

General Conditions of Testing and Certification of TÜV NORD LUXEMBOURG S.à r.l.

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I. Scope and definitions

1. The General Conditions of Testing and Certification (Prüf- und Zertifizierungsordnung - PZO) of TÜV NORD LUXEMBOURG S.à r.l. and of its associated companies in the sense of § 15 AktG – German Companies Act (“Contractor”) – applies for all assessments, tests, certifications, inspections and auditing as well as for conformity assessment procedures according to EU Directives and EU Regulations or other rules, regulations and regimes, including test programmes created by TÜV NORD. The client shall always fulfil the conditions of this PZO, including any changes if and when they are communicated by the certification body.
2. The services of the Contractor relate to products (as well as their manufacturing processes and/or production facilities and sites), services or systems (“objects of certification” or “objects of testing”).
3. Certificates (e.g. Module H, Welding Manufacturers EN 1090 etc.) and other certificates of conformity (including, for example, EC-type examination certificates), are referred to in the following text as “certificates”. Any attached Annexes or Appendices become an integral part of the certificate.
4. When a certificate is issued, the client (applicant) is also referred to as the “certificate owner”.
5. In so far as reference is made to “tests” or “testing”, these also include inspections, audits and assessments.
6. The term “test mark” covers all private marks which are issued by the Contractor following a test. Test or conformity marks required by law or any other permissible seals of quality etc. are not included, unless they are expressly mentioned in the text.
7. The responsible body within the Contractor’s organisation is referred to as the “conformity assessment body” or CAB.
8. With the exception of individual agreements which deviate from these conditions, contracts regarding the Contractor’s services are based solely on the stipulations contained in the following provisions. If use of the General Terms and Conditions of TÜV NORD GROUP is also agreed between the parties, the PZO takes priority in case of any overlaps, otherwise the PZO applies in addition to the AGB. Any opposing or deviating conditions of the client are not recognised by the Contractor, unless specifically agreed to in the individual case. The PZO also applies if the Contractor performs his services whilst knowing of opposing or deviating conditions of the client.
9. In so far as the client is not an end consumer, these PZO also applies for all aforementioned services of the Contractor which are provided in the future.
10. Each time an order is placed, the client recognises the version of the PZO which is current at the time of the order as the major component of the contract and as binding. The current valid version of the PZO can be viewed on the Internet at www.tuev-nord.de or can also be sent upon request.
11. Changes are made to the PZO in particular when standards or requirements of accreditors and official approval bodies are changed. The changes are communicated to the client at an early date. The client then has 6 weeks as from the time when notice was given of the changes in order to object. The CAB retains the right to terminate the contract following an objection.

II. Testing and conformity assessment

1. Tests are generally carried out at the client’s premises or at in-house or contracted test laboratories of the Contractor. Other test locations can be agreed with the client, e.g. if the type or construction of the test sample so requires. If employees of the client or third parties commissioned by the client participate in the tests, the client already now indemnifies the Contractor against all claims of third parties which are raised against the Contractor, if an employee of the client or of a commissioned third party organisation culpably commits a violation of obligations during the test.
2. The client is responsible for providing all technical equipment and test pieces in sufficient numbers free of charge. He shall grant the responsible employees of the Contractor access to the corresponding locations in his organisation. He is responsible for ensuring that all test locations are accessible and that the necessary employees from the client’s side are available.
3. The client shall provide the information and documents necessary for performance of the testing and conformity assessment to the Contractor. The documents shall generally be provided in the German language (further languages: English, others by agreement).
4. The client shall ensure that the test samples are delivered to the Contractor free of charge in appropriate packaging. The packaging shall enable return of the samples to the client. Despatch and transportation of the samples is at the client’s own risk.
5. The Contractor shall only be liable for damage caused to the test samples within the framework of the testing in the case of gross negligence or wilful intent and in so far as the nature of the test does not presuppose the damage.
6. The Contractor is entitled to commission qualified subcontractors with the performance of the test(s). The client will be informed accordingly.
7. Following conclusion of testing / conformity assessment, the client will receive the results in writing, e.g. in the form of a Test Report. If the results are positive, the client will also receive a test certificate or a certificate of conformity.
8. The client shall grant access to his premises for employees of official authorising bodies responsible for the relevant area and/or to employees of the accreditation body within the framework of auditing and surveillance of the CAB.
9. If issue of the certificate is refused, the certification body shall not be liable or responsible for any disadvantages which thereby accrue to the applicant.
10. In the case that documents (e.g. Test Reports, Certificates) are created in paper form alongside a digital version, the paper form is always the legally binding document.

III. Certificates

In so far as a certificate is issued to the client, the following special conditions of use additionally apply:

1. Issue and surveillance

- a) The certificate can include prerequisites for validity, in particular conditions that have to be fulfilled by the client.
- b) The certificate (including all duplicates) remains the property of the Contractor and is non-transferable.
- c) Permission to use a certificate only applies for the natural or legal person or entity and for the objects of certification which are expressly listed in the certificate. The certificate is only valid for the material, factual and geographical area of application named in the certificate. The certificate is only valid for the complete object of certification.
- d) A certificate that is issued does not constitute a definitive final statement regarding the marketability of a certified product. Certificates do not automatically constitute entitlement to use a test mark.

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- e) The CAB can subject objects of certification to surveillance in so far as demanded by the approval, notification, EU directives or other rules and regulations which form the basis of the certification, or in so far as deemed necessary by the CAB as in duty bound and at the CAB's discretion, in order to establish that the prerequisites for holding the certificate are met. Audits/visits can also be carried out by the CAB at any time without prior announcement for this purpose.

2. Obligations of the certificate owner

- a) The certificate owner may not use the certificate or use the certificate for advertising purposes in any way which brings the CAB into disrepute or is misleading. The Contractor is not liable either to the client or to third parties for incorrect or misleading use of a certificate or for an erroneous certificate which is based on incorrect, misleading or incomplete information from the client.

- b) In so far as the conformity assessment procedure or other rules and regulations on which the certificate is based require, the owner of the certificate is, during the term of validity of the issued certificate, obliged to undertake the following:

- Continuous monitoring of the manufacture of certified products, in order to ensure that the products correspond to the type / test samples and the applicable rules and regulations;
- In so far as legally required, to affix the Identification Number of the CAB (here: notified body) in association with the CE marking;
- To maintain and comply with the certified quality assurance system;
- To inform the CAB in good time of intended changes to the certified type sample, manufacturing process or quality assurance system. The CAB then reviews the intended changes at the expense of the client and decides if re-testing is necessary. The continuation of the certificate then depends on the result of this re-testing;
- To inform the CAB in good time of any change of location;
- To inform the CAB of nonconformities in objects of certification which lie within the scope of the certificate immediately in text form;
- If defects are discovered in objects of certification following certification, to take corrective actions without delay or to carry out product recalls. The CAB must be informed immediately in such an event;
- To communicate to the CAB complaints or requests for information from official bodies with reference to and within the scope of the certificates.

3. Expiry, Restriction, Suspension or Withdrawal

- a) A certificate expires when

- The period of validity stated in the certificate has expired and is not extended by the CAB upon request of the certificate owner;
- The certificate owner renounces the certificate and communicates this to the CAB in text form;
- The certificate owner does not or no longer recognises the PZO or objects to reasonable changes to the PZO as described in Clause 1.11;
- The certificate owner finally ceases his business operations without a legal successor;
- The certificate owner has to remove the object of certification from the market;
- The accreditation or notification or authority of the CAB ends; the certificate owner will be informed accordingly. This does not apply in the case of completed individual appraisals.

- b) Within the specified legal framework, a certificate can be restricted, suspended or withdrawn by the CAB at its discretion, without prior notice or with setting of an appropriate deadline, in particular if the following arise:

- The legal requirements, the requirements of the accreditator or the generally accepted state of technology which form the basis of the certificate change. The validity of the certificate is extended, if, based on a re-test at the expense of the client or certificate owner it is established within a set period defined by the certification body that the objects of certification also comply with the new rules;
- If the CAB has established that the object of certification no longer fulfils the certification requirements and the certificate owner does not implement appropriate corrective actions following a corresponding request;

- The certificate owner violates this PZO either based on gross negligence or with willful intent, in so far as the violation is of a serious nature;
- The certificate owner provides incorrect information to the CAB or fails to reveal important facts which are of relevance to grant of the certificate;
- The report upon which the certificate is based (test report, audit report or similar) is no longer suitable to form a basis for certification;
- The object of certification constitutes a risk or a hazard for final users or third parties;
- The requisite authority or accreditation for performance of the certification was not present;
- The responsible authority or accreditation body orders the suspension, restriction or withdrawal of the certificate;
- The necessary monitoring or surveillance cannot be carried out due to reasons for which the certificate owner is responsible or cannot be carried out within the specified period of time;
- Evidence of proper and compliant performance of tests by the certificate owner cannot be produced, despite written request;
- Following reminder, the fees for certification are not paid within the period set by the Contractor. If the fees do not relate to a specific certificate, the CAB decides upon the certificate to which the action should be applied; the certificate can be withdrawn even in the case of partial non-payment;
- Misleading or otherwise impermissible advertising with the certificate, the mark or the test report is carried out or permitted by the certificate owner, or the CAB is brought into disrepute;
- Certificates or copies of certificates have been changed and therefore falsified by the certificate owner;
- It is established after the event (during or following the certification process) that the tested object of certification is a non-genuine article or a counterfeit;
- Based on lack of assets (in particular cessation of payment or application to open insolvency proceedings), the certificate owner is no longer in a position to fulfil his obligations arising from the PZO.

- c) Before suspension, restriction or withdrawal of the certificate, the CAB shall provide the certificate owner with the opportunity to offer a response/make a corresponding statement and to reinstate conformity by means of suitable corrective actions within a suitable set period of at least 4 weeks.

- d) Following expiry, restriction, suspension or withdrawal of a certificate, the original of the certificate shall be returned to the CAB without delay. Any digital versions of the certificate shall be deleted. In the case of restriction, the CAB shall issue a new certificate with limited content. In the case of suspension, the certificate remains with the CAB until the CAB ends the suspension.

- e) Following expiry, restriction, suspension or withdrawal of the certificate, the certificate owner automatically loses the right to continue to affix the marks, labels etc. related to the certificate to the products listed in the certificate. He also loses the right to continue to put products with the marks or labels into circulation. In the case of certification of procedures, the certificate owner loses the right to make use of or employ the processes or procedures on the basis of the certificates issued by the CAB. As from this date, the client is no longer permitted to mention the certification for advertising purposes. The certificate owner shall remove the mark from all affected products and shall allow the CAB to undertake a corresponding re-test. In the cases mentioned in 3.2 a) and e) the certificate owner shall recall products that have been put into circulation.

- f) In the case of expiry or justified restriction, suspension or withdrawal of the certificate, the CAB shall not be liable for any disadvantage that shall be suffered by the applicant as a result.

4. Publication of certificates and test reports

- a) The client is only permitted to make use of the certificates or test reports in the course of business in accordance with the stipulations of the PZO and only in their complete form, with no missing text, quoting the date of issue. Publication of excerpts from or copying of the certificates requires the prior written agreement of the Contractor.

- b) The Contractor retains the right to publish the name of the client and the objects of certification, for example in the form of reference lists. The Contractor also retains the right to publish the certificate itself. It is not necessary to seek the special permission of the certificate owner for this purpose.

IV. Test marks

In so far as the client is to be granted the right to make use of a test mark, the following special conditions of use shall apply:

1. The specific test mark to be used in the particular case is dependent on the certificate that is issued. The prerequisites for use of the certificate therefore apply correspondingly to the use of the test mark. Restrictions as regards use of the mark can also be laid down in the certificate.
2. Permission to make use of the test mark is granted to the client with transfer of an unrestricted and valid certificate after the testing of the object of certification has been carried out with positive results and evidence of testing or a test report was created.
3. Permission for use of the test mark applies exclusively to the tested object of certification of the client and for the term of validity of the certificate. Use of the certificate for comparable or changed objects of certification is not permitted.
4. The test mark may only be used by the client himself and only in direct association with the company name or company logo or the mark of the client. The client is not permitted to transfer the right to use the test mark to third parties or to legal successors without the express written permission of the Contractor. The test mark may be affixed to the objects of certification and used for advertising purposes. Hereby it must be ensured that the name of the Contractor is not used for advertising purposes in such a way that he could be regarded as the manufacturer of these objects of certification.
5. The test mark may only be used in the form /design provided by the Contractor. The test mark must be easy to read and clearly visible. The client is not authorised to change or make changes to the test mark.
6. Each use of the test mark for advertising purposes shall be designed in such a way that no false impression can arise regarding the tests carried out on the object of certification being advertised. This includes, but is not limited to, the following considerations:
 - It shall not appear as a result of the statements made in the advertising that the product is a remedy to which a curative or preventive effect can or could be attributed,
 - The statements in the advertising which relate to the tests performed by the Contractor or to the test mark shall be spatially separated from other statements of the advertiser and
 - The text of the test mark shall not be re-stated or described/paraphrased by the advertiser with his own words or statements.
7. The client shall ensure that, within the framework of competition, the impression does not arise that the tests performed by the Contractor are official tests. Rather, the client is obliged at all times, by means of explanation and also by the appearance of his advertising etc. to ensure that within the free competitive environment it is made clear that the tests of the object of certification are voluntary tests based on a contract under private law.
8. The client shall vouch for the fact that the test mark is only used within the competitive environment in such a way that a statement corresponding to the test is made regarding the object of certification. The way in which the object of certification is to be marked with the test mark and the identification number are to be used on the certified objects and any further use of the test mark shall be presented to and approved by the CAB before the objects are put into circulation / used.
9. The client shall receive from the Contractor the non-transferable and non-exclusive right, limited to the term of the contract, to make use of the agreed test mark in accordance with the stipulations of this contract. The client is not entitled to issue sublicences.
10. The Contractor does not guarantee that the test mark can be used within the competitive environment in an unlimited fashion. If the client makes use of the test mark for advertising purposes, the client alone is responsible for ensuring that the use of the test mark agrees with the respective valid legal provisions that apply to advertising.

11. The Contractor shall monitor proper use of the test mark, and the client shall support the Contractor in this in particular by facilitating unannounced audits or audits at short notice.
12. The Contractor has the right to terminate the right to use the test mark with immediate effect and to withdraw the test mark or declare it to be invalid with immediate effect when the certificate expires or is withdrawn as described in Clause 3 of this PZO. In case of suspension or restriction of the certificate, the rights of use for the test mark can also be suspended or restricted.
13. With the ending of the rights of use, the client loses the right to affix the mark to the tested object of certification or to use the test mark in any other way for advertising purposes. This also applies to any existing stocks of the object. The Contractor will however allow the client to sell the objects of certification to which the test mark has been affixed for a run-out period of six months, if it can be demonstrated that the mark was affixed before the ending of the rights of use and the objects of certification to which the mark has already been affixed still exhibit the original quality and there are no advertising-related conflicts which would contraindicate further use.
14. If or when the rights of use come to an end, the client has the duty to return the test mark to the Contractor without delay.

V. Duties of reporting

1. Within the framework of its legal obligations, the CAB is authorised and entitled, upon the request of the official authorities, to provide any information required by these authorities and to provide further support. The CAB is in particular entitled to present the documents upon which the conformity assessment is based to the authorities upon request.
2. The CAB shall inform the authorising body of any refusal, restriction, suspension or withdrawal of a certificate and also of every request for information regarding conformity assessment activities which it has received from the market surveillance authorities, in so far as this is required by law, as well as, upon request, of which conformity assessment activities it has carried out within the scope of its notification and which other activities, including cross-border activities and placement of work with subcontractors, it has carried out.
3. The CAB shall communicate to the other notified bodies which are notified under the respective statutory harmonisation provisions of the European Union and which are engaged in similar activities, and test objects of certification of a similar kind, relevant information regarding negative, and upon request also regarding positive results of conformity assessments.
4. The CAB shall also inform the relevant authorities of any misuse of certificates which has become known to it. This does not require the separate or specific permission of the certificate owner. The certificate owner for his part has the duty to inform the CAB immediately of any misuse of the certificate issued to him by the CAB, as soon as he becomes aware of the misuse.
5. Upon request, the Commission, the EU member states and the other notified bodies shall receive a copy of the EC-type examination certificates (for types) and /or any additions or supplements to them. Upon request, the Commission and the EU member states shall receive a copy of the technical documents and the results of the tests undertaken by the notified body.

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VI. Confidentiality

The Contractor undertakes to keep confidential all information regarding the client's company to which he is granted access. Company documents shall not be transferred to third parties without the prior written permission of the client. This shall not apply in so far as information is transferred based on legal requirements or the requirements of official authorities.

Data from measurements or other plant- or product-related data from tests may be used in anonymised form for analysis and statistical purposes and may also be used for commercial purposes.

VII. Retention obligations

1. Following completion of the order, the test samples, in so far as this is possible based on their construction, shall, at the discretion of the client, be taken into storage by the Contractor at the client's cost or shall be returned to the client. In so far as surrender, return or destruction of test samples, documents or data carriers is agreed, this is carried out at the cost and risk of the client. Following expiry of an appropriate period of time specified to the client for the client to take back the test samples, the test samples can be destroyed. No entitlement to claim damages shall accrue to the client against the Contractor arising from this.

Any further legal obligations upon the client above and beyond the above to retain test samples and documents shall remain unaffected. Upon request of the Contractor, the client shall place these documents or this information at the disposal of the Contractor, also following completion of the test and/or certification order.

VIII. Violations of the PZO

1. Upon establishment of grossly negligent or intentional violations of the PZO, particularly in the case of illegal use of a certificate, test mark or test report, the Contractor is entitled to claim contractual damages of 5% of the contractual sum, at the least however 1,000 €, for each violation. The amount of the contractual penalty can be reviewed before the courts with regard to its appropriateness. Costs which accrue to the Contractor from authorising bodies (e.g. official authorities, accreditation body) as a result of the aforementioned infringement of the client against the PZO or which arise directly shall be borne by the client.
2. In addition, the Contractor retains the right to demand compensation for damages or expenditure which accrue to him as a result of a culpable violation of the PZO.

IX. Objections and complaints

The client can object to test and certification decisions and can issue a complaint with regard to the performance of procedures. The objection/complaint shall be communicated to the CAB in writing. The CAB shall justify its decision to the company making the objection/complaint.

X. Involvement of third parties

If the client is not himself the manufacturer of the product, he shall inform the CAB accordingly. Within his contractual relationship with the Manufacturer, he shall ensure that the Manufacturer/Certificate Owner also recognises the PZO as legally binding in relation to the CAB. The CAB shall provide agreement templates for this purpose. The Client shall provide this Declaration to the CAB. **Receipt of this agreement is the prerequisite for the entry into force of the contract concluded between the CAB and the Client.**

XI. Exclusivity of application

With conclusion of the contract, the client declares that the same application for conformity assessment has not been made to any other notified body.

The client shall inform the Contractor if the object of certification has already been the object of a comparable order for testing from another organisation. The result of the testing shall be communicated to the Contractor.

In case of violation of the aforementioned contractual obligations, the Contractor is entitled to terminate the contract without notice.