

- 1 Scope of application**
- 1.1 The below terms apply for the agreed services of TÜV Rheinland Consulting GmbH (hereinafter "TRC"), including consulting services, information, deliveries as well as ancillary services provided within the framework of the execution of the order and other secondary obligations.
- 1.2 Any general terms and conditions of the customer, including any procurement terms, shall not apply and are hereby ruled out. Contract terms of the customer shall also not be the content of the agreement if they are not expressly rejected by TRC.
- 2 Entry into force and duration of contracts**
- 2.1 The agreement shall only be concluded by the signing of the offer letter of TRC or a separate agreement document by both parties or by execution of the work requested from TRC by the customer. If the customer tasks TRC without prior quotation from TRC, TRC shall be authorised to accept the order at its sole discretion by written declaration (including such made electronically) or by provision of the ordered services.
- 2.2 The contractual term shall begin on the agreement's entry into force, as defined in Section 2.1 and continue for the period stated in the agreement.
- 2.3 If the agreement specifies an extension of the term, it shall only come into force if the extension is agreed six weeks before expiry of the agreement term in writing.
- 3 Scope of services and place of performance**
- 3.1 With regard to the scope of services, just one concordant declaration delivered by both sides shall be authoritative. If such is not given, the written order confirmation of TRC or if such is not given the quotation of TRC shall be authoritative to which the order of the customer refers.
- 3.2 TRC is permitted to determine itself the method and type of the service provision in accordance with an appropriate assessment if not other written arrangements were made or no mandatory regulations require a certain approach.
- 3.3 TRC may have its services executed in full or in part by certain third parties without this requiring the approval of the customer.
- 3.4 With the execution of the activities, no simultaneous guarantee is granted for the correct (unobjectionable quality) and functionality either of inspected or tested parts or of the overall system and its upstream or downstream processes, organisations, intended application and use as well as the systems underlying the plant; in particular, no responsibility is assumed for the design, material selection and construction and their intended application and use of examined plants, unless these items are expressly the subject of this order.
- 3.5 For orders, TRC shall not be responsible for the inspection or correctness and completeness of the regulations, technical rules, etc. underlying its advice, engineering services and acceptance. This shall also apply to information and documents that are provided by the customer, unless agreed otherwise.
- 3.6 Place of performance shall be the business premises of TRC, unless stated otherwise in the agreement.
- 4 Periods/deadlines for performing the services**
- 4.1 The performance times and deadlines agreed in the contract shall be based on estimates of the scope of work according to the particulars supplied by the customer. They shall only be binding if they are confirmed as binding by TRC in writing.
- 4.2 If terms were agreed as binding, they shall only commence when the customer of TRC has undertaken all cooperation actions, in particular has submitted all documents. This shall also apply equally for agreed periods that extend by the time of a delay that is not the responsibility of TRC even without the express approval of the customer.
- 4.3 If service deadlines agreed as binding are not cancelled at least 14 calendar days in advance, TRC shall be authorised to demand 60% of the price of the non-provided service, unless the party proves to the TRC that the damage is lower or that there is no damage.
- 4.4 TRC reserves the right to make further compensation claims.
- 5 Termination**
- 5.1 Every termination must be made in writing, and, in the event of extraordinary termination, for an important reason by giving the reason for the termination.
- 5.2 In the event of the effective, ordinary termination, the customer undertakes to make a pro rata payment of the remuneration that is calculated up to the end of the relevant termination period.
- 6 Cooperation obligations of the customer**
- 6.1 The customer shall guarantee that all necessary cooperation actions on its part, of its vicarious agents or third parties are carried out in good time and free of charge for TRC.
- 6.2 Information and documents, etc. required for performance of the service shall be made available free of charge. Furthermore, the cooperation actions of the customer must correspond to the relevant valid legal regulations, standards, safety provisions and accident prevention regulations.
- 6.3 The customer will bear any additional cost arising due to work needing to be repeated or being delayed due to overdue, incorrect or incomplete information or incorrect cooperation. Even where a fixed and maximum price is agreed, TRC shall be entitled to charge extra for such additional expenses.
- 7 Invoicing**
- 7.1 If the scope of services is not specified in writing when the work order is given, the services shall be invoiced monthly according to their cost.
- 7.2 Unless otherwise agreed, the services shall be invoiced in line with the progress of the work.
- 8 Terms of payment**
- 8.1 All invoice amounts shall be due for payment immediately without deduction on receipt of the invoice. No discounts shall be granted.
- 8.2 All prices are in EUR and understood to be excl. of the statutory value added tax valid at the time of invoicing.
- 8.3 The payments must be made to the bank account of TRC, which is stated on the invoice, while indicating the invoice and customer number.
- 8.4 In the event of a delay, TRC is entitled to claim interest at a rate of 9% above the base rate of the Deutsche Bundesbank. At the same time, the claiming of further compensation is reserved.
- 8.5 If the customer defaults on settling the invoice despite an appropriate period of grace being set, TRC may withdraw from the agreement, demand compensation for non-fulfilment and refuse the further execution of the contractual services.
- 8.6 The regulations under Section 8.5 shall apply equally in the event of non-cashing cheques, ceasing of payment, opening of insolvency proceedings against the customer or the rejection of the opening of insolvency proceedings due to a lack of assets.
- 8.7 Objections to the invoices of TRC shall be submitted in writing within two weeks from receipt of the invoice.
- 8.8 TRC is authorised to demand an appropriate down payment.
- 8.9 It is only possible to offset against claims from TRC with legally established or uncontested claims.
- 9 Acceptance**
- 9.1 Whether an acceptance must take place shall be, as a rule, guided by the type of service.
- 9.2 Any part of the work ordered which is complete in itself may be presented by TRC for acceptance as an instalment. The customer shall be obligated to conduct immediate acceptance.
- 9.3 Minor deviations from the potentially agreed service features and acceptance criteria shall not authorise the customer to refuse acceptance. The commissioning of a work shall also be deemed to be acceptance.
- 9.4 If the customer fails to fulfil its acceptance obligation, the acceptance shall be deemed to be conducted 4 calendar weeks after service provision if TRC notifies the customer of the completion of the work and the start of the period.
- 10 Claims for faults**
- 10.1 In the event of defects of work, TRC shall at its discretion be authorised to improve or newly create the faulty work.
- 10.2 If the subsequent fulfilment under Section 10.1 fails, the customer may, as a rule, at its discretion demand a decrease of the remuneration (reduction) or the reversal of the agreement (rescission). In the event of a minor breach of contract, in particular in the event of only minor defects, the customer shall, however, not be entitled to rescind.
- 10.3 The claims for defects shall not extend to normal wear and tear or damage that is caused by improper treatment after completion of work (in particular, excessive strain not intended in the product documentation/specification, use of unsuitable equipment, changes made improperly or repair work) or by an external event, which is not specified under the agreement. The customer must notify TRC of all changes that may have an influence on the fault liability in writing in good time.
- 10.4 If the customer demands a subsequent defect liability improvement, it undertakes to submit corresponding evidence in the form of a delivery note or invoice of TRC.
- 10.5 If it is noted on the occasion of a subsequent improvement that work provided by TRC do not have a fault claimed by the customer, a remuneration of the expenses incurred by TRC shall be calculated in accordance with the relevant applicable price list.
- 10.6 The guarantee period shall be one year from acceptance of the work.
- 11 Confidentiality**
- 11.1 "Confidential information" within the meaning of this Agreement includes all information, documents, images, drawings, expertise, data, samples and project documents supplied, transferred or otherwise disclosed by one Party ("disclosing party") to the other Party ("receiving party") during the period of validity of this Agreement. This also includes copies of this information in paper and electronic form.
- 11.2 All confidential information sent in writing must be marked as confidential by the disclosing party prior to transmission to the receiving party; this also applies to confidential information sent by email. Corresponding prior information is to be given in respect of confidential information that is passed on orally.
- 11.3 All confidential information sent or otherwise made accessible to the receiving party by the disclosing party in accordance with this Agreement
- a) may be used by the receiving party solely for the fulfilment of the relevant purpose of the agreement, unless a deviating express written agreement exists with the disclosing party,
- b) may not be duplicated, distributed, published or in any other way passed on by the receiving party, unless this is necessary for the fulfilment of the purpose of the agreement or if TRC is obligated under legal or official provisions to disclose confidential information, audit reports and documents,
- c) must be handled confidentially by the receiving party in the same way as it handles its own confidential information, however, in no case less carefully, than deemed necessary from an objective viewpoint.
- 11.4 The receiving party shall only disclose the confidential information received from the disclosing party to those employees and third-party companies under Section 3.3 that require it to provide services within the framework of the purpose of this Agreement. The receiving party shall obligate these vicarious agents to the same extent to observe secrecy as defined in this non-disclosure agreement.
- 11.5 Confidential information within the meaning of this Agreement does not include information for which the receiving party can reasonably prove that
- a) the information was already generally known at the time of publication or become known to the general public without breach of this Agreement, or
- b) the receiving party has received the information from a third party who was justifiably authorised to issue it, or
- c) the information was already known to the receiving party before being disclosed by the disclosing party, or
- d) the receiving party developed the information independently from the transmission by the disclosing party.
- 11.6 Confidential information shall remain the property of the disclosing party. The receiving party hereby grants its approval to return at any time at the disclosing party's request, but at the latest and without separate request by the it on cancellation or expiry of this Agreement
- a) all information, including all copies of it, to the disclosing party or at its request
- b) carry out a destruction of the confidential information, including all copies, and to confirm to the disclosing party in writing the fact of this destruction. Excluded from this are the reports and certificates produced for the customer only for fulfilment of the contractual undertakings under this contract, which remain with the customer. TRC shall be authorised as regards this and the confidential information, which form the basis for the service provided, to retain copies of the evidence of the correctness of the results and for general documentation purposes.
- 11.7 From the beginning of the contract, the receiving party will maintain the confidential information strictly confidential for a period of 3 years after ending of the contract, not make it accessible to any third party and not use the confidential information itself.
- 12 Intellectual property rights**
- 12.1 All usage rights to all industrial property rights and intellectual property rights, in particular to the expert reports, audit results, calculations, illustrations created by TRC, etc. shall remain exclusively, in terms of space, time and content with TRC without restriction.
- 12.2 The customer shall be granted a non-exclusively, unlimited usage right to the work results that is limited to the purpose of the agreement and unlimited in terms of space. All work results may be used by the customer for internal use only, unless governed differently. In particular the disclosure to third parties shall require approval from TRC.
- 12.3 In the event of retroactive agreement cancellation, all usage rights of the customer shall become null and void as well as all third-party usage rights derived therefrom.
- 12.4 Expert reports, test results, calculations, descriptions etc. produced in connection with the order may be used solely by the client only for the purpose for which they are intended as per agreement.
- 12.5 The client may disseminate test reports etc. only in complete and unabridged form. A publication or duplication for advertising purposes shall require in each individual case the prior written approval of TRC.
- 12.6 The mutual use of logos, brands and names for advertising or reference purposes shall require a separate agreement as a rule.
- 13 Liability of TRC**
- 13.1 The liability of TRC for damage and expenses caused by bodies and/or employees of TRC shall be limited regardless of the legal grounds, in particular in the event of breach of obligations from the debt relationship and from unauthorised actions, to three times the remuneration of the overall order, in the event of master agreements with individual retrieval option to three times the remuneration of the relevant individual order in whose context the damage or the expenses were incurred, and for orders on annually recurring services to the agreed annual remuneration. The liability of TRC shall be limited in each damage event to a maximum of EUR 2.5 million.
- 13.2 The liability restrictions in favour of TRC shall have the same effect in favour of its employees, executives and bodies.
- 13.3 This above disclaimer under Section 13.1 shall not apply if damage is based in malice, intent or gross negligence of the legal representatives of TRC or its vicarious agents as well as for damage that is based on breach of obligations for whose fulfilment TRC has given a guarantee for damage from the injury to life, body or health.
- 13.4 Should a cardinal obligation be breached, TRC shall also be liable in the case of minor negligence. In this sense, cardinal duties means essential contractual duties, the fulfilment of which allows orderly performance of this agreement, and whose performance customer can rely on. An entitlement to compensation shall, in the event of a breach of a key obligation, as regards the amount to the damage that was typical and foreseeable at the time of the breach of obligation as a possible consequence of the breach of contract (typically foreseeable damage), if none of the cases stated under Section 13.3 are given.
- 13.5 TRC shall not be liable for personnel made available by the customer to support TRC in its provision of the services to be provided under this contract unless the personnel provided are regarded as vicarious agents of TRC. Where, in accordance with the previous sentence, TRC is not liable for personnel made available, the customer shall indemnify TRC against any third party claims.
- 13.6 The statute of limitations for the compensation claims shall be guided by the legal regulations.
- 13.7 With the above regulations under Section 13, no change of the burden of proof to the disadvantage of the customer is associated.
- 14 Partial ineffectiveness, written form, jurisdiction**
- 14.1 Supplementary agreements to this contract have not been made.
- 14.2 Amendments and supplements shall be legally valid only if they are made in the written form; the same applies to amendments and supplements to this written form clause.
- 14.3 Should one or more of the provisions of this Agreement be invalid, the Parties shall agree upon a legally valid replacement provision that is as close as possible to the legal and economic intent of the invalid provision.
- 14.4 The place of jurisdiction for all disputes in connection with this Agreement is Cologne. This contract is subject to German substantive law.