

# GENERAL TERMS AND CONDITIONS FOR THE PERFORMANCE OF 2ND PARTY AUDITS

## 1. General

1.1 Unless expressly agreed otherwise in writing, these General Terms and Conditions apply to all offers and orders as well as to all resulting contractual relations for the conduct of 2nd Party Audits between SGS-TÜV Saar GmbH or SGS-International Certification Services GmbH (hereinafter uniformly: "SGS") on the one hand and companies that commission 2nd Party Audits (hereinafter "Customer") on the other hand.

1.2 These General Terms and Conditions, the Offer, the Code of Practice and – where agreed - the "Rules for the use of the certification mark" constitute the entire agreement (hereinafter "Agreement") between the Customer and SGS with regard to the subject matter of the contract. Unless expressly agreed otherwise in writing, all amendments to the Agreement must be made in writing and signed by the Customer and SGS or their respective representatives. This also applies to the renunciation of the written form requirement itself.

1.3 SGS provides the services with reasonable care and competence as well as in accordance with the applicable Code of Practice of SGS. A copy of the Code of Practice and any changes relating to this will be made available to the Customer at the beginning of the service provision of SGS.

## 2. Definitions

"Certificate" means a Certificate issued by SGS within the scope of the underlying order;

"Code of Practice" are the procedural rules that are created for the 2nd Party Audits according to the respective certification program;

The "Rules for the use of SGS Certification Marks" are the general terms and conditions of the use for Certification Marks of SGS.

"Offer" is the presentation of the services provided by SGS to the Customer and/or the contractual partner.

"Report" means the result documentation prepared by SGS for the Customer, which indicates whether or not a recommendation to issue a Certificate is made.

## 3. Services

3.1 These General Terms and Conditions apply to the following SGS services (hereinafter referred to as "Services"):

(a) Development of an audit questionnaire, if subject of the offer/order;

(b) Auditing of verified standards in the Customer's company;

(c) Auditing of verified company standards on behalf of the Customer with a third party, e.g. subcontractor (hereinafter: "Supplier").

3.2 After carrying out the commissioned 2nd Party Audit, SGS prepares a report and hands it over to the Customer. The recommendations contained in this report, if any, are non-binding for SGS. The decision to issue a Certificate within the contract, if any, is entirely at SGS's discretion.

3.3 The Customer acknowledges that SGS does not replace the Customer or a third party by concluding the contract or providing Services, nor relieves them of any obligations or otherwise assumes, restricts or otherwise exempts the Customer from any obligations to third parties or third parties towards the Customer.

3.4 Both certification and suspension, withdrawal or cancellation of any Certificates issued shall be carried out in accordance with the applicable Code of Practice.

3.5 SGS may transfer all or part of the Services to an agent or subcontractor. The customer authorizes SGS to disclose to the agent or subcontractor

all information necessary for the performance of the transferred Services.

3.6 With the exception of the express provisions of the Contract, it is forbidden for the Customer to use rights under the contract without the prior written consent of SGS. Insofar as SGS's provision of Services according to Clause 3.1 (c) allows to transfer rights under this contract to Suppliers, however, the Customer remains solely responsible for compliance with the terms of the contract. The Customer therefore remains responsible for the fault of his Supplier to the same extent as his own fault and must subsequently be imputed to all actions and omissions of the supplier. The regulations in accordance with sections 166, 278 of the German Civil Code (BGB) apply accordingly. A transfer of rights by Suppliers to third parties is not permitted. In this respect, the Customer must contractually ensure to the Supplier that this requirement is complied with and that, if necessary, it is enforceable by legal means.

## 4. Customer's obligations

4.1 The Customer ensures that SGS is provided with all necessary product samples, receipts, assistances, information, documents and operational facilities as required. This includes support from sufficiently qualified, trained and authorized employees of the Customer. In addition, the Customer provides SGS with suitable rooms for holding meetings free of charge.

4.2 To the extent permitted by law, Customer warrants that he has not been persuaded to enter into the Agreement under acceptance or on the basis of warranties, representations, statements, assurances, obligations, agreements, promises, payments or commitments of any kind not expressly set forth in these General Terms and Conditions. In any case, the Customer waives without limitation

and irrevocably any claims, rights or remedies that may arise for him in this connection. Pre-formulated provisions or regulations in Customer documents that contradict or modify or supplement these General Terms and Conditions are only effective if they have been expressly accepted in writing by SGS.

4.3 The Customer takes all necessary steps to eliminate or remedy any obstacles or interruptions in the provision of the services.

4.4 In order to enable SGS to comply with applicable health and safety regulations, the Customer provides SGS with all available information about known or potential hazards that SGS employees could encounter during their visits. If the Customer informs SGS in good time about its health and safety regulations, SGS shall ensure that these are complied with by its own employees during stays at the Customer by reasonable means.

4.5 The Customer may only reproduce or publish excerpts from reports of SGS if the name of SGS is not mentioned in it or if the Customer has obtained the prior written consent of SGS. SGS reserves the right to take legal action if the publication violates this provision or is abusive in the opinion of SGS. The Customer undertakes not to publish any details about the provision, performance or execution of SGS services.

4.6 The Customer immediately informs SGS of any changes in operational circumstances that may affect the certification program. Violations of this obligation to provide information may result in the withdrawal of the Certificate. In addition, the Customer is obliged to inform SGS of material violations that are detected in the context of internal audits by the Customer, his business partners or public authorities.

4.7 The Customer undertakes to allow witness audits by third parties, provided that such audits are provided for in the applicable certification

program or are necessary for other reasons.

## 5. Prices and payment conditions

5.1 The prices indicated to the Customer include all phases up to the completion of the certification process or audit activities, the transmission of the report and the regular monitoring by SGS, if necessary for the maintenance of the certification. Since the prices base on the remuneration rates at the time of the preparation of the offer, SGS reserves the right to increase prices during the certification period. SGS may also increase the remuneration if the Customer's information changes or if it turns out that the actual circumstances of the Customer do not correspond to the information originally provided to SGS on the basis of which the respective price offer was prepared. The Customer is informed of any price increase with reasonable notice in advance.

5.2 Additional remuneration will be charged for activities that go beyond the offer or which are necessary due to any discrepancies found. Such additional activities are, in particular:

- (a) repetition of the entire audit process or audit activities or parts thereof due to non-compliance with the applicable certification programme;
- (b) additional effort due to the suspension, withdrawal or reinstatement of a Certificate;
- (c) revaluations due to changes in products, processes or services, or
- (d) compliance with legal requests to provide information or documentation in connection with the activities carried out by SGS.

5.3 Without prejudice to clause 5.2, for urgent orders, cancellations or changes in time of Services or partial or complete repetitions of the audit procedure or activities that have to be carried out in accordance with the Code of Practice, an additional remuneration is due according to the current remuneration rates of SGS.

5.4 Unless otherwise agreed, all prices are plus travel and catering costs (which are charged to the Customer in accordance with the Travel Expenses Policy of SGS). All prices and additional fees are exclusive of VAT or other charges due in the respective country.

5.5 SGS issues an invoice to the Customer after the report has been submitted to him. Invoices for additional or further activities will be submitted after the completion of the respective task. Unless a prepayment has been agreed, all invoices are due and payable within fourteen (14) days of the respective invoice date (hereinafter "Due Date"). This applies regardless of whether a Certificate has been issued or not. In the event of a delay in payment, default interest of 1.5% per month (or the rate stated on the invoice) will be charged from the due date until the end of the day of receipt of payment.

5.6 Any use by the Customer of any reports or Certificates or information contained therein requires timely payment of the compensation and fees. In addition to the measures provided for in the Code of Practice, SGS reserves the right to stop or discontinue the performance of all activities and/or to suspend or revoke Certificates for Customers who do not pay an invoice properly.

5.7 Customer shall not be entitled to withhold payments due to disputes with SGS or to offset any claims asserted by Customer against payment claims of SGS.

5.8 SGS is free to assert unfulfilled payment claims in court.

5.9 The Customer shall bear all costs incurred in connection with the recovery of claims, including reasonable attorneys' fees and similar costs.

## 6. Archiving

6.1 SGS undertakes to retain all materials related to the certification and monitoring process for a

particular Certificate for the period required by law.

6.2 At the end of the archiving period, SGS will, at its sole discretion, hand over, archive or dispose of all materials, unless the Customer has made any other instruction. The costs incurred in the execution of such an instruction will be charged to the Customer.

## 7. Ownership of reports, Certificates and intellectual property

SGS remains owner of the copyright with regard to all documents made available by SGS, in particular any report or Certificate issued. The Customer may not change or misrepresent the content of these documents in any form. The Customer may make reproductions exclusively for internal purposes. Duplicates of Certificates for the external use will be made available to the Customer on request. Insofar as SGS has developed/created an audit questionnaire for the Customer in accordance with clause 3.1 a., SGS reserves all rights to this.

## 8. Communication

The Customer may advertise with his certification in compliance with the applicable regulations and requirements for the use of the certification marks and Certificates. The use of the company name or other registered trademarks of SGS for advertising purposes is not permitted without the prior written consent of SGS.

## 9. Confidentiality

9.1 Within the framework of these General Terms and Conditions, "Confidential Information" include all oral or written information obtained by the Customer or SGS from the other party on the basis of the Agreement, or business or trade secrets of the other party. However, Confidential Information is not information that

(a) is known to the public or become known;

(b) is available to the receiving party on a non-confidential basis prior to the date of disclosure by the disclosed party;

(c) disclosed by an independent third party entitled to such disclosure.

9.2 The parties and their representatives or subcontractors may only use Confidential Information within the scope of the Agreement. Disclosure of Confidential Information of the other party vis-à-vis third parties, with the exception of the express provisions of these General Terms and Conditions, may only be made with the prior written consent of the other party. This provision does not apply to disclosures required by law or by courts or government authorities, in the accreditation procedures of the accreditation bodies or in the applicable certification program be demanded.

## 10. Term and termination

10.1 Unless expressly agreed otherwise, the Agreement shall be subject to the term stated in the offer (hereinafter referred to as "Initial Term") (bearing in mind the termination options under these General Terms and Conditions). After expiry of the Initial Term the Agreement shall be automatically extended unless one of the parties terminate the Agreement in writing with a notice period of three (3) months to the end of the Initial Term. After the end of the Initial Term, the Agreement may be terminated at any time with a notice period of at least three (3) months.

10.2 SGS may terminate the Agreement at any time prior to issuance of a Certificate if Customer is in breach of any material obligation and fails to remedy such breach to SGS's satisfaction within thirty (30) days of receipt of an appropriate warning.

10.3 Both parties are entitled to terminate the services immediately if the respective other party concludes a creditors' settlement, insolvency proceedings are opened against its assets, such proceedings are applied for, the respective other party is under

receivership or ceases its business operations.

10.4 Unless otherwise agreed in writing, the rights and obligations of the parties as defined in paragraphs 8, 9, 12, 13 and 14 shall apply irrespective of the full provision of the services or the termination of the contract.

10.5 Should the Customer transfer his business activities to another company, the transfer of the Certificate requires the prior written consent of SGS. If SGS consents, the use of the Certificate by the new company is subject to the provisions of the contract.

## 11. Force Majeure

If SGS is unable to perform in whole or in part for reasons beyond SGS' control, such as force majeure, war, terrorist activity or in the event that any industrial action, or customer's failure to comply with any of its obligations under this Agreement, prevents SGS from performing its obligations under this Agreement, SGS shall be relieved of any responsibility to that extent for the partial or complete failure to perform its obligations under this Agreement.

## 12. Liability and limitation of claims

12.1 SGS undertakes to carry out the activity with due care and competence and is solely liable in accordance with these General Terms and Conditions for Certification Services.

12.2 SGS shall be notified in writing of any defects in the Services immediately, but no later than thirty (30) days after they become known. Customer shall grant SGS such time and opportunity as SGS deems reasonably necessary to remedy the defects, e.g. by re-performance of the audit, otherwise SGS shall be relieved from remedying the defects. If the removal of defects is not carried out within a reasonable period of time or if the removal of defects fails, Customer may reduce the remuneration accordingly. decrease.

12.3 The reports and Certificates are prepared on the basis of the

information, documents, documents and/or other information provided by the Customer and/or supplier and are used exclusively for the benefit of the Customer. Neither SGS nor its officers, employees or subcontractors are responsible to the Customer or third parties:

(a) for any type of action taken or omitted on the basis of reports and/or Certificates,

(b) as well as erroneous audits

based on unclear, false, incomplete or misleading information provided by the Customer and/or supplier.

12.4 SGS shall not be liable for any failure to perform any or all of its services, whether directly or indirectly, as a result of events occurring outside the control of SGS (e.g. in case of breach by Customer of its obligations to cooperate pursuant to clause 4).

12.5 SGS is also not liable for indirect or consequential damages (including lost profit).

12.6 In the event of intent, gross negligence, claims according to the Product Liability Act and injury to life, body or health, SGS shall be liable in accordance with the statutory provisions. In the event of simple negligence, SGS shall only be liable if an essential contractual obligation has been breached or if there is a case of

delay or impossibility. In these cases, liability is limited to the typical foreseeable damage up to a maximum amount of Euro 100,000.00. The breach of duty of SGS is equivalent to that of its legal representative or vicarious agents.

12.7 The limitation period for claims for damages arising from a breach of contractual duty and for any claims for damages is twelve (12) months from the commencement of the statutory limitation period. This does not apply to liability for intent.

12.8 The parties are obligated to take out appropriate insurance for their respective liability under this Agreement.

### 13. Miscellaneous

13.1 If one or more provisions of these General Terms and Conditions are found to be ineffective or unenforceable in whole or in part, this shall not affect or affect the validity or enforceability of the remaining provisions.

13.3 The parties are prohibited from transferring the contract without the prior written consent of the respective other party. Such consent must only be refused for good reason. Transfers do not release the transferring party from liability or obligations under the contract.

13.4 All communications from the parties must be sent to the other party in writing or by email.

13.5 The parties agree that SGS provides the services to the Customer as an independent company. The contract does not lead to any company law connection, representation, employment or fiduciary relationship between SGS and the Customer.

13.6 Should SGS fail to require the Customer to comply with its obligations under these General Terms and Conditions or the Contract, this shall not constitute a waiver of the right to assert the performance of these or all other obligations.

### 14. Disputes

Unless otherwise agreed, all disputes arising out of or in connection with these General Terms and Conditions or the Agreement shall be subject to the application and interpretation of the law of the Federal Republic of Germany to the exclusion of the provisions of international private law. The exclusive place of jurisdiction for all disputes is Hamburg, with the local district court of Hamburg-Center (Hamburg-Mitte) as competent court if the dispute is to be heard before a local district court at first instance.

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**SGS IS THE WORLD'S LEADING INSPECTION, VERIFICATION, TESTING AND CERTIFICATION COMPANY  
THE SGS-TÜV SAAR GMBH AS A JOINT VENTURE OF SGS AND TÜV SAARLAND E.V. ENSURES THE RELIABILITY AND QUALITY OF  
PROCESSES, PRODUCTS AND TECHNICAL SERVICES.**



**WHEN YOU NEED TO BE SURE**

