

General Terms and Conditions

of TÜV SÜD Management Service GmbH
(hereinafter referred to as MS)



Management Service

1. General Information

- 1.1 MS audits and certifies management systems, insofar as this is not in connection with consulting activities.
- 1.2 In the event that a corresponding order is placed, the customer shall accept the General Terms and Conditions, the MS Testing and Certification Regulations and the prices which apply at the time when the order is placed. As a rule, deviating General Terms and Conditions of individual customers will not be honoured.
- 1.3 Ancillary agreements, promises and other statements made on the part of MS staff or the experts called upon by them shall be binding only if they are expressly confirmed and in writing. This shall also apply to any modifications of this clause.

2. Executing Orders

- 2.1 Orders accepted by MS shall be executed - insofar as contrary agreements have not been made in writing - the customary handling practiced by MS.
- 2.2 The scope of the work performed by MS shall be specified in writing when the order is placed. If changes or extensions of the specified scope of the order result during proper execution of the order, then they shall form the subject of an advance agreement in writing. In this case the customer shall be entitled to cancel the contract, if it would no longer be reasonable to expect that the customer adhere to the contract with regard to the changes or extensions. The customer shall, however, in accordance with Section 649 of the German Civil Code [BGB] pay the agreed remuneration or, in lieu of agreement, appropriate remuneration.
- 2.3 The contractual services of MS shall be deemed as having been furnished and completed with preparation of the respective audit reports.

3. Deadlines, Delay, Impossibility of Performance

- 3.1 The order periods indicated by MS shall not be binding unless they are expressly agreed upon in writing.
- 3.2 If MS exceeds a binding order period for reasons for which it is responsible and defaults on performance as a result, then the customer shall be authorised – to the extent that he has suffered damage because of the delay – to assert claims to damages for delay for each completed week of delay of 1% of the order value overdue as a result of such delay or a maximum amount of up to 25% of the order value overdue as a result of such delay. The regulations in 4.5 and 5 shall apply to any other claims to compensation in damages.
- 3.3 If, after the service becomes due, the customer grants MS an appropriate grace period and if MS allows this period to elapse or if it becomes impossible for MS to provide the service, then the customer shall be entitled to cancel the contract and – to the extent that MS proves to be culpable – assert claims to compensation in damages instead of the service in the amount of the damages for delay specified in Subclause 3.2. Sections 281 and 323 of the German Civil Code [BGB] shall remain unaffected.

4. Warranty, Liability

- 4.1 The warranty granted by MS covers only the services expressly ordered from it in accordance with Subclause 2.1.
- 4.2 The warranty provided by MS shall initially be limited to subsequent performance within an appropriate period. If subsequent performance fails, i.e. it becomes impossible or unreasonable for the customer or in the event of unauthorized refusal by MS or unduly delayed, then the customer shall, at his discretion, be entitled to demand a reduction in the remuneration or cancellation of the contract.
- 4.3 The warranty period shall amount to one year starting from passage of the risk.
- 4.4 MS shall only assume liability for a warranted quality of items and works, in particular that the service is suited to the purposes of the customer if the service is unsatisfactory and insofar as MS is responsible or a corresponding guarantee has been provided. Liability for consequential harm caused by a defect which results from violation of duty or with regard to a warranted quality shall be excluded if the violated duty or quality guarantee is not intended to protect against precisely such types of consequential damage. Customer warranty claims within the meaning of Section 443 of the German Civil Code [BGB] shall remain unaffected.
- 4.5 If a defect, which does not involve the absence of a warranted quality, is due to a circumstance for which MS is responsible or in the event that MS violates a contractual obligation, then MS shall, per order, be liable for resultant damage to the customer in the case of only slightly negligent causation of damage up to an amount of
 - 1,000,000 EUR for property loss
 - 250,000 EUR for financial lossClause 5 shall apply in the case of any other claims for damages.
- 4.6 Claims to repayment of expenses in accordance with Section 635 Subclause 2 of the German Civil Code [BGB] shall remain unaffected.
- 4.7 The limitations of liability of Subclauses 4.4 and 4.5 shall also apply with regard to the personal liability of MS staff, their executing aides and, in particular, experts.

5. Other Liability

Except in cases of intention and gross negligence, bodily injury or liability in accordance with product liability law, any other claims asserted on the part of the customer for direct and indirect damages – for whatever legal reason whatsoever – in particular, claims for payment of damages because of violation of duty or unlawful acts and compensation for damage which has not occurred on the subject of the order itself shall be excluded, insofar as they go beyond the warranty and liability provided for by MS in Subclauses 3.2, 3.3 and 4.2 to 4.7. This shall also apply to the personal liability of MS staff, their executing aides and, in particular, experts.

General Terms and Conditions

of TÜV SÜD Management Service GmbH
(hereinafter referred to as MS)



Management Service

6. Terms of Payment and Prices

- 6.1 The prices which apply in accordance with the price list that is valid upon the conclusion of a contract shall be used in order to charge for services, insofar as a fixed price has not been expressly indicated in writing or another basis of assessment is agreed upon. If there is a period of more than 4 months between placement of the order and confirmation of the order and there has been a price increase in the meantime, then the modified price shall be used as the basis of calculation as of the 5th month.
- 6.2 Appropriate advances on costs may be required and/or partial invoices may be submitted in accordance with services already furnished.
- 6.3 The fees invoiced in accordance with Subclause 6.2 and/or the final invoice after finalization of the audits shall be payable within 14 days after billing, insofar as no other agreement has been reached.
- MS shall be entitled to charge interest of 8 percentage points above the basic interest rate during any delay on the part of the customer for an open invoice amount. The customer shall become in arrears by way of a reminder or 30 days after receipt of the invoice at the latest. If a particular date of payment is agreed upon based on the calendar, then the customer shall become in arrears at the end of the date of payment. Section 286 of the German Civil Code [BGB] shall remain unaffected.
- 6.4 The respective fees do not include the legally valid value added tax. The value added tax is shown separately in the invoice.
- 6.5 Objections to MS invoices shall be communicated and justified in writing within a fixed period of exclusion of 14 days after receipt of the invoice.
- 6.6 In cases involving short-term cancellation (postponement of audit date) within six weeks in advance of the scheduled audit date, MS reserves the right to charge the customer any additional costs incurred by MS in connection with such cancellation/postponement.
- 6.7 In cases involving termination of the certification contract prior to expiry of the respective certificate, MS reserves the right to charge 15% of the remaining contract value to be invoiced.
- We reserve the right to charge 30% of the remaining contract value, if the contract is terminated between 2 months and 2 weeks before the target date for the next audit or the date set for the audit; 70% if the contract is terminated 2 weeks or less before this date, and 100% in the case of contract termination on the target date or the date set for the audit. MS reserves the right to furnish proof of higher damage. The party terminating the contract shall be entitled to furnish proof that damage suffered by MS is less than the above amount.

7. Obligation to Maintain Secrecy, Copyright, Data Privacy Protection

- 7.1 MS shall be authorised to make file copies of written documents which have been made available to it for review and which are important for processing the order.
- 7.2 Insofar as audit reports are prepared in the course of processing the order and which are subject to the protection of copyright, then MS shall grant the customer a simple, non-transferable right to use to the customer, insofar as this is necessary and in accordance with the contractually presupposed purpose. Other rights shall not be transferred; in particular, the customer shall not be entitled to modify (edit) audit reports or to make use of such outside of his business premises.
- 7.3 MS, its staff and any experts which may be called in shall not be disclose and use trade and business matters about which they have gained knowledge of during the performance of their work without proper authorisation.
- 7.4 MS processes and uses personal data exclusively for its own purposes. It also uses automatic data processing systems for this purpose. In order to fulfil the data security requirements of the Annex to Section 9 of the Federal Data Protection Law [BDSG] its has taken technical and organizational measures which ensure the security of the data and the data processing operations. MS staff involved in data processing are obliged to strictly comply with the BDSG and all data protection regulations.

8. Jurisdiction, Place of Performance, Applicable Law

- 8.1 The place of jurisdiction for the assertion of any claims for both parties to the contract shall be Munich, insofar as the prerequisites as specified in Section 38 of the Code of Civil Procedure are given.
- 8.2 The place of performance for any obligations arising out of this contract shall be Munich, the principal place of business of MS.
- 8.3 The contractual relationship and all attendant legal relations shall be exclusively governed by the law prevailing in the Federal Republic of Germany between domestic contracting parties under the exclusion of the United Nations (Vienna) Convention on Contracts for the International Sale of Goods (CISG).

9. Scope of Application

- 9.1 These General Terms and Conditions shall apply both to businesses as well as all legal entities under public law and special funds under public law within the meaning of Section 310 of the German Civil Code [BGB], insofar as deviations have not been expressly determined.
- 9.2 If the customer does not belong to the category designated in Subclause 9.1 of Section 310 of the German Civil Code [BGB], then these General Terms and Conditions shall apply with the following stipulations:
- Contrary to Subclause 3.1, the order periods indicated by MS shall be binding.
 - Subclause 6.3 shall apply under the condition that the interest on arrears amounts to 5 percentage points per annum above the basic interest rate.
 - Clause 8.1 shall apply under the condition that Munich is agreed upon as the place of jurisdiction in the event that the customer moves his principal place of business, domicile or customary place of residence outside of the scope of application for the law prevailing in the Federal Republic of Germany or his principal place of business, domicile or customary place of residence is not known at the time that action is brought.
 - Subclause 8.2 shall not apply.