

Test and Certification Ordinance

of Hansecontrol Zertifizierungsgesellschaft mbH
(hereinafter called Hansecontrol-Cert)



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1. Domain of Validity

- (1) This test and certification ordinance applies to the testing and certification of products and similar services. Hansecontrol-Cert does not recognise any terms contradicting or diverging from these terms unless it has expressly consented to them in writing.
- (2) This test and certification ordinance only applies for traders if the contract is part of their profession and for public law entities and public law funds.
- (3) This test and certification ordinance also applies for all subsequent transactions with the client resulting out of the current business relationship until revoked by Hansecontrol-Cert.

2. General terms

- (1) The basic regulations and procedures that Hansecontrol-Cert uses ensure the independence, impartiality and are non-discriminatory. The used statutory regulations are open to the public. Possible changes in the test and certification ordinates will be announced by Hansecontrol-Cert.
- (2) Hansecontrol-Cert may commission third parties of its choice with the performance of services.
- (3) The place of performance is Hamburg unless agreed otherwise in writing.
- (4) Hamburg is the exclusive court of jurisdiction.
- (5) Only the law of the Federal Republic of Germany to the exclusion of private international law shall apply.

3. Award of order

- (1) All agreements concluded between Hansecontrol-Cert and the client relating to the execution of the contract must be recorded in writing. Amendments and supplements to this contract must occur in writing for their validity. If the client places an order, then the contract only takes effect if Hansecontrol-Cert issues a confirmation of order in text form.
- (2) Quotations provided by Hansecontrol-Cert are non-binding unless Hansecontrol-Cert expressly states otherwise in writing.
- (3) For certification inquiries, the certification centre shall define the required test scope.

4. Executions and execution time

- (1) The start of the execution times specified by Hansecontrol-Cert assumes the clarification of all technical questions and compliance with the obligations of the client. Unless otherwise agreed or resulting from the contractual relationship, the execution time specified by Hansecontrol-Cert is always of a non-binding nature.
- (2) Execution delays due to an act of god or circumstances not foreseeable by and not attributed to Hansecontrol-Cert such as disruptions to operations, strikes, lock-outs, transportation defects, energy supply difficulties, official orders or late deliveries by suppliers do not place Hansecontrol-Cert in a state of default. The agreed execution time is extended by the duration of the impairment in such a case. If the impairment lasts more than 3 months, Hansecontrol-Cert and the client are entitled, once an appropriate subsequent grace period expires, to withdraw from the as yet unfulfilled part of the contract. There are no claims for compensation in such a case. Hansecontrol-Cert will advise the client as soon as possible of any delays due to such circumstances.
- (3) Hansecontrol-Cert is entitled to provide partial services if no recognisable substantiated interest of the client contradicts this.
- (4) Hansecontrol-Cert is entitled to award sub-contracts to other accredited test institutes for parts of the desired services if no recognisable substantiated interest of the client contradicts this.
- (5) The client is obliged to provide, in a timely manner, all information and documents required for testing and certification as well as the required test samples for inspection. This may include
 - wiring and circuit board plans
 - component certificates
 - spare transformers
 - operating instructions

The certification centre will specify which individual documents are required.

- (6) The client is obliged to label certified projects in accordance with regulations and to discontinue the sale/distribution of products, which have not been correctly or wrongfully awarded the Hansecontrol test label. This applies in particular if Hansecontrol-Cert has revoked the client's test label.

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- (7) The client is obliged to keep a record of all complaints made known to it relating to compliance with certification requirements and to make these records available to the certification body when requested.

The client is obliged to take appropriate action with respect to such complaints and any deficiencies found in products or services which impair the fulfilment of the certification requirements, to document the actions taken and to make these records available to the certification body when requested.

- (8) The client is obliged to make all necessary arrangements for the conduct of the evaluation and surveillance (if required), including provision for examining documentation and records, and access to the relevant equipment, location(s), area(s), personnel, and client's subcontractors;
- (9) The client is obliged to make all necessary arrangements for the participation of observers, if applicable;
- (10) Hansecontrol-Cert may revoke or suspend awarded certificates. Reasons for this may be:

- production controls, which have not been performed or not in time
- technical modifications to the product, which for safety reasons do not allow for further validity of certification without additional testing
- sales bans imposed by official bodies
- financial receivables of Hansecontrol-Cert or one of our sub-contractors vis-à-vis the client, which have not been paid at all or which have not been completely paid
- errors encountered when performing the design type test and incorrect certification upon award of the GS mark
- identification of irregularities in the manufacture of the product in terms of compliance with the tested design type
- safeguard clause procedure and/or RAPEX notices in accordance with EC law
- market control, notices and/or information from official bodies, GS centres and consumer associations etc. relating to the deficient safety of products.
- If the product is not available during production control on multiple occasions, an up-to-date sample from the last production lot must be immediately tested in the lab. Hansecontrol-Cert is responsible for the type and execution of sampling. The client will carry the costs in this respect.

5. Shipping/transfer of risk

- (1) The client will provide Hansecontrol-Cert with test samples at no cost and carriage free.
- (2) If Hansecontrol-Cert has, as an exceptional case, committed to deliver or also return certain objects, delivery will be made from the test lab or warehouse for outgoing shipments unless otherwise agreed. Delivery will be made at the expense and risk of the client. The delivery will only be covered with transport insurance if the client expressly requests this; the client will carry any costs incurred in this respect.

6. Return and/or storage of the test samples

- (1) The client is obliged to take back the test samples provided to Hansecontrol-Cert no later than 3 months following order execution. If the client requests shipment of the test samples, this will occur at the expense and risk of the client.
- (2) The fees for tests and certifications include costs for storage of test samples for up to 3 months. After this time, Hansecontrol-Cert reserves the right to invoice these costs separately or dispose of the test samples at the cost of the client.
- (3) If regulations require that reference samples are kept for a certain period of time, then the client must comply with such regulations. Only in exceptional cases will Hansecontrol-Cert keep goods in storage for a fee. Once the storage period has expired, Hansecontrol-Cert will, without further notice, send the reference samples to the address specified by the client at the expense and risk of the client.

7. Industrial property rights

- (1) If not otherwise expressly stated in writing, all industrial property rights concerning goods provided, expert's reports and certificates including any software provided shall remain with Hansecontrol-Cert to the extent the industrial property rights originated through the activity of Hansecontrol-Cert. In the scope of order, the client may only use certificates/expert's reports, test reports, calculations, representations etc. created by Hansecontrol-Cert for the agreed purpose, for which they were created. Forwarding and/or publication of the test reports, calculations, representations and other documents to third parties is only permissible with the complete text and only with the express written consent of Hansecontrol-Cert. The client is not entitled to issue licenses or sublicenses
- (2) Hansecontrol-Cert is only liable for the fact that the object, expert's report, certificate etc. it provides is free from third-party industrial property rights, which contradict use by the client as agreed and/or as known to Hansecontrol-Cert.
- (3) In the event of certification orders, documents of Hansecontrol-Cert must be provided to the client in order to prepare the certification and monitoring process. These documents remain the property of Hansecontrol-Cert.
- (4) The client commits to treat such documents as confidential and to not share them with third parties without the consent of Hansecontrol-Cert.

8. Third-party rights

- (1) The client must ensure that the material provided to Hansecontrol-Cert is free from third-party rights such as rights to property, liens, copyrights, patent rights and/or rights of use, particularly industrial property rights, which contradict contractual use by Hansecontrol-Cert. If claims are asserted versus Hansecontrol-Cert on the basis of such rights, the client will, at first request, immediately release Hansecontrol-Cert from any third-party claims and possible costs of legal defence.
- (2) Suggestions of Hansecontrol-Cert relating to changes to the material inspected must be evaluated by the client as to whether third-party rights, in particular industrial property rights, would be violated as a result. Hansecontrol-Cert is not liable for such legal violations unless it was aware of such third-party rights. The client will also, at first request, release Hansecontrol-Cert from third-party claims in this respect, including the costs of adequate legal defence.

9. Payment terms

- (1) The costs for the performance of services by Hansecontrol-Cert will be billed according to expenditure to the extent not otherwise agreed below. Estimates of costs are possible providing the required data is specified. Lump sum prices may apply for certain services (e.g. manufacture and production controls).
- (2) Unless otherwise agreed in writing, the list prices valid on the day of order placement, which Hansecontrol-Cert will forward at request, apply for test orders. Services, which go beyond the agreed scope, e.g. due to unforeseeable additional work or necessary documents, which were not provided, will be billed separately according to resource and material expenditure.
- (3) The current version of the special scale of fees of Hansecontrol-Cert, which Hansecontrol-Cert submits at request, will apply for the certification of products.
- (4) Costs for the performance of manufacturing and production audits are billed upon completion of the audit(s). Fees, to the extent not provided for in the separate scale of fees, are charged in accordance with the agreed lump sum prices plus travel costs incurred.
- (5) Adequate prepayments may be demanded. Partial invoices may be issued for services already performed.
- (6) Statutory VAT in the prescribed amount will be added to fees. VAT will be specified separately.
- (7) Invoice amounts are payable without deduction upon receipt of the invoice. The client defaults upon receiving a reminder, however, no later than seven days following receipt of the invoice. If a specific calendar payment deadline is agreed, then the client defaults upon the passing of the deadline for payment. While the customer is in a state of default, Hansecontrol-Cert is entitled to charge default interest in the amount of 5 percentage points p.a. above the current prime rate of the European Central Bank and reminder fees for each reminder issued. Hansecontrol-Cert reserves the right to assert further claims for compensation.
- (8) Invoices of Hansecontrol-Cert can only be contested in writing within 28 days after their issue. The invoice amount is deemed accepted with the passing of this period.

- (9) In the event of subsequent change requests by the client, Hansecontrol-Cert reserves the right to adjust the price and to claim additional expenses due to the lost measurement station capacity and/or machinery downtime attributed to the change of the order.
- (10) The client is only entitled to offset costs if its counterclaim has been ruled on with legal effect, is undisputed or has been acknowledged by Hansecontrol-Cert. The client may only exercise a lien if the aforementioned prerequisites have been fulfilled and his counterclaim is also based on the same contractual relationship.
- (11) In the event of the bankruptcy or comparable foreign proceedings for the protection of debtors, reorganisation or the takeover of the client by a third party, Hansecontrol-Cert is entitled to discontinue performance of services without claims resulting for the client. In such a case, certifications, assessments and the right to use the certification marks awarded by Hansecontrol-Cert expires.

10. Warranty, withdrawal

- (1) The warranty of Hansecontrol-Cert only covers expressly commissioned services.
- (2) The warranty rights of the client require, also in the event of contracts exclusively for work and labour and works delivered, that the client immediately inspects the results provided by Hansecontrol-Cert and immediately reports any defects in a proper manner; concealed defects must be immediately reported upon discovery (§§ 377, 378 HGB [German Commercial Code]). Reports of defect must be made in writing and must specify the defect. If these criteria are not fulfilled, the client forfeits any warranty rights for defects.
- (3) If the client does not further specify the scope of the test provisions to be applied with the placement of an order, then Hansecontrol-Cert will perform the tests at due discretion and in compliance with the test and certification ordinance in accordance with the general state of science, engineering and valid generally acknowledged sets of standard specifications. Otherwise, Hansecontrol-Cert will specify the standards, according to which the test will be performed. The client must notify Hansecontrol-Cert in writing as to whether a test must be performed in accordance with other standards.

- (4) If there is a defect attributed to Hansecontrol-Cert, Hansecontrol-Cert may choose to rectify the defect or to provide a replacement. If Hansecontrol-Cert is not willing to rectify the defect/provide a replacement or is not capable of doing so, if this is delayed for reasons attributed to Hansecontrol-Cert, particularly beyond appropriate periods, or if the rectification of defects/the provision of a replacement fails for any other reason, then the client is entitled to withdraw (reversal of the contract) or reduce (corresponding reduction of the price) at its due discretion.
- (5) The warranty period amounts to one year from performance of service, that is, notification of the test, assessment or control result.

11. Liability

- (1) Hansecontrol-Cert is only liable for gross negligence and intent. Hansecontrol-Cert cannot be held liable for minor negligence unless this involves injury to life, limb or health or Hansecontrol-Cert breaches a cardinal duty of the contract. The claim for compensation due to the breach of cardinal duties of the contract is limited to foreseeable damages typical of the contract and amounts to no more than € 5,000,000.00 for injury to persons and damage to property and assets.
- (2) Hansecontrol-Cert only assumes liability for the suitability of its performance for the client's purposes if a corresponding promise of guarantee has been expressly issued in writing.
- (3) Hansecontrol-Cert does not assume a guarantee towards the client or third parties that the product or manufactured item used by the client is free of defects and fit for use. Hansecontrol-Cert is therefore not liable for damages caused by the product or manufactured item and/or use thereof.
- (4) The assignment of Hansecontrol-Cert does not have protective effects benefiting third parties. They are exclusively for the information of the client. If third parties do assert claims vis-à-vis Hansecontrol-Cert, the client shall release Hansecontrol-Cert from such claims including the costs of adequate legal defence.
- (5) These limitations of liability also apply with respect to personal liability of Hansecontrol-Cert employees and vicarious agents engaged by Hansecontrol-Cert.
- (6) Claims vis-à-vis Hansecontrol-Cert expire within one year from performance of service, that is, notification of the test, assessment or control result to the extent legally permissible and not otherwise agreed.

12. Transferability

Attestations, certifications and rights to use the certification marks granted by Hansecontrol-Cert cannot be transferred. The attempt to assign attestations, certifications and rights to use the certification marks granted by Hansecontrol-Cert renders them void.

13. Terms of use and license provisions of third parties, release

- (1) The client may only use certification marks of licensors, which Hansecontrol-Cert awards or relays to the client on behalf of the licensor, in accordance with the valid terms of use and license provisions of the licensor.
- (2) The client must ensure that the material provided to Hansecontrol-Cert is free from third-party rights such as rights to property, liens, copyrights, patent rights and/or rights of use, particularly industrial property rights, which contradict contractual use by Hansecontrol-Cert.
- (3) Suggestions of Hansecontrol-Cert relating to changes to the material inspected must be evaluated by the client as to whether third-party rights, in particular industrial property rights, would be violated as a result. Hansecontrol-Cert is not liable for such legal violations unless it was aware of such third-party rights.
- (4) The client shall release Hansecontrol-Cert from all claims relating to the breach of the obligations specified under this item, including the costs of adequate legal defence.

14. Contractual penalty

Hansecontrol-Cert is entitled to demand a contractual penalty of up to € 50,000.00 in every case in which breaches of this test and certification ordinance are determined or in which the certification marks are not used in accordance with provisions.

15. Severability clause

If individual provisions of this set of rules are invalid or unenforceable, then this shall not affect the validity of the other provisions. The invalid or unenforceable provision must be replaced with one that comes as close as possible to fulfilling the intended economic purpose. The same applies in the event of gaps in the agreement.

Hamburg, December 17, 2014