



# Testing and Certification Regulations

## TÜV SÜD Group

### Scope:

These Testing and Certification Regulations apply to the TÜV SÜD Group.

Specifically for the following business units/companies:

- TÜV SÜD Industrie Service GmbH
- TÜV SÜD Management Service GmbH
- TÜV SÜD Product Service GmbH

Hereinafter referred to as TSC (TÜV SÜD Company).

The Testing and Certification Regulations apply to:

- the testing and certification of products
- the testing and certification of services (hereinafter referred to as products)
- the testing and certification of projects (hereinafter referred to as products)
- the auditing and certification of management systems (hereinafter referred to as system)

These Testing and Certification Regulations shall become effective on January 1, 2005 and remain valid until a new version is issued.

In case of doubt, the original german version shall be authoritative.



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## **A) General terms and conditions**

**(Parts B and C include special provisions which amend, replace or cancel paragraphs included in part A, where appropriate)**

### **1. General**

- 1.1 These Testing and Certification Regulations apply to tests, audits, conformity assessment procedures as per EC directives and certification carried out by TSC. The services offered by TSC also include information on normative requirements or approval procedures.
- 1.2 With receipt of the first certificate, the client automatically becomes a TÜV SÜD certification-system partner and remains so for as long as at least one certificate is valid. Apart from the above, certificates do not become valid until all TSC requirements in connection with the test/audit and product/system certification have been satisfied.
- 1.3 With each order the client acknowledges the validity of the current version of the General Terms and Conditions of Business, agreed prices and these Testing and Certification Regulations. Existing contractual relationships are governed by the respectively valid versions of these documents. Prior to placing an order, the client shall inform TSC whether the product or system to be tested/audited has already been audited/tested in a similar way by another organization. Up-to-date versions of the General Terms and Conditions of Business, the Price List and Testing and Certification Regulations can be accessed on the Internet under [www.tuev-sued.de](http://www.tuev-sued.de).
- 1.4 The Certification Body evaluates the documents submitted by the testers/auditors. It decides whether a certificate is to be issued and handles disagreements concerning certification via the complaint procedure.
- 1.5 Certificates, certificates of conformity, test certificates based on EC directives relate to the version of the relevant directive valid on the date of issue of the certificate. Such certificates do not entitle the holder to use a TÜV SÜD certification mark. Any CE marking that may prove necessary falls under the responsibility of the persons indicated in the relevant Directive.
- 1.6 Auditors/representatives of the respective accreditation bodies are entitled to participate in TSC witness audits on the business premises of the client/manufacturer or his/her subcontractor.
- 1.7 TSC also provides reports as computer documents. In this case, the hard copy of the test/audit report represents the legally binding document.



## **2. Certificate expiry or withdrawal**

### **2.1 A certificate expires if and when**

2.1.1 the indicated period of validity expires;

2.1.2 the certificate holder terminates the certificate or his/her membership in the certification system at the end of the year by giving written notice by October 31 at the latest (in the case of system certificates: at least 3 months prior to certificate expiry);

2.1.3 the certificate holder objects in writing to amendments to the General Terms and Conditions of Business, these Testing and Certification Regulations or the Price List within 6 weeks after such amendments have come into effect or within 6 weeks after the certificate holder has had the possibility of taking note of them;

2.1.4 proceedings are opened under the Insolvency Code with regard to the assets of the certificate holder or an application for the opening of such proceedings is refused for lack of assets;

2.1.5 the certificate holder discontinues his/her business operations;

2.1.6 the legal requirements, the requirements of an accreditation body or the codes of practice on which the certificate is based change, unless the certificate holder demonstrates, within a certain defined period, through re-testing or re-auditing carried out by TÜV SÜD at the certificate holder's expense that the product or system is in line with the new codes of practice;

2.1.7 the underlying (basic) certificate becomes invalid.

2.2 The Certification Body may withdraw a certificate without notice or declare it invalid if

2.2.1 further use of a certification mark/certificate is no longer justified, i.e. no longer meaningful within the market context or is prohibited by law; in such cases, TSC will provide an alternative mark, if possible;

2.2.2 misleading or unauthorized advertising is conducted, in particular, specifically in connection with certification marks or certificates, or certification marks or certificates are misused, or legal requirements not met when a product is marketed;

2.2.3 the certificate holder, despite receiving reminders to that effect, fails to pay outstanding invoices to TSC. Failure to make partial payments may also lead to withdrawal of all certificates;



- 2.2.4 the certificate holder files a petition for the initiation of insolvency proceedings, third parties initiate compulsory execution proceedings relating to the certificate holder's rights arising from the certificate. The certificate holder shall notify TSC immediately of such measures;
- 2.2.5 the certificate holder violates these Testing and Certification Regulations, unless such violation is only due to negligence or insignificant acts.
- 2.3 In addition, the above reasons also entitle the Certification Body to restrict, revoke or suspend system certificates for a certain period.
- 2.4 The Certification Body is entitled to publish details of the withdrawal, expiry, declaration of invalidity, restriction and suspension of a certificate; continued advertising or other use of the certificate/mark or the name of TSC is prohibited in all such cases. A certificate that has been withdrawn has expired or has been declared invalid shall be returned to the Certification Body upon the Certification Body's written request. License fees paid in advance shall not be reimbursed; fees that have not yet been paid are fully payable in such cases.
- 2.5 Apart from cases of willful intention and gross negligence, TSC shall not be liable for any disadvantages arising for the client from non-issue, withdrawal, expiry, restriction or suspension of a certificate.

### **3. Advertising; publishing of certificates, certification marks and test reports; information**

- 3.1 A certificate or mark referring to a management system may only be used to promote the system concerned. A product certificate (in as far as a mark is approved) or a product mark may only be used to promote the certified product.

Product-related advertising using a TSC mark is not permissible in cases where a mere certificate of conformity or management system certificate has been issued. In the non-regulated area, TSC certification marks document voluntary certification, which is identified accordingly.

The certificate holder assumes full and complete responsibility for the use of his/her certificate, certification mark or test report. Specifically, when promoting a product which has been voluntarily tested, all advertising must indicate this voluntary aspect as well as the standard or entity that has issued the standard.



Test/audit reports prepared by TSC may only be quoted with their exact and complete wording, giving the date of issue. Use of the test report prepared by TSC or the name of TSC for advertising purposes is subject to written approval. The size of certification marks and company logos may only be changed, if the resultant shape is geometrically similar.

- 3.2 TSC is entitled to publish the names of certificate holders, tested products and audited management systems and the like for consumer information and advertising purposes.

#### **4. Retention of test samples and documentation**

As far as clients are in possession of test samples and pertinent documentation, they must retain them for a period of 10 years after expiry of the certificate or marketing approval.

System certification documentation shall be retained for the term of validity of the certificate plus a minimum of 3 years.

All other legal provisions going beyond the above shall remain unaffected.

Claims for damages against TÜV SÜD or TSC shall be excluded, in particular if the client fails or is unable to provide a test sample/document returned to or retained by him in an unchanged condition.

#### **5. Violation of Testing and Certification Regulations**

TSC is entitled to claim payment of a contractual penalty of up to EUR 250.000 in the case of culpable violations of these Testing and Certification Regulations by the certificate holder. This applies more specifically if a product labeled with the certification mark is offered for sale or marketed prior to the issue of the certificate, if unauthorized advertising takes place or if a certificate or certification mark is misused.

The certificate holder is liable for costs charged to TSC by an accreditation body or costs directly incurred by the Certification Body or the test laboratory in connection with activities resulting from culpable violation on the part of the certificate holder, in particular violation of these Testing and Certification Regulations. This applies in particular if TSC's activities were the result of instructions issued by a supervisory authority or similar instructions and if such instructions proved to be justified.



## **B1) Terms and conditions for product testing and certification**

### **1. Testing**

- 1.1 The client shall submit a test order to TSC and supply the required test samples and documentation free of charge. TSC shall, at its own discretion, carry out the tests either in their own test laboratory or externally, and prepare a summary report.
- 1.2 Following the test, TSC shall dispose of the test samples for a flat-rate charge per sample or, at the client's express request, return them to the latter at his/her expense. TSC will not store test samples but may require the client to do so. If a test is interrupted for more than one month, TSC shall also return the sample or store it for a flat-rate charge for each month or part-month that elapses up to continuation of the test.
- 1.3 TSC is entitled to make the test file, if necessary along with the test sample, accessible to any authorized (e.g. accreditation) bodies. Any agreement to the contrary is invalid.
- 1.4 TSC shall not assume any liability if test samples are mislaid or damaged either in the course of testing or due to burglary, theft, lightning, fire, water etc..
- 1.5 TSC does not offer consultancy services for product design and development or system establishment.

### **2. Certification**

After successful completion of product testing, TSC will award a certificate either with or without authorization to use a certification mark. If product certification does not include manufacturing surveillance, the product must not be labeled with a certification mark. The following regulations apply to product certification that includes the issue of a certification mark:

- 2.1 In addition to a positive product testing result, initial inspection of the manufacturing site must not raise any objections. Continued use of the certification mark will depend on regular inspections (follow-up service, see below).
- 2.2 Certificate holders may use the marks defined in the certificate. The certificate shall be valid only for the certificate holder and for the products and manufacturing sites listed in the certificate. The certificate holder must not transfer the certificate to third parties nor may third parties use the certificate or certification mark.



Should a product certificate expire or become invalid, the products listed on the certificate may no longer be marketed using the certification mark. Holders of withdrawn or expired certificates must either remove the certification mark from all accessible products or destroy the products and enable the Certification Body to verify these measures.

2.3 TSC certification marks may only be used for products that conform to the successfully tested type and the specifications included in the test report or supplementary agreements. The required documents (e.g. certificate of conformity, operating and assembly instructions) are to be enclosed with the product in the appropriate language of the country of destination.

2.4 Additional characteristics for individual certification marks

2.4.1 The modular TÜV SÜD mark allows various fields of testing to be covered by a single certification mark.

If a product is manufactured at several manufacturing sites with different qualifications, the qualification level of the respective manufacturing site may only be used if different designations are given to the models. Otherwise only the level of qualification which applies to all manufacturing sites may be used for advertising.

2.4.2 Certificates based on the product safety law (GS mark) have been limited to a period of 5 years, the validity can be extended.

2.5 Holders of certification marks must constantly monitor the manufacturing of products that have been awarded the mark to ensure conformance to test requirements. They must also carry out the specified tests and inspections, document any complaints in connection with certified products and the correction of nonconformances. The Certification Body must be immediately notified of any changes made to the products after certification. If the certificate concerned is to be maintained, the Certification Body may request the manufacturer to prove observance of codes of practice or may require an additional test to be carried out by the test laboratory.

2.6 As a minimum requirement, every product must be identified by a label clearly indicating the name of the manufacturer or importer and type designation, so that the identicalness of the approved type with the serially manufactured product can be ascertained. If a product submitted for testing does not satisfy the test requirements and if products corresponding to this test sample have already been distributed for sale, the modified test sample submitted for testing may only be certified if it bears another type designation.

2.7 Inspection of manufacturing sites in the case of certificates including authorization to use a certification mark (follow-up service), market observation.



2.7.1 In order to ensure maintenance of the product characteristics on which a certificate has been based, the Certification Body will regularly inspect manufacturing and testing facilities as well as quality assurance measures at the certificate holder's expense. Alternatively, for certification including the right to use a mark, random checks based on module C of the Council Resolution 93/465/EEC may be agreed prior to issue of the certificate. If the system of the respective manufacturing site has been certified by TÜV SÜD, the follow-up service may also be incorporated in the surveillance/repeat audit pertaining to the system.

To ensure production quality, additional pre-shipment inspection may be agreed, in which samples from the products to be shipped are checked for conformance to the tested and certified type.

2.7.2 The certificate holder shall ensure that the Certification Body can inspect the manufacturing and business premises and warehouses listed on the certificate (in the case of certificate holders abroad, also the warehouses of their German representatives and branches; in the case of importers, this also applies to warehouses) at any time during standard business hours and without prior notice. Certificate holders must also ensure that the Certification Body can take the required number of samples of certified products free of charge for testing purposes, even if the manufacturing and business premises are not their own.

2.7.3 The certificate holder shall immediately inform the Certification Body of any relocation of a manufacturing plant, transfers of manufacturing plants to another company/company owner or changes in the manufacturing process that may affect the certified product. In these and other special cases, the Certification Body may demand that the product is identified by a predefined inspection mark, in addition to the certification mark, so that products from different periods of manufacturing can be identified. Should there be a change in the manufacturing site, TSC must inspect and approve the new production facility before the products manufactured there can be labeled with a certification mark.

2.7.4 The Certification Body is entitled to take samples of products identified by a certification mark from the market for testing purposes. If the certificate requirements are not satisfied, e.g. because of unauthorized modifications that have resulted or may result in certificate withdrawal, the certificate holder shall bear the costs of re-testing/inspecting the product and/or the manufacturing site.

2.7.5 The certificate holder shall inform the Certification Body immediately of any damage or other events arising from certified products.



- 2.8 Further certificates may be issued in addition to an existing (basic) certificate, if, for example, the product is to be launched on the market under another name than that appearing on the (basic) certificate, or if – with the approval of the holder of the (basic) certificate – a certificate relating to this product is to be issued to a third party. The content and validity of such certificate shall be dependent on the (basic) certificate.
- 2.9 The Certification Body may withdraw a certificate without notice or declare it invalid, if
- 2.9.1 defects or nonconformances are detected in the products or in quality assurance, products do not conform to the certified samples or key prerequisites pertaining to the certified product/system are not or no longer fulfilled;
- 2.9.2 a product is not or no longer covered by the document on which evaluation was based (e.g. directive, standard) or have been inadvertently assigned to the wrong basis of evaluation or to an incorrect class as per the relevant EC directive on which testing is to be based;
- 2.9.3 a product no longer satisfies basic requirements, thus exposing users, operators or third parties to considerable risks, or fails to fulfill its purpose as defined by the manufacturer, and such defects are not corrected within a reasonable period of time;
- 2.9.4 Inspection of production, testing and storage facilities or product testing by the test lab are not possible or the products themselves not made available within the specified time. This also applies if follow-up services or surveillance audits cannot be carried out within 4 weeks despite a written request to this effect or if nonconformances are not eliminated within the agreed period through appropriate corrective action;