

General Terms and Conditions regarding Certification, Inspection or Approval Bodies Associated with the Danish Technological Institute (hereinafter called the Institute)*

General stipulations

These General Terms and Conditions shall apply to all commissioned work performed by certification, inspection or approval bodies associated with the Institute (hereinafter called "bodies"), and which concerns either certification, inspection or approval of products, systems or individuals (hereinafter called "commissioned work"). The terms and conditions also include the technical testing and calibration work that may be part of the performance of the work. These General Terms and Conditions may only be deviated from by a separate, written agreement regarding the work specifically and expressly states the items to which such deviation relates.

In addition to these Terms and Conditions, the body or the work in question shall be subject to the at any time applicable statutory provisions and standards to the effect that the body may invoke provisions contained therein against the other contract party (hereinafter called the "applicant").

With respect to other commissioned work than that specified above, the "General Terms and Conditions regarding Commissioned Work Accepted by the Danish Technological Institute" shall apply.

1. Definitions

- 1.1 *Certification* shall be understood as the activity associated with processing applications and audit (including any sampling and/or testing), inspection of documents and the issuing of certificates regarding products, systems or individuals, cf. EN 45011, EN 45012 and EN 45013, respectively.
- 1.2 *Inspection* shall be understood as activities mentioned in DS/EN ISO/IEC 17020 and appurtenant regulation applicable for the said activities.
- 1.3 *Approval* shall be understood as activities such as type approval (including type and design testing), verification, supervision or registration provided by legislation or any other recognised legal basis.

2. Establishing the basis for the agreement

- 2.1 Commissioned work will be commenced on the basis of a written agreement, or, with respect to certification and approval cases, on the basis of an application to the body, prepared in keeping with the application instructions of the relevant body. The information and specifications contained in the agreement or the application will be used by the body as a basis for performing the commissioned work.
- 2.2 The applicant undertakes to provide the body with any relevant information necessary for performing the work and warrants the veracity of such information. The applicant undertakes to give duly authorised representatives of the body access to relevant premises and information.
- 2.3 The applicant undertakes regularly to report all material changes in the information provided orally or in writing at the time of the conclusion of the agreement or at the time of filing the application or which has subsequently been submitted to the body.
- 2.4 The body shall be entitled to have commissioned work performed by a sub-contractor, in which event the body shall ensure that such sub-contractor has the appropriate accreditation or qualifications.

3. Time schedule, price estimates, etc.

- 3.1 Unless otherwise agreed in writing, time schedules, price estimates, etc. regarding the performance of work are approximate.
- 3.2 In the event of major budget overruns or delays compared to the agreed terms or material obstacles to the performance of the commissioned work, the applicant shall be informed thereof and shall subsequently be entitled to change or stop the work, cf. clause 5.

4. Fees and terms of payment

- 4.1 Commissioned work shall be performed according to account rendered based on the hourly rates from time to time fixed by the Institute or the body plus transport charges and other outlays.
- 4.2 In respect of long-term work, the Institute or the body shall be entitled regularly to adjust the hourly rates stated under 4.1. The applicant shall receive notice of such adjustments not less than 30 days prior to the date on which they come into force.
- 4.3 The body shall be entitled to a fee for work performed regardless of whether the results expected by the applicant are achieved.
- 4.4 The body shall be entitled to demand that the applicant furnishes a banker's guarantee or surety or that he makes a pre-payment or pays a deposit, if necessary in the form of cash or banker's cheque before the work is commenced.
- 4.5 The body shall be entitled to issue invoices on account once a month for work performed in the past month.
- 4.6 In case of overdue payment of balances due to the body, interest shall be charged at the rate of 1.5% for each commenced period of one month.

5. The right to change and cancel orders

- 5.1 If the applicant issues instructions to stop or postpone the work, cf. clause 3.2, work already performed shall be paid for according to invoice, just as the applicant shall reimburse the body for any costs incurred in connection with the cancelled or postponed work that the body has already undertaken to pay, such as expenses to a third party, special equipment or premises, etc.

- 5.2 If the applicant issues instructions to stop or postpone the work, he shall pay the body a fee corresponding to the time spent and the costs incurred plus outlays as originally agreed upon. Any application or establishment fees will not be refunded.

6. Professional discretion

- 6.1 The body and its staff shall exercise unconditional professional discretion with respect to the work performed, the identity of the applicant and any information obtained in the course of performing such work, cf. however clauses 6.2 and 7.1.
- 6.2 Notwithstanding the provisions regarding professional discretion stated above, the body shall at any time be entitled to disclose information required by the appropriate administrative authorities in connection with certification, inspection or approval.
- 6.3 If, in the course of performing commissioned work, the Institute becomes aware of factors that in the opinion of the Institute may cause material damage to health or environment, the Institute may, if required, inform the applicant thereof. In the event that the applicant does not, as quickly as possible, take the steps necessary to prevent or limit the risk of material damage to health or environment, the Institute shall, notwithstanding any separate agreement on discretion or secrecy, be entitled to pass on such knowledge to the relevant authorities.

7. Certificates, etc.

- 7.1 Certificates, inspection reports or approval certificates issued together with the associated documents shall be the property of the applicant, cf. however clause 7.2, and copies of such material may not be surrendered to any third party without the written consent of the applicant. However, the said documents may be handed over to the authorities referred to in clause 6.2 in connection with supervision or accreditation without the consent of the applicant.
- 7.2 The body may revoke certificates or approvals if the holder no longer complies with the conditions for the maintenance of the certificate or the approval, or if the certificate or the approval is abused. In particular, the certificate or the approval can be revoked in any one of the following instances:
 - 7.2.1 The information provided by the applicant is incomplete or incorrect;
 - 7.2.2 Grave non-compliance with relevant requirements;
 - 7.2.3 Failure to disclose changes in quality control systems or any other circumstances of crucial importance to the issuing of the certificate or the approval;
 - 7.2.4 Claims regarding validity that are not covered by the certificate or the approval;
 - 7.2.5 Insolvency proceedings, sale or other discontinuation of the activities of the applicant;
 - 7.2.6 Falling into arrears with respect to payments to be made to the body;
 - 7.2.7 Suspension for a long period of time of deliveries of the product or products comprised by the certificate or the approval;
 - 7.2.8 Abuse of logos or approval marks or of the name of the body or the Institute;
 - 7.2.9 Breach of agreements with the body of significance to the issuing of the certificate or the approval.
- 7.3 The body shall at any time be entitled to discontinue its activities as an accredited body. The attention of the applicant is drawn to the fact that if the body discontinues its activities or if its accreditation is withdrawn, the maintenance of the certification of the applicant may be rendered difficult or even impossible, cf. clause 9.
- 7.4 If the certificate or the approval is revoked, the original thereof shall be returned as soon as possible following the request of the body, which shall be entitled to publicly announce the revocation and to file notification of such revocation with the relevant authorities.

8. Logos, approval marks, etc.

- 8.1 The holder of the certificate or any approval may use the logo of the issuing body and other approval marks for business purposes, as long as this is done in direct connection with references to products, systems or individuals covered by the certificate or the approval. The use of the logo of the body shall cease forthwith if the body revokes the certificate or the approval.
- 8.2 Any use of logos or other marks in relation to certificates or approvals shall at all times comply with any supplementary provisions issued by the body.
- 8.3 Notwithstanding any other agreement to the contrary, the applicant shall not be entitled to mention or refer to the Institute or the body or the Institute's or the body's employees for advertising or marketing purposes with respect to the object of the work if such work is stopped or postponed by the applicant, cf. clause 5.

9. Liability

- 9.1 The body shall be liable towards the applicant for any errors and negligence in connection with the performance of the work pursuant to the general rules of compensation of Danish law, subject to such limitations as follow from clauses 9.2 to 9.8. The body shall in no event be liable for circumstances or events causing a loss that are not attributable to any errors or negligence on the part of the body.

- 9.2 The body shall not be liable for any direct or indirect loss suffered by the applicant (e.g. at the time when certification ceases) if the body's accreditation is revoked or if it ceases to carry on activities as an accredited body.
- 9.3 If the performance of commissioned work is stopped or postponed (cf. clause 5), the body shall not be liable for any defects or errors in work already performed.
- 9.4 The body shall only be liable for delays in connection with the performance of commissioned work if the body has issued a separate written warranty for the completion of the work at a specific time.
- 9.5 If the body has received samples or equipment from the applicant, the body shall exclusively be held liable for loss of or damage to such samples or equipment if an agreement in writing has been made with the applicant to return such samples and equipment. In addition, in such event, the body shall only be held liable if it can be substantiated that the body is guilty of gross negligence, and the compensation can in no event exceed the cost of the material necessary for manufacturing the samples or equipment in question. If the return of samples and equipment has not been agreed upon, the body will only keep such samples and equipment for a period of up to six months after the completion of the work.
- 9.6 The body cannot be held liable for more than the direct loss suffered by the applicant. Thus, the body shall not be held liable for losses on operations, loss of earnings or any other indirect losses. The body's total liability shall not exceed DKK 1,000,000 for each individual claim except for bodily injury according to Danish law. The body is covered by the Institute's third-party liability insurance. The body shall not be liable for any injury or damage caused by the applicant's products or systems or by any persons for whom the applicant is liable, if such injury or damage is the result of errors or defects in the products or systems in question, unless such error or defect is directly caused by the work performed by the body, and in that event, the liability is subject to such limitations as appear from this clause 9.
- 9.7 If any third party holds the body liable for bodily injury or damage to property caused by work performed by the body, including, but not limited to, product liability, the applicant shall be obliged to indemnify and hold the body harmless from any claim exceeding the amount of any claim(s) that can be brought against the body pursuant to the provisions of this clause 9. The body may request the applicant to defend any such claim on behalf of the body.
- 9.8 The body cannot be held liable for claims regarding loss, damage or injury that have not been made in writing within three years after delivery by the body of the service in respect of which the claim is made. In addition, the body's liability is contingent upon the applicant complaining in writing as soon as he has become aware of, or should have become aware of, the existence of a potential claim for compensation against the body. Notwithstanding the said time limit of three years, the body shall not be liable for any damage or injury that was impossible to foresee in view of the know-how and technology available at the time of the performance of the commissioned work.
- 10. Provisions regarding complaints and appeals**
- 10.1 Complaints shall be directed in writing to the body within four weeks of the occurrence of the event complained of. The body will process the complaint in keeping with the procedure of the body for complaints, the contents of which the body shall disclose to the complainant upon request.
- 10.2 If the body deems that the complaint is unjustified, the complainant shall pay all costs incurred by the body in connection with the processing of the complaint and the resumption of the work.
- 10.3 The complainant may lodge an appeal against the decision regarding a complaint by bringing the case before the Court in Glostrup, Denmark, cf. clause 11.
- 11. Disputes**
- 11.1 Any dispute or controversy arising between the body and the applicant shall be settled according to Danish law by the Court in Glostrup, Denmark.

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* In Danish, the name "Teknologisk Institut" is used.