

# 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 shall apply to all offers and orders as well as all contractual relations resulting therefrom concerning the performance of 2nd party audits between SGS Holding Deutschland B. V. & Co. KG and the domestic companies affiliated within the meaning of §§ 15 ff. AktG (German Stock Corporation Act) (each of which is hereinafter referred to as "SGS") on the one hand and companies and enterprises commissioning 2nd Party Audits (hereinafter referred to as "customer") on the other hand.
- 1.2 These General Terms and Conditions, the offer, the "Code of Practice" and - if 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 otherwise expressly agreed in writing, all amendments to the Agreement must be in writing and signed by the Customer and SGS or their respective representatives in order to be effective. This also applies to the waiver of the written form requirement itself.
- 1.3 SGS shall perform the Services with reasonable care and skill and in accordance with the SGS Code of Practice as amended from time to time. A copy of the Code of Practice and any amendments thereto shall be provided to the Customer by SGS at the commencement of the provision of the Services.

## 2. DEFINITIONS

"Certificate" means a certificate issued by SGS under the underlying Order;

"Code of Practice" are the procedural rules established for the 2nd party audits in accordance with the respective certification scheme;

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

"Offer" means the presentation of the services that SGS provides to the customer and / or the contractual partner.

"Report" means the results documentation prepared by SGS for the Customer

which indicates whether or not a recommendation is made to issue a Certificate, if applicable.

## 3. SERVICES

- 3.1 These General Terms and Conditions apply to the following services provided by SGS (hereinafter referred to as "Services"):
- Development of an audit questionnaire, if subject of the offer/order;
  - Auditing of verified standards in the customer's company;
  - Auditing of verified company standards on behalf of the Customer with a third party, e.g. subcontractor (hereinafter: "Supplier").
- 3.2 After the commissioned 2nd party audit has been carried out, 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 that may be the subject of the contract is solely at the discretion of SGS.
- 3.3 The Customer acknowledges that by entering into the Agreement or providing the Services, SGS does not substitute for or release the Customer or any third party from any obligations or otherwise assume, limit, waive or release the Customer from any obligations of the Customer to any third party or any third party to the Customer.
- 3.4 Certification as well as suspension, revocation or cancellation of any certificates issued shall be carried out in accordance with the applicable Code of Practice.
- 3.5 SGS may delegate all or part of the Services to an agent or subcontractor. The customer authorises SGS to disclose to the agent or subcontractor all information necessary for the performance of the transferred services.
- 3.6 Except as expressly provided in the Contract, Customer shall not assign any rights under the Contract without the prior written consent of SGS. To the extent that SGS permits the customer to transfer rights under this contract to suppliers in the case of the provision of services under clause 3.1 (c), the customer shall nevertheless remain solely responsible for compliance with the terms of

the contract. The customer shall thereafter be responsible for any fault of its supplier to the same extent as for its own fault and must thereafter accept responsibility for all acts and omissions of the supplier. The provisions according to §§ 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 vis-à-vis the supplier that this requirement is complied with and, if necessary, can be enforced by legal means.

## 4. OBLIGATIONS OF THE CUSTOMER

- 4.1 The customer shall ensure that all necessary product samples, access, assistance, information, documentation and operational facilities are available to SGS as required. This includes the support by sufficiently qualified, instructed and authorised employees of the customer. The customer shall also provide SGS with suitable premises free of charge for the conduct of meetings.
- 4.2 To the fullest extent permitted by law, the Customer represents and warrants that it has not been induced to enter into the Contract by reason of any warranty, representation, statement, covenant, agreement, promise, payment or undertaking of any kind not expressly set out in these General Terms and Conditions. In each case, the Customer unreservedly and irrevocably waives any claims, rights or remedies which may arise for him in this connection. Pre-formulated provisions or regulations in customer's documents which 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 shall take all necessary steps to prevent 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 shall provide SGS with all available information on known or potential hazards that SGS employees may encounter during their visits. Provided that the customer informs SGS in good time of its health and safety

regulations, SGS will ensure, as far as is reasonably practicable, that its own employees comply with them during visits to the customer's premises.

- 4.5 The Customer may only reproduce or publish extracts from SGS reports if the name of SGS is not mentioned in them or if the customer has obtained the prior written consent of SGS. SGS reserves the right to take legal action if any publication is in breach of this provision or is, in the opinion of SGS is improper. The customer agrees not to publish details of the provision, performance or execution of the services of SGS.
- 4.6 The Customer shall inform SGS immediately of any changes in operational circumstances that may affect the certification scheme. Violations of this information obligation may result in the withdrawal of the certificate. In addition, the client is obliged to inform SGS of material breaches identified during internal audits by the Customer, its business partners or public authorities.
- 4.7 The Customer undertakes to permit witness audits by third parties if the performance of such audits is provided for in the applicable certification scheme or becomes necessary for other reasons.

## 5. PRICES AND TERMS OF PAYMENT

- 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 surveillance by SGS if necessary for the maintenance of the certification. As the prices are based on the remuneration rates at the time of submission of the offer, SGS reserves the right to increase the prices during the certification period. SGS is entitled and obliged to adjust the prices at its reasonable discretion in accordance with § 315 BGB (entitled to increase and obliged to decrease). The reason for such a price adjustment is exclusively a change in the costs which are decisive for the price calculation, in particular costs for energy (e.g. electricity, gas, fuels), wage and material costs, costs for necessary preliminary services for the performance of the service. SGS continuously monitors the corresponding development of these costs. Increases in one type of cost may only be used for a price increase to the extent that they are not offset by possible decreases in other areas. When exercising its equitable discretion, SGS will choose the respective points in time of a price ad-

justment in such a way that cost reductions are not taken into account according to standards that are less favourable for the customer than cost increases, i.e. cost reductions will have an effect on the price to at least the same extent as cost increases. The customer has the right according to § 315 para. 3 BGB (German Civil Code) to have the exercise of SGS's equitable discretion reviewed by the courts. A price reduction on the part of SGS is possible at any time, a price increase, on the other hand, will only become effective if SGS notifies the customer of the price adjustment in text form at least six weeks before the planned effective date. In this case, the customer has the right to terminate the contract without notice at the time the price adjustment takes effect. The customer will be informed of this separately by SGS in the price adjustment notification. If it becomes apparent during the term of the contract that cost-relevant customer information has changed / will change or that the actual circumstances at the customer's premises do not correspond to the information previously communicated to SGS, SGS may adjust the prices to the relevant changed circumstances at any time.

- 5.2 An additional fee will be charged for activities that go beyond the scope of the offer or that are required due to deviations that have been identified. Such additional activities to be charged for are in particular:
- (a) Repetition of the entire audit process or audit activities or parts thereof due to non-compliance with the applicable certification scheme;
  - (b) additional expense due to the suspension, withdrawal and/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, additional remuneration shall be due for urgent orders, cancellations or temporary changes of services or partial or full repetitions of the audit procedure or activities required by the Code of Practice, in accordance with SGS's current remuneration rates.
- 5.4 Unless otherwise agreed, all prices are exclusive of travel and catering costs (which are charged to the Customer in accordance with SGS's Travel Expenses Policy). All prices and additional fees are exclusive of

VAT or other charges due in the respective country.

- 5.5 SGS will issue an invoice to the Customer after the report has been sent to him. Invoices for additional or further activities will be issued after completion of the respective task. Unless an advance payment has been agreed, all invoices are due and payable within fourteen (14) days of the respective invoice date (hereinafter "due date"). This shall apply irrespective 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 of reports or certificates or information contained therein by the Customer requires timely payment of remuneration and fees. In addition to the measures provided for in the Code of Practice, SGS reserves the right to stop or discontinue all activities and/or suspend or revoke Certificates for Customers who do not pay an invoice properly.
- 5.7 The Customer is not entitled to withhold payments on the basis of disputes with SGS or to offset any claims asserted by him 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 otherwise instructed by the Customer. The costs incurred in the execution of such an instruction will be charged to the Customer.

## 7. OWNERSHIP OF REPORTS AND CERTIFICATES AS WELL AS INTELLECTUAL PROPERTY

SGS remains the owner and holder of the copyright with regard to all documents provided by it, in particular each report or certificate issued, if any. The Customer may not alter or misrepresent the content of these documents in any form. The Customer may make duplicates for internal purposes only. Duplicates of certificates for external use will be provided to the Customer upon request. If SGS has developed/created an audit questionnaire

for the customer in accordance with clause 3.1 a., SGS reserves all rights thereto.

## 8. COMMUNICATION

The Customer may advertise with its 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 / DATA PROTECTION

9.1 For the purposes of these General Terms and Conditions, "Confidential Information" includes all oral or written information to be protected which the Customer and SGS obtain from each other under the Contract, or business or trade secrets of the other party. However Confidential Information is not information that

- (a) are or become known to the public;
- (b) were available to the receiving party on a non-confidential basis prior to the date of disclosure by the disclosing party;
- (c) disclosed to a party by an independent third party entitled to such disclosure.

9.2 The Parties and their agents or subcontractors may only use Confidential Information in the context of the Contract. Disclosure of Confidential Information of the other party to third parties, other than as expressly provided in these General Conditions, is only permitted with the prior written consent of the other party. This provision does not apply to disclosures required by law or required by courts or governmental authorities, the accreditation procedures of accreditation bodies or the applicable certification scheme.

9.3 SGS processes the personal data received from the Customer and its employees only for the fulfilment of the contractual obligations under its own responsibility. Any further processing that constitutes a change of purpose shall only be carried out in compliance with the legal requirements of Art. 6 para. 4 DS-GVO. SGS shall provide the customer with the data protection information for customers for this purpose, which can be accessed at <https://www.sgsgroup.de/privacy-customers>.

## 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 the "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 expiry 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 shall be entitled to terminate the Agreement at any time prior to the issuance of a Certificate if the Customer breaches any material obligation and fails to remedy the breach to the satisfaction of SGS within thirty (30) days of receipt of an appropriate warning.

10.3 Both parties shall be 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 Clauses 8, 9, 12, 13 and 14 shall apply irrespective of the complete performance of the services or termination of the Agreement.

10.5 Should the customer transfer its business activities to another company, the prior written consent of SGS is required for the transfer of the Certificate. If such consent is granted, the use of the Certificate by the new company shall be subject to the provisions of the Agreement.

## 11. FORCE MAJEURE

SGS shall not be liable for impossibility of performance of the contract or for delay(s) in performance to the extent caused by force majeure or other events not foreseeable/avoidable at the time of conclusion of the contract (e.g. disruptions of operations of any kind, difficulties in procuring materials and/or energy, transport delays, strikes, lawful lockouts, shortage of labour, shortage of energy (e.g. gas shortage) or raw materials, difficulties in obtaining necessary official permits, pandemics (e.g. Corona) or epidemics, official measures or the non-delivery, incorrect delivery or late delivery by suppliers despite a congruent hedging transaction concluded by SGS (if possible)) for which SGS is not responsible. SGS will notify the customer thereof without undue

delay. As soon as the impeding circumstances cease to exist, SGS shall notify the Customer accordingly and resume the performance of the service without undue delay. If such aforementioned events make it substantially more difficult or impossible for SGS to perform the service and the impediment is not only of a temporary nature or the duration of the impediment exceeds 3 months, SGS is entitled at its own discretion to withdraw from the contract or to terminate it in whole or in part. If an aforementioned impediment is of temporary duration, the deadlines for the performance of the service(s) shall be extended or, in case of doubt, the performance dates shall be postponed by at least the duration of the impediment plus a reasonable restart period (e.g. after interruption of the gas supply). In the event of termination, the Customer shall pay for the services rendered by SGS up to the termination of the contract on a pro rata basis; otherwise SGS's claim to remuneration shall lapse. The Customer shall not be entitled to any further claims for performance or damages in the event that SGS is prevented from performing in connection with one of the aforementioned events.

## 12. LIABILITY AND LIMITATION OF CLAIMS

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

12.2 Defects in the Services shall be notified to SGS in writing without undue delay, but not later than thirty (30) days after they become known. The Customer shall grant SGS the time and opportunity reasonably necessary to remedy the defect, e.g. in the form of a new audit, otherwise SGS shall be released from the obligation to remedy the defect. If the defect is not rectified within a reasonable period of time or if the rectification fails, the customer may reduce the payment accordingly.

12.3 The Reports and Certificates are prepared on the basis of the information, documents, records and/or other information provided by the Customer and/or Supplier and are for the sole benefit of the Customer. Neither SGS nor any of its officers, employees or subcontractors shall be liable to the Customer or to any third party:

- (a) for any action taken or not taken 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 partial or total non-performance of the Services if this results directly or indirectly from events beyond the control of SGS (e.g. breach by the Customer of its obligations to cooperate under Clause 4).
- 12.5 Furthermore, SGS is not liable for indirect or consequential damages (including loss of profit).
- 12.6 In the event of intent, gross negligence, claims under the Product Liability Act and injury to life, body or health, SGS shall be liable in accordance with the statutory provisions. In the case of simple negligence, SGS shall only be liable if a essential contractual obligation has been breached or a case of delay or impossibility exists. In these cases the liability is limited to the typical foreseeable damage up to a maximum amount of Euro 100,000.00. The breach of duty by SGS is equivalent to that of its legal representative or its vicarious agents.
- 12.7 The limitation period for claims for damages arising from breach of contractual duty and for any claims for damages shall be twelve (12) months from the commencement of the statutory limitation period. This does not apply to liability arising from intent.
- 12.8 The parties are obliged to take out appropriate insurance for the respective liability under this agreement.

### 13. MISCELLANEOUS

- 13.1 If one or more provisions of these General Terms and Conditions are found to be invalid or unenforceable in whole or in part, this shall not affect or impair the validity or enforceability of the remaining provisions.
- 13.2 The parties are prohibited from assigning the contract without the prior written consent of the respective other party. Such consent may only be refused for good cause. Transfers do not release the transferring party from liability or obligations under the contract.
- 13.3 All communications between the parties must be sent in writing or by email to the other party.
- 13.4 The parties agree that SGS provides the Services to the Customer as an independent company. The Agreement does not create any corporate, agency, employment or fiduciary relationship between SGS and the Customer.
- 13.5 SGS's failure to require the Customer to comply with its obligations under these General Terms and Conditions or the Contract shall not constitute a waiver of the right to assert the performance of these or any other obligations.

### 14. DISPUTES

All disputes arising from contractual relations with reference to these GTC shall be subject to the application and interpretation of the law of the Federal Republic of Germany to the exclusion of the rules of private international law. The exclusive place of jurisdiction for all such disputes is the registered office of SGS. SGS may also sue the customer at his general place of jurisdiction.

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