

Terms and Conditions of Business

of TÜV SÜD Rail GmbH (hereinafter referred to as "TÜV SÜD")

governing freely agreed (=non-regulated) services, in particular activities involving testing and inspection, consultancy and expert opinions

1 General

- 1.1 As laid down in its articles of association, TÜV SÜD provides technical services in the form of expert opinions, tests and inspections, measurements/laboratory services, consultancy/ concept planning and specialized training courses and develops services and the associated products in the field of new technologies.
- 1.2 The customer shall accept TÜV SÜD's General Terms and Conditions of Business and schedule of fees valid at the time of order placement. Deviating terms and conditions of business of individual customers cannot be recognized as a matter of principle.
- 1.3 Ancillary agreements, promises and other statements by TÜV SÜD employees or officially authorized experts called in by TÜV SÜD shall only be considered binding if expressly confirmed by TÜV SÜD in writing. This shall also apply to any amendments to this clause.

2 Contractual Performance

- 2.1 TÜV SÜD shall perform the contractual services and/or prepare expert reports in accordance with the established state of the art and unless otherwise agreed in writing in the manner customary at TÜV SÜD. Unless otherwise explicitly agreed in writing, no responsibility shall be assumed for the correctness of the safety programs and safety regulations on which the tests and inspections have been based.
- 2.2 The scope of contractual activities to be performed by TÜV SÜD shall be defined in writing on placement of order. If any modification or extension of the defined scope of order prove necessary within the context of due performance of the contract, they shall be additionally agreed upon in advance and in writing. In such cases, customers shall have the right to withdraw from the contract, if they can no longer be expected to remain a party to the contract in view of the modification or extension. However, in accordance with Article 649 of the BGB (German Civil Code), the customer shall pay the agreed compensation or, if no sum has been agreed, a suitable remuneration.

3 Deadlines, Default, Impossibility of Performance

- 3.1 The deadlines for contractual performance quoted by TÜV SÜD shall be binding only if this has been explicitly agreed upon in writing.
- 3.2 Should TÜV SÜD, for reasons for which it is to blame, have exceeded a binding deadline for contractual performance and thus be in default of its contractual obligations, the customer shall have the right to claim compensation for any damage due to delayed performance. Compensation shall amount to 1% of the value of the contract whose performance is delayed under the terms of the contract for each completed week of delayed performance up to a total of 25% of the above value. Any further claims for damages shall be governed by the provisions set out in Section 5.
- 3.3 Should TÜV SÜD's customer, in the case of delayed performance, grant a reasonable additional period within which performance is to take place and should TÜV SÜD fail to observe this new deadline or ascertain that performance is no longer possible, the customer shall have the right to withdraw from the contract and – if TÜV SÜD is at fault – claim damages in lieu of performance. Articles 281, 323 of the BGB (German Civil Code), shall remain unaffected hereby.

4 Warranty

- 4.1 Warranty by TÜV SÜD only covers contractual services with which it has been explicitly commissioned as per Section 2.1. Warranty regarding the proper condition and overall functioning of the plants to which the inspected or tested parts belong shall therefore be excluded. In particular, TÜV SÜD shall not assume any responsibility for the design, materials and construction of the examined plants unless these issues have been explicitly included in the contract. Even if the latter is the case, the warranty and the legal responsibility of the manufacturer shall be neither restricted nor assumed.
- 4.2 Any warranty given by TÜV SÜD shall initially be restricted to supplementary performance to be completed within a reasonable time limit. Should such supplementary performance fail, i.e. be impossible or unacceptable for the customer or be unjustifiably refused or delayed by TÜV SÜD, the customer shall be entitled, at its discretion, either to a reduction of the price or rescission of the contract.
- 4.3 Notwithstanding the sale and purchase of consumer goods and the consumer contracts which fall within the scope of Article 651 of the BGB (German Civil Code), any claims for supplementary performance, reduction of price or rescission of the contract, which are not subject to the limitation periods of Article 438 (1) No.2 or Article 634a (1) No.2 of the BGB (German Civil Code), shall be time-barred after one year following the transfer of risk.
- 4.4 Any claims for repayment of expenses covered by Article 635 (2) of the BGB (German Civil Code), shall not be affected by this clause.

5 Liability

- 5.1 TÜV SÜD shall only be liable for damages –regardless of their legal basis – if TÜV SÜD has caused any damage as a result of an intentional or grossly negligent act or if TÜV SÜD has negligently breached a substantial contractual obligation (material obligation*). In the event that TÜV SÜD is in breach of any substantial contractual obligations, TÜV SÜD shall only be liable for the damage related to and typically foreseeable under the particular contract at the time of entering into the contract.
- 5.2 In the event that TÜV SÜD is liable under no. 1 above for damages caused as a result of having breached, by an act of negligence, a substantial contractual obligation, its liability shall be limited in each single case to:
1,000,000.00 EUR for property damage,
500,000.00 EUR for economic loss.
- 5.3 In the case of claims for damages under the Atomic Energy Act (AtG), Article 13 (5), arising out of the handling, and in particular the transport, of radioactive substances under a license issued to TÜV SÜD to carry out such activities outside nuclear power stations, TÜV shall only be liable up to the officially insured amount in each case of damage. Any further liability by TÜV IS shall be governed by Section 5.1 hereunder.
- 5.4 TÜV SÜD shall not be liable for any damages caused as a result of a negligent breach of a non-substantial contractual obligation.
- 5.5 "Substantial contractual obligations" are those obligations that protect the customer's legal interests deemed to be substantial to the contract, which the contract, based on its content and purpose, must specifically grant to the customer; further, such contractual obligations are substantial which are deemed to be prerequisites for proper performance

of a contract and upon the observance of which the customer has generally relied and may rely.

- 5.6 The liability exemption contained in Section 5.1-5.4 and/or the liability limits shall not apply to damage to life, person, or health; nor shall it apply for claims under a warranty or claims based on the German Product Liability Act.
- 5.7 Any person making claims under this contract shall without delay inform TÜV SÜD in writing about any potential damage for which TÜV SÜD could be liable.
- 5.8 If claims for damages against TÜV SÜD are excluded or limited, this shall extend to any personal liability of any statutory organs, experts, miscellaneous employees, vicarious agents or any other auxiliary personnel of TÜV SÜD.
- 5.9 Notwithstanding the sale and purchase of consumer goods and the consumer contracts which fall within the scope of Article 651 of the BGB (German Civil Code), any claims for damages, which are not subject to the limitation periods of Article 438 (1) No. 2 or Article 634a (1) No. 2 of the BGB (German Civil Code), shall be time-barred after one year following the transfer of risk.
- 5.10 Notwithstanding the above provisions of Sections 5.1-5.9, the customer shall be obliged to obtain standard insurance cover for direct or indirect damage.

6 Terms of Payment, Prices

- 6.1 Unless a fixed price or other calculation basis has been explicitly agreed upon, services shall be billed in accordance with the fees outlined in the schedule of services and prices valid at the time of contract conclusions. In the absence of a valid schedule of services and prices, contractual provisions must be agreed on a case-by-case basis.
- 6.2 Reasonable advance payments may be requested and/or partial invoices covering services already rendered may be made out. Partial invoices need not be designated as such. The receipt of an invoice does not mean that the order has been billed completely by TÜV SÜD.
- 6.3 Unless otherwise agreed, the fees billed in accordance with Section 6.2 and/or via the final invoice after acceptance of work shall be due for payment immediately upon invoicing. In cases involving default of payment by the customer, TÜV SÜD shall be entitled to charge interest on the outstanding invoice amount of 8% p.a. above the base interest rate. The customer shall be in default of payment upon receipt of a reminder or 30 days after receipt of invoice at the latest. If a specific period of payment is agreed upon, the customer shall be in default of payment upon expiry of this period. Article 286 of the BGB (German Civil Code) shall not be affected by this clause.
- 6.4 Fees shall be subject to the value added tax at the applicable statutory rate. The amount of value added tax shall be shown separately on the invoice.
- 6.5 Any objections to invoices must be made in writing to TÜV SÜD within a 14-day preclusion period after receipt of invoice, with reasons stated.

7 Secrecy, Copyright, Data Protection

- 7.1 TÜV SÜD shall have the right to copy and file any written documents submitted for perusal which are important for performance of the order.
- 7.2 In as far as expert opinions, test results, calculations and the like that are protected by copyright are prepared within the scope of contractual performance, TÜV SÜD shall grant the customer a simple, non-transferable right of use, if this is required by the underlying purpose of the contract. This transfer of copyright explicitly shall not include the transfer of any other rights; the customer shall, in particular, not be entitled to change (process) or use expert opinions, test results, calculations and the like outside its business.
- 7.3 TÜV SÜD, its employees, and the expert engineers called in by TÜV SÜD shall not, without authorization, disclose or turn to use any business or company circumstances of which they become cognizant during their activities.
- 7.4 TÜV SÜD shall process and use personal data only for its own purposes within the TÜV SÜD Group. Personal data will only be transmitted to associated companies within the meaning of Article 15 of the AktG (German Stock Corporation Act). To this end, TÜV SÜD will also use automated data processing systems. In order to meet the data protection requirements outlined in the appendix to Article 9 of the BDSG (German Data Protection Act), TÜV SÜD has taken technical and organisational measures to ensure the security of its data and data processing operations. The employees engaged in data processing are bound by the BDSG and are expected to observe all data protection regulations strictly.

8 Jurisdiction, Place of Performance, Applicable law

- 8.1 In as far as the prerequisites outlined in Article 38 of the Code of Civil Procedure have been fulfilled, the place of jurisdiction for the assertion of claims by both contractual partners shall be the domicile of TÜV SÜD.
- 8.2 Place of performance for any obligations arising out of the contract shall be the domicile of TÜV SÜD.
- 8.3 The contractual relationship and all legal relations arising from it shall be exclusively governed by, and construed in accordance with, the laws of the Federal Republic of Germany without regard to its provisions on the conflict of laws and the UN Treaty on the International Sale of Goods (CISG) which shall be expressly excluded.

9 Scope of Application, Miscellaneous

- 9.1 These General Terms and Conditions of Business shall apply to enterprises and all public corporations and Special Funds of the Federal Government as defined in Article 310 of the BGB (German Civil Code), unless explicitly agreed upon otherwise.
- 9.2 If the customer does not belong to the group of persons cited in Section 9.1 hereunder and enumerated in Article 310 of the BGB (German Civil Code), these General Terms and Conditions of Business shall apply with the following provisos:
 - Contrary to Section 3.1 above, the deadlines for order processing quoted by TÜV SÜD shall be binding;
 - Section 6.3 shall apply with the following proviso: penalty interest rates shall be 5 per cent p.a. above the base interest rate;
 - Section 8.1 shall apply with the following proviso: The domicile of TÜV SÜD shall be agreed as the place of jurisdiction, if the customer moves its domicile, residence or normal place of abode to an area outside the purview of German law, or if the customer's domicile, residence or normal place of abode is unknown when action is brought;
 - Section 8.2 shall not apply.