repealed by these Terms and Conditions.

2. Quotations

2.1. Quotations are valid for [15] days from the date specified, provided that TÜV AUSTRIA UK reserves the right (at its reasonable discretion) to increase the fees in Quotations (either before or after its acceptance by the Principal) if there is a significant change in the scope or complexity of the services or the agreed timescale for which TÜV AUSTRIA UK cannot be held accountable. A mutually binding agreement shall come into force only with the receipt by the Principal of the written confirmation of the order by TÜV AUSTRIA UK or the commencement of the provision of services by TÜV AUSTRIA UK. Changes and additions to the agreement shall be made in writing by the Principal and will be subject to TÜV AUSTRIA UK's acceptance (which shall not be unreasonably withheld). Verbal information, ancillary arrangements and undertakings by agencies or employees of TÜV AUSTRIA UK shall, at any stage of the contractual process, be binding only if confirmed in writing by an authorised representative of TÜV AUSTRIA UK.

2.2. Upon notification of inspections and their performance TÜV AUSTRIA UK shall not assume the obligation incumbent upon the Principal to adhere to this or follow-up inspection appointments.

3. Geographical applicability

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

4. Implementation of agreement

4.1. TÜV AUSTRIA UK shall be liable to provide services only as expressly set out in the agreement, with reasonable skill and care and in compliance with generally acknowledged technical regulations.

4.2. On conclusion of agreement, the volume of orders shall be set down in writing. If in the course of the proper performance of the services, changes or excesses to the agreed contract volume become necessary, TÜV AUSTRIA UK shall (at its reasonable discretion) be entitled to carry out any such required increase in the volume of orders on the basis of these Terms and Conditions, even without written notification to the Principal, 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 between the parties 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 upon written notification to TÜV AUSTRIA UK 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 and also for any advance fees incurred by TÜV AUSTRIA UK (with the Principal's approval) for the engagement of contractors to assist with the provision of the services which TÜV AUSTRIA UK cannot reasonably mitigate.

4.3. TÜV AUSTRIA UK 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 programs or safety regulations.

4.4. On conclusion of agreement, the Principal shall provide TÜV AUSTRIA UK 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 the order fulfilment, 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, TÜV AUSTRIA UK may suspend all or part of the services until it receives the relevant information requested in full. In no event shall TÜV AUSTRIA UK be liable for any delay or default because of suspension or non-completion of the services in the predicted timescale specified in the agreement when these results from a Principal's failure to comply with its obligations under the agreement or these Terms and Conditions.

4.5. TÜV AUSTRIA UK 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 AUSTRIA UK shall be entitled to determine the method and type of inspection on Principal's premises at its discretion on the basis of professional criteria.

4.7. TÜV AUSTRIA UK shall be entitled to produce copies of the provided documents 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 10.2 of these Terms and Conditions, the Principal shall hereto expressly give his consent.

4.8. TÜV AUSTRIA UK provides the service, unless agreed otherwise in individual cases, with one employee per area of expertise. Any assistance required or useful for the order fulfilment shall be provided to TÜV AUSTRIA UK 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.

4.9. The client allows the accreditation body to accompany and observe (audit) the conformity assessment activities, which are covered by contract, of TÜV AUSTRIA UK.

5. Deadlines/delays and Force Majeure

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 AUSTRIA UK. Delays shall not entitle the Principal to claim damages, irrespective of legal title.

5.3. If fulfilment of the agreement is delayed by circumstances which TÜV AUSTRIA UK is not accountable for (e.g. acts of God, operational disruptions, strike, force majeure, transport impediments, natural disaster, epidemic or pandemic, civil war, etc.) TÜV AUSTRIA UK 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. TÜV AUSTRIA UK shall not be in breach of the agreement or these Terms and Conditions or be otherwise liable for any such failure or delay in the performance of its obligations. This shall also apply when the events occur at a point in time at which TÜV AUSTRIA UK is already in default. TÜV AUSTRIA UK shall notify the Principal of this in good time. If the event prevents, hinders or delays TÜV AUSTRIA UK's performance of the

services for a continuous period of more than three weeks, the Principal may terminate the agreement by giving one week's written notice to TÜV AUSTRIA UK. In the event of withdrawal from the agreement either by TÜV AUSTRIA UK or the Principal, TÜV AUSTRIA UK 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 offers, price lists and so on 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 prices as valid at the point in time when individual services are provided.
- 6.2. If TÜV AUSTRIA UK provides services for a period of time extending to more than 4 weeks, TÜV AUSTRIA UK shall be entitled to issue monthly invoices for partial provision of services. Partial and total payment of invoices shall be effected without deduction within [15] days of receipt of the invoice, stating invoice and customer numbers and indicating TÜV AUSTRIA UK's bank account to where payment shall be made.
- 6.3. Objections to invoices shall be made and substantiated in writing within a period of two weeks following date 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 AUSTRIA UK 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 AUSTRIA UK may opt to demand immediate payment of the outstanding claims and suspend the fulfilment of the performance of the services 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. TÜV AUSTRIA UK reserves the right to charge interest on the overdue sum from the due date until payment of the overdue sum is fully made. Interest will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base is below 0%.
- 6.6. The Principal shall furthermore undertake to reimburse TÜV AUSTRIA UK 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, 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.
- 6.9. TÜV AUSTRIA UK shall be entitled to send the Principal invoices in electronic form as well. The Principal declares his explicit consent to having invoices sent to him in electronic form by TÜV AUSTRIA UK.

7. Warranty

- 7.1. If the Principal is not a consumer under the terms of the Consumer Rights Act 2015, he shall on completion of the agreement examine the works or services of TÜV AUSTRIA UK and assert in writing, without any delay, but no 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 AUSTRIA UK. Concealed defects shall upon identification be objected to in writing without any delay, at the latest within seven cal-

- endar days thereafter 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 AUSTRIA UK, be limited to rectification or supply of a replacement. TÜV AUSTRIA UK shall be entitled to carry out two attempts 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 unfeasible, 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 incorporeal works, such as, for instance, expert opinions or software development — shall expire within a year of completion of the services performed by TÜV AUSTRIA UK. 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. Should the Principal fail to give timely complaint according to clause 7.1, then warranty claims for compensation for the claim itself as well as for erring about the defective delivery shall expressly be excluded, unless employees of TÜV AUSTRIA UK by acts of intent or severe gross negligence are responsible for such claims.

8. Liability

- 8.1. If the Principal lodges against TÜV AUSTRIA UK 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 AUSTRIA UK, 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. In no event shall TÜV AUSTRIA UK be liable to the Principal under the agreement or these Terms and Conditions for any indirect punitive, special, exemplary, incidental, consequential or other damages of any type or kind (including loss of data, revenue, profits, use or other economic advantage) arising out of, or in any way connected with the agreement. In no event shall TÜV AUSTRIA UK's aggregate liability arising from or relating to the agreement exceed the total sums paid or payable by the Principal during the 12 months immediately preceding the date on which the claim arose.
- 8.5. Nothing in these Terms and Conditions excludes the liability of TÜV AUSTRIA UK: (a) for death or personal injury caused by TÜV AUSTRIA UK's negligence; or (b) for fraud or fraudulent misrepresentation.
- 8.6. Inasmuch as TÜV AUSTRIA UK is liable vis-à-vis the Principal for acts of intent or severe 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 AUSTRIA UK.
- 8.7. If third parties, who neither have a contractual relationship with TÜV AUSTRIA UK nor with the Principal, on the basis of an agreement between TÜV AUSTRIA UK and the Principal, assert claims against TÜV AUSTRIA UK, its agencies, employees and vicarious agents, which are not attributable to acts of intent or severe gross negligence on the part of TÜV AUSTRIA UK, its agencies, employees and subcontractors, the Principal shall indemnify and hold harmless TÜV AUSTRIA UK or its vicarious agents.
- 8.8. TÜV AUSTRIA UK 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.
- 8.9 In no event TÜV AUSTRIA UK shall be responsible for losses or damages incurred by the Principal arising out of, or in connection with, the Principal's use of the services in a way contrary to TÜV AUSTRIA UK's instructions and guidelines or otherwise in breach of the agreement.
- 9. Copyright**
The Principal acknowledges that all intellectual property rights used in the provision of, incorporated in or provided as part of the services and any material, device or other documents whatsoever prepared or produced by or on behalf of TÜV AUSTRIA UK in connection with the services (including, without limitation, any copyrights on inspection and monitoring reports, certificates, expert opinions, calculations and suchlike) shall remain with TÜV AUSTRIA UK and the Principal shall have no right to use such rights or documentation other than in accordance with the terms of the agreement. The distribution, utilization and/or publication of the services beyond the contractually stipulated purpose shall require prior written authorization by TÜV AUSTRIA UK and the Principal shall be liable to comply with legal provisions. He shall in this respect indemnify and hold harmless TÜV AUSTRIA UK from all or any costs, claims, damages or expenses incurred by TÜV AUSTRIA UK, or for which TÜV AUSTRIA UK may become liable, with respect to any intellectual property infringement claim or other claim relating to the Principal's use of the services.
- 10. Non-disclosure/confidentiality/data protection**
- 10.1. TÜV AUSTRIA UK and the Principal agree not to disclose any confidential information of the other party which is made available under the agreement or in connection with the provision of the services, without the other party's prior written consent. Information shall in any event be considered confidential if so designated in writing by the other party. For these purposes, confidential information shall have the definition established in any confidentiality agreement agreed upon by the parties prior to entering into the agreement, provided that the Principal hereby acknowledges that details of the services and all other information, data, materials, documents and intellectual property rights arising throughout the provision of the services shall constitute TÜV AUSTRIA UK's confidential information for the purposes of this agreement. For the avoidance of doubt, all confidential information shall be and shall remain the property of the party which supplied it to the other party.
- 10.2. The Principal shall consent to TÜV AUSTRIA UK making copies for the records of TÜV AUSTRIA UK of written documents, drawings and plans etc. which are left with TÜV AUSTRIA UK for its perusal and which are necessary for the provision of the services in accordance with the agreement.
- 10.3. TÜV AUSTRIA UK shall when dealing with personal data comply with any applicable data protection laws or regulations and adopt the required technical and organizational arrangements to ensure the data is properly secured. Details on how TÜV AUSTRIA UK handles personal data on its ordinary course is set out in our privacy policy available [here](#).
- 10.4. TÜV AUSTRIA UK agrees that any personal data processed for the purpose of the agreement will be processed only as strictly necessary to provide the services to the Principal during the term of the agreement.
- 11. Additional material**
Costs for additional material and test equipment not commonly used within TÜV AUSTRIA UK will be additionally charged to the Principal.
- 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 AUSTRIA UK 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**
- 14.1 Ineffective provisions of these Terms and Conditions shall not affect the effectiveness of the other provisions. In the event of the ineffectiveness of one provision of these Terms and Conditions, the parties shall agree to replace it with an effective one that in spirit and purpose comes closest to the ineffective provision.
- 14.2 Nothing in these Terms and Conditions is to be construed as creating an agency, partnership, or joint venture between TÜV AUSTRIA UK and Principal.
- 14.3 No amendment to, or waiver of, any provision of these Terms and Conditions will be effective unless in writing and signed by both parties. The waiver by any party of any breach or default will not constitute a waiver of any different or subsequent breach or default.
- 14.4 A party who is not a party to these Terms and Conditions may not enforce any of its terms under the Contracts (rights of Third Parties) Act 1999.
- 14.5 Notwithstanding clause 1 and insofar TÜV AUSTRIA UK agrees in writing that general terms and conditions of the Principal might apply alongside these Terms and Conditions to govern the relationship between the parties, in case of conflicts between these Terms and Conditions and the Principal's individual terms, the former shall take precedence and shall be deemed binding between the parties.
- 15. Place of jurisdiction and applicable law**
For this agreement and the entire legal relationship between the parties English Law shall apply and the applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) is hereby consensually be excluded.
Any disputes arising from these Terms and Conditions and the agreement based thereon, including the pre-contractual obligation or other legal relationships between TÜV AUSTRIA UK and the Principal, shall exclusively be referred to the competent court of England and Wales; however, TÜV AUSTRIA UK shall be entitled to institute legal proceedings against the Principal with other courts for which the contractual partner has a legal venue.