Testing and Certification Regulations (PZO) of TÜV Rheinland LGA Products GmbH (TRLP)

Table of Contents

1. Scope of Application

The Testing and Certification Regulations govern all the services TRLP renders for third parties. These services include in particular:

- The testing and appraisal of products, components, technical product designs in their different stages of development and the preparation of expert reports. The services are rendered on the basis of legal regulations, national, European and international standards and specifications agreed upon with the client with regard to safety, suitability for purpose, quality and environmental compatibility. Furthermore, manufacturing premises are appraised and inspected with regard to quality measures in connection with the granting of TRLP test marks as proof of conformity in line with EC Directives and in connection with approved quality management systems. These services are hereinafter referred to as "testing".
- The auditing of quality management systems, the production of audit reports, hereinafter referred to as "auditing of QM systems".
- The evaluation and recognition of test and audit reports, certifications of products and QM systems, hereinafter referred to as "certifications".

2. Contractual Bases

(1) The ordering party, hereinafter referred to as "client", places an order with TRLP or with a subsidiary of TÜV Rheinland AG, hereinafter referred to as “subsidiary”, which is engaged in the field of work of TRLP. If the client places an order, the order may be for testing or auditing of a QM system without certification or subsequent certification, or it may be for certification alone. If the order includes a certification, a "General Agreement" must be concluded with the client.
Orders may be placed by e-mail or in writing, without having to be in any set form.
(2) With each order a client places with TRLP, the client accepts as an essential element of the contract the General Terms and Conditions of TRLP as binding. Furthermore, when placing an order for testing, the client accepts the Testing Regulations (Item 3) as binding; when placing an order for certification alone, it accepts the Certification Regulations (Item 4), and when placing a testing and certification order, it accepts the Testing and Certification Regulations of TRLP.
(3) The Testing and Certification Regulations and the General Terms and Conditions of TRLP do not apply to orders for testing or auditing the client places with a subsidiary with the intention to obtain and/or certification with local recognition. In such a case, the terms of contract of the subsidiary shall apply.

3. Testing Regulations

3.1 Site of Testing

(1) Tests are generally carried out in the laboratories of TRLP. In consultation with the client, other test sites may also be agreed upon if these laboratories have adequate competence and proficiency in carrying out the tests and if appraisal by TRLP or by the subsidiary has furnished evidence of such competence and proficiency. The decision on the test site lies with TRLP or the subsidiary.
In consultation with the client, the tests may also be conducted in the client’s own laboratories if appraisal by TRLP or by the subsidiary has furnished evidence of their competence and proficiency.
Consent which has been given to the performing of tests in external laboratories may be withdrawn by TRLP or the subsidiary involved if the fulfillment of the requirements of DIN EN ISO/IEC 17025 can no longer be guaranteed or if complaints by TRLP or the subsidiary concerning the test laboratory are not rectified.
(2) If employees of the client participate in the performance of the tests, the latter may take place only in the presence and under the supervision of an expert from TRLP or the subsidiary. In this case the client undertakes to exempt TRLP or the subsidiary from claims for damages in the event of an employee of the client committing a breach of duty deliberately or through negligence during the testing. The obligation to exempt covers costs both in and out of court.

3.2 Test Procedure

(1) After placing the order, the client shall supply TRLP or the commissioned subsidiary with the amount of needed test samples free of charge together with the complete technical documentation required for the evaluation (such as constructional data form sheet, risk analysis, operating instructions, certificates on related safety relevant components used or other technical documentation). If necessary, TRLP or the subsidiary may request several test samples free of charge. A single product evaluation of the supplied sample(s) will be conducted. Inspection orders are accepted without making any guarantee as to the outcome of the tests.
As a rule, the documents to be submitted to TRLP shall be in German. After previous consultation, the client may also file the documents in another language; in this case, however, TRLP reserves the right either to request the client to have individual passages translated into German or to translate the texts on its own and charge the client accordingly. This also applies if Accreditation Bodies or supervisory authorities to which TRLP is answerable request translations.
(2) Test samples are tested on the basis of statutory provisions and regulations and any requirement agreed with the client. No statement about the characteristics of the entire test samples can be given if only single components or single aspects of the entire test sample have been tested. If no norms, standards or statutory provisions exist on the nature and scope of testing, a test program is laid down between TRLP or the subsidiary and the client or between TRLP in collaboration with the subsidiary and the client.
The client shall cover all additional expenses incurred by supplying incomplete documentation, for re-testing and delayed testing which may occur due to delayed, incorrect or incomplete information or improper assistance caused by the client.
TRLP or the subsidiary will only be liable for the loss of test samples as a result of, burglary, theft, water, fire or transport if they are accused of gross negligence. TRLP or the subsidiary will not be liable for damaging or destruction of test samples or outer packaging as a result of testing.
(3) If the client places an order for the auditing of QM systems, the client must first submit the quality management manual (QMM) and supplementary documented QM procedures (QMP). All these documents should preferably be in German or in English. Any other languages will be accepted only after previous consultation. To test the QM system for its effectiveness, audits on the client’s premises are conducted either in one or in several steps.
(4) If a product submitted for testing by a client turns out indisputably and verifiably to be a counterfeit, TRLP is entitled to discontinue the testing and to bill the incurred expenses. The counterfeit can be proven solely by submission of a definitive verdict against which no further means of appeal are possible. In addition, a contractual penalty may be demanded under Item 7 (2) of these Testing and Certification Regulations.
(5) The orders for testing are processed on the assumption of the submission in full of all necessary documents and test samples. This applies both to product tests and to audits of QM systems.
(6) On completion of the test procedure, the client shall receive written notification or, by special request, a full test report listing the non-conformities noted, if any. Approaches to solution, however, will not be set out therein.

(7) The client may disseminate test reports etc. only in complete and unabridged form. In the actual case, any publication or reproduction for advertising purposes requires the prior written permission of TRLP or the subsidiary (see IEC/ISO 17025 section 5.10.2).
(8) If the client wishes the product testing to result in a test mark license and if the advancement of the test indicates a positive progress, TRLP or the subsidiary shall perform, in co-ordination with the client, an initial factory inspection during which the manufacturing process, assembly and test facilities and measures of quality management are checked that are essential for the continuous observance of a quality level consistent with the model evaluated. Testing based on statutory provisions or the specifications of TRLP covers receiving inspection and testing, production control, in-process inspection and testing and final inspection and testing. The Product Safety Act stipulates that the GS Mark will only be awarded if a qualified goods-in and end-product inspection has been carried out for the model to be certified. If the product to be manufactured is not produced during the initial factory inspection, an earlier follow-up will be performed after three month. To safeguard the GS Mark, the Accreditation Body may demand, in certain individual cases, that additional measures provided for be taken (for more information, see ZEK decision 2006-01).
Product certification will not take place if the request to inspection the factory is declined or if there is no production under way when the initial factory inspection is conducted.
(9) If the client desires certification following successful testing of its product or successful completion of the audit of its QM system, the technical documentation and, if necessary, also the report on the initial factory inspection will be filed with the Certification Body for certification.
(10) TRLP or the subsidiary expressly reserves the right to publish, e.g. in the form of reference lists, the trading names of clients which operate businesses. The special consent of the client to this is not required.
(11) Test reports issued for the client must not be altered by the client. A test reports only relates to the sample mentioned in the test report. Without permission of TRLP or subsidiary a test report is not permitted to be duplicated in extracts. A test report does not entitle to carry any test mark.

3.3 Whereabouts of the Test Samples and Documentation

(1) The test samples submitted by the client to TRLP for testing will be scrapped following testing or will be returned to the client at its expense. The only exceptions to this are test samples which are placed in storage on the basis of statutory regulations or of another agreement with the client.
(2) Charges apply if the test samples are stored at TRLP's premises. The cost of placing a test sample into storage will be advised to the client in the quotation.
(3) If reference samples or documentation are given to the client to place in storage at its premises, the reference samples or documentation must be made available to TRLP or the subsidiary promptly and free of charge on request. If the client, in response to such a request, is incapable of making available reference samples and/or documentation, any liability claim for material and pecuniary damage by the client against TRLP or the subsidiary, resulting from the respective testing and certification, shall lapse.
(4) In the absence of any statutory regulation to the contrary, the period of safekeeping of the corresponding documentation is 10 years after expiry of test mark certificates and with EC certificates of conformity it is ten years after the final placing of the products on the market.
(5) The costs for the storage in warehouses of TRLP or the subsidiary and any subsequent disposal shall be borne by the client. This does not apply to the costs for the storage of the test samples in warehouses of TRLP for a period of up to 2 (two) months in connection with proposed re-testing. The costs of the handover and dispatch of the test samples for storage on the client's premises are likewise borne by the client. TRLP or the subsidiary will be liable for the loss of test or reference samples from the laboratories or warehouses of TRLP or the subsidiary only if gross negligence has occurred during the test procedure.

4. Certification Regulations

4.1 Basic Requirements

(1) The only test reports on which assessments in the course of certification may be based are those produced by laboratories which have been accredited according to the rules of DIN EN ISO/IEC 17025 or which have furnished evidence that they operate according to these codes.
(2) The Certification Body of TRLP carries out, as a matter of priority, assessments and certifications on the basis of the reports of TRLP or the subsidiary which are governed by the same QM system. In addition, test reports of other test laboratories can also be used for assessment as part of the certification. Test reports which are to serve as a basis of certification may not be more than one year old at the time of the certification; in the CB Scheme they may not be more than three years old, and must be based on valid standards.
(3) In order to issue a certificate for a client, it is necessary for the client to conclude a General Agreement with TRLP. If the client does not intend to market a product to be certified under its own name, the client must document the mark of origin under which it intends to place the product on the market through a "marks declaration".
If the client applies for an EC certificate of conformity (e.g. EC type examination certificate), the client must declare to the Certification Body/Notified Body that it has not submitted the same application to another Certification Body/Notified Body.
(4) Permission to use the certificate applies only to the certificate holder with respect to the product and the manufacturing premises stated in the certificate and the scope covered by the QM system. Product certificates may be limited to certain quota or lots. It is always possible to restrict the validity of the certificate. In special cases a certificate may be subject to conditions. The transfer of a certificate from the certificate holder to a third party is possible only after consultation with the Certification Body of TRLP (OEM or duplicate certificate).
(5) Fees shall be paid by the certificate holder for participation in the certification system and the issue of certificates. License fees, graded in units, shall also be paid annually for maintaining and filing of the certificates and for the use of test marks. The Certification Body of TRLP may demand prepayment of both the certification fee and the license fees prior to certification.
(6) The completion of a test with a concluding appraisal or with a certificate shall not release the client from its contractually-agreed warranty obligation due to defects or its statutory product liability obligation or the assessment and surveillance of predictable misuse.
(7) The Certification Body of TRLP reserves the right to publish a list of products certified and QM systems granted recognition for the information of Accreditation Bodies, competent authorities and Notified Bodies of the contracting states to the Agreement on the European Economic Area, consumers and other interested parties. It will do so in particular in its capacity as "Notified Body" or "Authorized Body". Special consent of the certificate holders to this is not required. Furthermore, the Certification Body of TRLP is entitled to transmit to third parties on request or to make accessible to any person the contents of a certificate issued except for particulars about the factory at www.certipedia.com.
(8) TRLP publishes the issued, valid certificates of “tested safety” (GS certificates) as well as all other issued, valid certificates on the internet at www.certipedia.com.
(9) TRLP publishes information regarding the misuse of test marks as well as certificates issued by TRLP under the section "black list" at www.tuv.com.
(10) Particularly in case of alterations of the testing regulations and/or the prerequisites of certification or infringements, on the part of the client, of the rules of the certification system, the Certification Body shall have the right to terminate the certificates at any time. In serious cases it may declare the certificates invalid with immediate effect. This applies also to EC certificates of conformity and recognitions or approvals of QM systems. The Certification Body reserves the right to publish certificates it has declared invalid or it has withdrawn. The consent of the previous certificate holders to this is not required.
(11) If changes are made to testing and/or certification requirements, it may be possible/ necessary to carry out a re-examination following consultation with the client even if the certification is still valid. If the client declines the re-examination, the certificate will be cancelled. The testing requirements can also be changed when the test is already underway. The product must then be tested and evaluated in accordance with the new testing requirements. No test mark will be issued on the basis of the precious testing requirements.
(12) If a certificate is about to expire neither TRLP nor its subsidiary is obliged to make a new offer for the renewal or prolongation of the expiring certificate.
(13) Certificates issued for the client must not be altered by the client. The client is not entitled to extend his rights to use his certificates or test marks to further individuals or companies.

4.2 Types of Certificates

(1) On the basis of the favorable assessment and evaluation of test and audit reports the Certification Body issues the following certificates:

- GS Mark certification according to the Product Safety Act (ProdSG) as an "GS-Body"
- Test mark certification for private test marks of TRLP
- Product certificates according to the European Standards Conformity Agreement (ENEC) and the international IEC Agreement (CB Scheme)
- EC type examination certificates according to European regulations or European directives transposed into national legislation as a Notified Body
- EC design examination certificates according to European regulations or the European directives transposed into national legislation as a Notified Body
- EC conformity certificates according to European regulations or European directives transposed into national legislation as a Notified Body with respect to European directives or type conformity
- Type examination certificates according to the Telecommunications Act in combination with the Telecommunications Licensing Ordinance
- Approvals of QM systems according to European regulations or European directives transposed into national legislation as a Notified Body
- Certificates for QM systems in the domain not subject to regulations
- Conformity certificates according to European directives (module A of the conformity assessment procedure) with respect to standards or certain regulations.

(2) Conformity certificates alone do not confer the right to use a test mark of TRLP. If test marks of TRLP are to be used, they must always be combined with a separate test mark license. Advertising using conformity certificates is possible only with the express written agreement of the Certification Body.

(3) A test mark or a certificate that has been granted makes no statement on the marketability of the tested and certified product.

(4) The test mark may only be displayed as shown on the certificate and if the size is changed, the proportions must remain the same.

(5) Certificates for QM systems are issued only if the audits have been completed successfully. If the Directives require EC type examination certificates or EC design examination certificates as a condition for the award of the QM system certificates, the EC examination certificates must be submitted for the certification process.

(6) Certificates for QM systems provide evidence of

- conformity to standards e.g. ISO 9001, ISO 13485,
- successfully conducted conformity assessments through a Notified Body,
- the scopes of application of products/product categories.

4.3 Client Rights arising from Certifications

(1) The client is entitled, during the period of validity of the test mark licenses and/or the certificate for the QM system issued to it,

(a) to apply test marks to its products following successful testing and certification and once they have been approved for use,

(b) to use the test marks approved for use by it in relation to products in printed matter or similar items,

(c) to use test mark licenses and certificates for QM systems issued to it in advertising campaigns without any alterations in such licenses and certificates,

(d) to use marks relating to the certification of the QM system in hand-outs, business letters and printed matter; the client is not permitted to attach the marks to its products. In this context, reports such as laboratory test reports, calibration certificates, and inspection reports shall also be classed as products (see IEC/ISO 17021).

(e) to use EC type examination certificates (module B) and EC certificates of conformity (module F or G) in the framework of the conformity assessment procedure,

(f) to use test reports for GS and EMC Test Marks as documentary evidence of product safety in the framework of the conformity assessment procedure (module A),

(g) to use the TRLP's EU identification number 0197 as a "Notified Body" in respect of the CE marking provided the QM system of production has been approved according to the requirements of the directives,

(h) to apply for additional certificates or OEM certificates (**O**riginal **E**quipment **M**anufacturer) for the client's products if they shall be placed on the market under another mark of origin or trade name and in certain cases also with another model designation.

(2) Further advertising campaigns of the client which refer to the activities of TRLP or the subsidiary need to be agreed with TRLP or the subsidiary. This applies in particular to advertising referring to the testing or certification services of TRLP or the subsidiary which the client has retained without any statutory obligation and invitation of the authorities to do so, i.e. on a voluntary basis. In the Federal Republic of Germany it is required that this kind of advertising references the voluntary nature of the testing or certification services. The client thus waives all claims for compensation and repayment of expenses towards TRLP or a subsidiary of TRLP, regardless of their legal grounds, which may result from the client's failure to reference the voluntary nature of the tests in its advertisements for testing or certification services as mentioned in phrase 2 which are intended for the Federal Republic of Germany. This shall not affect the client's personal responsibility for its standards of advertising practice.

4.4 Client Obligations arising from Certifications

The client is obliged, during the period of validity of the test mark licenses and/or the certificates for the QM system issued to it,

(a) to monitor the manufacture of the certified products continuously for compliance with the approved types.

(b) to see to it that production or products can be inspected at regular intervals by TRLP or the subsidiary in the framework of the test mark licenses issued to it.

(c) to see to it that surveillance audits can be conducted annually by TRLP or the subsidiary with respect to the certified QM systems.

(d) to pursue product development and production in strict compliance with the approved QM system.

(e) to take note of the findings of the recurrent production or product inspections and of surveillance audits conducted by TRLP or the subsidiary.

(f) to notify the Certification Body beforehand of any changes it intends to make in the product, either through further development or through the replacement of components or materials, and to obtain the approval of the Certification Body. Continued licensing depends on the results of an additional test that may have to be carried out.

(g) to notify the Certification Body of any changes in the QM system.

(h) to record and file all complaints from the market or third parties about the product. At the request of the Certification Body the client must make these details available and to provide information on the remedial measures taken.

(i) to notify the Certification Body promptly of any intended relocations of inspected manufacturing premises or the intended transfer of its firm to another firm or another firm owner. If changes are made to the company name or legal form, a new General Agreement must be signed and certificates shall be drawn up again at the client's expense. If a change of address within a country is made the anew signing of a General Agreement is not necessary but the retyping of the certificates shall be at the client's expense.

(j) to accept the requirements set out Product Safety Act with regard to measures of production control.

(k) to reach a contractual agreement with the manufacturer, provided the client as holder of the certificate is not the manufacturer of the product, on the fulfillment of requirements essential for the manufacture of the product including the allowing of inspections required.

(l) to rectify immediately any safety defects which appear in products that bear, on the basis of a type examination certificate, a CE marking or a test mark of TRLP and to take suitable measures for minimizing damage in the market. The client must in any case stop immediately the marketing of the defective product and notify the Certification Body.

(m) despite the certification, to meet its obligations to give notice to the authorities by itself or through its authorized representative in the client's capacity as manufacturer or party placing the product on the market.

(n) to permit witness audits, by the Accreditation Body and/ or notifying authority of TRLP on the client's manufacturing premises and those of its subcontractors. The client undertakes to put its subcontractors under an obligation to that effect.

(o) to determine a new type designation for a changed product that shall be certified in case this product is based on a product certified earlier.

(p) to accept that TRLP is entitled, by virtue of reporting obligations imposed by law or by authorities, to pass on information about the

certification which has come to its knowledge. At the request of the Accreditation Body and/ or competent authorities, information, documentation etc. concerning both the contract with the client and the subject of the contract may be passed on to the Accreditation Body. This includes, in particular, information about the performance of audits, the granting and withdrawal of licenses, attestations, certificates, etc. and incidents which occur and risks indirectly or directly connected with the tested products and/or QM systems. TRLP reserves the right to debit to the client's account the cost incurred for identifying and clarifying such incidents.

4.5 Restriction, Suspension, Expiration and Declaration of Invalidity of Certificates or Licenses and of the General Agreement

Definition of terms:

- Restriction: Restriction of the original scope of the certificate/license
- Suspension: Invalidity of the certificate/license for a certain period of time not longer than six months

(1) Certificates shall expire if
(a) The validity period stated on the certificate has expired.
(b) The holder of the certificate or the TRLP terminates the "General Agreement" or if the holder of the certificate waives individual test mark licenses and informs the Certification Body in writing thereof in compliance with the period of notice specified.
(c) The holder of the certificate becomes insolvent or if a petition in insolvency filed against it is dismissed for lack of assets
(d) The Certification Body terminates the certificate by virtue of changes in accreditation regulations and/or in the bases of testing regulations or changes in the use of the product with a notice period of three (3) month.
(2) Certificates may be restricted, suspended, or declared invalid and revoked by the Certification Body at any time with immediate effect if
(a) The product put into circulation no longer corresponds to the approved type and/or end users or third parties are exposed to risks.
(b) End users or third parties are exposed to risks resulting from products manufactured under an approved QM system.
(c) At the time of the test or audit facts were either ignored or not seen or judged correctly or could not be recognized which would have precluded certification. This includes e.g. the misplacing of products in certain hazard categories or the classification by types of use.
(d) Defects in the product or system which come to light later or are not noted during periodic inspection or checks of products already on the market or otherwise are not rectified by the holder of the certificate within a reasonable period.
(e) The holder of the certificate cannot ensure that his/her products will be manufactured consistently as tested and/or certified.
(f) Accreditations have expired or been cancelled
(g) The holder of the certificate does not have the periodic inspections carried out according to the procedures specified in the Product Safety Act (ProdSG), the regulations of accreditation, the European directives and regulations or the Testing and Certification Regulations of TRLP or if it holds up or restricts the proper performance of the periodic inspections.
(h) Certificates or copies of certificates have been changed and thus falsified.
(i) The holder of the certificate uses existing test mark licenses or CE markings for non-approved products or products that are not covered by the QM system. This constitutes misuse of the mark and precludes any co-operation in a spirit of trust.
(j) Misleading or otherwise impermissible advertising is practised with test reports, certificates or test marks.
(k) If it is discovered that the certified product is undisputedly or verifiably counterfeit.
(l) The holder of the certificate fails to pay fees (for certifications, licenses and/or tests carried out beforehand) due within the stipulated period following a reminder. If the fees refer to several certificates, the Certification Body decides which certificates the measure is to cover.
3) The certification body has the right to terminate the General Agreement concluded with the holder of the certificate without notice if certificates, copies of certificates, test reports or copies of test reports are repeatedly altered or falsified. It will be assumed that the alteration or falsification has been repeated provided that the documents mentioned in sentence 1 are altered or falsified twice.
(4) Before declaring a certificate restricted, suspended or invalid, the Certification Body shall give the client the opportunity to state its views, unless such a hearing is impossible owing to the urgency of the measures to be taken. No hearing will take place if the reason for the declaration of invalidity is the expiry or cancellation of the accreditation.
(5) The holder of the certificate automatically forfeits the right to continue to provide products listed in the certificate with test marks of TRLP or, in the framework of CE marking, to use the EU registration number for products which are affected by the restriction or suspension or which have expired by notice of termination on a particular date or have been declared invalid at short notice. In case of declaration of invalidity or expiry, the original certificate must be returned to the Certification Body.
(6) The Certification Body must publicize restrictions, suspensions, declarations of invalidity and revocations and the expiry of product and QM-system certificates. In case of infringements, it must disclose to the competent regional authority, to the supervisory authorities, to the Accreditation Bodies, to the other "Authorized Bodies" and "Notified Bodies" and to the licensing authorities the name and address of the client involved, the nature of infringement or the reason why the certificate has been declared invalid, including, where appropriate, information about the product etc. This also applies if the certification is withdrawn on the basis that the product is counterfeit.
See Item 4.1 (7) for information about the validity of certificates.
(7) The Certification Body will not be liable for any damage the client may suffer as a result of the non-granting, the restriction or suspension and the termination or the declaring invalid and revocation of a certificate, nor of the publication of the aforementioned measures (see section 4.5 (5)).

4.6 License fees

A license fee is payable for the permission to use the test marks of TRLP, approved QM systems and EC certificates of conformity in combination with our identification number (0197). For this fee, license holders will also be kept informed of amendments to test standards and regulations affecting their certified product or their QM system. Sentence 2 does not apply to holders of OEM-certificates.
The license fee is dependent on the type of certificate and shall be charged annually at the beginning of the calendar year.
License fees for test mark certificates shall be charged for the first time on award of the certificate. For test mark certificates issued after 1 July, only 50% of the license fees shall be charged for the current year. If a test mark certificate is issued after 30 November, no charges shall be incurred for the current year.
License fees for QM system certificates shall be charged for the first time in the year following the award of the certificate.
Amendments or cancellations which are to be taken into account in the calculation of the license fees for the following calendar year must be received by TRLP by 15 November of the current year. If certificates are terminated in the course of the year, no proportional reimbursement of the license fees shall be made.

5. Periodic Inspections

5.1 Follow-Up for the Product Manufacture

(1) In order to ensure and maintain consistent product quality of the certified products, TRLP or the subsidiary shall carry out regular inspections of the factories or the certified products. An annual inspection is assumed as a minimum. At least one of the certified products must be presented during the inspection of the factory.
(2) If non-conformities come to the attention of the Certification Body through initial factory inspections, product specific information from third parties or through other channels, the Certification Body may shorten the inspection intervals. In special cases the Certification Body may order a counter-check to be carried out prior to the initial shipment of the products.
(3) In addition, TRLP or the subsidiary may inspect at any time without advance warning the products, factories and stores mentioned in the certificate (in the case of foreign certificate holders also the stores of the importers or of the German agents and the branch establishments). For the purposes of monitoring purposes, it may remove, free of charge, products for which a certificate has been granted and also carry out checks in factories and stores.
(4) By way of exception (see ZEK decision 2006-01), tests may be carried out on a test sample representative of series production in order to inspect consistent quality of production instead of follow-up factory inspections. In this case, a batch-related certificate may be issued for the product concerned. The TRLP or the subsidiary may

commission other independent and expert agencies to carry out follow-up inspections on its behalf.

5.2 Surveillance of QM Systems

To maintain the validity of certificates issued for QM systems, clients are required to have surveillance audits conducted, usually every year. This involves spot checks on the effectiveness of the QM system in the scopes of application specified. At the end of the period of validity of a QM system certificate it may be extended only after a thorough repeat audit has been performed. An unannounced exceptional audit will be carried out if there are serious doubts about the effectiveness of a QM system, particularly if it is determined that defective products were put into circulation or counterfeit items were manufactured.

At any time TRLP has the right to conduct unannounced audits at the manufacturers' premises as well as at the premises of manufactures subcontractor/ component supplier and has the right to take samples. It is the obligation of the holder of the certificate to ensure that an audit at the component supplier's premises can be conducted. Cost for unannounced audits, sample taking and/or testing will be charged to the clients.

5.3 Costs of Follow-Up Inspections

(1) The costs of carrying out follow-up inspections, goods inspections, and surveillance and repeat audits of the QM systems shall be invoiced to the certificate holder. This can be also done against prepayment.

(2) The cost of co-coordinating factory inspections and trade mark surveillance is invoiced annually invoiced together with the license fee.

(3) Costs for scheduled (follow up) inspections of factories are billed at the prices included in the respective quotations.

(4) Additional re-inspections which are necessitated by non-conformities detected during the factory inspection or goods testing will be charged at cost incurred.

If the client cancels an agreed inspection appointment at short notice (1-5 days of the agreed appointment), the applicable fixed price or a lump sum of costs that have already been incurred will be invoiced.

6. Market Check

(1) The Certification Body may remove from the market at any time, for counter-checking, products which are provided with a test mark belonging to TRLP or with TRLP's CE marking using the EU identification number.

(2) If deviations with respect to the certified types or defects in products manufactured in the scope of a certified QM system are noted during inspections, the certificate holder will receive a written report on the outcome of the inspection and be asked to rectify the defects. The certificate holder has to bear the whole of the costs necessitated by the inspections.

7. Infringement of the Testing and Certification Regulations

(1) The Certification Body is entitled, in the event of culpable infringement by the client of the Testing and Certification Regulations being noted, to demand, in addition to the declaration of invalidity of the certificate pursuant to Item 4.5 (2), a contractual penalty of up to 25,000 (twenty-five thousand) Euro for each infringement by the certificate holder.

This applies in particular

- in cases of unlawful use of test marks or
- if inadmissible advertising is practiced using test marks or certificates of conformity of TRLP.

(2) Furthermore TRLP is entitled to assert a contractual penalty of € 25,000 if an order for testing and certification procedure is cancelled because of verifiable counterfeiting (see Item 3.2.(4)).

(3) In addition, the Certification Body reserves the right to terminate the General Agreement with immediate effect and to declare further existing certificates for the client invalid in so far as TRLP can regard its confidence in the client's faithful compliance with the contract and its reliability as having been shaken owing to the client's infringement of the Testing and Certification Regulations.

Product certification is not possible if it is determined that the product submitted for testing and certification is a counterfeit.

(4) If the client does not comply with the requirements pursuant to Item 4.4, the Certification Body may take suitable measures of its own. These include, for example:

- informing the users in order to minimize market loss, and
- notification to the supervisory authorities, Accreditation Bodies and the other "Authorized Bodies" and "Notified Bodies".

(5) TRLP reserves the right to claim compensation from the client for expenses incurred by TRLP owing to infringement of the Testing and Certification Regulations by the client.

Such expenses are, for example, costs of:

- tests for comparing certified products with products taken from the market,
- investigations necessary,
- factory inspections, shipping checks, checking of stocks and other measures TRLP deems necessary.

Costs incurred for these measures will be charged by TRLP according to time spent.

(6) TRLP reserves the right to inform other GS-bodies, competent authorities and accreditation bodies about the misuse of the GS-mark and the withdrawal of the GS-mark according to § 21 clause 3 German Product Liability Act.

(7) Pursuant to clause 4.1 (9) TRLP will publish the misuse of TÜV Rheinland GS-marks or any private TÜV Rheinland test mark at www.tuv.com.

8. Objections and Complaints

(1) An appeal is the request for reconsideration of test, audit and certification decisions of TRLP by the client

A complaint is the expression of dissatisfaction of the client relating to the activities of TRLP.

(2) Appeals and complaints may be lodged in written to the management of TRLP against test results, audit results or certification decisions.

(3) In case of appeals TRLP will give its written statement of reasons.

If these reasons are not acceptable to the client and no final decision can be reached with the management of TRLP, the client who lodged the appeal is free to take legal action.

(4) In case of complaints TRLP will answer the person who lodged a complaint according to the TRLP procedure.

9. Liability of TRLP

(1) Irrespective of the legal basis and in particular in the event of a breach of contractual obligations and tort, the liability of TRLP for all damage, loss and reimbursement of expenses caused by legal representatives and/or employees of TRLP shall be limited to: (i) in the case of contract with a fixed overall fee, ten times the overall fee for the entire contract; (ii) in the case of contracts for annually recurring services, to the agreed annual fee; (iii) in the case of contracts expressly charged on a time and material basis to a maximum of 20,000 Euro and (iv) in the case of framework agreements that provide for the possibility of placing individual orders, to an amount equal to three times the fee for the individual order under which the damage occurred. The maximum liability of TRLP is limited in any event of damage or loss to 2.5 Mio Euro.

(2) The limitation of liability according to article 9.1 above shall not apply to all damage and losses caused by malice, intent or gross negligence on the part of any of the legal representatives of TRLP or their vicarious agents. Such limitation shall also not apply to damages arising from a violation of obligations which TRLP has guaranteed to perform, damages caused by a person's death, physical injury or illness, or damages for which liability is assumed under the German Product Liability Act (Produkthaftungsgesetz).

(3) In cases involving a fundamental breach of contract, TRLP will be liable even where minor negligence is involved. For this purpose, a "fundamental breach" is a material contractual obligation, the performance of which permits the due performance of the contract and which the client may rely on being complied with. Any claim for damages for a fundamental breach of contract shall be limited to the amount of damage reasonably foreseen as a possible consequence of such breach of contract at the time of the breach (reasonably foreseeable damage), unless any of the circumstances described in article 9.2 apply.

(4) TRLP shall not be liable for personnel made available by the client to support TRLP in the performance of its services regulated under this contract, unless personnel made available may be regarded as vicarious agents of TÜV Rheinland.

If TRLP is not liable for personnel made available by the client under the foregoing provision, the client shall indemnify TRLP against any claims made by third parties.

(5) The limitation periods for claims for damages shall be based on statutory provisions.

(6) None of the provisions of this article 9 changes the burden of proof to the disadvantage of the client.

10. Partial invalidity, written form, place of jurisdiction

(1) No ancillary agreements to this contract have been concluded.

(2) All amendments and supplements must be in writing in order to be effective; this also applies to amendments and supplements to the requirement for the written form.

(3) Should one or several of the provisions under this contract be or become ineffective, the contracting parties shall replace the invalid provision with a legally valid provision that comes closest to the content of the invalid provision in legal and commercial terms.

(4) The place of jurisdiction for all disputes arising in connection with this contract shall be Cologne. This contract is governed by German substantive law.

11. Coming into Effect

The Testing and Certification Regulations are effective as of January 15th 2015. The previous regulations cease to have validity as of that date.

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