

General Terms and Conditions of Purchase for Deliveries and Services of Third Parties to Companies of TÜV SÜD Group located in the USA



1. Conclusion of the contract, cancellation, written form, secrecy, prohibition of sub-contracting, changes to the object of the order

1.1 The legal relationships between the party providing goods or services (the "Contractor") and the companies of TÜV SÜD Group as the "Customer" are based exclusively on these terms of purchase and on any other written agreements. The Contractor's Standard Terms and Conditions shall not apply, and are hereby rejected. Acceptance by the Customer of the delivery/service without an explicit objection shall not be deemed as acceptance, by the Customer, of the Contractor's terms of delivery.

Deliveries within the meaning of these terms of purchase shall be both deliveries of goods and contracts for work and services.

1.2 Until withdrawn by the Customer, these terms of purchase shall apply to all future contractual relationships with the Contractor. Agreed deviations shall apply only to the order for which they were confirmed in writing.

1.3 Only orders that are issued or confirmed in writing shall be legally binding. This shall also apply to oral side agreements or subsequent amendments to the contract.

1.4 If the Contractor does not accept the order in writing within ten working days of receipt the Customer may cancel the order.

1.5 The Contractor agrees to treat as commercial secrets the conclusion of the contract and all non-publicised commercial or technical details that it becomes aware of through the business relationship. Any referral of the contract to third parties as a reference shall require the Customer's prior approval in writing. Subcontractors must be subjected to the same obligations.

If the Contractor discovers that information that is to be kept secret has been made available to an unauthorised third party or that a document that is to be kept secret has been lost, it shall inform the Customer of this without delay.

The obligation to secrecy shall also apply after the contract has been wound up. It shall only expire if and so far as the production knowledge contained in the documents that were handed over has become generally known.

1.6 The Contractor shall not be entitled to sub-contract the order or essential parts of it to third parties without the Customer's prior approval in writing.

1.7 The Customer may request changes to the object of the order even after the conclusion of the contract insofar as this is acceptable to the Contractor. The provisions of the contract shall be amended appropriately in such cases.

2. Prices, shipping, packaging

2.1 The agreed prices are fixed prices and exclude all types of additional demands. All prices are understood to be DDP (Delivery Duty Paid, Incoterms 2010, 7th revised version) to the destination set out in the purchase order including packaging. If prices are not shown in the order, the Contractor's list prices valid at the time of the order shall apply with the standard deductions.

2.2 No payments shall be made for visits, specimens/samples or preparing offers, projects, etc.

2.3 All deliveries shall be notified to the Customer without delay after shipping by means of an advice of shipment which shows exactly the type, quantity and weight. Advices of shipment, bills of freight, invoices and all correspondence must show the Customer's order number.

2.4 Provisions governing the transport of hazardous materials must be complied with; in particular, hazardous goods must be marked as such.

2.5 Deliveries ahead of schedule, excess deliveries, deliveries of less than the full amount or partial deliveries shall require the Customer's prior approval in writing. In the case of agreed partial deliveries the remaining balance must be shown.

2.6 Shipping shall take place pending delivery to the destination indicated by the Customer at the sole risk of the Contractor.

2.7 The Contractor's obligation to take back the packaging shall be governed by the statutory provisions. Superfluous packaging must be avoided. Only environmentally-friendly packaging materials may be used. If packaging is invoiced separately, the Customer shall be entitled to return to the Contractor free of charge packaging that is in good condition. The Contractor shall reimburse the Customer for 2/3 of the value shown on the invoice for packaging of this kind.

3. Documents, safety devices, industrial property rights

3.1 Storage, assembly and operating instructions and any necessary safety devices shall be provided free of charge. This shall also apply to documents that are required for the maintenance and repair of the delivery item.

3.2 The Contractor shall furnish documentary evidence of origin requested by the Customer with all the necessary data, duly sign it and make it available free of charge without delay.

3.3 Implementation records, in particular drawings, jigs and fixtures, tools, models, etc., which the Customer handed to the Contractor for the implementation of the order, or which were made in accordance with the Customer's instructions or paid for by the Customer, shall remain the property of the Customer. The Contractor may only use them for the contractually agreed purposes and they may only be made accessible to third parties with the Customer's written approval. After the order has been carried out the above-mentioned items shall be returned to the Customer without exception.

3.4 The Contractor guarantees that all products and services provided and delivered are free of the proprietary rights of third parties and that in particular the industrial property rights, licences and copyrights or other patent rights of third parties are not infringed by the products and services provided and delivered.

3.5 The Contractor shall indemnify the Customer and its customers from all claims by third parties arising from any infringements of industrial property rights and shall bear all the costs, including reasonable attorneys' fees, that accrue to the Customer in this context.

3.6 The Customer shall have the right to obtain from the rightful owner at the Contractor's cost the approval to use the delivery items concerned.

3.7 The Contractor shall not be entitled to make use of the Customer's trade name, logos or trademarks for its own benefit or that of third parties. Without the Customer's prior written approval, the Contractor may not use these either individually or in combination with its own trade name, trademarks or logos.

If the Customer grants its approval the Contractor shall strictly comply with the instructions with regard to size, positioning and layout of the trade name, trademarks or logos.

4. Dates, contractual penalty, withdrawal, substitute performance

4.1 Agreed delivery dates and periods are binding. The receipt of the goods or the provision of the works and services free of defects at the delivery point indicated by the Customer, or the successful acceptance in good time, shall be decisive for compliance with such dates and periods.

4.2 A contractual penalty shall become due if the Contractor defaults on a contractual date or period. The contractual penalty shall be 0.2 % of the net value of the order per calendar day of the delay, but not exceeding 5 % of the net value of the order; several claims to contractual penalties shall be aggregated. The Customer reserves the right to claim further damages, whereas the contractual penalty shall be set off against the actual damages resulting from such delay. If, on acceptance of the goods or services, the Customer did not reserve the right to claim a contractual penalty, the contractual penalty may be claimed until the final payment has been made.

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4.3 Notwithstanding the above, in the event of default by the Contractor, the rights of the Customer shall otherwise be governed by applicable law. The acceptance of a late delivery or late works and services shall not contain a waiver of claims for compensation.

In addition to any other rights or remedies, the Customer shall also be entitled, in lieu of withdrawing from the contract to have the order carried out by a third party at the expense of the Contractor.

4.4 The Contractor shall notify the Customer of identifiable delays to deliveries immediately. It may only plead non-compliance with a time limit that is beyond its control if it has notified the Customer without delay of the reason for this. The Contractor may only rely on the lack of necessary documents to be supplied by the Customer, if it had sent a written reminder for the documents and did not receive them within an acceptable period.

4.5 The Customer may withdraw from the contract if the delivery or the performance of the work and services are no longer of any use to it, taking into account economic aspects, any delays caused by force majeure or a labour dispute.

5. Warranty, guarantee, claims under liability for defects, damages, periods for giving notice of defects, warranty period, suspension, new start

5.1 The Contractor guarantees that all deliveries will be in conformity with the agreed specifications, however in particular with the latest accepted engineering standards, with any applicable national and international statutory requirements, including any rules and regulations by authorities, trade bodies and professional associations. If the Contractor has any misgivings regarding the type of implementation desired by the Customer it shall inform the Customer without delay in writing.

5.2 The Contractor agrees, to the extent that this is economically and technically possible, to use environmentally-friendly products and processes for its deliveries and also for the deliveries or ancillary services of third parties. At the request of the Customer, the Contractor shall issue a certificate of inspection for the delivered goods free of charge.

5.3 The Customer shall notify in writing all obvious defects of the shipment/service/work without delay as soon as they are detected in accordance with the conditions of ordinary business, but not later than within 5 working days of receipt by the Customer of the shipment / acceptance. In the case of hidden defects this notification period shall be 3 working days after detection.

5.4 Following a request by the Customer, the Contractor shall, without delay and free of charge and including all ancillary costs, remedy defects of the products, goods, shipment/service or work and services that are the subject of complaints during the warranty period; such defects shall also include the non-achievement of guaranteed data and the lack of warranted qualities. The Customer shall be free to choose the type of remedy, i.e. repair, replacement of the defective parts or a replacement delivery.

The Contractor shall in particular bear all expenses in connection with the detection of the defect and its remedy, insofar as these accrue to the Customer, in particular inspection costs, costs of dismantling and assembling, freight charges, transport costs and the costs of labour and materials. This shall also apply insofar as the expenses are increased because the delivery item was taken to a location other than the place of performance.

If necessary, the Contractor shall carry out repairs or new deliveries in multishift operations or during overtime or on public holidays provided that this is necessary because of the Customer's existing essential operating reasons and provided that this can be expected of the Contractor.

After the second unsuccessful expiry of a reasonable time limit set by the Customer for repair or a replacement delivery the Customer shall

be entitled to invoke the statutory rights of withdrawal or price reduction. An agreed period for the replacement delivery shall have the same legal effects as a time limit set by the Customer.

If the non-fulfilment or defective performance is limited to a definable part of the service, the withdrawal may be limited to this part insofar as the Customer has the right to withdraw from the contract and the remainder of the contract remains in force.

The Customer reserves the right to claim damages in all cases, in addition to the remedies provided hereunder..

5.5 In the event of material defects, the Customer shall also be entitled to render the performance itself and to obtain an advance payment from the Contractor. .

If the Contractor fails to comply with its obligations under liability for defect within a reasonable time limit set by the Customer, the Customer may carry out the necessary measures itself or have them carried out by third parties. In urgent cases following agreement with the Contractor, the Customer may carry out the repair or have it carried out by a third party. The Customer may remedy minor defects without prior agreement in fulfilment of its obligation to minimise loss without this leading to a reduction of the Contractor's obligations arising from liability for defects. The Customer may then charge the Contractor for the necessary expenditure. This shall also apply if unusually severe damage or heavy losses are imminent.

5.6 The statutory warranty periods shall apply, unless otherwise explicitly agreed. Any such period shall commence upon the surrender of the delivery item to the Customer or to a third party designated by the Customer at the location for reception or use stipulated by the Customer. As regards installations, machinery and plants the applicable warranty periods shall commence on the date of the acceptance inspection referred to in the written acceptance declaration by the Customer. If the acceptance is delayed for reasons beyond the Contractor's control, the applicable warranty period shall commence upon the provision of the delivery item for the acceptance inspection.

5.7 For deliveries or parts thereof which cannot be used by the Customer during the period in which the defect is examined and/or remedied the current guarantee period shall be extended by the period of interruption of use. For repairs or replacement deliveries or parts thereof the warranty period shall commence again after transfer of the risk.

6. Quality assurance, product liability

6.1 The Contractor shall carry out quality assurance suitable in its type and scope and in accordance with the state of the art and shall provide evidence of this to the Customer on demand. The Contractor shall conclude an appropriate quality assurance agreement with the Customer where the latter regards this as necessary.

6.2 The factory inspections carried out by the Contractor shall ensure that the deliveries conform to the Customer's technical specifications. The Contractor agrees to make records of all inspections and tests carried out and to file all test, measuring and inspection results for ten years. The Customer may inspect these documents at any time and make copies.

6.3 Unless otherwise agreed the Contractor shall mark the delivery items in such a way that they are permanently recognisable as its products.

6.4 If claims are made against the Customer for a breach of official safety regulations or under product liability law, regulations or statutes because of defectiveness of its product that is attributed to the Contractor's goods, the Customer shall be entitled to recover from the Contractor for costs, expenses, and damages, including reasonable attorneys' fees, insofar as this was caused by, or the result of, products supplied by the Contractor.

This damage also includes the costs of a precautionary recall action. As far as this is possible and reasonable the Customer shall inform the Contractor of the contents and scope of the recall measures and

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provide the Contractor with an opportunity to comment on such measures.

6.5 In addition, prior to the commencement of any labor, work, or services hereunder or on the premises of the Customer, the Contractor shall obtain and provide evidence of adequate insurance with carriers doing business in the state in which the work is performed, and acceptable to the Customer, which shall include: .:

(a) Workers' Compensation and Employers Liability with limits of not less than \$1 million, which shall provide for a waiver of all subrogation rights by Contractor and its insurers;

(b) Automobile liability insurance, including coverage for owned and non-owned and hired automobiles with combined bodily injury and property damage limits of not less than \$1 million;

(c) Commercial general liability insurance written on an "occurrence" basis with combined bodily injury and property damage limits of not less than \$1 million per occurrence and \$2 million in the aggregate.

Contractor shall furnish to Customer certificates of insurance demonstrating compliance with these requirements and noting expiration dates of policies, and providing that such insurance will not be cancelled or changed with less than 30 days' prior notice to Customer. The certificates will also indicate: (1) that Customer has been named as an additional insured under the Contractor's commercial general liability policy; (2) that the commercial general liability policy includes broad form contractual liability coverage which will include coverage for performance under this order. If Contractor fails to furnish said certificates or maintain said insurance, Customer shall have the right to cancel an order for breach of these conditions. Contractor, for itself and its insurers hereby waives subrogation against Customer.

7. Invoicing, payment, certificates, rights to withhold, prohibition of assignment, set-off, insolvency of the Contractor

7.1 Invoices shall be submitted separately to the Customer in duplicate with all the appropriate documentation and data after the delivery/service or works and services. Invoices that are not correctly submitted shall be deemed to be received by the Customer on the date they are corrected.

7.2 Payments shall be made in the usual form within 14 days less a discount of 3 % of the amount invoiced or 30 days without deduction calculated after complete delivery or acceptance inspection of the works and services and receipt of a proper and verifiable invoice. Discounts shall also apply, if the Customer sets off or retains payments because of defects; the discount period shall commence after the complete elimination of the defect. Deliveries ahead of schedule (Clause 2.4) shall not affect an agreed date for payment.

7.3 Insofar as certificates of material tests are part of the agreed deliverable, they shall form an essential part of the delivery or works and services and shall be sent to the Customer together with the invoice. However, the Customer must receive them not later than ten days after receipt of the invoice. In these cases the period for payment shall commence with the receipt of the agreed certificate.

7.4 The Customer shall have the right to exercise its statutory rights to withhold payment in the event of incomplete or defective deliveries or provision of the works and services.

7.5 The Contractor may not assign its claims against the Customer or have them collected by third parties without the approval of the Customer. If the Contractor assigns its claims to third parties or has them collected by third parties in spite of this the Customer shall have the option of paying the Contractor or the third party with the effect of a discharge.

7.6 With the exception of the Contractor being the subject of insolvency proceedings, the Customer shall have the right to set off any claims brought against the Contractor by any other companies that are affiliated with the TÜV SÜD Group within the meaning of § 15 of the German Companies Act (AktG).

7.7 If the Contractor discontinues payments and/or is over-indebted or if a petition for the initiation of insolvency proceedings has been made in relation to the Contractor's assets, the Customer shall be entitled to withdraw from the contract. If the Customer does not withdraw from the contract, it shall be entitled to withhold an amount of at least 5 % of the net order sum as security for the contractual guarantee obligations until the expiry of the guarantee period.

8. Compliance

8.1 The Contractor hereby confirms its awareness of the TÜV SÜD Code of Ethics available online at

<http://www.tuv-sud.com/code-of-ethics>.

8.2 The Contractor hereby assumes the obligation to undertake all necessary action in order to ensure that any of its employees and those in its supply chain are compliant in all respects with all applicable laws including but not limited to the US Foreign Corrupt Practices Act, the UK Bribery Act 2010 and the UK Modern Slavery Act 2015 and refrain from any illegal activities within their professional activity. The Contractor hereby confirms to the Customer that neither it nor any of its employees have committed any act in connection with this agreement that may constitute bribery, nor shall the Contractor or its employees commit such acts in the future. The Contractor hereby represents to the Customer that it shall refrain from all activities, which could constitute a criminal act of fraud, fraudulent breach of trust, criminal offence under insolvency law, criminal offence under unfair competition law, granting of an undue advantage or bribery.

8.3 In the event that the Contractor has demonstrably and consciously entered into an agreement which represents an impermissible restraint of competition, it shall be liable to pay to TÜV SÜD 10% of the net order value. Both contract parties shall be entitled to prove that a higher or lesser amount of damage has been caused. This payment obligation shall also arise if the contract has been terminated or fulfilled. Further contractual or statutory claims of TÜV SÜD shall remain unaffected. Inadmissible restraints of competition shall be deemed to include anticompetitive practices and agreements with other contractors/tenderers in relation to:

- the prices to be demanded,
 - commitments concerning further payments,
 - profit mark-ups,
 - process margins and other price elements,
 - payment, delivery and further conditions, insofar as they directly impact on the price,
 - profit sharing or other participation arrangements ,
- as well as recommendations, unless such practices or agreements are admissible under competition law.

8.4 The Contractor hereby represents and warrants to the Customer that all necessary consents and authorizations have been obtained prior to providing services to the Customer.

8.5 In the event of any violation of the provisions in this clause attributable to the Contractor's fault, the Customer shall be entitled to terminate all negotiations with the Contractor, and to terminate all contractual agreements with the Customer or withdraw from such agreements. In the event that the Customer is held liable by any third party based on a violation of any undertaking in this section by the Contractor, the Contractor hereby agrees to indemnify the Customer from any such claims. In addition, the Contractor hereby agrees to reimburse the Customer for all damages related to such third party claim.

8.6 The contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that the contractor and subcontractor shall

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abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

9. Foreign trade

The Contractor shall inform the Customer immediately, if any deliverable or performance is subject, in whole or in part, to export restrictions under German foreign trade rules, EC-regulations or the terms of international embargos or export restrictions.

10. Indemnification

10.1 Contractor agrees to defend, indemnify and save harmless the Customer, its customers and users of its products, against any claim, demand, suit damage, loss, expense, royalty, award, fees and costs (including court costs and reasonable attorneys' fees) arising from the actual or alleged infringement of any patent, copyright, or trademark by reason of sale or use of the goods covered hereby. In the case of actual infringement, Contractor shall, at its sole expense, procure for Customer the right to continue using such goods under license or otherwise, or replace the infringing goods with a non-infringing substitute of equal quality, or modify such goods to Customer's satisfaction, so that they become non-infringing.

10.2 With respect to goods furnished pursuant to an order, Contractor agrees to defend, indemnify and save harmless Customer, its affiliates, agents, servants, employees, officers, directors, parents, and subsidiaries against any loss, damage, expense (including court costs and reasonable attorneys' fees) or claim whatsoever for any injury or death of any person (including without limitation any injury or death of any employee of Contractor or Customer) or damage to property arising from or relating to the undertaking of Contractor hereunder, or any defects in the goods or services furnished, regardless of the negligence or fault of the Customer.

10.3 Contractor agrees to defend, indemnify and save harmless Customer, its agents, servants, employees, officers, directors, Parents, subsidiaries, affiliates and insurers against any loss, damage, expense (including court costs and reasonable attorneys' fees) or claims whatsoever for any injury to or death of any person (including without limitation injury or death of any employee of Contractor or Customer) or damage to property arising from or relating to the performance of any labor, work or services or the use of any materials, tools, equipment, scaffolding, machinery or property of Customer undertaken or in connection with an order, including without limitation, labor, work or services in connection with or collateral to a contract or agreement relative to the construction, alteration, repair or maintenance of a building, structure appurtenance, or appliance of Customer, including moving, demolition and excavation connected therewith, whether the same arise under statutes (including without limitation Workers' Compensation Laws) the common law, or otherwise and whether or not such loss, damage, expense or claim is caused in part by the negligence or other fault of Customer, its agents, servants, or employees; provided, however, that this indemnity shall not apply to the extent that any such loss, damage, expense or claim results from the sole negligence of Customer. This indemnity expressly includes damages, losses and expenses arising out of fines or penalties, including for violation of applicable laws and regulations, and including those governing the costs of environmental clean up necessitated thereby. Contractor's indemnity obligations under this clause shall not be limited by applicable Workers Compensation laws and,

as respects these indemnity obligations, Contractor expressly waives all immunities and defences it may have under such laws.

11. Severability

If any parts of these general terms of purchase are invalid this shall not affect the validity of the remaining provisions.

12. Place of performance

Unless otherwise agreed in writing the place of performance for the obligation to deliver is the delivery location indicated by the Customer and the registered office of the Customer for all other obligations of both parties.

13. Contract language

The contract language is English. Insofar as the parties to the contract use another language in addition, the English wording shall prevail.

14. Legal venue

. All disputes arising out of this agreement shall be resolved by final and binding arbitration, to be conducted by a single arbitrator under the Commercial Arbitration Rules of the American Arbitration Association at its Boston, Massachusetts office, or such other arbitration service in the same locale as the parties may agree upon. The parties shall bear their own legal fees but shall otherwise split the costs and fees charged by the arbitrator. To the extent that the parties seek injunctive relief, that may be sought in either a federal or state court within the Commonwealth of Massachusetts..

15. Supplementary law

This contract and all legal relations arising from it shall be exclusively governed by, and construed in accordance with, the laws of the State of New York, without regard to its conflict of laws provisions and the UN Treaty on the International Sale of Goods (CISG) which shall be expressly excluded.