

Test Report No.: 0154365126b 001

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Client:

Buyer's name: FIRST PERSON LIMITED

Manufacturer's name: n.a.

Test item(s): BAMBOO FIBER WARE

Identification / Model No(s): CUP CS01-BF1744D-P(B)
CUP CS01-BF1744D-P(B)/600 210

Sample Receiving date: 2018-10-08

Testing Period: 2018-10-11 to 2018-10-22

Test specification:

Performed parameter(s) for the compliance with the following regulations concerning materials in contact with foodstuff:

- German §31 LFGB (Lebensmittel-, Bedarfsgegenstände- und Futtermittelgesetzbuch)

Test conclusion:

PASS

Other Information:

Country of Origin: China

Country of Destination: EUROPE, ASIA, AMERICA, AUSTRALIA, SOUTH AFRICA

Reference report No.: 0154365126a 001f

For and on behalf of TÜV Rheinland (Shanghai) Co., Ltd.



2018-10-24

Date

Amy Zhao / Technical Manager

Name / Position

Test result is drawn according to the kind and extent of tests performed.

This test report relates to the a. m. test sample. Without permission of the test center this test report is not permitted to be duplicated in extracts. This test report does not entitle to carry any safety mark on this or similar products.

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Indication: Food contact

Product: Commodity, contact with foodstuff
 § 2 (6) No. 1, German Food, Commodities and Animal Feed Code of Law (LFGB)

Description of test specimen

Item

1 BAMBOO FIBER WARE

1. Material List:

Sample No.	Material	Color	Location
1	Melamine+ Bamboo fiber + PU coating	Multicolor	Beaker
1A	Melamine+ Bamboo fiber + PU coating	Multicolor	Drinking rim (middle grape owl)
1B	Melamine+ Bamboo fiber + PU coating	Multicolor	Drinking rim (right blue owl)
2	Melamine+ Bamboo fiber + PU coating	Multicolor	Cup
2A	Melamine+ Bamboo fiber + PU coating	Multicolor	Drinking rim
3	Melamine+ Bamboo fiber + PU coating	Multicolor	Cup
3A	Melamine+ Bamboo fiber + PU coating	Multicolor	Drinking rim

According to client's information food contact parts of all samples are produced of the same base material with 0154365126a 001f. Tests were performed on randomly selected sample and tests concerning the base material were as indicated referring to 0154365126a 001f.

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2. Overall Results:

Test No.	Tested Item	Conclusion
1	Sensorial examination	Pass
2	Global Migration from Plastic	Pass
3	Specific Migration of metals, Metal-release from Plastic	Pass
4	Specific Migration of Polycyclic Aromatic Hydrocarbons (PAHs) from plastic	Pass
5	Colourfastness	Pass
6	Specific Migration of Formaldehyde from	Pass
7	Coating Specific Migration of 2,4,6-Triamino-1,3,5-triazine (Melamine)	Pass
8	Pentachlorophenol, Trichlorophenol and Tetrachlorophenol (Wood)	Pass
9	Pesticides	Pass
10	Specific Migration of Primary Aromatic Amines from Coating	Pass
11	Isocyanates	Pass

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3. Results

3.1 Sensorial examination

Test method: It is examined to the extent of food simulant being used, which comes into contact with the product, undergoes detectable changes in taste and smell.

For this purpose, the food simulant was stored in the product under the below mentioned time and temperature. Afterwards, the food simulant was examined by an appropriate number of tasters with regard to any divergence in smell and taste. Another test sample, which was used as a reference, was treated by the same way except that it had no contact with the product to be tested.

Before testing, the product had been cleaned according to the product's instruction manual or in the absence of such manual, by normal household cleaning.

The test is carried out on the basis of DIN 10955:2004 by paired comparison test:

Evaluation scheme:

- 0 = No discernible deviation
- 1 = Barely discernible deviation
- 2 = Weak deviation
- 3 = Clear deviation
- 4 = Strong deviation

Limit: 3 (failed)

The following food simulants and conditions were applied:

Food simulant	Test duration / Temperature
Water	2 hour(s) / 70 °C

Test No.:	1
Sample No.:	1
Parameter:	Result
Transfer of Smell:	0
Transfer of Taste:	1

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3.2 Global Migration from Plastic

Test method: The migratory behaviour is examined with reference to Chapter V, Article 18 of Commission Regulation 10/2011 and its amendments. Deviating to the regulations the following tests were performed as orientating single tests.

Limit: Commission Regulation (EU) No 10/2011 and its amendments

The following food simulants and conditions were applied:

Food simulant	Test duration / Temperature
Acetic acid 3 %	2 hour(s) / 70 °C
Ethanol 50 %	2 hour(s) / 70 °C

Results 3rd Migration:

Test No.:	1		
Sample No.:	1		
Migration ratio:	200 ml / 1.41 dm ²		
Parameter	Unit	Result	Limit
Acetic acid 3 %	mg/dm ²	3	10
Ethanol 50 %	mg/dm ²	3	10

Abbreviations:

mg/dm² = Milligram per square decimetre

< = Less than

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3.3 Specific Migration of metals, Metal-release from Plastic

Test method: The migratory behaviour is examined with reference to Chapter V, Article 18 of Commission Regulation 10/2011 and its amendments. The determination of amounts of metals that were released is done via ICP-MS.

Limit: Commission Regulation (EU) No 10/2011 and its amendments

The following food simulant and condition was applied:

Food simulant	Test duration / Temperature
Acetic acid 3 %	2 hour(s) / 70 °C

Test No.:	1		
Sample No.:	1		
Migration ratio	200 ml / 1.41 dm ²		
Parameter	Unit	Result	Limit
Barium	mg/kg	< 0.1	1
Cobalt	mg/kg	< 0.01	0.05
Copper	mg/kg	< 0.1	5
Iron	mg/kg	< 1.0	48
Lithium	mg/kg	< 0.1	0.6
Manganese	mg/kg	< 0.1	0.6
Zinc	mg/kg	< 1.0	5
Aluminium	mg/kg	< 0.1	1
Nickel	mg/kg	< 0.01	0.02 ^{*1}

Abbreviations:

mg/kg = Milligram per kilogram

< = Less than

Remark

- *1 The migration limit for Nickel of 0.02 mg/kg shall be applied from 19 May 2019 according to Commission Regulation (EU) 2017/752. During the transitional period, Nickel release is not considered for compliance evaluation.

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3.4 Specific Migration of Polycyclic Aromatic Hydrocarbons (PAHs) from plastic

Test method: The migratory behaviour is examined with reference to Chapter V, Article 18 of Commission Regulation 10/2011 and its amendments. Presence of PAHs is detected by means of GC-MS.

Limit: Please refer to remark 1

The following food simulant and condition was applied:

Food simulant	Test duration / Temperature
Ethanol 50 %	2 hour(s) / 70 °C

Test No.:	1		
Sample No.:	1		
Migration ratio	200 ml / 1.41 dm ²		
Parameter	Unit	Result	Limit
Sum of 18 PAHs	mg/kg	n.d	n.d. (<0.01)

Abbreviations:

n.d. = Not detected

mg/kg = Milligram per kilogram

< = Less than

Remark:

- *1 Polycyclic aromatic hydrocarbons (PAHs) are not listed substances for the production of plastic materials acc. to Regulation (EU) No. 10/2011, Annex I. A threshold of detection <0.01 mg/kg should be met.

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3.5 Colourfastness

Test method: 24th Communication on the testing of plastics in Bundesgesundheitsbl. 15 (1972) 285

 Requirement: BfR Recommendations on Food Contact Materials (formerly "Plastics Recommendations") Part IX "Colorants for Plastics and other Polymers used in Commodities" - *No transfer of colorants to foodstuffs is permitted*

Test No.:	1	2
Sample No.:	1A	1B
Parameter - Colourfastness to	Difference between blank and filter paper contacted with sample	Difference between blank and filter paper contacted with sample
Water	No	No
Acetic acid 3 %	No	No
Ethanol 50 %	No	No

Test No.:	3	4
Sample No.:	2A	3A
Parameter - Colourfastness to	Difference between blank and filter paper contacted with sample	Difference between blank and filter paper contacted with sample
Water	No	No
Acetic acid 3 %	No	No
Ethanol 50 %	No	No

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3.6 Specific Migration of Formaldehyde⁽¹⁾ (Articles within the Scope of (EU) No 284/2011)

Test method: The migratory behaviour is examined with reference to Chapter V, Article 18 of Commission Regulation 10/2011 and its amendments. Presence of Formaldehyde is detected according to EN 13130-23.

Limit: Commission Regulation (EU) No 10/2011 and its amendments

The following food simulant and condition was applied:

Food simulant	Test duration / Temperature
Acetic acid 3 %	2 hour(s) / 70 °C

Results 3rd Migration:

Test No.:	1		
Sample No.:	1		
Migration ratio	200 ml / 1.41 dm ²		
Parameter	Unit	Result ⁽²⁾	Limit
Formaldehyde	mg/kg	< 3	15

Abbreviations:

mg/kg = Milligram per kilogram

< = Less than

Remark:

*1 Including HMTA expressed as Formaldehyde

*2 The Formaldehyde migration was carried out on three articles, only the highest result for all migration tests is reported.

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3.7 Specific Migration of 2,4,6-Triamino-1,3,5-triazine

Test method: The migratory behaviour is examined with reference to Chapter V, Article 18 of Commission Regulation 10/2011 and its amendments. Presence of 2,4,6-Triamino-1,3,5-triazine is detected according to EN 13130-27.

Limit: Commission Regulation (EU) No 10/2011 and its amendments

The following food simulatant and condition was applied:

Food simulatant	Test duration / Temperature
Acetic acid 3 %	2 hour(s) / 70 °C

Results 3rd Migration:

Test No.:	1		
Sample No.:	1		
Migration ratio	200 ml / 1.41 dm ²		
Parameter	Unit	Result	Limit
2,4,6-Triamino-1,3,5-triazine	mg/kg	0.16	2.5

Abbreviations:

mg/kg = Milligram per kilogramm

< = Less than

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3.8 Pentachlorophenol, Trichlorphenol and Tetrachlorphenol (Wood)

Test method: Ref. to 64 LFGB B82.02-8:2001

Limit: With reference to Resolution ResAP (2002) 1 on paper and board materials and articles intended to come into contact with foodstuffs

Test No.:	1				
Sample No.:	1#				
Parameter	Unit	RL	Result	Limit	Technically preventable limit
Pentachlorophenol (PCP)	mg/kg	0.1	n.d.	0.15	-
Trichlorphenol (TriCP)	mg/kg	0.1	n.d.	-	n.d.
Tetrachlorphenol (TeCP)	mg/kg	0.1	n.d.	-	n.d.

Abbreviations:

n.d. = Not detected (<Reporting Limit)

RL = Reporting Limit

mg/kg = Milligram per kilogram

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3.9 Pesticides

Test method: Organic solvent extraction, GC-ECD, GC-MS

Table 1: Selected Pesticides being tested

Test No.:	1				
Sample No.:	1#				
Selected Pesticides	Cas no.	Unit	RL	Result	Limit ⁽¹⁾
Allethrin	584-79-2	mg/kg	0.15	n.d.	n.d.
1-chloronaphthalene	90-13-1	mg/kg	0.15	n.d.	n.d.
2-chloronaphthalene	91-58-7	mg/kg	0.15	n.d.	n.d.
Chloropyrifos	2921-88-2	mg/kg	0.15	n.d.	n.d.
Chlorothalnil	1897-45-6	mg/kg	0.15	n.d.	n.d.
Cyfluthrin	68359-37-5	mg/kg	0.15	n.d.	n.d.
Cypermethrin	52315-07-8	mg/kg	0.15	n.d.	n.d.
DDE	3424-82-6, 72-55-9	mg/kg	0.15	n.d.	n.d.
DDT	50-29-3, 789-02-6	mg/kg	0.15	n.d.	n.d.
Diazinon	333-41-5	mg/kg	0.15	n.d.	n.d.
Dichlofluanid	1085-98-9	mg/kg	0.15	n.d.	n.d.
Dieldrin	60-57-1	mg/kg	0.15	n.d.	n.d.
α-Endosulfan	959-98-8	mg/kg	0.15	n.d.	n.d.
β-Endosulfan	33213-65-9	mg/kg	0.15	n.d.	n.d.
Fenitrothion	122-14-5	mg/kg	0.15	n.d.	n.d.
Fenthion	55-38-9	mg/kg	0.15	n.d.	n.d.
Fenvalerate	51630-58-1	mg/kg	0.15	n.d.	n.d.
Furmecyclox	60568-05-0	mg/kg	0.15	n.d.	n.d.
Hexachlorobenzene	118-74-1	mg/kg	0.15	n.d.	n.d.
Lindane(g-HCH)	58-89-9	mg/kg	0.15	n.d.	n.d.
Malathion	121-75-5	mg/kg	0.15	n.d.	n.d.
Methoxychlor	72-43-5	mg/kg	0.15	n.d.	n.d.
Parathion-ethyl	56-38-2	mg/kg	0.15	n.d.	n.d.
Parathion-methyl	298-00-0	mg/kg	0.15	n.d.	n.d.
Pentachloroanisole	1825-21-4	mg/kg	0.15	n.d.	n.d.
Permethrin	52645-53-1	mg/kg	0.15	n.d.	n.d.
Piperonyl butoxide	51-03-06	mg/kg	0.15	n.d.	n.d.
Propiconazole	60207-90-1	mg/kg	0.15	n.d.	n.d.

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Propoxur	114-26-1	mg/kg	0.15	n.d.	n.d.
Tebuconazole	107534-96-3	mg/kg	0.15	n.d.	n.d.
Tetrachlorvinylphos	22248-79-9	mg/kg	0.15	n.d.	n.d.
Tetramethrin	7696-12-0	mg/kg	0.15	n.d.	n.d.
Tolyfluanid	731-27-1	mg/kg	0.15	n.d.	n.d.

Abbreviations:

n.d. = Not detected (<Reporting Limit)

RL = Reporting Limit

mg/kg = Milligram per kilogram

Remark:

*1 Technically preventable limit

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18**3.10 Specific Migration of Primary Aromatic Amines from Plastic^**

Test method: The migratory behaviour is examined with reference to Chapter V, Article 18 of Commission Regulation 10/2011 and its amendments. Presence of Primary Aromatic Amines is detected by means of LC-MS/MS.

Limit: Commission Regulation (EU) No 10/2011 and its amendments

The following food simulant and condition was applied:

Food simulant	Test duration / Temperature
Acetic acid 3 %	2 hour(s) / 70 °C

Test No.:	1		
Sample No.:	1		
Migration ratio	200 ml / 1.71 dm ²		
Parameter	Unit	Result	Limit
Sum of Primary Aromatic Amines	mg/kg	n.d.	n.d. (<0.01)

As carcinogenic classified Primary Aromatic Amines have been detected:	No
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Abbreviations:

mg/kg = milligram per kilogramm

n.d. = Not detected

< = Less than

Remark

- *1 All primary aromatic amines as comprised in table 1 are considered within the screening.
- *2 According to the BfR the transfer of any as carcinogenic classified PAA to foods and / or food simulants should not be detectable with an analytical detection limit of 0.002 mg/kg.
- ^ Indicates that the test has been subcontracted to a laboratory which complies with the requirement of ISO/IEC 17025.

Table 1: Screening List of Primary Aromatic Amines			
PAA classified as carcinogenic 1A or 1B acc. to Regulation (EC) No 1272/2008		CAS no.	PAA not classified as carcinogenic 1A or 1B acc. to Regulation (EC) No 1272/2008
2,4,5-Trimethylaniline	137-17-7		2,4-Dimethylaniline
2,4-Diaminoanisole	615-05-4		2-ethoxyaniline
2-Naphthylamine	91-59-8		3-Amino-4-methoxybenzanilide
3,3'-Dichlorobenzidine	91-94-1		3-Amino-4-methylbenzamide
4,4'-methylene-bis-(2-chloro-aniline)	101-14-4		4,4'-Methylenebis-(3-chloro-2,6-diethylaniline)
4,4'-methylenedianiline	101-77-9		4-aminobenzamide
4,4'-oxydianiline	101-80-4		4-chloro-2,5-dimethoxyaniline
4,4'-thiodianiline	139-65-1		4-Ethoxyaniline
4-aminoazobenzene	60-09-3		Benzoguanamine
4-aminobiphenyl	92-67-1		Dimethyl-2-aminoterephthalate
4-chloro-o-toluidine	95-69-2		2-Chloroaniline
o-anisidine	90-04-0		5-Chloro-2-methoxyaniline
Benzidine	92-87-5		2-Nitroaniline
4-chloroaniline	106-47-8		1,3-Diiminoisoindoline
o-aminoazotoluene	97-56-3		2-Chloro-4-nitroaniline
p-cresidine	120-71-8		2-Methoxy-4-nitroaniline
4,4'-bi-o-toluidine	119-93-7		4-Chloro-3-methoxyaniline
2,4-toluenediamine	95-80-7		5-Amino-6-methyl-1,3-dihydro-2H-benzimidazol-2-one
o-Toluidine	95-53-4		2-Aminonaphthalene-1-sulfonic acid
3,3'-Dimethoxybenzidine	119-90-4		4-Aminotoluene-3-sulfonic acid
4,4'-Methylene-di-o-toluidine	838-88-0		2,5-Dichloroaniline
			2,4,5-Trichloroaniline
			2,4-Dinitroaniline
			Biphenyl-2-ylamine
			2-Methyl-4-nitroaniline
			1,5-naphthylenediamine
			2,6-Dimethylaniline
			2-Methyl-5-nitroaniline
			5-Chloro-2-methylaniline
			Aniline
			m-Anisidine

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3-Chloroaniline	108-42-9
o-phenylenediamine	95-54-5
p-phenylenediamine	106-50-3
m-phenylenediamine	108-45-2
2,6-toluenediamine	823-40-5
p-toluidine	106-49-0
m-toluidine	108-44-1

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18**3.11 Isocyanates**

Test method: According to EN 13130-8:2004

Limit: Commission Regulation (EU) No 10/2011 and its amendments

Test No.:	1				
Sample No.:	1#				
Parameter (Expressed as NCO)	CAS No.	Unit	RL	Result	Limit
Cyclohexyl isocyanate	3173-53-3	mg/kg	0.2	n.d.	1
Diphenylmethane-4,4-diisocyanate	101-68-8	mg/kg	0.5	n.d.	1
Hexamethylene diisocyanate	822-06-0	mg/kg	0.2	n.d.	1
Isophorone Diisocyanate	4098-71-9	mg/kg	0.2	n.d.	1
1,3-Bis(2-isocyanate-2-propyl)benzene	2778-42-6	mg/kg	0.2	n.d.	1
2,4-Toluene diisocyanate	584-84-9	mg/kg	0.2	n.d.	1
2,6-Toluene diisocyanate	91-08-7	mg/kg	0.2	n.d.	1

Abbreviations:

n.d. = Not detected (<Reporting Limit)

RL = Reporting Limit

mg/kg = Milligram per kilogramm

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4. Sample picture(s):



Sample 1



Sample 2



Sample 3

(#) Test result refer to report 0154365126a 001f

- END -

General Terms and Conditions of Business of TÜV Rheinland in Greater China

<p>Scope</p> <p>1.1 These General Terms and Conditions of Business of TÜV Rheinland in Greater China is made between the client and one or more member entities of TÜV Rheinland in Greater China as applicable as the case may be ("TÜV Rheinland").</p> <p>1.2 The following terms and conditions apply to agreed services including consultancy services, information, deliveries and similar services as well as ancillary services and other secondary obligations provided within the scope of contract performance.</p> <p>1.3 Any standard terms and conditions of the client of any nature shall not apply and shall hereby be expressly excluded. No standard contractual terms and conditions of the client shall form part of the contract even if TÜV Rheinland does not explicitly object to them.</p> <p>2. Quotations</p> <p>Unless otherwise agreed, all quotations submitted by TÜV Rheinland can be changed by TÜV Rheinland without notice prior to its acceptance and confirmation by the other party.</p> <p>3. Coming into effect and duration of contracts</p> <p>3.1 The contract shall come into effect for the agreed terms upon the quotation letter of TÜV Rheinland or a separate contractual document being signed by both contracting parties, or upon the works requested by the client being carried out by TÜV Rheinland. If the client instructs TÜV Rheinland without receiving a quotation from TÜV Rheinland (quotation), TÜV Rheinland is, in its sole discretion, entitled to accept the order by giving written notice of such acceptance (including notice sent via electronic means) or by performing the requested services.</p> <p>3.2 The contract term starts upon the coming into effect of the contract in accordance with article 3.1 and shall continue for the term agreed in the contract.</p> <p>3.3 If the contract provides for an extension of the contract term, the contract term will be extended by the term provided for in the contract unless terminated in writing by either party with a six-week notice prior to the end of the contractual term.</p> <p>4. Scope of services</p> <p>4.1 The scope of the services shall be decided solely by a unanimous declaration issued by both parties. If no such declaration exists, then the written confirmation of order by TÜV Rheinland shall be decisive.</p> <p>4.2 The agreed services shall be performed in compliance with the regulations in force at the time the contract is entered into.</p> <p>4.3 TÜV Rheinland is entitled to determine, in its sole discretion, the method and nature of the assessment unless otherwise agreed in writing or if mandatory provisions require a specific procedure to be followed.</p> <p>4.4 On execution of the work there shall be no simultaneous assumption of any guarantee of the correctness (proper quality) and working order of either tested or examined parts nor of the installation as a whole and its upstream and/or downstream processes, organisations, use and application in accordance with regulations, nor of the systems on which the installation is based. In particular, TÜV Rheinland shall assume no responsibility for the construction, selection of materials and assembly of installations examined, nor for their use and application in accordance with regulations unless these questions are expressly covered by the contract.</p> <p>4.5 In the case of inspection work, TÜV Rheinland shall not be responsible for the accuracy or checking of the safety programmes or safety regulations on which the inspections are based, unless otherwise expressly agreed in writing.</p> <p>5. Performance periods/dates</p> <p>5.1 The contractually agreed periods/dates of performance are based on estimates of the work involved which are prepared in line with the details provided by the client. They shall only be binding if being confirmed as binding by TÜV Rheinland in writing.</p> <p>5.2 If binding periods of performance have been agreed, these periods shall not commence until the client has submitted all required documents to TÜV Rheinland.</p> <p>5.3 Articles 5.1 and 5.2 also apply, even without express approval by the client, to all extensions of agreed periods/dates of performance not caused by TÜV Rheinland.</p> <p>6. The client's obligation to cooperate</p> <p>6.1 The client shall guarantee that all cooperation required on its part, its agents or third parties will be provided in good time and at no cost to TÜV Rheinland.</p> <p>6.2 Design documents, supplies, auxiliary staff, etc. necessary for performance of the services shall be made available free of charge by the client. Moreover, collaborative action of the client must be undertaken in accordance with legal provisions, standards, safety regulations and accident prevention instructions.</p> <p>6.3 The client shall bear any additional cost incurred on account of work having to be redone or being delayed as a result of late, incorrect or incomplete information provided by or lack of proper cooperation from the client. Even where a fixed or maximum price is agreed, TÜV Rheinland shall be entitled to charge extra fees for such additional expense.</p> <p>7. Invoicing of work</p> <p>7.1 If the scope of performance is not laid down in writing when the order is placed, invoicing shall be based on costs actually incurred. If no price is agreed in writing, invoicing shall be made in accordance with the price list of TÜV Rheinland valid at the time of performance.</p> <p>7.2 Unless otherwise agreed, work shall be invoiced according to the progress of the work.</p> <p>7.3 If the execution of an order extends over more than one month and the value of the contract or the agreed fixed price exceeds €2,500.00 or equivalent value in local currency, TÜV Rheinland may demand payments on account or in instalments.</p> <p>8. Payment terms</p> <p>8.1 All invoice amounts shall be due for payment without deduction on receipt of the invoice. No discounts shall be granted.</p> <p>8.2 Payments shall be made to the bank account of TÜV Rheinland as indicated on the invoice, stating the invoice and customer numbers.</p>	<p>8.3 In cases of default of payment, TÜV Rheinland shall be entitled to claim default interest at the applicable short term loan interest rate publicly announced by a reputable commercial bank in the country where TÜV Rheinland is located. At the same time, TÜV Rheinland reserves the right to claim further damages.</p> <p>8.4 Should the client default in payment of the invoice despite being granted a reasonable grace period, TÜV Rheinland shall be entitled to cancel the contract, withdraw the certificate, claim damages for non-performance and refuse to continue performance of the contract.</p> <p>8.5 The provisions set forth in article 8.4 shall also apply in cases involving returned cheques, cessation of payment, commencement of insolvency proceedings against the client's assets or cases in which the commencement of insolvency proceedings has been dismissed due to lack of assets.</p> <p>8.6 Objections to the invoices of TÜV Rheinland shall be submitted in writing within two weeks of receipt of the invoice.</p> <p>8.7 TÜV Rheinland shall be entitled to demand appropriate advance payments.</p> <p>8.8 TÜV Rheinland shall be entitled to raise its fees at the beginning of a month if overheads and/or purchase costs have increased. In this case, TÜV Rheinland shall notify the client in writing of the rise in fees. This notification shall be issued one month prior to the date on which the rise in fees shall come into effect (period of notice of changes in fees). If the rise in fees remains under 5% per contractual year, the client shall not have the right to terminate the contract. If the rise in fees exceeds 5% per contractual year, the client shall be entitled to terminate the contract by the end of the period of notice of changes in fees. If the contract is not terminated, the changed fees shall be deemed to have been agreed upon by the time of the expiry of the notice period.</p> <p>8.9 Only legally established and undisputed claims may be offset against claims by TÜV Rheinland.</p> <p>9. Acceptance</p> <p>9.1 Any part of the work ordered which is complete in itself may be presented by TÜV Rheinland for acceptance as an instalment. The client shall be obliged to accept it immediately.</p> <p>9.2 If the client fails to fulfil its acceptance obligation immediately, acceptance shall be deemed to have taken place 4 calendar weeks after completion of the work provided that TÜV Rheinland has specifically made the client aware of the aforementioned deadline upon completion of the work.</p> <p>10. Confidentiality</p> <p>10.1 For the purpose of these terms and conditions, "confidential information" means all information, documents, images, drawings, know-how, data, samples and project documentation which one party (the "disclosing party") hands over, transfers or otherwise discloses to the other party (the "receiving party"). Confidential information also includes paper copies and electronic copies of such information.</p> <p>10.2 The disclosing party shall mark all confidential information disclosed in written form as confidential before passing it onto the receiving party. The same applies to confidential information transmitted by e-mail. If confidential information is disclosed orally, the receiving party shall be appropriately informed in advance and the disclosing party shall confirm in writing the confidentiality nature of the information within five working days of oral disclosure. Where the disclosing party fails to do so within the stipulated period, the receiving party shall not take any confidentiality obligations hereunder towards such information.</p> <p>10.3 All confidential information which the disclosing party transmits or otherwise discloses to the receiving party during performance of work by TÜV Rheinland:</p> <p>a) may only be used by the receiving party for the purposes of performing the contract, unless expressly otherwise agreed in writing by the disclosing party;</p> <p>b) may not be copied, distributed, published or otherwise disclosed by the receiving party, unless this is necessary for fulfilling the purpose of the contract or TÜV Rheinland is required to pass on confidential information, inspection reports or documentation to the government authorities, judicial court, accreditation bodies or third parties that are involved in the performance of the contract;</p> <p>c) must be treated by the receiving party with the same level of confidentiality as the receiving party uses to protect its own confidential information, but never with a lesser level of confidentiality than that which is reasonably required.</p> <p>10.4 The receiving party may disclose any confidential information received from the disclosing party only to those of its employees who need this information to perform the services required for the contract. The receiving party undertakes to oblige these employees to observe the same level of secrecy as set forth in this confidentiality clause.</p> <p>10.5 Information for which the receiving party can furnish proof that:</p> <p>a) it was generally known at the time of disclosure or has become general knowledge without violation of this confidentiality clause by the receiving party; or</p> <p>b) it was disclosed to the receiving party by a third party entitled to disclose this information; or</p> <p>c) the receiving party already possessed this information prior to disclosure by the disclosing party; or</p> <p>d) the receiving party developed it itself, irrespective of disclosure by the disclosing party, shall not be deemed to constitute "confidential information" as defined in this confidentiality clause.</p> <p>10.6 All confidential information shall remain the property of the disclosing party. The receiving party hereby agrees to immediately (i) return all confidential information, including all copies, to the disclosing party, and/or (ii) on request by the disclosing party, to destroy all confidential information, including all copies, and confirm the destruction of this confidential information to the disclosing party in writing, at any time if so requested by the disclosing party but at the latest and without special request after termination or expiry of the contract. This does not extend to include reports and certificates prepared for the client solely for the purpose of fulfilling the obligations under the contract, which shall remain with the client. However, TÜV Rheinland is entitled to make file copies of such reports, certificates and confidential information that forms the basis for preparing these reports and certificates in order to evidence the correctness of its results and for general documentation purposes required by laws, regulations and the requirements of working procedures of TÜV Rheinland.</p> <p>10.7 From the start of the contract and for a period of three years after termination or expiry of the contract, the receiving party shall maintain strict secrecy of all confidential information and shall not disclose this information to any third parties or use it for itself.</p>	<p>11. Copyrights</p> <p>11.1 TÜV Rheinland shall retain all exclusive copyrights in the expert reports, test results, calculations, presentations etc. prepared by TÜV Rheinland.</p> <p>11.2 The client may only use such expert reports, test results, calculations, presentations etc. prepared within the scope of the contract for the contractually agreed purpose.</p> <p>11.3 The client may use test reports, test results, expert reports, etc. only complete and unshortened. Any publication or duplication for advertising purposes needs the prior written approval of TÜV Rheinland.</p> <p>12. Liability of TÜV Rheinland</p> <p>12.1 Irrespective of the legal basis, in the event of a breach of contractual obligations or tort, the liability of TÜV Rheinland for all damages, losses and reimbursement of expenses caused by TÜV Rheinland, its legal representatives and/or employees shall be limited to: (i) in the case of a contract with a fixed overall fee, three times the overall fee for the entire contract; (ii) in the case of a contract for annually recurring services, the agreed annual fee; (iii) in the case of a contract expressly charged on a time and material basis, a maximum of 20,000 Euro or equivalent amount in local currency; and (iv) in the case of a framework agreement that provides for the possibility of placing individual orders, three times of the fee for the individual order under which the damages or losses have occurred. Notwithstanding the above, in the event that the total and accumulated liability calculated according to the foregoing provisions exceeds 2.5 Million Euro or equivalent amount in local currency, the total and accumulated liability of TÜV Rheinland shall be only limited to and shall not exceed the said 2.5 Million Euro or equivalent amount in local currency.</p> <p>12.2 The limitation of liability according to article 12.1 above shall not apply to damages and/or losses caused by malice, intent or gross negligence on the part of TÜV Rheinland or its vicarious agents. Such limitation shall not apply to damages for a person's death, physical injury or illness.</p> <p>12.3 In cases involving a fundamental breach of contract, TÜV Rheinland will be liable even where minor negligence is involved. For this purpose, a "fundamental breach" is breach of a material contractual obligation, the performance of which permits the due performance of the contract. Any claim for damages for a fundamental breach of contract shall be limited to the amount of damages reasonably foreseen as a possible consequence of such breach of contract at the time of the breach (reasonably foreseeable damages), unless any of the circumstances described in article 12.2 applies.</p> <p>12.4 TÜV Rheinland shall not be liable for the acts of the personnel made available by the client to support TÜV Rheinland in the performance of its services under the contract, unless such personnel made available is regarded as vicarious agent of TÜV Rheinland. If TÜV Rheinland is not liable for the acts of the personnel made available by the client under the foregoing provision, the client shall indemnify TÜV Rheinland against any claims made by third parties arising from or in connection with such personnel's acts.</p> <p>12.5 The limitation periods for claims for damages shall be based on statutory provisions.</p> <p>12.6 None of the provisions of this article 12 changes the burden of proof to the disadvantage of the client.</p> <p>13. Partial invalidity, written form, place of jurisdiction and dispute resolution</p> <p>13.1 All amendments and supplements must be in writing in order to be effective. This also applies to amendments and supplements to this clause 13.1.</p> <p>13.2 Should one or several of the provisions under the contract and/or these terms and conditions be or become ineffective, the contracting parties shall replace the invalid provision with a legally valid provision that comes closest to the content of the invalid provision in legal and commercial terms.</p> <p>13.3 Unless otherwise stipulated in the contract, the governing law of the contract and these terms and conditions shall be chosen following the rules as below:</p> <p>a) if TÜV Rheinland in question is legally registered and existing in the People's Republic of China, the contracting parties hereby agree that the contract and these terms and conditions shall be governed by the laws of the People's Republic of China.</p> <p>b) if TÜV Rheinland in question is legally registered and existing in Taiwan, the contracting parties hereby agree that the contract and these terms and conditions shall be governed by the laws of Taiwan.</p> <p>c) if TÜV Rheinland in question is legally registered and existing in Hong Kong, the contracting parties hereby agree that the contract and these terms and conditions shall be governed by the laws of Hong Kong.</p> <p>13.4 Any dispute in connection with the contract and these terms and conditions or the execution thereof shall be settled friendly through negotiations. Unless otherwise stipulated in the contract, if no settlement or no agreement in respect of the extension of the negotiation period can be reached within two months of the arising of the dispute, the dispute shall be submitted:</p> <p>a) in the case of TÜV Rheinland in question being legally registered and existing in the People's Republic of China, to China International Economic and Trade Arbitration Commission (CIETAC) to be settled by arbitration under the Arbitration Rules of CIETAC in force when the arbitration is submitted. The arbitration shall take place in Beijing, Shanghai, Shenzhen or Chongqing as appropriately chosen by the claiming party.</p> <p>b) in the case of TÜV Rheinland in question being legally registered and existing in Taiwan, to Chinese Arbitration Association Taipei Branch to be arbitrated in accordance with its then current Rules of Arbitration. The arbitration shall take place in Taipei.</p> <p>c) in the case of TÜV Rheinland being legally registered and existing in Hong Kong, to Hong Kong International Arbitration Centre (HKIAC) to be settled by arbitration under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted in accordance with these rules. The arbitration shall take place in Hong Kong. The decision of the relevant arbitration tribunal shall be final and binding on both parties. The arbitration fee shall be borne by the losing party.</p>
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