



## **General Terms and Conditions of Dr.-Ing. Wesemann Gesellschaft für Ingenieurgeodäsie mbH, DMT GROUP**

### **I. Definitions**

The following terms used in these General Terms and Conditions have the following meaning:

"Contractor" is the company of the TÜV NORD Group, in which name this Agreement is being signed.

"Principal" is the customer commissioning the Contractor.

"Written" is the issuing of a declaration by letter, email, or fax, unless expressly specified otherwise in these General Terms and Conditions.

"Entrepreneur" is any contract partner practicing its commercial or independent professional activity upon conclusion of the Agreement.

"Consumer" is any contract partner that concludes the Agreement for a purpose that is predominantly neither part of its commercial nor independent professional activity.

### **II. Validity of these Conditions**

1. Except as provided otherwise in individual cases, Agreements with the Contractor are concluded exclusively pursuant to the following provisions. The Contractor does not accept any of the Principle's conflicting regulations or conditions to the contrary unless it expressly consented to such in writing. The Contractor's following conditions apply even if the Contractor provides its service without reservations while knowing of the Principal's contradicting or conflicting conditions.

2. These General Terms and Conditions apply to all of the Contractor's services (to include but not limited to expert opinions, inspection and consulting services) and all responsibilities resulting from the contractual obligation with the Principal. These conditions also apply to all future business relations vis-a-vis companies and corporate bodies governed by public law.

### **III. Conclusion of the Contract**

1. An Agreement is deemed to be concluded with the Contractor only after the Principal accepts an offer by the Contractor without reservations or if the Principal receives a written order confirmation from the Contractor or if the Contractor commences the provision of the service. If the Contractor issues a written order confirmation, such order confirmation is decisive in terms of content and scope of the Agreement unless expressly negotiated otherwise.

2. Any and all arrangements between the Principal and Contractor regarding the performance of the Agreement are fully set forth in writing in this Agreement including these General Terms and Conditions. There are no verbal supplements.

### **IV. Performance of the Agreement and Principal's Obligation to Participate**

1. If objects of the Principal must be accessed for the contractual performance of the service owed by the Contractor, the Contractor shall not be liable for compensation for damage to or destruction of these objects resulting from the contractual performance.

2. If the Contractor's own equipment is damaged, destroyed, or lost as a consequence or at the occasion of proper performance of the Contractor's service and through no fault of the Contractor, the Contractor is authorized to request replacement from the Principal.

3. Transportation and possible return of the Principal's objects is at its own cost and risk; however, return is performed only upon the Principal's express request. During storage, the Contractor's liability is limited to the same due diligence as for its own affairs.

4. The Principal is obligated to fully disclose all information relevant for the Contractor's proper performance of its service. The Contractor, is however not obligated to review the accuracy and completeness of data, information, or other services provided by the Principal, insofar as there is no cause for this in consideration of the respective circumstances of each individual case, unless expressly stated within the order. The Contractor does not accept any warranties for the accuracy of safety rules, information and programs upon which its inspections and expert opinions are based, unless such regulations, instructions, or programs originate with him or are the object of the inspection order. If the Contractor is commissioned with inspecting the technical safety of an object, it does not accept any warranties for the object's freedom from other faults, unless this is expressly listed in the order.

5. Insofar as the Principal's participation is required for the Contractor's performance of services, the Principal must provide such in a timely manner and at its own costs; expenses will be reimbursed only if this has been negotiated expressly in writing. To the extent that the Principal does not fulfill its obligations to participate, does not do so properly or in a timely manner, and if acceptance is therefore delayed, the Contractor is authorized to charge any additional expenses thus incurred. The Contractor's further legal claims are expressly not affected.

6. The Contractor is authorized to have the services owed under this Agreement performed by a carefully selected and suitable subcontractor.

7. If the Contractor is active outside of its premises, the Principal shall be responsible for any measures required in order to fulfill duties of care to safeguard public, unless such is not required based on the nature of the activity or based on an agreement with the Principal. The Contractor is authorized to refuse performance of the service for as long as required measures are not taken. The Principal will inform the Contractor in writing, in a timely manner, of all safety and accident prevention regulations applicable at the location.

8. If the Agreement includes services pertaining to the Principal's EDP system, the Principal is obligated to back up data and programs at regular intervals that are adequate for the application, at least once a day, in machine-readable form, to ensure that these can be recovered with reasonable effort. The Contractor is responsible for recovery of data only if and insofar as the Principal has ensured that such data can be reconstructed from other data material with reasonable effort.

### **V. Deadlines and Schedules**



1. If a binding deadline for the provision of services is not agreed, the Contractor defaults only if the Principal has first given a written, adequate deadline to provide the service owed and such deadline has expired unsuccessfully. Deadlines commence only as of the complete provision of any and all obligations to participate owed by the Principal, and, insofar as a down payment has been negotiated, as of the receipt of such. Deadlines are extended accordingly due to the Principal's retroactive change requests or delayed participation.
2. If the service owed by the Contractor is delayed due to unforeseeable circumstances and through circumstances, for which the Contractor is not at fault (e.g. strike, legitimate lockout, disruption of operation, transportation disruption, shortage of resources, official measures - also at the Contractor's supplier), the Contractor is authorized to defer the service for the duration of the delay. In the event that the delay lasts more than six weeks, the Contractor is authorized to withdraw from the Agreement. The Contractor will immediately inform the Principal of the non-availability of the service or partial service, and in the event of a withdrawal from the Agreement will immediately reimburse any services in return already provided for such. Claims for damages are excluded.
3. If the Principal defaults on acceptance or if it violates other obligations to participate, the Contractor is authorized to request reimbursement of any additional expenses possibly incurred due to such default or violation. This does not affect any further legal claims for damages.
4. If the Contractor defaults on the provision of services due to slight negligence, its liability for damage arising from deferment (compensation in addition to services) is limited to 5% of the contract price. Claims for damages in lieu of performance are subject to Sec. X..

## **VI. Acceptance**

1. The Principal is obligated to accept the Contractor's services. The Principal is not entitled to refuse acceptance for insignificant defects that do not have a material effect on the fitness of the service pursuant to the contractual purpose, regardless of its right to assert statutory warranty claims. In case of self-contained partial services, the Contractor is also authorized to request partial acceptance.
2. If the Principal refuses acceptance in violation of No. 1. of this section, acceptance is nonetheless deemed to be made.
3. The Principal is obligated to accept the Contractor's services within 14 days after receipt unless such services show material defects that give cause to a refusal of acceptance. If the Principal does not accept the services within the fixed grace period even though it is obligated to do so, the service is deemed to be accepted. If the Principal is a Consumer, the Contractor upon completion of the service is obligated to expressly inform the Principal of the consequences of such expiration of the grace period.
4. If the Principal claims a retention right due to defects, the Contractor shall review its service. If the Principal's retention is proven to be unjustified, the Principal shall bear all incurred additional costs unless it has acted merely with slight negligence or is not at fault.

## **VII. Prices and Payments**

1. The price listed by the Contractor or otherwise the price commonly charged by the Contractor for the respective service is decisive, plus statutory value-added tax insofar as such is applicable. In case of transnational services, any possibly applicable taxes, fees, customs fees, and other charges (of any kind) incurred for the transnational service shall be borne by the Principal.
2. If, within the scope of contracts for the performance of a continuing obligation and long-term contracts, the Contractor's prime costs increase and such increase is not within the Contractor's own scope of responsibility, the Contractor is authorized to an appropriate price increase commensurate with the increase of its prime costs; if the Principal does not consent to such price increase it is authorized to terminate the Agreement within four weeks after receipt of such notification of a price increase; otherwise, the increase is deemed to be mutually agreed upon. A right to a price increase pursuant to this provision does not exist if the Principal is a Consumer.
3. The Principal shall pay the remuneration owed without any cash discounts, free of charge to the Contractor, and within two weeks after receipt of the invoice, to the bank account stated by the Contractor. Credit entry at the Contractor's account is decisive for the timeliness of the payment. The Contractor reserves the right to request appropriate installment payments and appropriate advance payments.
4. If the Agreement is based on a cost estimate, and if it turns out that the costs will be significantly higher than the amount estimated vis-a-vis the Principal, then the Contractor will inform the Principal of such in writing. In this case the Principal is authorized to terminate the Agreement in writing, within two weeks after receipt of such notification. In the event of a termination, the Contractor is authorized to request partial remuneration commensurate with the services already provided. Furthermore, the Contractor is authorized to request compensation for any expenses not included in the remuneration but incurred due to the provision of services.
5. If the Principal owes interest and expenses in addition to a possibly existing principal claim, any payment by the Principal that does not fully redeem the total sum will first be credited against expenses, secondly against interest, and lastly against the principal claim.
6. The Principal is entitled to offset and retention rights only if its counterclaims are legally ascertained, undisputed, or acknowledged in writing by the Contractor. This limitation does not apply to the Principal's claims for defects arising from the same contractual relation as the Contractor's payment claim. If the contract partner is a Consumer, then in contrast to clause 1, such contract partner is on principle entitled to unlimited retention rights for claims arising from the same contractual relation.
7. If, after conclusion of the Agreement, it becomes clear that the Contractor's claims vis-a-vis the Principal are at risk due to the Principal's lack of ability to perform, the Contractor is authorized to perform outstanding services only against advance payment or provision of a security as well as settlement of possibly still outstanding receivables for partial services already provided and arising from the Agreement, and - after unsuccessful expiration of a grace period - is authorized to withdraw from the Agreement; No. 4 clause 3 of this provision applies accordingly.



8. In case of payment default, the Principal owes default interest in the amount of 9 percentage points above the base interest rate if the Principal is an Entrepreneur; in the amount of 5 percentage points above the base interest rate if the Principal is a Consumer. The Contractor is entitled to assert further claims if it can prove higher damage to the Principal. The Contractor is furthermore entitled to charge a flat rate of € 40.00 if the Principal is an Entrepreneur. This shall also apply if the payment default relates to any kind of an installment. In case the Contractor may claim further compensation for damage, the flat rate has to be credited against such claims. If the Principal is a Consumer the Contractor is entitled to charge a flat rate of € 5.00 per reminder. The Principal is entitled to provide evidence that the Contractor did not incur any damage or incurred significantly lower damage.

#### **VIII. Claims for Defects**

1. In the event of defective service by the Contractor, the Principal shall grant the Contractor opportunity to supplementary performance, at least twice, within appropriate grace periods, unless this is unreasonable in each individual case or unless special circumstances justify the Principal's immediate withdrawal in consideration of mutual interests. The Contractor may rectify the defect at its own choice or provide the service once more without defect. If supplementary performance is unsuccessful, the Principal is authorized to reduce remuneration or to withdraw from the Agreement; claims for compensation for damage exist only pursuant to Sec. X. No claims for compensation for damage and withdrawal exist if the deviation from the contractual condition is insignificant.

2. The Principal shall inform the Contractor immediately - no later than two weeks after acceptance - in writing of any obvious defects. The Principal shall inform the Contractor of any hidden defects in writing no later than within two weeks after discovery of such. Otherwise the assertion of warranty claims is excluded. This does not apply if the Principal is a Consumer.

#### **IX. Withdrawal**

The Principal's right to withdraw is valid only if the Contractor is responsible for the violation of duties based upon which withdrawal is declared. The withdrawal must be declared in writing by registered letter. If the Principal is a Consumer, a written declaration of withdrawal suffices.

#### **X. Liability**

1. The Contractor's liability is based on the statutory provisions for compensation for damage if the Principal asserts claims for damages based on intent or gross negligence, to include intent or gross negligence of the Contractor's representatives or vicarious agents, or if the Contractor culpably violates a material contractual obligation. Material contractual obligations are obligations which enable the proper performance of the Agreement in the first place and on the performance of which the contract partner usually relies and is expected to rely.

2. Insofar as the Contractor cannot be accused of intentional violation of a contractual obligation, the liability for damages in the above cases is limited to foreseeable damage typically incurred in connection with agreements of this nature. Accordingly, the Contractor is in these cases liable for property and material damages up to a maximum of EUR 3,000,000.00 per damage event. If the Principal is a Consumer the liability limitations set forth in this section neither apply in case of intentional violations of a contractual obligation or nor in case of gross negligence.

3. The above provisions do not affect liability for culpable injury of life, body, or health.

4. Unless otherwise stipulated in these provisions, liability for damages exceeding Nos. 1.-3. is excluded without regard to the legal nature of the asserted claim.

5. Insofar as the Contractor's liability for damage pursuant to the above regulations is excluded or limited, this also applies in regards to personal liability for damages of the Contractor's employees, workers, staff members, representatives and vicarious agents.

6. The limitations pursuant to Nos. 1 and 2 also apply if the Principal claims wasted expenses instead of damage in lieu of performance.

#### **XI. Period of Limitations**

1. Contractual claims due to breach of duty shall expire one year after the start of the statutory period of limitations. This does not apply to claims for defective workmanship on a structure or faulty planning and supervision services for a structure. In this case, the statutory period of limitations of 5 years as of acceptance applies.

2. The above provisions do not apply to statutory periods of limitations for the following: (i) damages arising from death and injury to body and health; (ii) other damages based on an intentional or grossly negligent breach of duty of the Contractor, its legal representatives or vicarious agents; (iii) claims due to fraudulent concealment of a defect or due to a guarantee of properties.

#### **XII. Utilization Rights and Indemnification**

1. The Contractor's services provided during the fulfillment of the Agreement (e.g. expert opinions, inspection and consultation services) may be utilized only within the scope of the contractually negotiated purpose. Subject to deviating agreements in each individual case, the Contractor therefore grants to the Principal a simple, non-transferable utilization right that is limited in terms of duration and location, for its services that are subject to copyright protection. Other rights are expressly not granted; the Principal is in particular not authorized to process or modify the Contractor's services or to use excerpts of them.

2. Insofar as, pursuant to the Agreement, the Contractor grants a right to the utilization of quality marks and/or a certificate of the Contractor to the negotiated extend, such may be utilized only for the contractual, designated use or the certified area and only in the unmodified form or shape as provided by the Contractor.

3. Any utilization of the Contractor's brands and other identifying marks beyond the above, for example the word mark/design mark "TÜV NORD" requires the Contractor's express, prior written consent.



4. If the Principal violates the above provisions, the Contractor is at any time authorized to prohibit the continued utilization of the Contractor's services, quality marks, certificates, and/or identifying marks. The Principal is upon first request by the Contractor obligated to indemnify the Contractor from all third party claims, regardless of the legal grounds (e.g. competition law), which claims are based on its utilization of the Contractor's services, quality marks, certificates, and/or identifying marks as well as all of its own, connected, required expenses.

### **XIII. Data Protection**

The Contractor shall process and utilize personal data exclusively within the scope of the purpose of the Agreement, unless the Principal has consented to further utilization. Upon complete execution of the Agreement, the Principal's personal data shall be blocked for further utilization and shall be deleted upon expiration of statutory retention periods, unless the Principal has provided separate consent for further utilization. For the rest and pursuant to the German Federal Data Protection Act (BDSG), the Principal shall be entitled to information, reporting, blocking, and deletion of its data stored by the Contractor.

### **XIV. Obligation to Confidentiality and Retention of Records**

1. The Contractor as well as the Principal are each obligated to maintain confidentiality regarding confidential information of the respective other contract partner. This obligation continues for a term of five years after termination of this Agreement.

From this obligation excluded is any information that

- a) can be proven to have already been known to the recipient upon conclusion of the Agreement or that is disclosed by third parties after conclusion of the Agreement without such third parties violating a confidentiality agreement, statutory provisions, or official orders;
- b) is public knowledge upon conclusion of the Agreement or becomes public knowledge after conclusion of the Agreement, unless such is based on a violation of this Agreement;
- c) must be disclosed due to statutory obligation or orders of a court or an official authority. Insofar as permitted and possible, the recipient obligated to disclose such information shall inform the other contract partner of such in advance and will provide the respective other contract partner with an opportunity to take action against such disclosure.
- d) the recipient developed itself or had developed independently from its knowledge of such confidential information.

2. The Contractor shall retain contractual documents insofar as a statutory or official obligation to retain records exists. The Contractor is furthermore obligated to retain records for the purpose of documentation; any of the Principal's possible statutory or contractual claims for return remain unaffected.

### **XV. Place of Fulfillment and Prohibition of Assignment**

1. Place of fulfillment for all services is the Contractor's registered office.
2. Assignment or pledging of claims to which the Principal is entitled based on the business relation is excluded.

### **XVI. Jurisdiction and Applicable Law**

1. The Contractor's registered office is place of jurisdiction for all claims arising from the business relation vis-a-vis commercial entities, corporate bodies under public law, or special assets. However, the Contractor is authorized to bring an action against the Principal at the Principal's general place of jurisdiction.

2. The law of the Federal Republic of Germany applies to all business relations and the overall legal relations between the Principal and the Contractor. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

Valid: January 2016

TÜV NORD AG