

MU_001_ General terms and conditions

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Governing Language

The original version of these Terms and Conditions is in German. In the event of any discrepancies or differences between the German version and any translations of these Terms and Conditions, the German version shall prevail and be binding.

§ 1 General information

1. Berlin Cert GmbH (hereinafter referred to as the Contractor) provides the contractually agreed services to its contractual partner based on and in application of these General Terms and Conditions (hereinafter referred to as GTC).
The contractual partner agrees to their validity and inclusion as part of the concluded contract.
2. Any terms and conditions of the contractual partner that conflict with or deviate from these GTC shall not be recognized by the contractor and shall not become part of the contract even if the contractor does not expressly object to them. A tacit acknowledgement of terms and conditions of the contractual partner that conflicts with or deviates from these GTC is excluded.
3. The following terms and conditions shall apply to the entire contractually agreed service as well as to ancillary services rendered within the scope of contract fulfilment and other ancillary contractual obligations.
4. Amendments or ancillary agreements to these GTC require prior written agreement between the contractor and the contractual partner to be valid. Deviating agreements and ancillary agreements shall only apply to the respective individual contract.

§ 2 Scope of Application

1. These GTC govern the execution of the contractually agreed services in connection with validation, verification, testing and certification based on the applicable statutory regulations, standards and technical provisions as well as the organization of seminars and in-house training courses.
2. For the execution of the contractually agreed services, the contractually agreed remuneration plus statutory value added tax shall be charged at the rate applicable at the time of performance.
3. Ancillary costs, such as shipping costs or travelling expenses, are not included in the contractually agreed remuneration. Insofar as ancillary costs are incurred in connection with the provision of the contractually agreed services, these shall be reimbursed by the contractual partner against proof plus the statutory value added tax at the rate applicable at the time of performance.

§ 3 Scope of services/ deadlines

1. The scope of the service shall be determined by the offer concluded in text form between the contracting parties. The Contractor shall only owe the contractually agreed services. The Contractor assumes no responsibility for the correctness of the laws, guidelines and standards on which the contracts are based.
2. The contractually agreed performance deadlines and dates are based on estimates of the scope of work and services by the Contractor based on the information provided by the contractual partner. Deadlines specified by the Contractor are non-binding unless their binding nature has been expressly agreed in text form.
3. Binding performance periods shall commence at the time agreed in the contract. Insofar as an advance payment has been contractually agreed or advance performance by the contractual partner has been agreed, the period shall only commence after receipt of the advance payment or fulfilment of the advance performance. The later date shall be decisive in each case.

§ 4 Warranty/ liability

1. Regarding the services provided by the Contractor, the parties agree that the Contractor does not owe any success or a specific result. The Contractor shall only provide the contractually agreed services. The measures to be taken as a result of the services rendered shall be the responsibility of the contractual partner.
2. If the Contractor fails to perform, its obligation to perform under the contract shall continue to exist, unless the failure to comply with the performance period results in the impossibility of performance.
3. Complaints about the contractual performance of contractually agreed services must be reported in writing by the contractual partner to the contractor immediately after discovery, but at the latest within one year of the report or certificate being handed over.
4. Spelling or grammatical errors as well as errors in the formatting of the text or in the layout in test reports or in training documents can be corrected by the contractor at any time and do not entitle the contractual partner to make complaints. In this case, the contractually owed service shall be deemed to have been duly rendered.
5. The Contractor shall not be liable in the event of simple negligence on the part of its executive bodies, legal representatives, employees or other vicarious agents, insofar as this does not involve a breach of material contractual obligations. Essential to the contract is the obligation to perform the contractually agreed service of training, testing, evaluation, certification or assessment of management systems or products with regard to safety, suitability for use and quality on the basis of the relevant statutory regulations, standards and technical provisions applicable to the respective management system or product or the individually defined scope of services.
6. In the event of a breach of material contractual obligations, the Contractor's obligation to pay compensation shall be limited to damages which the Contractor foresaw as a possible consequence of a breach of duty when concluding the contract or which it should have foreseen if it had exercised due care. Liability is excluded for indirect consequential damage, including consequential damage typical of the contract.
7. These exclusions and limitations of liability do not apply to damages resulting from personal injury or damages caused by an intentional or grossly negligent breach of duty by a legal representative or vicarious agent of the contractor.
8. If claims for damages against the Contractor are excluded, this shall also apply to the personal liability of its vicarious agents

§ 5 Confidentiality

1. The Contractor and the contractual partner undertake to treat all confidential information and business secrets of the other party that become known during the contractual relationship, including the preparation and follow-up of this, as strictly confidential, even beyond the duration of the business relationship, and to maintain secrecy about them. In particular, the parties undertake not to make the confidential information accessible to third parties or to pass it on.
2. Copies may be made for the Contractor's files of documents, drawings, plans etc. which have been provided to the Contractor for inspection and which are of importance for the fulfilment of the contract.
3. Disclosure of confidential information is permitted insofar as
 - a) this is done with the prior written consent of the party affected by the disclosure, or

- b) the disclosure is made to the top management or - on a need-to-know basis - to employees or persons bound to secrecy (e.g. lawyers, auditors, tax consultants), the Notified Bodies and accreditation bodies commissioned by the Contractor as part of their monitoring activities, or auditors of certification bodies, insofar as this is necessary for certification purposes;
 - c) the Contractor is obliged to do so under applicable law or in the context of proceedings before a governmental, judicial, regulatory or administrative authority or a stock exchange.
 - d) In the cases of letters b) and c), the disclosure may also be made without the written consent of the party affected by the disclosure; in these cases, the disclosing party is obliged to inform the party affected by the disclosure in text form of the disclosure and its purpose and to give this party the opportunity to comment.
4. The obligation to maintain confidentiality does not apply to confidential information that is publicly accessible or is made publicly accessible without violating the provisions of this agreement.
 5. Should the contractual partner express the wish for its own confidentiality agreement, the contractor reserves the right to carry out a legal review at the contractual partner's expense before deciding whether to accept the conditions.

§ 6 Copyrights

1. Unless otherwise contractually agreed, all copyrights to documents prepared by the contractor, in particular expert opinions, test results, calculations, illustrations or training documents of any kind, shall remain with the Contractor.

§ 7 Complaints procedure

1. The contractual partner may lodge a complaint in writing if it is not satisfied with the services or decisions of the contractor.
2. The contractual partner as well as the contractor's management and quality management officer shall be informed of the receipt of the complaint without delay.
3. Complaints are handled by a complaints committee with the involvement of the contractor's quality management officer(s).
4. The complaints committee decides on the complaint.
5. The contractual partner shall be notified of the decision in text form.

§ 8 Data protection

1. The personal data transmitted when contact is made will be processed electronically to carry out pre-contractual measures and to fulfil the contract. The contractor guarantees that this data will be used exclusively for the establishment, content or amendment of the contractual relationship. Auditors, inspectors, technical experts and environmental verifiers who provide audit services on behalf of the contractor are obliged in writing to comply with the statutory data protection regulations.
2. Further information on the protection of personal data can be found in the contractor's current privacy policy at <https://www.berlincert.de/en/data-privacy> can be taken.

§ 9 Assignment

1. The contracting parties may assign rights and obligations under the contract in whole or in part with the prior written consent of the other contracting party in text form.

§ 10 VAT Internal Market Act

1. The contractual partner is obliged to provide the information relevant under tax law regarding its name, address and VAT ID number without delay and without being requested to do so, at the latest when the contract is concluded. It undertakes to inform the contractor immediately of any change to its name, address and VAT identification number.
If a non-taxable service is treated as taxable due to deficiencies in the name, address or VAT identification number, the contractual partner shall reimburse the tax payable by the contractor.
2. If double taxation occurs - purchase tax in the customer's country, VAT in Germany - the customer pays back the excess tax paid to the contractor.

§ 11 Place of fulfilment and jurisdiction, applicable law

1. The place of fulfilment for all services to be provided by the Contractor within the scope of the contractual agreement is Berlin.
2. Berlin, Germany is agreed as the place of jurisdiction.
3. The exclusive application of the law valid in the Federal Republic of Germany is agreed. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

§ 12 Terms of payment

1. If the performance period is extended by a period of more than four months after conclusion of the contract for reasons for which the contractor's contractual partner is responsible, the new price shall apply from the fifth month in the event of an interim change in prices.
2. If services are performed outside of Germany, the contractual partner must pay all direct or indirect national taxes and/or duties to authorities and/or corresponding local bodies and undertakes to provide the contractor with all necessary evidence of payment of such taxes and/or duties upon request. In the case of cross-border transfers, the contractual partner shall bear the transaction fees incurred.
The contractor is entitled to demand an advance payment from the contractual partner up to the amount of the remuneration owed under the contract.
3. The contractor is authorized to issue partial invoices. Partial invoices do not have to be labelled as such; the receipt of an invoice does not mean that the contractor has settled the order in full.
4. Unless expressly agreed otherwise, invoices shall be issued as electronic invoices and sent to the contractual partner electronically.
5. The invoice amount is due for payment within 2 weeks of receipt of the invoice. In the event of late payment, interest of 9 percentage points above the base interest rate will be charged on the outstanding invoice amount for the period between the due date of payment and receipt of payment.
The invoice amount must be transferred to the contractor's account specified in the invoice by the due date.
Offsetting against or retention due to a counterclaim of the contractual partner is excluded unless the counterclaim is undisputed or has been recognized by declaratory judgement.
6. If the contractual partner is in arrears with the settlement of an invoice, the contractor may terminate the contract for good cause if the contractual partner fails to pay the amount due despite a reasonable payment deadline set.

7. The Contractor's right to demand default interest in the statutory amount or compensation for further damages caused by default from the contractual partner in the event of default in payment shall remain unaffected.
8. VAT shall be charged at the rate applicable at the time the contractual service is provided in addition to the service prices and shall be shown separately.
9. Complaints about invoices must be made in text form within a preclusive period of 14 days after receipt of the invoice, stating the reasons. The invoice shall be deemed approved after expiry of the deadline for objections.
10. If an invoice has to be reissued due to an incorrect billing address, a processing fee of €50 will be charged.

§ 13 Price adjustment

1. The contractor is entitled to adjust the agreed remuneration for the first time after the expiry of 12 months after the start of the contract and at most once a year with a notice period of three months to the development of the costs for personnel, administration, accreditation, operation and financing, costs for advance services of third parties (in particular auditors and experts) at its reasonable discretion in accordance with Section 315 BGB (Bürgerliches Gesetzbuch).
2. The contractor shall be entitled to demand an appropriate increase in remuneration in the event of an increase in the aforementioned costs.
3. The contractor is also entitled to adjust prices that have already been calculated and agreed if the framework conditions for the performance of the services change. This applies, but not exclusively, to changes resulting from new statutory provisions, official directives or changes to the contractual partner's calculation bases.
4. The announcement of the price adjustment must be sent in text form to the contact address provided by the contractor for contractual communication.
5. As soon as the remuneration increases by more than 5 % compared to the previous billing period, the contractual partner is entitled to terminate the contract extraordinarily with a notice period of six weeks after receipt of the announcement, effective from the date on which the increase takes effect.
6. In the event of a reduction in the costs specified in sentence 1, the contractor shall be obliged to reduce the remuneration at its reasonable discretion in accordance with Section 315 BGB. The reduction of the remuneration shall take place after the review for the first time after the expiry of 12 months after the start of the contract and at most once a year for the coming audit period.

§ 14 Independence

1. The contractor does not offer any consultancy services for the development or maintenance of management systems or products. The training courses offered provide information and skills of a generic nature; it is not possible to deal with specific operational issues.

§ 15 Deviating provisions

1. Deviations from these General Terms and Conditions must be agreed in writing in the contract concluded between the parties in order to be effective.

§ 16 Final provision

1. Should individual provisions of these General Terms and Conditions be invalid or unenforceable or should these General Terms and Conditions contain loopholes, this shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be replaced by a valid or enforceable provision that comes as close as possible to the economic intent and purpose of the invalid or unenforceable provision.

§ 17 Further conditions for validation, verification, testing and certification

Other obligations of the contractual partner

1. The contractual partner is obliged to provide the contractors free of charge with all objects, samples or documents relating to the subject matter of the contract which are necessary for the provision of the contractually agreed service.
2. The contractual partner undertakes to provide the contractor and the persons authorized by it with further documents relating to the subject matter of the contract upon request within a reasonable period set by the contractor or an authorized person.
3. Documents submitted to the contractor shall only be accepted in German or English. If other languages are required, the contractor's consent must be obtained.
4. The contractual partner undertakes to provide all necessary cooperation in good time and free of charge for the contractor. In fulfilling its obligations to cooperate, the contractual partner must ensure compliance with all applicable statutory provisions, technical standards, safety regulations and accident prevention regulations.
5. The contractual partner shall bear any additional expenses incurred as a result of contractually agreed services having to be repeated or delayed in whole or in part due to incorrect, incomplete or delayed provision of required items, samples or documents and other information for which the contractual partner is responsible or due to failure to cooperate or delayed cooperation. Even if a binding fixed or maximum price has been agreed, the contractor shall be entitled to invoice such additional expenses additionally. The contractor shall invoice the additional expenditure taking into account the actual and proven additional time or material expenditure incurred; the calculation of the additional expenditure shall be based on the remuneration rates for time and material expenditure on which the contractual agreement is based.
6. The contractual partner undertakes to indemnify the contractor, its managing directors, employees, staff, executives and vicarious agents against all costs and expenses directly caused by
 - a) a breach of the provisions of these GTC,
 - b) an application of tested management systems, devices or products in a way that does not comply with the contractually agreed test,
 - c) a follow-up audit of the management systems, devices or products certified in accordance with these regulations caused by the contractual partner,
 - d) any event causing damage that occurs during the testing of the devices or
 - e) a breach of submission, co-operation and information obligations attributable to the contractual partner.
7. The Contractual Partner undertakes not to publish or reproduce the Contractor's work results provided to it in full or in part without the Contractor's written authorization. Furthermore, the contractual partner undertakes not to misuse, falsify or misinterpret the test results or to quote or interpret them in a misleading manner.

8. The Contractual Partner undertakes to indemnify the Contractor against claims for damages of any kind asserted by third parties against the Contractor due to improper, inadmissible or unauthorized use of a certificate or test report by the Contractual Partner.

§ 18 Further conditions for testing activities

1. The contractor's warranty only covers the contractually agreed services. No warranty is given for the correctness and functioning of a test object including all inspected or tested parts and systems.

2. If the contractual partner commissions the contractor to test a test object or software, the contractor shall be liable for a proper examination and assessment of the test object in accordance with the agreed scope of testing.

Any further liability of the contractor, in particular a warranty or other legal responsibility of the contractor for the functionality or freedom from defects of the tested item vis-à-vis buyers, users or other third parties shall not be established by the test.

The warranty obligation and the legal responsibility for the functionality and freedom from defects of the tested item in relation to buyers, users or other third parties lie exclusively with the contractual partner.

The contractual partner indemnifies the contractor and its vicarious agents against all third-party claims asserted against Berlin Cert GmbH due to the lack of functionality or defects of a tested item.

3. If the contractual partner discovers that a test sample tested or certified by the contractor has been or may be the cause of personal injury, property damage or other damage, it is obliged to inform the contractor of this immediately in writing. This shall also apply in cases in which the test was carried out by a test laboratory other than the contractor commissioned by the contractual partner and whose results were accepted by the contractor as the basis for the certification of the test sample.