

## PREAMBLE

These General Conditions of Purchase define the fixed general contract terms for all procurements (supplies and/or works/ services) provided by the contractor with respect to TÜV Austria, and will apply to all companies of the TÜV Austria Group in Austria.

## ABBREVIATIONS AND DEFINITIONS

### Principal (AG):

The General Conditions of Purchase apply to the following companies of the TÜV Austria Group:

TÜV AUSTRIA HOLDING AG

TÜV AUSTRIA AKADEMIE GMBH

TÜV AUSTRIA AUTOMOTIVE GMBH

TÜV AUSTRIA CERT GMBH

TÜV AUSTRIA SERVICES GMBH

TÜV TRUST IT TÜV AUSTRIA GMBH

and all related companies, in short TÜV.

### Contractor (AN):

The contracting partner of the client for the present contract.

### Procurement performance:

This is the performance to be rendered according to specifications or performance specification by the contractor under the terms of the contract.

### Procurement support:

The request, the general conditions of purchase, specifications, performance specifications, and, if available, award criteria, including all relevant annexes.

### Third-party contractor:

Companies contracted by the contracting authority for supplies and services - with the exception of the contractor.

### Place of execution:

The place of execution for procurement performance is defined in each instance within the contract. For payments, the place of execution is Vienna.

### Subcontractor:

Employees or businesses additionally included by the contractor or by third-party contractors to fulfill their contractual obligations to the contracting party - without notice of a contractual relationship with the contracting authority

## 1. PURPOSE OF THE CONTRACT

The purpose of the contract is to regulate the rights and obligations of the contractor and TÜV in the provision of procurement performances.

The contract for the provision of procurement performances includes the following documents (including their attachments), which are valid in the following order:

- 1.1 The written order from TÜV.
- 1.2 The jointly initialed technical and/or commercial negotiation protocol, if available.
- 1.3 The offer (references to the general terms and conditions of the contractor are not valid).

- 1.4 All legal and technical standards, guidelines and other regulations, to the extent applicable to the procurement performance, or are current technical standards, and which are made known at the time the contract is concluded, but only re-enter into effect with transition periods within the performance period or re-enter into effect within the performance period and are immediately binding. The provisions arising from Point 4 complement the contract solely from a technical perspective. Commercial provisions - particularly from ÖNORMs - will not be a subject of the contract, even if in this respect no regulation is provided in Points 1 to 4. The general terms and conditions of the contractor are not subject of the contract. If the contractor attaches its own general terms and conditions to financial documents or future order confirmations of the contract, this will hereby be explicitly rejected. A further objection in each individual case is not required. The conduct of TÜV must not be seen under any circumstances whatsoever as approval of such conditions.

## 2. SERVICES OF THE CONTRACTOR

The contractor is to provide the products and services resulting from the subject of the contract defined in Point 1 above. All services not mentioned separately in the procurement documents, provided that they are for the full and proper performance of the contract, or required to meet current technological standards, are also included in the scope of services of the contractor and shall be deemed included in the offered price. Excluded from the scope of performance of the contractor are only possible TÜV's own services, which are explicitly stated in the procurement document.

The contractor is to be informed about the nature and scope of its duties and any circumstances that may play a role in the planning and subsequent execution of the procurement performance and/or delivery. In case of ambiguity, the contractor is to clarify this in advance with TÜV, and this clarification is to be noted. Otherwise, additional costs arising from such ambiguities during the placing of the order are to be borne by the contractor and will not be reimbursed by TÜV. Within the scope of the provision of procurement-related services, the contractor undertakes to comply with all legislation and governmental regulations necessary to fulfill the contract fully and properly. The contractor is committed to ensuring that all legal, regulatory and operational health and safety regulations and all individual administrative decrees and orders of the individuals in charge are to be followed by its agents and the subcontractors it appoints.

The contractor further undertakes to comply with the agreed timelines. By exceeding the delivery or performance dates specified in writing, there will be no reimbursement of either a wage increase nor material price increase for work which is carried out after this date. If delays are caused by TÜV's actions, the schedule continues to apply in principle until a new schedule is determined through mutual agreement.

The contractor undertakes to take care that the persons employed by them or their subcontractors have the necessary authority, reliability, expertise and physical fitness to fulfill their work. In the event of use of sub-suppliers and/or subcontracted companies, these are to be named by the contractor in their bid, and to be approved in advance by TÜV. TÜV reserves the right to refuse subcontractors. The use of sub-suppliers and/or subcontracted companies shall not release the contractor of any of their obligations or liabilities. The contractor is to remain liable for the actions of sub-suppliers and subcontractors to an equal extent as if they were their own. Through this agreement, no legal relationship is formed between TÜV and the sub-suppliers and/or subcontracted companies.

As far as the procurement performance includes construction and assembly work, the contractor must also comply with the following provisions:

- Working time is determined to be a 40-hour week. The daily working time must be agreed separately.
- Overtime, night, Sunday and holiday hours will only be reimbursed if they are ordered by TÜV prior to carrying out the work, and not on the part of the contractor to compensate for delays that were previously caused by him.
- Holidays not recognized by law are considered working days. All necessary permission from the competent authorities to work overtime, night-time, Sunday and holiday hours must be obtained by the contractor.
- Operations under special conditions are those which are defined in the relevant, current collective labor agreements for workers and employees in Austria. The percentages specified there are the maximum amounts remunerated.
- Unless unit prices are agreed, the following provisions shall apply to invoicing:
- TÜV will only recognize as travel time those hours that are required from the location of the company concerned to the place of assembly via the cheapest air, train, or road connection.
- For assembly personnel, travel expenses based on actual documented expenses (invoice, ticket, etc.) are paid without surcharge.
- With regard to the remuneration of travel costs, the relevant, currently applicable collective agreements for workers and employees in Austria apply. If the journey is made in personal vehicles, the official mileage allowance is paid.

- The start of the installation period is, if not already fixed in the contract, agreed between the competent management of the contracting entity and the contractor.
- TÜV is to be notified in writing of the selected representative of the contractor before work commences. This person must always be contactable during working hours.
- The contractor will ensure the continuity of key personnel to as great an extent as is possible. The project manager, site manager, and other such persons deemed necessary shall be specified as key persons. In the event of a justified request by TÜV, the contractor's key personnel are to be changed.

### 3. PACKAGING AND SHIPPING TERMS

Deliveries are performed on the basis of DDP (INCOTERMS 2010).

Basically, only the supply of the entire quantity is considered as being on time. Partial deliveries, to the extent permitted and agreed, must be labeled as such.

The contractor is responsible for determining the type of packaging required for the integrity of the goods to be guaranteed.

The order number is required on all documents and invoices. If delivery is to be performed by a different company than the contractor, this is also to be recorded alongside the order number. Notification of expected delivery delays must be given immediately by the contractor.

### 4. SUBSEQUENT AMENDMENTS TO THE ORDER

TÜV may require changes to the procurement performance even after conclusion of the contract. The contractor is obliged to provide information regarding the impact in relation to dates, costs, third-party contractors, etc. These effects have to be calculated and disclosed in a comprehensible manner by the contractor. Subsequent offers are to be created on the basis of the original calculation of the main contract.

The calculation for the supplementary offer must be disclosed in particular in instances when flat rates were originally agreed. The execution of the works may commence only after commissioning by TÜV. The same applies to additional work not included in the initial contract but the undertaking of which is requested by TÜV. If changes to service delivery times are requested by TÜV, although these are not the fault of the contractor, new binding deadlines are to be determined through agreement, otherwise the originally-agreed deadlines remain unchanged and in place.

### 5. REMUNERATION OF THE CONTRACTOR - PAYMENT CONDITIONS

Unless otherwise agreed, all estimates are submitted to TÜV without charge. Moreover, the supplier guarantees the accuracy of its cost estimate. However, if the expenses of the supplier falls short of their calculations, TÜV is only to be billed with the actual expenses. The reimbursement of services is made after completion of the service, unless otherwise agreed. If the parties agree to payment in installments, partial payments will only be effected after completion of the respective portion of work. The prices are fixed and unchangeable until complete fulfillment of the order. Any changes to the basis of the calculations have no influence on the price offered. The possibility of contesting due to the presence of an error in calculations is hereby expressly excluded. The prices specified in the contract are net, and the statutory VAT is added to each. Unless otherwise specifically agreed in writing, the agreed prices always include the delivery as outlined in Point 3 "Packaging and Shipping Terms".

In general, all travel expenses for staff of the contractor, including overhead and associated costs that are required under the contract, are calculated into the bid price.

The payment dates are determined by agreement between the parties.

Payments will be made, unless otherwise agreed, within 21 days less 3% discount, or within 30 days net following receipt of an auditable, accurate (assuming maturity) and lawful invoice. Payments do not constitute an acknowledgment of the accuracy of the statements and/or conformity with the contract of delivery or performance, but are made subject to retrospective review. In particular, all claims of TÜV to the contractor potentially arising from the contract remain intact.

TÜV reserves the right to retain 10% of the total order value for the duration of the warranty period plus 3 months as a non-interest-bearing financial retention. On request, a free, irrevocable and unconditional bank guarantee from a major bank located in the EU can be produced, issued for the same amount and for the same duration. The value of this financial retention remains unchanged for the duration of its existence. In the event of an extension of the warranty period because of warranty claims, its duration is adjusted accordingly. The return of the bank guarantee is fulfilled upon receipt of a written request after expiration of the warranty period.

The contractor is not entitled to offset any claims of TÜV with their own claims, unless both the basis and the amount of the claims were specifically recognized in writing or in law.

### 6. TRANSFER OF OWNERSHIP AND RISK

With payment of the total price - excluding any agreed financial retention - the ownership of the procurement performance passes fully over to TÜV. The retention of ownership is excluded. The contractor guarantees to TÜV that no third party rights exist.

Nonetheless, financial retention can be used in the event of any such third-party rights claims being made against TÜV.

Until the final transfer of ownership, the contractor bears the risk of accidental losses related to the procurement performance.

### 7. DEADLINES AND PENALTIES

If specified penalties are attached to deadlines, the following will apply:

The complete delivery/service at the place of execution is considered meeting a deadline for a delivery/service. Penalties also apply to mere partial completion. When exceeding the agreed deadline without further notice, the contractor is in default and owes TÜV for each week or part thereof and a punitive no-fault contractual penalty of 1% of the total amount, up to a maximum of 10% of the total amount. If deadlines are moved with the approval of TÜV, these new dates shall be construed as the new penalty dates. TÜV therefore expressly reserves the right to claim further damages in addition to the no-fault penalties (in accordance with Point 14).

Acceptance of a delayed service does not exclude potential compensation claims.

### 8. WARRANTY

The contractor ensures that all procurement performances / supplies correspond to those usually expected, and those defined within the contract - in particular the current technological standards.

In the event of a warranty claim, the contractor is to identify all defects, and to provide any remedial services required at their own expense. The incurred expenses will only be borne by TÜV as they would have been during the contractual performance of the contractor. In addition, TÜV is entitled to full compensation from the contractor. The statutory warranty period is agreed. As far as the procurement performance cannot be rendered due to the remedying of defects - as required by the contract - the warranty period is extended by the duration of the interruptions. TÜV is required to notify the contractor of defects within a reasonable period of noticing the defect. The supplier expressly waives the objection to delayed notification of defects according to §377 UGB.

Oral communication of the defect is considered keeping with the deadline. By written notification of defects and invitation to improve after acceptance, the warranty period is suspended until these deficiencies are rectified. Further claims of TÜV remain unaffected by claims under the warranty.

### 9. LIABILITY

The contractor is liable for any personal injury, property damage and financial loss (including loss of profits), the cause of which is deemed to be the contractor or its agents, during or after the fulfillment of the procurement performances, to TÜV or its personnel, and also for cases of minor negligence, if unable to - where relevant - prove that the contractor or his agents are not at fault.

The contractor shall indemnify TÜV from all claims of third parties resulting from the actions of the contractor or their agents.

## 10. INSURANCE

The Contractor shall provide, on request, with the tender, proof of an existing liability insurance for the period of performance, with an indication of the predetermined amount of coverage for personal injury and property damage per claim.

## 11. OWNERSHIP OF DOCUMENTS - USAGE RIGHTS

TÜV claims ownership of all documents, drawings, etc. which are produced or procured in compliance with the order or this contract by the contractor ("Documents").

The contractor is obliged to provide TÜV with the originals of all contract-related documents, especially technical documents, and to also to provide them in editable electronic format.

TÜV shall legally have the exclusive and transferable usage rights (right of use) for the material, including any other proprietary rights in the broadest possible sense.

## 12. PATENTS - INVENTIONS

The contractor must immediately report all inventions that arise in connection with their activities for TÜV and, at the request of TÜV, initiate all steps for a patent application for TÜV's benefit. TÜV will support the contractor in this task.

The contractor is obliged to perform its services so that they are free of third party rights, in particular free of patent rights or intellectual property rights. In the event of third-party claims being made against TÜV due to an infringement of such rights, the contractor is obliged to indemnify TÜV from such claims. The contractor is obligated to transfer all intellectual property rights that are necessary for the achievement of the contractual object to TÜV, insofar as TÜV is not already in possession of them.

## 13. CONFIDENTIALITY - PUBLICATION

The contractor expressly undertakes that they and their representatives, consultants or other agents, in the course of negotiations and discussions in connection with the conclusion and implementation of the contract, are to treat all disclosed information confidential, to use it only for the purpose of the business relationship between the contractor and TÜV and to prevent the disclosure of this information to third parties in any form whatsoever.

Such confidential information includes, in particular:

- all submitted written documents (e.g. offers, supplements, plans, technical descriptions) and their contents.
- all non-written information communicated to the contractor during negotiations or meetings.

Confidential information gained in this manner includes, but is not limited to, economic, financial, operational and technical issues, know-how, particularly with regard to software and hardware, technical applications or information services, all sales, marketing and advertising, and customer strategies and activities.

The contractor expressly undertakes to ensure that confidential information is only disclosed to the extent that is absolutely necessary, and then only to persons who are subject to a professional confidentiality agreement and/or are bound in writing to the appropriate non-disclosure obligation.

This Article shall remain applicable for a period of 5 years after termination of the contract.

Publications of any kind (radio, television, press, journals, lectures and the like) regarding the overall system can be made by the contractor only with the prior written consent of the contracting party. This also applies to the production of photographs, illustrations and other specific representations for publication. The contractor shall ensure that third-party contractors have obtained the consent of TÜV also for the above scenarios.

Use of the LOGO is only permitted by means of a separate contract.

The contractor is obliged to hand over all documents in their possession (both originals and facsimilies) to the contracting party promptly and without solicitation after completion of the contract or in the event of premature termination of the contract. All services provided by the contractor are to be treated by TÜV as non-confidential. Any additional knowledge and information acquired by TÜV as a result of the exercise of their information and audit rule (Point 7) shall be treated by TÜV as confidential.

## 14. FORCE MAJEURE

A force majeure is understood to be an external unpredictable and unavoidable event impacting upon obligations, which the respective parties could not foresee at the signing of the contract. This also includes, for example, terrorist attacks, blackouts, strikes, civil unrest, governmental or judicial directives, and suchlike.

If either contract partner is unable to comply with its contractual obligations due to force majeure, they must indicate this to the other party without delay, stating the expected duration. The other party is not entitled to any claims arising from such a breach of contract for the period of the existence of the circumstance of force majeure. The mutual rights and obligations are suspended during the period of existence of the breach of contract based on force majeure in the areas affected by the force majeure. Already incurred payment obligations remain standing and must be met without delay.

In the case of force majeure, the parties will endeavor to keep the resulting disadvantages to a minimum. The contractor concerned commits to take all technically and economically reasonable measures to eliminate the causes or consequences of the force majeure.

If it is foreseen that the circumstances of the force majeure and/or its aftermath will last longer than 4 weeks, the contracting partner must initiate negotiations to achieve a mutually acceptable solution. If the duration of the circumstances of force majeure and/or its aftermath, is, however, expected to be longer than 8 weeks, an extraordinary termination right is reserved by the contractor who is not affected by the force majeure, without being bound to notice periods or dates.

### 15. TERMINATION OR INTERRUPTION

This contract cannot be terminated by the contractor. TÜV has the right to interrupt or to terminate the contract at any time by giving two weeks' notice. In the case of termination or interruption, the contractor is to receive remuneration for the portion of the work completed at the agreed remuneration, which represents the sum of the present values of the services already provided at this time. The extent of services provided shall be demonstrated by the contractor (for example, on the basis of monthly progress reports). If the scope of the proven performance corresponds to a partial service which is shown separately in the price sheet, the contractor is entitled to the corresponding part value of the total order value. Additional financial claims of the contractor are not valid.

If TÜV has notified the contractor of a mere interruption of the contract, the contractor will resume the provision of open contractual services within 14 days of written notification of TÜV pertaining to the desired continuation of work. However, the contractor has the right to reject the continuation of performance of its obligations if the interruption lasts longer than 6 months. Upon termination or longer-term interruption, the contractor is obliged to hand over to TÜV all documentation in a orderly and usable form.

### 16. RIGHT TO WITHDRAW

TÜV reserves the right to withdraw when it determines the use of the delivery or performance services provided by the contractor to be unacceptable, i.e. use of procurement performance is not available to TÜV. Unacceptability exists especially when performance values fall below those guaranteed, or other agreed performance features fall substantially below those guaranteed. In all events, a shortfall of 5% shall be deemed critical.

### 17. LEGAL SUCCESSION

TÜV may transfer the rights and obligations under the contract to a legal successor or affiliated companies; the contractor may only object to a transfer to a legal successor if the assignee does not guarantee the fulfillment of the liabilities of TÜV arising from this agreement and the order.

The transfer of rights and obligations under the contract on the part of the contractor is only permitted with the prior written approval of TÜV.

The contractor is not entitled to relinquish its claims or have them overtaken by third parties, especially without prior written approval by TÜV.

Otherwise this cession will be void (absolute effect of the cession ban). TÜV can, however, in this case make payment to the contractor or the third party at their discretion with an exempting effect.

### 18. SEVERABILITY CLAUSE

Should any clause or purchasing condition be or become invalid or void, the legal validity of the remaining provisions shall thereby remain unaffected. The contracting partners will commit themselves to replace the invalid or void provision with another effective provision, the aim of which is to facilitate the same economic success.

### 19. MISCELLANEOUS

The written contract, including its annexes, regulates all relations between the parties with respect to the subject matter herein. Changes and/or additions and annexes to the contract shall be in written form - this also applies to the agreement of waiving the written form. Verbal agreements have not been, and will not be, entered into.

All previous agreements and arrangements relating to the subject matter herein applicable to the conclusion of the written contract shall be revoked. In the event of contradictions between the Annexes and the text of the contract, where any doubt arises, the contract text is binding. Headings are for convenience only and not an interpretation of the contract. For issues not regulated in the contract, these conditions of purchase apply.

### 20. APPLICABLE LAW - JURISDICTION

Any disagreements that may arise in connection with the contract, its validity, its interpretation, and implementation should be settled on good terms by negotiation between the contract parties. However, should an agreement not be reached, or one party declare that an agreement cannot be reached, then all disputes arising out of this agreement, or related to its violation, termination or nullity will be finally settled through arbitration and conciliation by three arbitrators selected in accordance with these rules from the International Arbitration Center of the Austrian Federal Economic Chamber in Vienna (Vienna Law). Use of the reinstatement provisions under the Austrian Code of Civil Procedure (ZPO) is foregone. Arbitration will take place in Vienna. The court of arbitration shall give priority to the contents of the contract in its verdict. Negotiations before the court of arbitration will be held in German. The applicable law is the substantive law of the Republic of Austria, to the exclusion of the UN Sales Convention and the conflicts of law rules.