

**General Terms & Conditions of Business**

(Version: 1 January 2017)

**1 General**

- (1) These terms and conditions apply to all offered services from DIN CERTCO.
- (2) DIN CERTCO offers test services, certifications, registrations, as well as recognition services (called services in No. 1). This service is certified in the form of a certificate, notice of registration, recognition certificate (called a licence in Nos. 1 to 3 and 5).
- (3) DIN CERTCO operates on the basis of European and international standards (DIN EN ISO/IEC 17000 series).
- (4) These Terms & Conditions of Business are deemed to have been agreed as binding when then application is submitted. Terms & Conditions of Business to the contrary issued by the customer are hereby expressly rejected. They are also not included in the contract if they have not been expressly rejected by DIN CERTCO. These Terms & Conditions of Business apply for the term of the contractual relationship, including subsequent contracts based on them, as well as any licence that may have been issued. The current versions of all the required documents are written down for example in certification schemes and are published online at [www.dincertco.de](http://www.dincertco.de) or are available from DIN CERTCO on request.

**1.1 Data protection, confidentiality and copyright**

- (1) DIN CERTCO undertakes to treat as confidential all facts to which it becomes privy in connection with its work for the customer irrespective of whether it involves company-specific knowledge about the customer itself or about its business relations unless the customer releases it from this duty of confidentiality, or if legal or accreditation regulations dictate that the information must be disclosed. This also applies for the period after the end of the contractual relationship.
- (2) The documentation made available to the customer by DIN CERTCO is protected by copyright. The customer acknowledges that all documents made available to it by DIN CERTCO or presented for inspection shall remain the property of DIN CERTCO and undertakes only to use them for internal purposes, not to disclose them to third parties or not to use them for anything other than the agreed purposes.
- (3) The customer shall undertake to treat as confidential the information and knowledge made available to it about affairs relating to DIN CERTCO, its employees, test laboratories and assessors. This obligation shall continue to apply over and beyond the end of the contractual relationship about ten years.
- (4) Furthermore, DIN CERTCO may use the traffic data, which has been saved for the execution of the order, for the purposes of the selective and topic-specific information of the customer by DIN CERTCO. The customer may object to this usage at any time.

**1.2 Customer's duty to participate**

- (1) The customer shall ensure that DIN CERTCO is given or provided with access to all the information, samples and any premises that may be required for performing the order in good time and at no expense to the latter.
- (2) The customer shall bear any additional cost incurred on account of work having to be redone or being delayed as a result of tardy, incorrect or incomplete information or lack of proper cooperation. Even where a fixed or maximum price is agreed, DIN CERTCO shall be entitled to charge for any additional expenses.

**1.3 Liability**

- (1) The liability of DIN CERTCO for damage and expenses caused by bodies and/or employees

belonging to DIN CERTCO is limited, irrespective of the legal basis, in particular in case of breach of duties arising from the contractual obligations and for unauthorised actions, to ten times the payment amount for the total order in case of contracts with a fixed overall payment sum, to the agreed annual payment in case of contracts for services performed on an annual basis, to a maximum of 20,000 euros in the case of contracts which are to be expressly invoiced according to costs, and to three times the payment amount of the respective individual order in the case of framework agreements with an individual call-off option, in relation to which the damage or expense has occurred. DIN CERTCO's liability in each claim shall be limited to a maximum of 2.5 million euros.

- (2) The limitation of liability specified in paragraph 1 shall not apply if damages are attributable to the intentional or grossly negligent conduct or malice of DIN CERTCO or its vicarious agents, to damages relating to a breach of duties which DIN CERTCO has guaranteed to meet, to damages arising from death, physical injury or damage to health, or to damages subject to liability under the German Product Liability Act.
- (3) Should a cardinal obligation be breached, DIN CERTCO shall also be liable in the case of slight negligence. Cardinal obligations in this regard are key contractual obligations that must be fulfilled in order to duly execute the contract and that the customer may trust to be fulfilled. In the event of a breach of a cardinal obligation, the entitlement to compensation shall be limited to the damage that was typical and foreseeable as the possible consequence of the breach at the time the breach occurred, unless any of the situations specified in paragraph 2 exists.
- (4) DIN CERTCO shall not be liable for personnel made available by the customer to support DIN CERTCO in its provision of the services to be provided under this contract unless the personnel provided are regarded as vicarious agents of DIN CERTCO. Where, in accordance with the previous sentence, DIN CERTCO is not liable for personnel made available, the customer shall indemnify DIN CERTCO against any third party claims.
- (5) DIN CERTCO shall not be liable for any damage the customer may suffer as a result of the non-granting, the restriction or suspension and the termination or the declaring invalid and revocation of a licence.
- (6) The limitation period for compensation claims is based on the statutory provisions.
- (7) The above provisions shall not imply any change of the burden of proof to the detriment of the customer.
- (8) The issue of a licence shall not release the customer from the duty to meet any further statutory or other requirements to his product/service, where appropriate. DIN CERTCO shall not be held liable for defects in the marked products/services based upon the award of the licence or of the associated right to use the mark.

**1.4 Application and service processing****1.4.1 Quotations**

- (1) Quotations provided by DIN CERTCO for licences shall be valid for six weeks and shall be sent to the customer in a scanned format.
- (2) The customer shall accept the quotation by submitting its application.

**1.4.2 Application**

- (1) By submitting the application, a valid contract shall come into being between DIN CERTCO and the customer. The application shall be com-

pleted in full, duly stamped and signed, and shall be sent to DIN CERTCO.

- (2) DIN CERTCO shall decide whether or not to award a licence on the basis of its assessment of the application documents. A licence shall be issued for a service in the customer's name.

**1.4.3 Marking**

- (1) The product must bear the name of the manufacturer/distributor or a legally protected and registered manufacturer's mark. If a marking is not possible, the information must be indicated on the packaging. This also applies to other provided services.
- (2) When issuing the licence, DIN CERTCO shall issue a registration number for the traceability and identification of the product/service/person/qualified enterprise.

**1.4.4 Property rights**

- (1) DIN CERTCO shall retain sole title to the licence. A licence shall only become valid if the respective fees have been paid and shall only remain valid while the ongoing fees are paid in accordance with the prevailing schedule of fees.
- (2) The licence issued by DIN CERTCO may only be published in its complete form and may only be used for the purposes of publicity. This shall not include annexes to the licence which contain particular compositions or information which is marked as confidential by the customer.

**1.4.5 Changes and additions**

The customer shall undertake to advise DIN CERTCO forthwith about any important changes which have a bearing on the scope and nature of the service. This shall apply, in particular, to changes in trading name and the service in question.

**1.4.6 Suspension**

DIN CERTCO shall reserve the right to suspend the licence for a fixed period of time if it has legitimate reasons to do so. The customer shall be advised accordingly in writing. During this period, the customer may not use the mark and the associated registration number and may not circulate products bearing the mark and registration number.

**1.4.7 Termination**

Termination by the customer must be reported to DIN CERTCO in writing with notice of one month to the end of each calendar year. The customer shall not be entitled to offset or to request reimbursement of the usage fee which is paid every calendar year.

**1.4.8 Expiry**

- (1) The permission to use the licence and the associated right to use the mark shall expire on the date indicated on the licence. The permission to use the licence shall expire prior to the end of its regular period of validity in the event of infringements against these Terms and Conditions of Business or supplementary documents (point 1, paragraph 4). If the requirements upon which the service is based, for example, a standard, are withdrawn or amended, DIN CERTCO shall decide whether the permission to use the licence shall expire.
- (2) Written notification shall be provided that the permission to use the licence and the associated right to use the mark has expired. Upon expiry of the permission to use the licence, the customer shall undertake to return the licence to DIN CERTCO.

**1.5 Use of the mark**

- (1) With the award of a licence and registration number, DIN CERTCO may also grant the right of use for certain marks which may only be used in connection with a valid licence. DIN CERTCO

- shall provide a template of the mark which may be reproduced.
- (2) Any fraudulent use of marks shall be prosecuted with all legal means available. Marks may only be used in their original form. Any mark may only be modified proportionally in terms of its size. Deviating from the colour design in the template, marks may be depicted in mono colouring.
  - (3) The marks may be used, for example, in publicity correspondence and on packaging, albeit only indirect connection with the product, service, person, and qualified enterprise for which the mark has been issued.
  - (4) The customer shall undertake to desist from anything which may damage the public perception of the mark. This includes, for instance, using the mark for products or services which do not meet the requirements or using the mark or the registration number for products or services which are not certified/registered.
  - (5) The registration number and the reference of publication on the internet must always be indicated immediately beside the mark. In exceptions, the registration number may be indicated elsewhere with the express permission of DIN CERTCO.
  - (6) DIN CERTCO shall be entitled to prohibit the fraudulent use of the mark and use of a registration number, as well as to assert claims for compensation where necessary. In addition, it may publish details of the fraudulent use of marks on a blacklist on the Internet.

#### 1.6 Mark surveillance and special testing

- (1) The correct use of the licence or mark shall be monitored by DIN CERTCO. If DIN CERTCO discovers an abusive use of the licence, it shall implement the necessary steps to eliminate the complaint (for example special audits).
- (2) A special audit may be conducted at the legitimate instruction of DIN CERTCO, if DIN CERTCO reaches the assumption, that the customer has not adequately managed to comply with the quality requirement, or at the request of third parties if they have a particular interest in ensuring that the market continues to operate correctly in terms of competition or quality.

#### 1.7 Complaint management

- (1) The customer shall be required to keep a list of all the complaints made known to it in respect of certified/registered products or services. This duty of documentation shall extend throughout the validity of the licence.
- (2) Following expiry of the permission to use the licence, the records must be retained for ten years. The list must be made available to DIN CERTCO at any time on request for examination.

#### 1.8 Publication

DIN CERTCO shall keep a list of the certified/registered products or services, keep it up-to-date and make it accessible to the general public. All data contained on the licence shall constitute part of the database research available on the website [www.dincertco.de](http://www.dincertco.de).

#### 1.9 Retention

In the absence of any statutory regulation to the contrary, the period of safekeeping of the corresponding documentation is ten years after expiry of the permission to use the licence or, in the case of EC licences of conformity, ten years after the final placing of the products on the market.

#### 1.10 Remuneration

- (1) Unless otherwise expressly agreed, the customer shall acknowledge the fees specified by DIN CERTCO in accordance with the prevailing version of the schedule of fees. If the price increase per contract year does not exceed 5%, the customer shall not have any special termination right by reason of this price increase.
- (2) If a procedure is aborted, an administrative fee amounting to the costs incurred, albeit at least amounting to 3 fee units, shall be charged.
- (3) All invoice amounts shall be due for payment without deduction on receipt of the invoice. No discounts shall be granted

- (4) Payments shall be made to the bank account of DIN CERTCO as specified on the invoice, stating the invoice and customer number.
- (5) In the event of payment arrears, reminder charges of € 15.00 shall be payable. This shall be without prejudice to the right to assert claims for further loss. In cases of default of payment, DIN CERTCO shall be entitled to claim default interest at a rate of 9 percentage points above the basic rate of interest of the German central bank (§ 288 Abs. 2 BGB). At the same time, DIN CERTCO reserves the right to claim further damages.
- (6) If the customer is in arrears with the settlement of the invoice, despite having been given a reasonable payment extension, DIN CERTCO shall reserve the right to rescind the contract, to cancel the permission to use the licence, to claim compensation for non-performance and to decline to continue to perform the contractual services.
- (7) The provisions of paragraph 6 also apply in case of non-payment of cheques, stoppage of payments, insolvency proceedings being opened against the customer or dismissal of the insolvency proceedings due to lack of assets.
- (8) Objections to the invoices from DIN CERTCO shall be submitted in writing within two weeks from receipt of the invoice.
- (9) DIN CERTCO shall be entitled to request payment of an advance on costs up to 100 % of the order value.
- (10) DIN CERTCO shall be entitled to request payments on account, reflecting the progress in its performance. In that event, the customer shall undertake to effect payment immediately.
- (11) Amounts owing to the customer may only be offset against amounts payable to DIN CERTCO if the former are legally established.

#### 1.11 Appeals

- (1) If customers or third parties are not in agreement with decisions, appeals may be lodged within 30 days of receipt of the decision, submitted to the Management of DIN CERTCO by registered mail.
- (2) If agreement is not reached within two months of receipt of the appeal, an arbitration committee may be established at the request of the appellant within 60 days. The arbitration committee shall comprise a total of five members. It shall comprise two members who are nominated by the customer, two members who are nominated by the Management of DIN CERTCO and the chairperson or a member of the competent certification committee or steering committee instructed by the chairperson.
- (3) The committee shall be chaired by the member of the competent certification committee or steering committee. The arbitration committee shall reach its decision within 90 days on the basis of a simple majority. Thereafter, the party affected shall have recourse to the law.

#### 1.12 Place of jurisdiction, applicable law

DIN CERTCO shall be entitled to assert rights arising from infringement of these Terms & Conditions of Business, including all supplementary provisions. Berlin is the place of jurisdiction. This contractual relationship shall be governed exclusively by German law.

#### 1.13 Deviating agreements

Deviating agreements or ancillary arrangements must be put in writing. If any of the provisions of the contractual agreements, including the Terms & Conditions of Business, are invalid, this shall not affect the validity of the other provisions. The parties shall undertake to replace the invalid provisions without delay by provisions which are most in keeping with the sense of the former.

## 2 Test services

- (1) DIN CERTCO offers test services of various kinds within the scope of the "Eye protection and personal protective equipment" business field. The tests are conducted with great care on the basis of a quotation or order in accordance with the prevailing state of the art in science and technology.

- (2) The customer shall undertake to provide an adequate quantity of test samples in an impeccable state. DIN CERTCO shall then conduct the tests, record the results and make the test results available to the customer in the form of a test report. DIN CERTCO shall retain the samples for documentation purposes.
- (3) DIN CERTCO shall be entitled to dispose of samples and specimens which are not required and which had been sent for test purposes, unless otherwise advised in writing by the customer.
- (4) DIN CERTCO shall only be liable for the loss of test samples as a result of testing, burglary, theft, water, fire or transport if it is accused of gross negligence.
- (5) The customer may only reproduce test reports from the Nuremberg Test and Certification Centre in their complete form.

## 3 Certification

### 3.1 General

- (1) In the course of certification, DIN CERTCO shall provide licences or certification marks which document the fact that a product/service/person/qualified enterprise is in compliance with specified requirements.
- (2) In the following, licences shall also include type test licences which are issued within the implementation of EC directives on the basis of what is known as the "new concept".
- (3) DIN CERTCO also offers separate test services limited to a few areas of application, such as technical tests on products, as well as testing business models and business workflows.
- (4) The CE mark and the GS quality mark are used in accordance with announcements made by the Federal Minister for Employment and Social Affairs.

### 3.2 Principles of certification

- (1) The principles underlying certification are the special requirements placed upon products/services/persons/qualified enterprises. These requirements are generally specified in DIN standards or similar specifications and are agreed between the parties in individual cases in the form of certification schemes. The customer bears sole responsibility for compliance with other requirements, in particular also those of a statutory nature.
- (2) With its order, the customer shall submit all documentation named in the respective certification scheme, either at the time or afterwards. This shall include, for example, technical specifications, a power of attorney and a declaration of understanding by the manufacturer if the customer is not the manufacturer, as well as a valid tax identification number or, in the case of non-EU countries, a completed company record.
- (3) The certification shall include the conformity test, the conformity assessment, the award of a licence and, where necessary, the award of the right to use a certification mark. Ongoing conformity surveillance shall then commence after that. All activities shall be performed by DIN CERTCO itself or by third parties instructed to do so by it.

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### 3.3 Initial test/assessment

The initial test is a type test (design test) and determines whether the product meets the specified requirements. The samples for this are generally taken by DIN CERTCO from ongoing production or from the warehouse. The Initial assessment is performed as a visual inspection.

### 3.4 Test report/Inspection report

A test/inspection report shall be compiled by the test laboratory which or assessor who has been instructed to act. At the time of certification, this may generally not be more than six months old and must be presented to the certification body in its original form. Reports may be submitted in PDF format, provided they come directly from the test laboratory.

### 3.5 Validity

The licence shall be valid for five years unless otherwise specified in the certification scheme or

in other reference documentation. The customer shall undertake to arrange a renewal test, or to permit DIN CERTCO to carry this out, in good time prior to the expiry of the permission to use the licence.

### 3.6 Renewal

Certification may be renewed provided there have been no significant changes in the product/service/person/qualified enterprise. Renewal generally takes place under the same registration number.

### 3.7 Changes

A supplementary inspection is carried out if, for example, there have been changes in the basis for testing or additions, extensions or changes are made to a certified product and they affect its conformity with the underlying requirements.

### 3.8 Conformity surveillance

- (1) The customer must implement suitable quality assurance methods in order to ensure that the characteristics verified during certification remain of the same quality. In the case of products or services, this may be ensured through direct self-monitoring, as well as through measures under a quality management system in accordance with DIN EN ISO 9001. Records shall be presented at the request of DIN CERTCO. The records shall be retained for ten years.
- (2) If the outcome of an inspection is negative, the customer must take all steps immediately to rectify the defect. Defective products must be marked and removed from the process. The inspection must be repeated at regular intervals to establish whether the defect has been rectified.
- (3) DIN CERTCO shall check production and testing facilities at regular intervals within the scope of inspections and, where relevant, check the effectiveness of the quality management system. Furthermore, DIN CERTCO shall take samples for the purposes of testing.
- (4) If defects are identified in a product or services that have been certified once it is on the market, the customer shall receive a written notice from DIN CERTCO to rectify the defect.
- (5) If defects are identified that have a direct or indirect effect on the safety, hygiene or correct functioning of the product, the customer must ensure that the product no longer displays the certification mark until the defects have been rectified. The defects must also be rectified immediately for all products in stock or those already installed. The customer must present a special test report to DIN CERTCO within four weeks as proof that the defects have been rectified and that the product in question once again meets the requirements that have been set. If the customer fails to meet the specified deadline, both the licence and the authorisation to use the certification mark shall be withdrawn from it.
- (6) If the defects do not affect the safety, hygiene or correct functioning of the product, the customer must use suitable means to prove to DIN CERTCO within four weeks that the defects affecting the product in question have been rectified.
- (7) If grounds for complaint persist, DIN CERTCO shall suspend the permission to use the licence and, at the same time, set the customer a final deadline for rectifying the defects. If the customer fails to meet this deadline or does not meet it in good time, the licence shall be revoked. This also applies if it fails to prove that the defect has been rectified. If the defect is rectified within the specified deadline or if DIN CERTCO is given proof that the matter has been resolved, the suspension may be lifted again.
- (8) The nature and scope of a special test shall be defined by DIN CERTCO in each case with due regard for the intended purpose. If defects are discovered during a special test, the customer shall be responsible for paying the costs associated with the special test procedure. If no defects are discovered in special tests which are carried out at the request of third parties, the costs shall be borne by the third-party body which requested testing.

## 4 DIN registrations

The conditions for the collective mark by-laws are regulated in a separate document and are provided to the customers as an attachment to the General Terms and Conditions.

### 4.1 Conditions for the registration of markings on products and services using the association mark

- (1) Persons and companies may have products and services, which conform to the existing DIN or DIN EN standards and other usage requirements which are legitimately applied, registered with DIN CERTCO Gesellschaft für Konformitätsbewertung mbH - hereinafter called DIN CERTCO - for marking with the DIN, DIN EN or DIN EN ISO association marks.
- (2) A condition for registration is that the persons and companies named in paragraph (1) have stated that they distribute or offer the products and services themselves and have indicated which DIN or DIN EN standards they conform to. The applicant shall undertake to desist from anything which may damage the public perception of the DIN, DIN EN or DIN EN ISO marks, such as using the mark for products or services which do not conform to standards or which do not meet usage requirements which are legitimately applied or using a registration number for products or services which are not registered.
- (3) To the extent that the conditions specified in paragraph (2) are met, the products and services reported shall be registered by DIN CERTCO for conformity with the specified DIN or DIN EN standard following a review of the application documentation. The applicant shall receive a notice of registration with a registration number which it may use in connection with the DIN, DIN EN or DIN EN ISO mark for the registered products and services.
- (4) DIN CERTCO shall reserve the right to prohibit the fraudulent use of marks and the fraudulent use of a registration number, as well as to assert claims for compensation, where applicable.
- (5) The registration of products and services which are marked with the DIN, DIN EN or DIN EN ISO association marks to denote their conformity to standards shall be subject to the payment of fees in accordance with the prevailing schedule of fees of DIN CERTCO. Use of the association marks is dependent upon payment of the registration fees, as well as ongoing fees (usage fee for the calendar year).
- (6) The notice of registration shall apply in each case for a period of one year and shall be extended by tacit agreement if it is not cancelled by the applicant. Cancellation shall be made known to DIN CERTCO in writing 30 days before the end of the calendar year.

## 5 Recognition of test laboratories, surveillance bodies and assessors/inspectors

- (1) Certification processes and test procedures shall include cooperation with suitable (competent) test laboratories, surveillance bodies and external assessors/inspectors.
- (2) The assessment of test laboratories or surveillance bodies shall be based on the international standard DIN EN ISO/IEC 17025. The competence of assessors/inspectors shall be verified with due regard for DIN EN ISO 19011.
- (3) During the assessment of test laboratories/ surveillance bodies, accreditations issued by independent accreditation bodies or recognitions (often also referred to as provisions, designations, notifications) issued by official bodies shall be taken into consideration.
- (4) Assessors/inspectors must possess product-specific and production expertise and experience in the relevant area of recognition, and also be competent in audit procedures. It is essential that they also possess knowledge of the specific standards and certification-related documents, as well as of the certification procedure.
- (5) However, allowance for this shall not be regarded as a substitute for recognition by DIN CERTCO and for fulfilment of any other factors, such as access to suitable equipment on the test stand, the presence of concluded insurance policies covering liability in the event of defects, regular testing and surveillance performance,

participation in Round Robin Tests, as well as exchange of experience, neutrality and independence.

- (6) If the test laboratory is already in possession of relevant accreditation for the requested area of testing, a simplified recognition process, which is generally limited to an assessment of the accreditation documents, as well as of the customer's QM manual, may be conducted. Otherwise, an assessment generally has to be conducted on site. DIN CERTCO may also engage the services of external assessors to conduct this, where appropriate.
- (7) If the outcome of the assessment is positive, a certificate of recognition or a letter of recognition shall be issued.
- (8) A test laboratory or surveillance body or an assessor/inspector which or who are recognised by DIN CERTCO shall be subject to regular surveillance in order to ensure that the test laboratory or surveillance body or the assessor/inspector continue to meet the requirements for recognition.