

1. Scope of Application

These General Terms and Conditions shall apply to all orders/contracts concluded between ZER-QMS, Zertifizierungsstelle, Qualitäts- und Umweltgutachter GmbH and its clients concerning expert witness, testing and surveillance services, unless expressly agreed otherwise in writing or required by law.

Hereafter, the term „audit“ shall apply to expert witness, testing and surveillance services and the term „expert witness“ shall apply to tester, auditor, expert witness.

The employees and experts of ZER-QMS are not authorized to conclude individual agreements deviating from these General Terms and Conditions. Such agreements may only become effective after the managing director's prior consent in writing.

Any general terms and conditions of the client shall not become part of contracts, unless they are expressly recognized in writing by the managing director of ZER-QMS.

2. Scope and performance of the contract

The object of the contract between ZER-QMS (contractor) and the client shall not be a particular economic success, but the testing, auditing or expert witness service described in the contract and the jointly applicable guidelines and, if applicable, the award and use of the respective ZER-QMS certificate.

ZER-QMS is entitled to make use of third parties in order to perform the contractual services in whole or in part, unless expressly agreed otherwise in the contract or the jointly applicable guidelines.

3. Obligations of ZER-QMS

During the performance of the contractual testing, auditing and expert witness services, ZER-QMS observes all legal stipulations and the principles of orderly professional practice applicable at the time of conclusion of the contract / information sourcing.

3.1 Confidentiality, data protection

ZER-QMS undertakes that it will keep confidential with regard to all facts that become known to it in connection with its performance for the client.

ZER-QMS undertakes that it will treat reports and other written statements regarding the findings of its activity as confidential and will not disclose these to third parties. This shall also apply

to the time after the termination of the contractual relationship.

Non-confidential information is information that is public knowledge or becomes public knowledge without a breach of this clause or has been independently acquired from a third party without restriction on disclosure or breach of such a clause.

This clause shall not apply to legal obligations of disclosure to regulatory bodies.

This clause shall not apply to reports submitted by ZER-QMS to its accreditation bodies and the anonymous evaluation for scientific purposes.

3.2 Liability, negative prescription

If a contractual obligation performed by ZER-QMS is tainted with a defect for which ZER-QMS is responsible, the warranty claims of the client shall initially be restricted to the right to remedy the defect. Any other legal warranty claims shall only be revived in the event of a failure of this remedy of the defect.

ZER-QMS is absolutely liable according to legal stipulations concerning injuries or damage to persons caused by intent or gross negligence by ZER-QMS, its legal representatives or subcontractors. This liability shall also apply to damage under the product liability law. ZER-QMS shall be liable according to the legal stipulations for damage that is not covered by the cases mentioned above but caused by ZER-QMS's or its legal representatives' or subcontractors' intent or gross negligence or malice. In this case, however, indemnity liability is limited to the predictable and typically eventuated damage if ZER-QMS, its legal representatives or subcontractors have not acted deliberately.

ZER-QMS is also liable for damage caused by simple negligence in so far as this negligence affects the infraction of contractual obligations, the compliance of which is of special importance for the performance of the contract (material contractual obligation). However, ZER-QMS will also be liable in so far as the damage is typically related to the contract or predictable.

Any further liability shall be excluded without regard to the legal status of the claim; this applies especially to tort claims or compensation claims for unavailing expenditure in lieu of performance. In so far as liability is excluded or limited, this exclusion or limitation shall also apply to the personal liability of employees, representatives and subcontractors of ZER-QMS.

ZER-QMS shall be liable for any damage event arising from contracts only up to the total amount insured, independently from the time the damage had been caused.

ZER-QMS shall not be liable for immediate nor consequential damage nor for lost profit.

ZER-QMS shall not be liable for damage arising from force majeure, rebellion, war, Acts of Nature or other events (such as regulations set by a higher authority in Germany and abroad).

ZER-QMS shall not be liable for damage caused by third parties if the client has made the services performed by ZER-QMS available for their own use unless this disclosure had been agreed on in writing on ordering and these third parties had been mentioned by name.

Claims against ZER-QMS arising from warranty or for damages, for any legal reason whatever, shall become statute-barred after one year. In cases of doubt, the set period shall commence at the time of submitting the report or, if applicable, upon the termination of the order.

3.3 Appointment of expert witnesses

ZER-QMS undertakes to carefully appoint expert witnesses considering their sufficient qualification for the purpose and sufficient knowledge of the relevant set of regulations.

In the case of the client's substantiated rejection of the expert witness appointed, ZER-QMS shall be obliged to submit another proposal.

3.4 Prevention of an expert witness

In the event that an expert witness fails to appear immediately before or during the audit for reasons for which she or he is not responsible, ZER-QMS shall appoint a representative acting in agreement with the client. If a substitute can no longer be appointed due to the brevity of the time remaining up to the audit, a new date for the survey shall be agreed upon.

3.5 Trouble-free audit procedure

ZER-QMS undertakes to urge the experts to keep the interferences in the operational processes of the client during the audit as minimal as possible.

3.6 Consultancy

The certification body ZER-QMS shall carry out no consultancy services for

the realization and implementation of the relevant sets of regulations to be witnessed in the companies. It shall thus avoid any suspicion of self-contracting. However, information talks and trainings regarding the activity of expert witness, of the certification body and the contents of the sets of regulations form an essential part of the work of ZER-QMS.

4. Obligations of the client

4.1 Cooperation of the client

The client shall guarantee that ZER-QMS is provided with all supporting documents necessary for the execution of the order and is accordingly granted inspection of these.

The client shall facilitate the experts witness' access to the corresponding operating sites and premises. The client shall facilitate technical investigations and tests and shall make work-force and tools available in so far as is required for the fulfilment of the purpose of the audit.

The client shall guarantee that the experts are furnished with truthful information when questioning the client's employees about all circumstances and procedures that may be of importance for the audit.

If a consultant employed by the client participates in an audit performed by ZER-QMS, the client shall guarantee that no disruption or influencing of the course of the audit is practised by the consultant.

4.2 Copyright and rights of use

The copyright for services rendered by ZER-QMS are the property of ZER-QMS.

The client is entitled to use all information, data and written documents during the term of the contract exclusively for his own purpose, unless the contract itself foresees the consent to disclosure to determined third parties.

Any further use, especially the disclosure and publication of information, data and written documents to third parties, is not permitted without previous written consent of ZER-QMS.

4.3 Date arrangements and adherence to deadlines

ZER-QMS or its expert witnesses shall confirm the date of the audit agreed with the client, which ZER-QMS and the client shall recognize as binding.

If the date of the audit fails to materialize through the fault of the client, the preparation costs incurred by ZER-

QMS, if applicable, shall be borne by the client.

4.4 Payment, payment of invoices within the period specified

The amount invoiced for the services performed by ZER-QMS shall be as indicated in the offer for the agreed service. Payment is due without discount immediately upon invoicing.

4.5 Safeguarding of independence

The client shall guarantee that every action is avoided which could endanger the independence of ZER-QMS expert witnesses. This shall apply in particular to offers for a consultancy activity or employment as well as orders for the expert witnesses' own account.

5. Retention of records

The office of ZER-QMS shall retain a copy of all documents submitted for the audit during the period specified by contract. After termination of the duty to preserve records, the client may take the documents back at his own expense. If records are not taken back immediately after termination or if there is no duty to preserve records, ZER-QMS shall not be obligated to retain these records.

The retention of records submitted to ZER-QMS expert witnesses for the audit shall be agreed upon directly between client and expert witnesses. After termination of the audit, the client may take these records back at his own expense.

6. Termination

If not otherwise indicated in the offer or contract, every contract is concluded for a period of one certificate (period of certificate: 18 or 36 months, depending on the procedure; further details are governed by a specific set of regulations). The contract shall always be extended for another period of certificate if it has not been terminated in writing 3 months before the current certificate period.

If the contract is cancelled ahead of schedule, the certificate immediately becomes invalid. The client shall then be obligated to return the certificate immediately to ZER-QMS.

7. Miscellaneous

ZER-QMS hereby reserves the right to publish the company name of clients running a commercial business, e.g. in reference lists. This shall not re-

quire special approval by the client concerned.

In the case of ineffectiveness of one or several of the foregoing provisions, the parties agree that these shall be replaced by the statutory regulation. The effectiveness of the remaining conditions shall remain unaffected.

If ZER-QMS is required to modify procedures or regulations as a consequence of changes of the set of regulations underlying its activities, these shall become a binding part of the contract upon the written notification to the client by ZER-QMS.

Changes and amendments to these General Terms and Conditions must be made in writing. This also applies to the revocation of the written form.

The contract shall be governed by and construed in accordance with German law.

The place of performance shall be the place where the services agreed are to be performed, otherwise the place of business of ZER-QMS.

The place of jurisdiction shall be the place of business of ZER-QMS.