

General Terms and Conditions

Test and certification procedures

TÜV INTERCERT GmbH
- Group of TÜV Saarland -

(hereinafter TÜV)

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1. General Terms and Conditions

1.1. Area of application

1.1.1. According to the respectively agreed-on objective of the contract, these general terms and conditions of TÜV INTERCERT GmbH – Group of TÜV Saarland – (hereinafter referred to as TÜV) shall apply towards any offers, contracts and services of TÜV, in particular for:

- Certification services regarding management systems and processes,
- Certification services regarding products as well as verifications of the compliance with European regulations and international standards,
- TÜV services and customer satisfaction analyses,
- Further education and seminars,
- TÜV technical support,
- Inspections,
- Expert opinions according to international, national or specific requirements.

1.1.2. These general terms and conditions shall also apply to future business relations between the client and TÜV even if no express reference has been made to them if they were provided to the orderer within the frame of a previous transaction. General terms and conditions of the client shall not become part of the contract, even if they are attached to the declarations of the client (requests for quotations, orders, offers, declarations of acceptance etc.) and not objected to.

1.2. Offer/ conclusion of the contract/ content of the contract

1.2.1. In the sense of non.-discrimination TÜV concludes service contracts with all clients fulfilling the certification requirements. Type and contents of this contract depend on the relevant certification program.

1.2.2. Unless anything else is notified, offers of TÜV:concerning the relevant contractual subject shall be unbinding until receipt of the acceptance by TÜV.

1.2.3. The contract with TÜV shall be fulfilled

- If the client accepts an offer from TÜV without reservations,
- When TÜV starts the execution of the service based on the offer/ order of the client.

1.2.4. The scope of services to be rendered by TÜV shall be based exclusively on the agreed-upon contractual agreements. Any side agreements, commitments, supplements to the contract and other declarations of employees of TÜV shall only be binding if they are expressly confirmed in writing by the management or an authorised person of TÜV. This shall also apply for modifications or the waiver of this clause. Responsibilities and planned activities of the Certification Office in the sense of impartiality body are subject to the contracts.

1.3. Carrying out of the order/duties of the client to cooperate

1.3.1. Unless any other express agreements are made, TÜV shall carry out services according to the recognised rules of engineering and the applicable legal requirements in accordance with the procedures of TÜV. TÜV does not assume any liability for the accuracy of safety regulations or accepted concepts upon which the tests and assessments are based unless anything else is agreed upon expressly and in writing or the safety regulations and accepted concepts stem from TÜV and/or were elaborated by TÜV. TÜV shall not be responsible for the correctness and functioning of the objects checked for technical safety unless this is the express content of the order. In particular, the construction, choice of materials and construction of the installation shall only be tested if an order directly relates to such services. TÜV shall be entitled to have its services carried out by one or several sub-contractors who are carefully selected and regarded as suitable by it. TÜV shall be entitled to pass on any data, information and other documents which are necessary for carrying out the services and tasks assigned to the respective subcontractor. Apart from that, point 1.10 concerning the secrecy obligation shall be applicable.

1.3.2. The client shall present any required documents such as drawings, plans, calculations and certifications to TÜV in due time and at their own expense, obtain the required approvals and releases, provide information regarding the order at any time and make the required test preparations prior to the beginning of tests, i.e. in particular ensure access to the test objects. If the client does not fulfil such obligations despite a deadline set by TÜV, the contract shall be regarded as cancelled with the expiration of such a deadline. In such a case, TÜV shall be entitled to request an indemnification for non-fulfilment. The client shall also provide TÜV with the typical auxiliary services without their having to be separately agreed upon in writing. Within the frame of the fulfilment of these duties to cooperate, the client shall be responsible for compliance with the legal safety regulations and the purchase of sufficient insurance unless anything else results from the nature of the order or the expressly agreed contractual agreements.

1.3.3. Transport of items of the client's within the frame of carrying out the order shall be made at the expense and risk of the client. Return transport of items of the client's from the business premises of TÜV shall only take place if the client expressly requests it. For the storage and warehousing of items of the client's by TÜV, the liability of TÜV shall be limited to the diligence TÜV is accustomed to apply in their own matters. If the client does not take such items back, TÜV reserves the right to dispose of them at the client's expense or to send them back to the client at the client's expense.

1.4. Non-assignment clause

Any assignment or pledging of claims to which the client is entitled within the frame of business relations with TÜV shall be excluded.

1.5. Deadlines, default

1.5.1. The order deadlines indicated by TÜV are unbinding unless their bindingness is expressly agreed upon in writing. Deadlines fixed as binding shall begin with the complete agreement of the contractual partners in all matters and regarding all conditions of the services, and end with the provision of the service by TÜV.

1.5.2. TÜV shall only be in default if the company does not render due services after the expiration of an unbinding order deadline despite an appropriate additional period of grace or warning by the client for reasons for which TÜV is responsible. § 286 BGB¹ (default of the obligor) shall remain unaffected.

1.5.3. If the client suffers from damages because of a service default for which TÜV is responsible, such damages may only be asserted with a maximum of 5% (five) of the value of the relevant part of the order.

1.6. Warranty

- 1.6.1. The warranty of TÜV shall only cover the services expressly commissioned to it.
- 1.6.2. Any warranty claims of the client shall be limited to subsequent improvement or compensation delivery claims.
- 1.6.3. Warranty claims shall fall under the statute of limitations within one year as of the contractual rendering of the service. The warranty period of one year shall also apply for immaterial work, e.g. for recommendations resulting from an expert opinion.
- 1.6.4. If the client is a businessman, merchant, legal person under public law or fund assets under public law, any possible complaints towards TÜV shall be asserted in writing immediately after the defects are found. A limitation period of seven working days after the delivery of the expert opinion, test report, test result or similar shall apply. Hidden defects shall be reported immediately after identification but in any case within the legal warranty period.
- 1.7. Liability
- 1.7.1. The following disclaimers and limitations of liability under the following numbers 1.7.2 to 1.7.4 shall also apply for tort claims as far as these compete with contractual claims.
- 1.7.2. TÜV shall only be liable for damages for any legal cause if TÜV, its legal representatives or agents and/or vicarious agents have caused such damages intentionally or with gross negligence or if TÜV, its legal representatives or agents who are bodies or employees have violated an essential contractual obligation. In case of any violation of essential contractual obligations, TÜV shall always be liable only for any damages that were contractually typical and foreseeable at the time of conclusion of the contract.
- 1.7.3. The liability of TÜV shall be limited to the following amounts as per damage event:
- € 15,000,000 for personal damages,
 - € 10,000,000 for material damages and
 - € 500,000 for financial losses.
- 1.7.4. Claims for indemnification of the client shall be excluded with the exception of intention on the part of TÜV or its bodies/employees unless they are asserted within a period of three months after the rejection of the claims with a corresponding note from TÜV or its insurer in writing.
- 1.7.5. The contract partner shall remain liable for his products and his services despite of the certification by TÜV. Numbers 3.1.6. and 3.4 of these Terms and Conditions shall be applicable.
- 1.7.6. On request of the contract partner the Certification Office shall pass to him the evidence of a valid liability insurance.
- 1.8. Limitation
- 1.8.1. The period of limitation for claims of the client because of violations of obligations on part of TÜV shall amount to one year as of the statutory beginning of limitation. This limitation provision shall, however, not apply for:
- 1.8.1.1. Claims of the client which are subject to limitation according to § 438 section 1 no. 2 BGB (limitation of claims for defects),
 - 1.8.1.2. Claims for damages of the client due to negligent injuries to life, body or health,
 - 1.8.1.3. Claims for damages due to intentional or grossly negligent violation of obligations of TÜV or its legal representatives or agents,
 - 1.8.1.4. Claims of the client due to the violation of essential contractual obligations,
 - 1.8.1.5. Claims according to the product liability law.
- 1.9. Prices/ payment conditions/ termination of contract
- 1.9.1. For the calculation of the services of TÜV, the prices that are generally valid at the time when the contract is concluded shall apply unless another price or calculation basis is expressly agreed upon in writing. The prices are net prices to which legally applicable taxes and charges will be added. These shall be separately indicated upon invoicing.
- 1.9.2. Invoices shall be due for payment immediately without any deductions unless another agreement has been made expressly. The client shall only receive a first and second warning from TÜV. During default of the client, TÜV shall be entitled to claim interests amounting to 8 (eight) percent above the basic interest rate of the European Central Bank p.a. towards the client as well as to a cost share as per warning of € 10.- (Euro ten). The client shall be in default because of a warning or at the latest 14 days after receipt of the invoice or equal payment lists. If a fixed or fixable payment date according to the calendar is agreed upon, the client shall be in default with the expiration of such a payment date. § 286 BGB (default of the obligor) shall remain unaffected. If the client is a merchant, the claim shall be subject to due date interest amounting to 8 (eight) percent points above the respective basic interest rate.
- 1.9.3. Appropriate cost advantages may be requested and/or partial invoices issued in accordance with the services that have already been rendered. TÜV shall be entitled to invoice an advance up to the amount of the overall costs of the audit to the client prior to or during the audit at the discretion of TÜV unless anything else has been agreed upon with the client. Partial invoices do not need to be marked as such.
- 1.9.4. Any objections to the invoices of TÜV shall be notified within a limitation period of 14 working days after receipt in writing and upon indication of reasons. Otherwise, the invoice shall be regarded as acknowledged.
- 1.9.5. The client shall bear the travel expenses occurred on the occasion of the order amounting to 15% (fifteen percent) of the net invoice amount unless anything else is agreed upon with the client. Both parties may terminate the contract within a delay of six weeks after last performance of service by TÜV. TÜV may terminate the contract immediately, i.e. without any delay, after effectless end of delay for requested corrective measures.
- The existing contract may only be terminated via fax message or via traditional mail. In case the client terminates the contract with TÜV, the latter shall be entitled to charge an administrative fee of at least 10 % (in words: ten percent) of the total order sum. If TÜV proves higher expenses till the contract termination, TÜV may also charge more than 10 % of the order sum towards the client.

1.10. Copyright, confidentiality, data protection

1.10.1. TÜV shall be entitled to file copies of written documents which are provided to TÜV for its activities and necessary to carry out the service.

1.10.2. The certification programs define ownership and copyright concerning the TÜV logo and the conformity mark.

1.10.3. To the extent that expert opinions, test results or similar items which are subject to copyright protection are created within the frame of carrying out the order, TÜV shall grant the client a simple, non-transferable right of use in these to the extent that this is necessary according to the contractually determined purpose. Additional rights are expressly not transferred; in particular, the client shall not be entitled to modify or process expert opinions, test results or similar items nor to use these outside of the business operation in any way.

The employees of TÜV shall not disclose or use business and trade secrets which become known to them within the frame of the exertion of activity outside of carrying out the service in an unauthorised way.

1.11. Place of jurisdiction, applicable law

1.11.1. The place of jurisdiction for any litigations from or in connection with this contract shall be the seat of the competent certification body of TÜV for both parties if the client is a fully qualified merchant or if the other preconditions of the place of jurisdiction agreement according to § 38 section 1 ZPO² are fulfilled. The place of fulfilment shall also be Bonn. TÜV shall be entitled to sue the client also before the competent court of its business headquarters and place of residence. Even if the client is not a merchant, Bonn shall be the place of jurisdiction if the client does not have any general legal domicile in the country, the client's place of residence or habitual residence is moved from the Federal Republic of Germany after the conclusion of the contract or the client's place of residence or habitual residence is not known to TÜV at the time when the action is filed.

1.11.2. Any contracts and agreements of any kind that are conducted with TÜV shall exclusively be subject to the laws of the Federal Republic of Germany.

2. Test procedure

2.1. Area of application

The test codex regulates the carrying out of any services of TÜV within the frame of external relations to the client. This covers the following services in particular:

- Tests and inspections of products, components, technical product drafts in different development phases, preparation of test reports and audit reports, engineering and training. The services shall be rendered e.g. with regard to safety, suitability for use, quality and environmental compatibility on the basis of legal regulations, national, European and international standards and guidelines as well as requirements agreed to with the client. Moreover, first inspections and monitoring of production sites with regard to quality-ensuring measures are carried out within the frame of granting test labels of TÜV, conformity certifications according to EC guidelines and for approved management systems. These services will be hereinafter referred to as "tests".
- Auditing of management systems, preparation of audit reports, hereinafter referred to as "management system auditing".
- Assessment and release of test and audit reports, certifications (accredited and unaccredited) of products and management systems.

2.2. Place of test

Tests are usually carried out in the laboratories of TÜV. In coordination with the client, different test locations may be agreed upon if such laboratories are suitable for carrying out the tests and the suitability has been documented by an inspection/audit of TÜV. The decision regarding the test place shall be made by TÜV. In coordination with the client, the tests may also be carried out in the client's laboratories if their suitability has been documented by an inspection/audit of TÜV.

2.2.1. Any commitment to realising the tests in laboratories not owned by TÜV may be cancelled by TÜV if the fulfilment of DIN EN ISO/IEC 17025 is no longer ensured or if objections by TÜV regarding the test laboratory are not removed prior to the test.

2.2.2. If employees of the client are involved in tests in the client's laboratories, the tests may only be realised in the presence and under the supervision of a technical expert of TÜV. The client shall then release TÜV from any claims of third parties which are asserted against TÜV if an employee of the client intentionally or negligently violates any obligation. The obligation to release shall also cover any legal and out-of-court charges.

2.3. Test procedure

2.3.1. In case of a product test, the client shall provide TÜV with the required amount of test samples free of charge together with the complete technical documents which are necessary for the assessment (e.g. structural overview, risk analysis, operating instructions, certificates for safety components used, another technical documentation). If necessary, TÜV may subsequently request additional test samples free of charge. The test sample(s) submitted will be assessed once. Upon acceptance of a test order, no statement may be rendered regarding the test result. The documents shall usually be provided to TÜV in German or English. Submission in another language shall be possible after coordination. However, TÜV reserves the right to have individual passages provided in German or English and/or to translate these at the expenses of the client. The same shall apply if translations are requested by accrediting parties or supervisory bodies of TÜV.

2.3.2. Test samples shall be tested in accordance with the legal provisions and rules as well as in accordance with the requirements agreed on with the client. If only individual components of a test sample are tested or if the complete test sample is tested only for individual aspects (a so-called partial test), no statement can be made with regard to the characteristics of the product as a whole. If there are no standards, guidelines, rulebooks or legal provisions for the type and scope of the test, TÜV shall define a test programme together with the client. The client shall bear any additional expenses incurred due to the submission of incomplete test documents, or if tests have to be repeated or are delayed because of late, incorrect or incomplete information or improper cooperation.

2.3.3. In case of management system audits, the manual and the supplementary management process instructions shall be provided in advance at the request of the conformity assessment body. All documents should preferably be written in German or English. Other languages shall only be acceptable after previous coordination. The verification of the efficiency of the management system shall be carried out by means of audits on the basis of Standard DIN EN ISO/IEC 17021 (accredited by DAkkS) within the frame of the first certification in Stage 1 and Stage 2 as well as afterwards by monitoring and re-certification at the client's which may be carried out in several steps as described.

- 2.3.4. If a product which the client provides for testing undisputedly or demonstrably proves to be plagiarised, TÜV shall be entitled to interrupt the test and invoice the expenses incurred. The proof of plagiarism may only be rendered by presentation of a legally effective judgement of the last instance. In addition, the assertion of a contractual penalty in accordance with the test and certification codex is threatened.
- 2.3.5. The test orders shall be processed under the precondition of the complete submission of all required documents and test samples. This shall apply to product tests as well as for orders for management system audits.
- 2.3.6. With the announcement of deadlines of tests becoming due, TÜV shall not assume the responsibility for compliance with such test dates which legally rests on the operators.
- 2.3.7. After completion of the test procedure, the client shall receive a written notification or a test report according to the offer which mentions any possible defects but does not point to possible solutions.
- 2.3.8. The client may only pass on test reports and similar documents in their complete version. Any publication or reproduction for advertising purposes shall require the previous written approval of TÜV. See also IEC/ISO 17025.
- 2.3.9. If the client desires permission to use the test label in addition to the product test, and if the development of the test allows for the expectation of a positive result, TÜV shall carry out a production site visit after coordination with the client. In this matter, the production, assembly and test devices as well as management measures which are necessary for continuous compliance with a quality equal to the assessed

construction sample shall be examined. The test shall primarily cover the receipt, production, intermediary and final control of goods in addition to the technical equipment and personnel resources which depend on applicable regulations or determination of the conformity assessment body.

A qualified goods receipt and final product control which correspond to the construction sample to be certified may only be realised based on the device and product safety law and equipped with a TÜV certificate, according to the current accreditation of TÜV .

In justified individual cases, additional individual measures provided for by the accrediting party and/or TÜV shall be carried out for protection of the TÜV certificate (see decision of the central ethics commission [ZEK] 2006-01³).

- 2.3.10. If a certification shall follow the positive conclusion of the test procedure or management system audit, then the technical documentation, and, if necessary, the production site report and also the report of the first visit shall be sent to the conformity assessment body (the certification office or its branch office) for certification.
 - 2.3.11. TÜV expressly reserves the right to publish company names of the clients conducting a trade, e.g. in the form of reference lists as well as the certificate granted. This shall not require a separate approval of the respective client.
- 2.4. Deviations/test samples/documentation
- 2.4.1. If any deviation appears in the development of the product test for which the client spontaneously wants to commission retesting, the test samples shall be stored for a maximum period of six weeks free of charge. Afterwards, the test samples shall be provided for collection or sent back to the client on the client's behalf as in the case of an interruption of the test procedure.
 - 2.4.2. If the test is concluded with a certification, the assessing body (the certification office or its branch office) shall determine whether the test sample shall be stored in the warehouses of TÜV as a storage sample for the client or given back to the client for storage labelled and sealed. In this matter, the holder of the certificate shall ensure that the storage sample can, at any time, be provided by TÜV for control purposes. If, in case of certification, the design of the storage sample allows for storage neither in the warehouses of TÜV nor with the client, or if the storage of storage samples is refrained from for any other reason, comprehensive documentation regarding the storage sample shall be prepared in such a way that any aspects relevant for testing can be found in the documentation.
 - 2.4.3. Storage samples or documentation provided to the client shall be provided to TÜV upon request spontaneously and free of charge. If the client is not able to provide storage samples and/or documentation upon request, any liability claim for material damages and financial losses of the client against TÜV resulting therefrom shall expire.
 - 2.4.4. The storage duration for documentation shall amount to 10 years after the expiration of the test label certificates and/or 10 years after the last placing on the market of the products in case of EC conformity certificates, unless anything else is stipulated by legal provisions.
- 2.5. Engineering/ Training
- 2.5.1. Services in the field of engineering shall be rendered in accordance with the relevant valid service catalogue and, if applicable, the service discussed with the client shall be offered and carried out.
 - 2.5.2. Training measures shall be realised in accordance with the published programme content and recognised rules of engineering. TÜV reserves the right to exchange the consultants and/or to relocate and/or change the programme schedule as long as this does not materially change the training goal. Changes in content which change the training goal shall be admissible if they are carried out with the approval of or upon request of the authorities responsible for the recognition of the desired degrees. In case of in-house training, the venue shall be agreed upon with the client in advance.
The minimum number of participants for training measures and exams shall amount to ten persons.

3. Certification codex

3.1. Framework conditions

- 3.1.1. It is only possible to prepare test certificates regarding the basis of assessments within the frame of certification which stem from laboratories which have been accredited according to the rules of DIN EN ISO/IEC 17025 or demonstrably work according to these.
- 3.1.2. The conformity assessment body of TÜV mainly carries out assessments and certifications on the basis of test and audit reports of TÜV which are based on the same management system. Test reports of other test laboratories may also be consulted for assessment within the frame of certification. Test reports which shall serve as a basis for certification may not be older than one year at the time of certification, may not be older than three years in the CB procedure and must be based on currently applicable test bases.
- 3.1.3. For issuing a certificate to a client, these general terms and conditions, the test and certification procedure as well as the test shall be accepted and observed by the client for the fulfilment of the contract. If the client does not want to distribute a product to be certified in the client's own name, the client shall document under which mark of origin the product shall be placed on the market in the form of a "mark explanation".

- 3.1.4. The authorisation to use a certificate shall only be valid for the holder of the certificate and for the product mentioned in the certificate, the production site mentioned in the certificate and the area of application covered by the management system. Product certificates may be limited to certain contingents or lots. A limitation of the validity of a certificate shall mainly be possible. In special cases, a certificate may be granted on certain conditions. The transfer of a certificate to a third party by the holder of the certificate shall only be possible upon involvement of the conformity assessment body of TÜV (OEM or secondary certificate).
- 3.1.5. For participation in the certification system and the issuance of certificates, the holder of the certificate shall pay charges according to the valid price list of TÜV unless other arrangements have been made. Moreover, license fees that are scaled according to units per year or agreed upon as a lump sum shall be paid for the follow up and archiving of the certificates as well as for the use of test labels in accordance with the valid price list of TÜV unless other arrangements have been made. The conformity assessment body may determine that the charges for the certification procedure itself (certification fee) as well as the license fees have been paid prior to certification.
- 3.1.6. Tests conducted with a final expert opinion or certificates shall release the client neither from the contractual warranties for defects nor from the legal product liability or the assessment and monitoring of any foreseeable wrongful use.
- 3.1.7. The conformity assessment body of TÜV reserves the right for publication of certified products and any approvals granted for management systems for information of the accrediting parties, competent authorities and authorities of the contractual states mentioned in the accord on the European Economic Area, consumers and other interested parties. For this, no separate agreement of the holder of the certificate shall be necessary. Moreover, the conformity assessment body of TÜV shall be entitled to pass on the content of any certificate granted to third parties upon request or make it accessible to anybody, with the exception of information regarding the production site.
- 3.1.8. In case of changes of contractual and test bases and/or of the preconditions of certification, or if the client violates any rules of the certification system, the conformity assessment body may, at any time, cancel the certificates. In serious cases, the certificates may immediately be declared void. This shall also apply for EC conformity certificates and acknowledgements of management systems. The conformity assessment body reserves the right to publish the certificates that are declared void and withdrawn. This shall not require any approval of the former holder of such certificates.
- 3.1.9. In case of changes of the test bases and/or certification requirements, a subsequent test shall be possible/ necessary after previous coordination with the client, even if the certificate is still valid. If the client refuses such a subsequent test, the certificate will be cancelled.
- 3.1.10. Certificates shall only be issued after the client has completely paid the invoice issued by TÜV.
- 3.1.11. TÜV reserves the right to suspend the certification procedure if
- the client is in default with the payment of an invoice,
 - the client does not fulfil the certification instructions or
 - the client is insolvent.

In the field of certification of management systems, TÜV shall still be entitled to assert breaches of faith towards the client which are incurred because the client does not have the re-certification carried out by TÜV in contrast to the order granted.

3.2. Types of certificates/period of validity

3.2.1. Based on the positive assessment and evaluation of the test and audit reports, the certification body shall, in particular, issue the following certificates:

- TÜV label accordance based on the device and product safety law,
- Label accordance for private test labels of the test label list of TÜV (e.g. design, EMC, ergonomics labels etc.),
- Management system certificates in the unregulated area.

3.2.2. Conformity certificates alone shall not authorise keeping a test label of TÜV. If test labels of TÜV shall be kept, these must always be combined with a separate authorisation for keeping such test labels. Advertisements with the conformity certificate shall only be possible after the express written approval of the conformity assessment body has been granted.

3.2.3. Management system certificates shall be issued after successfully completed audits.

Management system certificates confirm the relevant management standards.

3.2.5 The maximum validity period of certificates / attestations is usually five years for certificates / attestations of product and three years for certificates / attestations of management systems. Within the voluntary certifications field, technical specifications by organizations for standardization or by accreditation bodies may still have an impact on the maximum validity of certificates/ attestations. Within the compulsory certifications field, the maximum validity of the certificates/ attestations is governed by the relevant documents issued by appropriate authorities at national and international level. The maximum validity of the certificates/ attestations, whenever it is different from the standard validity, is explicitly indicated in the offer.

3.3. Rights of the holder of the certificate

3.3.1. For the duration of the validity of the approval granted for keeping the test label and/or existing management system certification, the client shall be authorised:

- a) To attach test labels released for use to the client on the client's products,
- b) To advertise with the test labels released and shown in the certificate with regard to certain products in print matters or similar documents,
- c) To present permits for keeping test labels and management system certificates granted within the frame of advertising measures in an unchanged form,
- d) To advertise in brochures, business documents and printed materials referring to the management system certificate; product labeling shall not be permitted.
- e) To use the test reports for TÜV labels for the documentation of the product safety within the frame of the conformity assessment procedure,
- f) To apply for secondary certificates or OEM certificates (Original Equipment Manufacturer) for the client's products if they are supposed to be distributed under another mark of origin or trade name - if necessary, with different

type designations.

3.3.2. Because of the use of the TÜV logo, incidental reference is made to number 5 (use of the TÜV mark).

3.4. Obligations of the holder of the certificate

For the valid duration of the approval granted for using the test label and/or for existing management system certificates, the client shall be obliged:

- a) To continuously monitor the production of certified products in order to ensure that the products correspond to the approved construction samples.
- b) To allow for periodically repeated inspection of the product's production or product by TÜV within the frame of the approval granted for keeping the test label.
- c) To allow for annual monitoring audits by TÜV within the certified management systems.
- d) To manage the product development and production under strict compliance with the management system approved by TÜV.
- e) To observe the notes from the repeated production and product controls and monitoring audits of TÜV.

For the period of validity mentioned above, the client shall additionally be obliged:

- f) To announce any planned product changes to the certification body prior to implementation and to have them approved, no matter whether these changes are due to further development or the exchange of components; the continuation of the authorisation to keep the test label shall depend on the result of any possible additional tests.
- g) To announce any change in the management system of the certification body.
- h) To register and archive any complaints relating to the product which become known from the market or third parties, to present them to the certification body upon request, and to render information on the measures taken.
- i) To announce any intended relocation of the assessed production sites or the planned transfer of the company to another company or another company owner to the certification body in due time. In case of a change of the company's name, change of address or of the legal form, a new general contract shall be concluded and the certificates shall be changed accordingly subject to a charge.
- j) To accept the liabilities regarding production control measures stipulated in the device and product safety laws.
- k) To conclude a contractual agreement regarding the compliance with preconditions which must be observed for the production of the product and which includes the acceptance of required inspection measures with the manufacturer if the client, as the holder of the certificate, is not the manufacturer of the product.
- l) To immediately remedy any identified safety defects of products which dispose of a CE marking or test label of TÜV based on a later construction sample certificate, and to take suitable measures for minimising damages in the market. In any case, the client shall immediately stop release of faulty products to the market and notify the certification body.
- m) To independently fulfil the client's obligations to inform the authorities as the manufacturer or marketer regardless of certification, or have this done by an agent.
- n) To allow for witness audits of the accrediting party of TÜV in the client's operating facilities and those of sub-contractors; the client shall accordingly oblige the sub-contractors.
- o) To determine a new type designation in case of changes to a certified product for the changed product if this shall also be certified.
- p) To accept that TÜV may pass on information regarding certification which become known because of legal or official obligations to inform, and that information, documents etc. relating to the contract with the client, as well as to the object of the contract, may be passed on to the accrediting party upon request by TÜV. This shall refer in particular to information regarding the carrying out of audits, the granting and withdrawal of approvals, confirmations, certificates, etc., and any events and measures for the protection against risks in the direct or indirect connection with tested products and/or management systems. TÜV reserves the right to invoice any costs incurred in connection with the clarification of such incidents to the client according to the expenses.
- q) To keep records of complaints regarding the conformity of a product according to the requirements of the respective standard and to take appropriate measures regarding such complaints as well as any defects found with products or services which affect the fulfilment of certification requirements, and to document the measures carried out and report them to the certification body. Upon request of the certification body, the client shall make the records of complaints and defects as well as the measures taken for removal accessible to the certification body.

3.5. Restrictions, suspensions, expiration, cancellations of certificates, attestation, conformity certificates

The Certification Office shall take appropriate measures in case non-conformity with certification requirements is proved. This proof may be the result of surveillance or with other means. Appropriate measures may be restriction, suspension, declaration of expiration or cancellation of certificates, attestation or conformity certificate. Restriction shall hereinafter refer to the restriction of the original area of application of the certificate. Suspension shall refer to the timely limited invalidity of the certificate for three months.

3.5.1. Certificates shall expire if:

- a) The period of validity indicated in the certificate has expired and no extension has taken place; extensions of certificates shall be possible if the provisions taken as a basis upon certification are still correct and the regular inspection measures were positive.
- b) The holder of the certificate terminates the order or waives the right to keep individual approvals or test labels and notifies this in writing in consideration of the periods of termination of the certification body.
- c) The holder of the certificate becomes insolvent or an application for bankruptcy proceedings against the holder is rejected for lack of assets.
- d) The certification body terminates the certificate with a maximum period of six months because of changed accreditation regulations and/or test bases or changed use of the product.

3.5.2. The certificates may be restricted, suspended or declared void and withdrawn with immediate effect if:

- a) The product placed on the market no longer corresponds to the approved construction sample and/or presents a danger for the end user or third parties.
- b) Products which are manufactured within the frame of an approved management system present a danger to end users or third parties.
- c) Facts which would have been opposed to certification have not been seen, not been seen and assessed correctly, or have not been perceivable at the time of the test or audit. This shall, for example, also include a wrongful classification of products in certain risk classes or classification according to types of intended use.
- d) Product or system defects which are subsequently identified within the frame of repeated monitoring, market controls or otherwise are not remedied by the holder of the certificate within an appropriate period of time.
- e) The holder of the certificate does not have the repeated monitoring measures stipulated in the device and product safety law, accrediting provisions, EC guidelines or test and certification rules of TÜV or impedes or restricts

their proper implementation.

- f) Certificates or copies of certificates are changed and thus counterfeited.
- g) Existing authorisations for the use of test labels are also used for products that are not approved or not entered in the management system and thus a misuse of the label takes place which withdraws the basis for trustful cooperation.
- h) Test reports, certificates or test labels are advertised in a deceptive or otherwise inadmissible way.
- i) It is demonstrated that the certified product has undisputedly or demonstrably been plagiarised.
- j) Charges due for certifications, licenses and/or tests carried out in advance are not paid by the holder of the certificate after receiving warning within the granted period. If the charges relate to several certificates, the certification body shall decide which certificates such measures shall apply to.

If the main certificate holder loses the validity of the certificates, TÜV shall reserve the right to suspend the validity of the OEM and co-licenses.

- 3.5.3. Prior to the announcement of the restriction, suspension or invalidity of a certificate, the certification body shall grant the client the possibility to explain the client's position unless such a hearing is unreasonable because of the urgency of the measures to be taken.
- 3.5.4. The holder of the certificate shall automatically lose the right to provide the products indicated in the certificate with test labels of TÜV or to use these for products which are concerned with restriction or suspension, which have expired at a certain point in time because of termination, or have spontaneously been declared void. In case of cancellation or expiration, the certificate shall be returned to the certification body as the original.
- 3.5.5. The certification body shall publish restrictions, suspensions, cancellations and withdrawals of product and management system certificates. In particular, the body shall pass on the name and address of the client,

the type of violation and/or reason for cancellation, if necessary, information on the product, etc., to the relevant competent federal body, the supervisory authorities, the accrediting authorities, other "approved authorities" and "appointed authorities" and approved authorities within the frame of violations. This shall also apply if the withdrawal of the certificate is based on the fact that it has been plagiarised.

- 3.5.6. The certification body shall not be liable for disadvantages the client suffers in connection with the non-granting, restriction or suspension as well as the expiration, cancellation and withdrawal of a certificate.
- 3.5.7. Certificates, attestations and conformity declarations may be brought into force by the Certification Office again if the certification owner applies in written form to prolongue the validity or re-activation of the certificate.

3.5.7.1. The owner of the certificate shall explain to the Certification Office the reasons for prolongation of the validity or re-activation in written form. The certification owner has to pass relevant documentation explaining sufficiently and reasonably the settling of restriction, suspension, expiration and cancellation of the certificates, attestations and conformity declarations. The Certification Office shall give a written decision to the certification owner concerning his application after careful assessment. In case of suspension of the certificate the delay for application by the certification owner shall be three months. In case the reason for cancellation is not corrected, the certificate, the attestation or the conformity declaration shall be definitely and completely cancelled.

3.5.7.2. In case the Certification Office brings the certification into force again, it shall alter all formal certification documents, public information, permission for usage of mark etc. It shall take care that all relevant information that the product is still certified exist.

3.5.7.3. In case of restriction of the certification validity as condition for the re-activation, the Certification Office shall alter all formal certification documents, public information, permissions for usage of the mark etc. and makes sure that the contract partner is informed completely and comprehensively about the restricted scope of application of the certificate and that the restricted scope of application is clearly defined in the certification document and in public information.

3.6. License fees

3.6.1 For the authorisation to use test labels, approved management systems and TÜV conformity certificates in connection with the certificate code number for the TÜV mark, a license fee shall be paid. The license fee shall, at the same time, also cover the information of the holder of the certificate regarding changes of test bases regarding the relevant certified product or management system.

3.6.2. The amount of the license fee shall depend on the type of certificate and shall be due annually at the beginning of a calendar year. License fees shall be due for the first time when the certificate is granted. License fees for test label certificates which are issued after July 1st shall only be calculated for half the current year. If test label certificates are issued in the fourth quarter, the license fee shall only amount to 25% for the current year.

3.6.3. License fees for test labels shall be calculated for the first time in the year following the granting of the certificate.

3.6.4. Changes or terminations which shall be considered for the calculation of license fees in the following year shall be notified to TÜV until November 15th of the current year. For certificates terminated during the year, no proportionate reimbursement of license fees shall be made.

3.7. Production site visits/ follow up audits

3.7.1. Product Certification

3.7.1.1. For ensuring and maintaining an equal product quality of the certified products, TÜV shall regularly carry out surveillance audits of the production sites or products to be certified. In typical cases, surveillance audits shall take place once a year.

3.7.1.2. If the certification body gets to know product-specific information of third parties or any other noticeable problems during the visit to the production site, the certification body may reduce the surveillance intervals. In special cases, the certification body may specify a goods control check prior to first shipment.

3.7.1.3. Moreover, TÜV may, at any time, inspect the products, production sites and warehouses indicated in the certificate without previous announcement (in case of foreign holders of certificates also the warehouses of importers or the German authorised parties and subsidiaries). TÜV may take products for which a certificate has been granted for inspection free of charge and also carry out tests in production sites and warehouses.

3.7.1.4. In exceptional cases, a product test may be realised with a test sample which is representative for serial production instead of the repeated production site inspection for assurance of equal quality. In such a case, a lot-related certificate shall be issued for the respective product. TÜV shall be entitled to commission independent and suitable authorities to realise the follow up audits on behalf of TÜV.

3.7.2. Management systems

For maintaining management system certificates, follow up audits – usually in annual intervals – are required, during which the efficiency of the management system is checked with random samples in the defined areas of application. For extension of a management system certificate after a term of three years, a comprehensive re-certification shall be a precondition. An extraordinary audit shall be possible if considerable doubts regarding the efficiency of the certified management system have been raised. This shall, in particular, be the case if it is found that faulty products have been placed on the market or plagiarism has taken place.

3.7.3. Costs of TÜV services

3.7.3.1. The costs for carrying out monitoring tests, goods control tests and follow up and repetitive audits of management systems shall be invoiced to the holders of the certificates.

3.7.3.2. The costs for the coordination of production site follow up and brand follow up shall be invoiced on an annual basis together with the license fees.

For regularly planned inspections of the production sites, the prices indicated in the respective offer shall be invoiced.

3.7.3.3. In addition, subsequent inspections which become necessary because of defects found during the follow up of the production site or during goods control checks shall be invoiced according to expenses:

- a) First inspection of production sites or repetitive production site monitoring in which the client requests a certain expert, or for which the client determines the time,
- b) Additional subsequent inspections which become necessary due to defects found within the frame of the follow up of the production site.

If the client spontaneously cancels an agreed inspection date, i.e. up to one week in advance, the applicable fixed price or a lump sum for costs that have already been incurred shall be invoiced.

4. Violations of the test/certification codex

4.1. The certification body shall be entitled to request a contractual penalty of an appropriate amount up to 300,000.- € (in words: three hundred thousand euros) for any violation by the holder of the certificate in case of culpable violations against the test and/or certification codex by the client in addition to the cancellation of the certificate.

This shall, in particular, apply:

- In case of unlawful use of test labels,
- In case of inadmissible advertisements with test labels or
- In case of violations against conformity certificates of TÜV.

4.2. Moreover, TÜV shall be entitled to claim a contractual penalty of an appropriate amount if a test order is demonstrably interrupted because of demonstrable plagiarism.

4.3. In addition, the certification body reserves the right to terminate the general contract without any period of notice with immediate effect and to cancel additional certificates of the client as soon as TÜV considers its trust in the observance and reliability of the client as damaged because of a violation by the client against the test and certification rules. If it is found that the product presented for testing has demonstrably been plagiarized, product certification shall no longer be possible.

4.4. If the client does not fulfill the obligations resulting from the certificate, the certification body may take corresponding measures. These shall, for example, include:

- Information of users for minimising damages on the market and
- Notification of the supervisory and accrediting authorities.

4.5. TÜV reserves the right to request reimbursement from the client for expenses incurred because of violation of the test and certification rules by the client. Such expenses shall, for example, include costs for:

- Comparative tests of certified products with products from the market,
- Necessary research,
- Visits to production sites, shipment checks, inspection of stock and any other measures TÜV regards necessary.

The costs incurred for such measures shall be calculated according to expenses by TÜV.

4.6 TÜV is obliged to take appropriate measures in case of false reference to the certification system or misleading usage of permissions, certificates, marks or other mechanisms indicating a certified product and made public or circulated in which way so ever.

5. Use of the TÜV mark/ use of the certification mark

The certification mark TÜV is released:

- to organizations that successfully completed the certification process for systems or products;
- Professionals who successfully passed the exams for the certification of personnel.

If the positive recommendation issued by the auditor / inspector is not sufficient at the end of the audit/ examination, it is necessary that the organization / professionals are in possession of a valid certificate issued by TÜV.

A certificate or mark relating to a management system may only be used to promote the relevant management system.

A certificate of product or mark of product may only be used to promote the certified product.

Certificates of compliance with a standard or certificates for management systems cannot be used to promote products.

The certificate holder assumes full and complete responsibility for the use and the legitimacy of all statements concerning the issued certificate, certification mark or test report/ verification of a system/ product certificate and for the correct application/ publicity by his customers. In particular, in case of advertising a product/ certified system voluntarily, all advertising shall indicate the voluntary aspect as well as the standard of reference.

Except for different requests, approved in advance in writing by the certification body, the following shall apply: The reports and/ or certificates and/ or attestations certificates shall not be reproduced in part. Zoom in and out is allowed, providing there is no distortion of the structure and provided uniforms and legible. The same applies to all communication, notices, promotions, etc. prepared by the client organization in digital, audio or print form.

As aforementioned, reports/ certificates/ attestations issued by the certification body may be quoted only with their exact wording and in complete form, together with the date of release. The holder of the certificate/ attestation receives the right to use the certification mark under the condition and according to the rules of TÜV for advertising purposes. This right is limited to the period of validity of the issued certificate / attestation.

The certification mark may not be associated or combined with any other elements, such as logos, graphics or statement) misleading and/ or leading to misinterpretation. Neither the contents nor the design of the certification mark may be modified. If the size is changed, the proportions shall remain unchanged. In particular, no text may be added to the certification mark. The use of the certification mark must not give the impression that the certified company or its employees belong to TÜV or acting on behalf of TÜV.

The role of the Certification Body as "independent third party" may not be negatively affected by the use of the certification mark. The certification mark of the product may not under any circumstances be larger than the CE mark. The certification mark must be smaller than the name or logo of the certificate/ attestation holder and must be positioned without any possibility of misinterpretation.

The holder of the certificate / attestation:

- has to meet the requirements of the certification with respect to the reference to certification in media (e.g. internet, brochures, advertising material or other documents)
- - due to suspension of the certificate, expiration, revocation or withdrawal-, must end any use of the mark; any reference to certification shall be removed from advertising activities and material.
- - in case of reduction of the scope of the certification- shall withdraw advertising material reference to certification or adjust the material accordingly.
- is not allowed to make or permit any misleading statements about the certification.
- shall not use any certification documentation or parts of it in a misleading way or authorize such use.
- must not do or allow references so that you might think that the certification applies to activities outside the scope of certification.
- may not make or permit the use of its certification to discredit the Certification Body and/ or to mistrust certification system.
- shall not use the company logo of TÜV, nor the slogan "Your qualities are your asset, we can certify them", or use the corporate design of TÜV.

At first glance, the certification mark and the logo of TÜV may appear similar. Therefore, it is particularly important to note the clear difference between the certification mark and the logo. Only the certification mark of TÜV may be used by organizations in their advertising activities.

The certification mark is supplied in electronic form in .jpeg format. On request it can be issued in other formats. These files may not be edited and/ or counterfeit; only the original files may be used to guarantee the correctness of proportions, color and content. The content and/ or design of the TÜV may not be changed.

The TÜV certification mark may not be associated with the logo of the user.

The certification mark TÜV may not be combined with other elements, i.e. logo, or graphics, and may not be combined with gray background used only for the logo TÜV.

The certification mark may not be compressed, stretched or altered in any other form.

The colors of the certification shall not be altered in any way.

5.1. Shape and color

The TÜV logo, between parentheses, is placed inside of a rectangular mark on a grey gradient background, with rounded corners, with a blue edge, joined on the right side by a blue rectangle, with rounded corners too:

PANTONE 275 C,

RGB C= 100 M= 100 Y= 38 K= 41.

The writing inside the right rectangle is white as well as the writing that determines the business line of reference of certification, in the blue rectangle integrated under the logo.

The mark may also be used in grayscale:

C: 20% - M: 10% - Y: 10% - K: 20%

The background of the rectangle where the logo could be in white or gray.

5.2. Dimension

The minimum reduction allowed of vertical side is 12 mm keeping the proportions. The mark is always to be reproduced on a white background. The TÜV logo may never be matched to the logo of accreditation body.

5.3. Application of Mark for holders of TÜV certified Management Systems

The organization shall have and - after having been certified - implement a documented procedure for the management of the procedures for reference to certification, in particular the use of the certificate and the mark; this procedure can be a separate document, specifically devoted to this subject, or it may be included in another document management system; in any case it must specify the / the function / the organization which allocated the responsibility for the management and in particular how to use the certificate and the mark in order to ensure compliance with the following requirements.

Once the management system is certified, for the entire period of validity the organization may refer to it in their technical publication and advertisement, in its correspondence, etc. Each reference shall be made correctly and, in particular, shall not lead to misinterpretation;

- It must be clear that the certification covers only the certified management system and that it is not a product certification;
- The standard applicable to the certified management system shall be mentioned;
- It shall be clear that the certification of the management system is limited to the site/s and/ or production plant defined on the certificate;
- The certificate number shall be mentioned;
- The site/ s and/ or plant/ s and the type of product, processes, services specified in the certificate shall be given;
- Possible exclusions of non-applicable requirements of the reference standard shall be given.

The TÜV mark released following a certification system may only be affixed in combination with the name or logo of the organization. Dislocation of the brand not adjacent to the name or the logo of the organization is not allowed.

The TÜV mark released according to a certification system may never be applied on products and primary packaging.

On primary packaging reference to the certification may be done only by the following or similar wording: "This product was made by an organization with a management system certified according to the standard XY".

On secondary packaging reference to the certification can be applied to the conditions and the prior written consent of TÜV; one condition may be that the brand is supported by a statement, e.g.: "This product has been made by an organization with a management system certified according to the standard XY" (or similar wording).

In addition, the TÜV mark may be combined with written information specifying the type of management system, ie. environment, safety, quality, information security etc., as follows:

- company with quality management system certificate /attestation no. XYZ;
- certificate of quality management system no. XYZ;
- certified company since 20xx;

and similar wording as long as it does not lead to misinterpretation as outlined at the beginning of this paragraph.

If the organization is a certified laboratory, i.e. an organization showing in the management system certificate that its activities are performance of tests and/ or calibrations, it is prohibited to affix the TÜV mark on its test reports or its own calibration. Then the report in question is the "product" of the laboratory itself.

Technical consultants or the design department may use the following wording on deliverables (technical reports, drawings):

- company with quality management system certificate / certificate no. XYZ;
- certificate of quality management system no. XYZ;
- certified company since 20xx;

and similar wording, only if it does not lead to misinterpretations as outlined at the beginning of this paragraph.

Also, if the company provides certified training courses, the TÜV mark may not be affixed on certificates of qualification and/ or competence certificates issued to participants.

In case of reproduction of the certificate or non-appliance of the TÜV mark to case studies described in this paragraph, the certified organization has to contact TÜV for written prior approval.

Proper use of the certificate, the TÜV mark and overall correct reference to certification always have to be under control during the surveillance and renewal visits. In case of non-compliance with the conditions set out above, the audit team may issue a non-compliance report in this regard; also the misuse of the certificate may be cause for suspension of the certificate.

5.4. Application of Mark for TÜV certified Products

After successful certification the client has to prepare and implement a documented procedure for the management of the procedures for reference to the certification itself, in particular the use of the certificate and the TÜV mark in all forms of communication. The procedure must indicate the tasks of the client responsible for the management policy, in particular how to use the certificate and the mark in order to ensure compliance with the following requirements:

The certification mark may be issued on the appliance/ equipment of products covered by the certificate issued -but not larger than the possible CE. The awarded certification mark may be used in the publications of advertising, i.e. brochures, website, etc. The right to use the certification mark given, in its entirety, i.e. without making any changes, applies only to products manufactured at the production site and verified indicated on the certificate. The released certification mark may be used for advertising purposes only with respect to the activities under the contract with TÜV.

Once certified, and throughout the period of validity of the same, the customer can refer to it in their technical publications and advertising in the form prescribed by different regulations. Each reference has to be correct without leading to misinterpretation; in particular it must be clear that the certificate only covers the "product" certificate; therefore, no others than particular device, components or systems specifically indicated on the certificate may be shown, even not the organization's management system, e.g. the quality system.

A certificate entitling the User to use a certification mark is not permitted until a first factory inspection procedure has been successfully completed. Regular follow-up inspections in accordance with TÜV factory inspection procedures are necessary for the mark to be retained.

The certification mark of TÜV may only be used for products that are conform to the successfully tested type and the specifications in the test report or in any supplementary agreements. The necessary operating and assembly instructions must be supplied with the product in the appropriate language of the country of destination.

Where the Mark can be applied on:

- Certified Product
- Primary packaging
- Description sheet and user manual
- Certified Product Brochure
- Labels

Where the Mark can NOT be applied on:

- Writing paper, envelopes, fax, business cards,
- commercial printing,
- e-mail,
- Budget and company profiles,
- Corporate advertising, exhibition stands and permanent company buildings,
- Motor vehicles,
- Company website.

5.5. Application of Mark for holder TÜV Personnell Certification

The Certification Mark must be reported as explicitly inherent in the object of professional qualification certificate issued by TÜV. The mark cannot be linked to other professional qualification not being certified. In addition, the certification mark always has to be attached to the name of the professional certificate.

List of documents on which it is possible to bring the mark:

- business cards,
- letterhead,
- trade publications and promotional activities related to the services provided by the professional certificate, signatures to emails,
- Websites,
- professional social networks, eg. LinkedIn,
- professional registration.

The professional certification is issued in accordance with the frame of reference and therefore has to refer exclusively to the scheme. The reference to other standards / norms is only allowed as follows:

The standard ISO/IEC 17024 may be specified with reference to the certification scheme exclusively in the manner indicated at follows: The year of publication has to be shown in the title.

The use of other reference standards is only granted if the certification scheme is developed by TÜV according to the standard the client wants to specify and thus specified in chapter "2. References" in the regulation diagram. The professional, in this case, will show that the scheme is developed in accordance with the reference standard but will NOT indicate that it is certified.

5.6 License fee

For the use of the Mark/ TÜV certification mark a nonrecurring license fee for the validity term of the certification will be charged to the amount of five percent of the total volume of order.

6. Complaints management

The client may submit complaints against test, audit and certification decisions to the superior management of the certification body of TÜV according to the process instruction of TÜV TIC-F-MS-57 Customer Complaint/ Appeal Report. TÜV shall then present a detailed justification of the decision to the applicant. If the justification presented is not acceptable for the applicant and no agreement can be reached with the superior management of the certification body of TÜV, the legal process shall be open to the applicant.



7. Severability clause, written form

7.1. Severability clause

If individual provisions of these general terms and conditions or of the test and/or certification codex are or become ineffective, or if a loophole is found in the general terms and conditions or the respective codex, the effectiveness of the remaining provisions shall not be affected. The ineffective provisions shall be replaced or the loophole filled by an appropriate provision which comes closest to what the contractual parties had intended according to the sense and purpose of these general terms and conditions or the respective codex.

7.2. Written form

Modifications and supplements of these general terms and conditions and the provisions of the test/certification codex must be in writing. This shall also apply to the waiver of this written form requirement.

TÜV Certification Mark	Documentation logo
	

¹ German Civil Code

² German Code of Civil Procedure

³ The German Central Ethics Commission (ZEK) anticipates and discusses ethical problems of medicine. It is guided by developments on the national and international level and promotes the exchange of information as well as the cooperation with related institutions.