

# General Terms and Conditions for the Services of Kiwa Primara GmbH

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**Trust  
Quality  
Progress**

# General Terms and Conditions for the Services of Kiwa Primara GmbH

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## 1. General

**1.1.** Unless expressly agreed otherwise in writing, all offers or services of Kiwa Primara GmbH (hereinafter referred to as "KIWA"), all contractual relationships between KIWA and its customers (hereinafter referred to as "Contractual Relationships") arising therefrom or in connection thereto, and any contractual agreements made pursuant thereto, are subject to these General Terms and Conditions.

**1.2.** KIWA provides all services exclusively for those natural or legal person of private or public law from whom it has received the assignment ("Customer"). The Contractual Relationships between the Customer and KIWA do not have protective effects in favour of third parties; any deviation requires an express contractual agreement.

**1.3.** Unless KIWA receives written instructions to the contrary from the Customer, no persons other than the Customer will be entitled to give KIWA instructions regarding the provision of contractually agreed services.

**1.4.** Insofar as a contract is concluded between the Customer and KIWA, the Customer accepts as binding the validity of these General Terms and Conditions as well as the certification requirements separately agreed with it. The certification regulations can be viewed and printed out at any time on the KIWA website at [www.kiwa.de](http://www.kiwa.de). If the provisions of these General Terms and Conditions contradict the certification regulations, the provisions of the certification regulations shall prevail over these General Terms and Conditions.

**1.5.** Deviating, conflicting or supplementary general terms and conditions of the Customer or verbal collateral agreements shall not become part of the contract, unless KIWA expressly agrees to their validity in writing.

## 2. Services provided by KIWA

**2.1.** The scope of services of KIWA shall be exclusively governed by the contractual provisions agreed between the Customer and KIWA and the intended use specified in the contract. Deviations from this require an express written agreement. The services to be provided by KIWA do not include the services provided by the Customer.

**2.2.** Insofar as an advance payment has been agreed between the Customer and KIWA, KIWA will only commence the services once the advance payment has been received in the agreed amount.

**2.3.** KIWA will render its services with the necessary care in accordance with the contractual agreements. In doing so, KIWA cannot guarantee the result desired by the Customer and only makes statements in the scope of the objective application of its expertise. In this respect, KIWA will also not be liable for disadvantages arising to the Customer from the non-issuance, termination, cancellation or revocation of a certificate in accordance with the certification provisions. The Customer bears the risk for the usability of the results of the services provided by KIWA, in particular, for a use that differs from the purpose foreseen in the contractual agreement.

**2.4.** When carrying out agreed tests, KIWA uses the documents or test items provided by the Customer. Test results achieved by KIWA relate solely to the items to be tested per the contractual agreement with KIWA's Customer.

**2.5.** The Customer acknowledges that, through the provision of its services, KIWA neither assumes the position of the Customer or a third party, nor relieves these of any obligations or otherwise assumes, restricts, or abrogates the Customer's obligations vis-à-vis third parties or third parties vis-à-vis the Customer, or otherwise releases it therefrom. Likewise, an issued certification does not release the Customer from its legal obligations in connection with products certified by KIWA or the other organization of the company. In this respect, KIWA does not make any reports on the contractually agreed services or their results to third parties (authorities, Rapex, etc.) without a separate assignment. These are made by the Customer, who alone ensures compliance with any statutory reporting requirements. Likewise, in the case of a service provided by KIWA, the Customer alone continues to bear the responsibilities as product manufacturer.

**2.6.** If the Customer provides KIWA with third-party work results as a basis for the services to be provided by KIWA, KIWA will perform its services on the basis of these results without checking them. Unless otherwise expressly agreed in writing, it does not examine these third-party work results, nor does it have an obligation to do so. In these cases, KIWA does not assume any liability for the correctness and completeness of the work

results produced by third parties and any consequences in case of errors, unless otherwise expressly agreed in writing. This also applies insofar as these errors may have a detrimental effect on the services rendered by KIWA or even make these useless.

- 2.7.** Services contractually assumed by KIWA will, except when otherwise stipulated, be carried out on the basis of the statutory provisions, the applicable regulations and the recognized rules of technology.
- 2.8.** If contractually agreed audits, inspections and tests have been completed, KIWA will draw up a report. This is derived from the results of the services rendered by KIWA. The test bases in accordance with Clause 2 as well as other circumstances that, in KIWA's opinion, must be observed, form the basis for such a report, including any assessment contained therein. Should any discrepancies be determined in the underlying test bases, this will be shown in the report.
- 2.9.** KIWA reports only reproduce the facts established at the time of the test within the scope of the contractually agreed or otherwise established test bases for KIWA's testing according to Clause 2. KIWA is under no obligation to refer to or to report on any other facts. The above regulations also apply to the transmission of results by KIWA to the Customer, insofar as KIWA does not prepare a report.
- 2.10.** KIWA provides reports in written or electronic form. The Customer accepts that messages and reports sent in electronic form (particularly via Internet) may be lost, altered or falsified with or without the intervention of third parties, e-mails are not protected against third-party access and KIWA, therefore, cannot accept any liability whatsoever for the confidentiality and integrity of e-mails that have left KIWA's sphere of responsibility. Additionally, KIWA does not accept any responsibility whatsoever for possible computer viruses occurring in connection with the electronic transmission of data and the resulting possible technical damage to the Customer.
- 2.11.** KIWA shall be entitled to transfer to a subcontractor all or part of its services to the Customer. The Customer authorizes KIWA to disclose to the subcontractor all information necessary to render the transferred services. Deviating from this, the transfer of services to a subcontractor is subject to the Customer's consent, insofar as services are concerned that fall under KIWA's testing, inspection and certification regulations or insofar as this is stipulated in DIN EN ISO/IEC 17065.

### 3. Delivery and return of test items

- 3.1.** Samples, test material or test items (hereinafter referred to uniformly as test items) must be provided by the Customer to KIWA with the complete technical documentation necessary to perform a test (e.g. assembly overview, processing instructions, certificates of used safety-related components, other technical documentation) in compliance with dangerous goods regulations or other statutory transport regulations, free from third-party rights and at the premises of KIWA or, depending on the contractual agreement, at another location where the test is to be carried out (test location). Contrary to the above, KIWA may also determine another test location if this is to ensure that the test environment does not falsify the test results and it meets the testing requirements. KIWA shall notify the Customer of this. If the test is to be carried out for the purpose of subsequent certification, the test location must be recognized by the certification body.
- 3.2.** Documents must generally be handed over in German. It is possible to submit documents in another language upon prior agreement with KIWA; however, KIWA reserves the right to submit individual passages in German or to produce the corresponding passages at the Customer's expense.
- 3.3.** If several test items are required, KIWA will inform the Customer of the required number. If required, KIWA may also request test items free of charge at a later date.
- 3.4.** The test items provided by the Customer must specify the Customer and, if necessary, include another marking as required by KIWA. The Customer shall bear the costs and the risk of delivery of the test items, unless a pick-up by KIWA has been agreed. When shipped by the Customer, the test items must be properly packaged, taking into account any instructions given by KIWA. The packaging must be chosen so that it can also be used to return the shipment to the Customer. If a sample is taken and transported by KIWA, the responsibility for transporting and storing the test items is transferred to KIWA upon handover of the items on site. Special services, such as KIWA providing suitable sample containers for assignment processing or taking professional samples, must be agreed separately.
- 3.5.** All accruing test items, including unused samples, shall be kept until completion of the test and preparation of the test report. Extended storage by KIWA shall only occur as far as this results from legal regulations, the test standards or product specifications valid for the

test, the contractual agreement between the Customer and KIWA or from DIN EN ISO IEC 17025. In this case, the applicable retention periods apply. Following the preparation of the test report or the expiry of the aforementioned deadlines, the test items will, at KIWA's discretion, be returned to the Customer or disposed of, whereby KIWA's responsibility for these test items shall simultaneously expire. In the case of a return, the Customer shall pay the handling and freight costs. The Customer shall bear the risk of the return shipping. If the test items are disposed of, the Customer shall bear the disposal costs.

- 3.6.** Test items or other material, including documents that a Customer provides to KIWA without a contract or a separate contractual agreement covering them, must be collected by the Customer at its own expense immediately upon KIWA's request. KIWA accepts no responsibility or liability for them, including for proper storage.
- 3.7.** The Customer warrants that all test items provided to KIWA for the purpose of rendering the commissioned services or of which KIWA may, with its consent, take its own on-site samples, are free from third party rights, that any company names, trademarks or other business designations on products meet legal requirements and that it does not infringe or impede any third-party rights (including copyrights) by commissioning KIWA with any services. In this respect, the Customer shall indemnify KIWA from any claims by third parties.
- 3.8.** The Customer shall reimburse KIWA for any damage caused by the provision of test items in disregard of the above provisions.

#### 4. Obligations of the Customer

- 4.1.** The Customer shall fulfil all conditions required for the issuance of a certificate, including all laws, ordinances and other regulations of the competent authorities as well as all regulations, requirements and demands of authorities for the issuance of a certificate or other justified requirements of KIWA that must be complied with in order for a certificate to be issued or kept valid. The Customer herewith guarantees the completeness and correctness of all documents and the correctness of all information that it provides to KIWA in the context of a certification procedure.
- 4.2.** The Customer shall support KIWA in the provision of services. In particular, in the case of on-site services, it must grant KIWA the necessary access to its facilities

and premises in which the contractually agreed services are to be provided, and to provide qualified personnel and the other infrastructure necessary for carrying out the services required by KIWA. It shall inform KIWA without delay of all circumstances that affect the fulfilment of the contract by KIWA and must appoint an authorized representative who can be reached during normal business hours. In addition, it shall take all necessary measures that are required to eliminate or remedy any hindrance or interruption that would impede KIWA's performance. It shall also ensure that KIWA is provided with all information, instructions and documents required for the performance of the assignment in such a timely manner that KIWA can perform the agreed services in accordance with the contract.

- 4.3.** In the case of on-site tests, the Customer shall, under its sole responsibility, take all necessary measures to ensure the physical and legal safety of the working conditions, locations and facilities during the performance of KIWA's contractual services. This applies, in particular, to ensuring any special requirements for occupational safety. If necessary, the Customer shall inform KIWA of these requirements prior to the contractually agreed services being performed. Protective equipment that goes beyond personal protective equipment, shall be provided by the Customer at its expense, unless otherwise agreed. Safety instructions for KIWA employees shall be carried out by technically trained personnel of the Customer, for which it bears sole responsibility. For its part, the Customer cannot rely on any recommendations from KIWA, irrespective of whether it has requested them or not.
- 4.4.** In addition, the Customer shall inform KIWA in writing of all known risks or hazards—be they present or potential—associated with the performance of the service, such as the presence or possibility of radiation, toxic, harmful or explosive components or materials, as well as pollution or poisons.
- 4.5.** Documents must generally be handed over by the Customer in German. It is possible to submit documents in another language upon prior agreement with KIWA; however, KIWA reserves the right to submit individual passages in German or to complete the corresponding passages at the Customer's own expense.
- 4.6.** If KIWA provides the Customer with devices or documents, these remain the property of KIWA. The Customer undertakes to treat any documents provided confidentially, to not pass them on to third parties without KIWA's consent and to return them to KIWA after the assignment has been completed.

**4.7.** In addition to the statutory duty to accept services provided according to the contract without substantial defects, KIWA may demand partial acceptance for independently usable parts of rendered services, insofar as these parts of the services have been performed according to the contract without substantial defects and the Customer has already received them.

**4.8.** The use of the company and/or registered trademarks of KIWA for advertising purposes of any kind is not permitted unless KIWA has given its prior written consent.

## 5. Dates and deadlines for services/additional costs in case of malfunctions

**5.1.** Dates and deadlines for the provision of services by KIWA are only binding if they have been previously agreed in writing or confirmed in writing by KIWA. If the Customer wishes to postpone or withdraw from already scheduled audits within the scope of certification services, it must notify KIWA in writing as soon as possible.

**5.2.** If an agreed or confirmed date for the provision of services cannot be met for reasons for which the Customer is responsible, the Customer shall bear the costs incurred by KIWA. This is without prejudice to the according obligation to pay the contractually agreed re-booking and cancellation fees, even if the Customer asks for the postponement of audits it has agreed to or confirmed or if it withdraws therefrom. In these cases, KIWA shall be entitled to otherwise allocate reserved auditors. The Customer cannot assert any rights against KIWA therefrom. This applies, in particular, to the extent that appropriate auditors in sufficient numbers may be temporarily unavailable for the execution of the contractually agreed services, thereby delaying the contractually assumed services of KIWA.

**5.3.** Adherence to agreed dates or dates or deadlines promised/confirmed by KIWA presupposes the timely receipt of all documents to be supplied or made available by the Customer under the contractual agreement in the contractual form as well as the Customer's timely fulfilment of all obligations necessary for KIWA to render its services (particularly, the obligation to cooperate, the provision of information and powers of attorney and/or the obligations according to the above Clause 3). No period of an agreed deadline or a deadline promised/confirmed by KIWA shall begin to run prior thereto. The obligations of the Customer to be fulfilled also include the timely payment of fees due, including any agreed advance payments. If the Customer

is in default, KIWA shall no longer be bound to the agreed or promised/confirmed dates.

**5.4.** Agreed dates or dates or deadlines promised/confirmed by KIWA shall be extended if KIWA is obstructed in providing its services and the obstruction is caused

- by a circumstance that falls within the Customer's sphere of influence (and, above all, because the Customer does not comply with an obligation required for the provision of services),
- by KIWA's rightfully exercised rights of retention to its own performance due to the failure to pay due compensation,
- by a strike or a lock-out ordered by the employers' representative office at KIWA or in a company otherwise working for KIWA,
- due to force majeure or other circumstances that are unavoidable for KIWA. This also applies to the effects of weather, which could not normally have been expected when KIWA agreed or confirmed/promised the appointment.

The extension of agreed deadlines is calculated according to the duration of the obstruction plus an additional period for resuming work and taking into account the fact that it is by no means certain that after the removal of the obstruction, a sufficient number of suitable auditors at KIWA will immediately be available again.

**5.5.** If KIWA is not responsible for an obstruction or an interfering cause, the Customer shall pay KIWA for any necessary additional expenses incurred for the purpose of completing KIWA's agreed performance compared to a disruption-free process. The additional costs incurred shall—as far as possible—be settled according to the agreed contract prices (unit price, hourly rates, etc.); if nothing else is agreed upon, a standard fee is payable.

## 6. Termination of the contract

**6.1.** Termination of the contract between the Customer and KIWA for good cause is possible without restriction; insofar as nothing else is regulated below, the relevant statutory provisions apply. Likewise, both parties may terminate a contract if reasons for which neither KIWA nor the Customer is responsible lead to KIWA being unable to perform, continue or begin the contractually agreed services over a period of at least twelve months

(including, but not limited to, ancillary services) or if the performance of the contractually agreed services is interrupted for that period of time.

- 6.2.** KIWA may, in particular, terminate a contract concluded with the Customer,
- if the Customer fails to perform an act or otherwise fulfil a duty incumbent upon it, thereby making it impossible for KIWA to execute or continue the contractually agreed performance,
  - if the Customer does not make a due payment or otherwise falls into debtor's default,
  - if the Customer suspends its payments, the Customer applies for insolvency proceedings, such proceedings are opened, or their opening is rejected due to lack of assets.
- 6.3.** Termination according to Clause 6.2 presupposes that KIWA has previously set the Customer a reasonable deadline to fulfil the contract or subsequently perform the action to which the Customer is obligated and has declared that KIWA will terminate the contract after the deadline expires without result.
- 6.4.** Any termination must be declared in writing.
- 6.5.** In the event of termination, the services rendered up to the effective date of the termination shall be invoiced according to the contractual prices and paid by the Customer. In the event of termination by the Customer in accordance with Section 648 BGB (German Civil Code) or Clause 6.2, KIWA may also demand remuneration for the part of its services that are no longer performed; however, it must allow the deduction of expenditures which it saves as a result of the termination of the contract or other gains acquired by any ulterior application of work capacity as well as against any gains it averted maliciously. The same applies in the case of termination for good cause according to Clause 6.1, insofar as the Customer is responsible for this. Without prejudice to the above provisions, after terminating the contract, the Customer shall in any case bear the costs already incurred by KIWA for the execution of the contractually agreed services, which are not reimbursed to KIWA following a termination. Any further claims of KIWA (in particular for damages, claims for compensation according to Section 642 BGB for the period of default in acceptance) remain unaffected.

## 7. Restriction of use/confidentiality/advertising

- 7.1.** The Customer may only use the reports or assessments produced within the scope of the Contractual Relationship, including all tables, calculations and other details and all other services and work results, after full payment of the agreed remuneration and for the agreed purpose for which these reports or assessments are intended. However, the Customer is not permitted to modify, edit or only use extracts of the reports or assessments. Any transfer of KIWA's reports, assessments or other work results by the Customer to authorities or other public bodies is permitted, if and to the extent required under the contractually agreed purpose or as required by law. In addition, any publication or reproduction of KIWA's reports, assessments or other work results—even in extracts—in particular via the Internet or for promotional purposes, as well as any other disclosure to third parties is only permitted with the prior written consent of KIWA.
- 7.2.** Unless otherwise stated in Clause 7.1 above, the Customer is obligated to treat as confidential the documents and information received from KIWA in relation to the Contractual Relationships, including the content of the offer and the existing Contractual Relationship with KIWA, in particular business and trade secrets. It shall not pass them on to third parties—subject to any other statutory obligation—without the prior written consent of KIWA and shall not use them for its own purposes without authorization. Furthermore, it shall take all reasonable precautions to protect the information and documents against unauthorized access, disclosure, reproduction, transmission or any other unauthorized use.
- 7.3.** If the Customer receives a legal or regulatory request to disclose information or documents that the Customer has obtained in relation to the Contractual Relationship, it shall immediately inform KIWA thereof in writing.
- 7.4.** The obligation to confidential treatment under the above provisions shall not apply to either party if any information and documents are publicly known or accessible or were already known or have been disclosed to the obligated party by a third party without breach of confidentiality. With regard to the right to disclose information or documents, the burden of proof shall lie with the party relying on the aforementioned exception.
- 7.5.** KIWA is entitled to publish company names of Customers who operate a business, e.g. in the form of reference lists. The Customer consents to this.

**7.6.** The aforementioned obligations shall survive the termination of a Contractual Relationship between the Customer and KIWA.

## 8. Copyright

KIWA retains the copyright to the services provided, insofar as they are suitable for this. The certificates remain the property of the certification authority.

## 9. Payment terms

**9.1.** All prices are exclusive of the statutory value added tax. This will be shown separately in invoices. Unless otherwise agreed, the costs of travel for KIWA employees and other expenses will be invoiced separately and shall be paid by the Customer.

**9.2.** Unless otherwise agreed, KIWA may demand from the Customer payments by instalment for services already provided in the amount of the value of the services rendered and owed under the contract. VAT must be indicated separately in an instalment invoice. Insofar as KIWA has provided complete and independent parts of a contractually agreed service and these have been accepted (Clause 4.7), KIWA may also invoice these services independently with a partial final invoice. KIWA reserves the right to bill the agreed services in advance with a prepayment invoice (50%). Furthermore, KIWA reserves the right to bill the agreed services in advance with a prepayment invoice (100%) if the Customer is in the second stage of the dunning process.

**9.3.** Unless otherwise agreed, invoices are due immediately upon receipt.

**9.4.** The Customer may only offset claims of KIWA if the Customer's counterclaim is undisputed or adjudicated. Offsetting is also permitted if the Customer wishes to offset monetary claims for defects against KIWA's claims for remuneration from the same Contractual Relationship.

**9.5.** The Customer may assert a right of retention against claims of KIWA if the Customer's counterclaim is undisputed or adjudicated and is based on the same Contractual Relationship. In addition, the Customer may assert a right of retention against remuneration claims of KIWA insofar as the counterclaim is based on claims for defects to which the Customer is entitled.

**9.6.** The Customer shall determine, bear and pay on the spot foreign taxes and duties of any kind, insofar as foreign law provides for a duty to deduct tax. These do not reduce the agreed remuneration to be paid to

KIWA. The Customer or any deviating invoice recipient shall be jointly and severally liable for the correct determination and payment of foreign taxes and shall indemnify upon first request KIWA against any damage resulting from KIWA's non-fulfilment of payment debtor's tax obligations.

## 10. Claims for defects, liability

**10.1.** KIWA reports (in particular those made after performed tests) are prepared on the basis of information, documents and/or samples, test items or test material provided by or on behalf of the Customer. They are solely for the benefit of the Customer and are—unless otherwise agreed—exclusively for the Customer. Third parties cannot invoke any reports by KIWA, or any other results communicated by KIWA; in this respect KIWA is not liable for any claims of these third parties. This applies, in particular, to damage caused to third parties or competitors due to incorrect or erroneous information or explanations in reports produced by KIWA or results communicated to the Customer. This also applies to monetary and indirect damages, such as legal costs or fees resulting from competition law or trademark disputes.

**10.2.** The Customer must, on its own responsibility, draw the necessary conclusions from the reports produced by KIWA or results otherwise communicated. Neither KIWA nor its officers, employees or subcontractors are responsible to the Customer or any third party for any action taken or omitted on the basis of KIWA's reports or results otherwise communicated, nor for faulty tests that are based on unclear, incorrect, incomplete or misleading information transmitted by the Customer.

**10.3.** KIWA is not liable

- for services provided late, partially or in full, if this results directly or indirectly from events for which KIWA is not responsible or that otherwise lie beyond the control of KIWA. This applies, in particular, to a breach of the Customer's obligations specified in Clause 4 or in the event of non-fulfilment of actions by the Customer, which are necessary for the provision of services by KIWA.
- for the Customer's employees, who are provided by the Customer to support KIWA in providing its services under the contract, unless the provided workers must be regarded as vicarious agents of KIWA. Insofar as KIWA is not

liable according to the above sentence for employees provided by the Customer, the Customer shall indemnify KIWA from any third-party claims.

- for the use and application of any certification, license, certification mark or mark of conformity duly granted under the certification regulations and the consequences thereof. This applies (but is not limited to) especially in the case of improper use by the Customer as well as after a restriction, suspension, withdrawal or expiry of a license, a certification mark or a conformity mark. Insofar as third parties make claims against KIWA in these cases, the Customer shall indemnify KIWA against any claims.
- for the accuracy or legality of the test bases used. KIWA is also not responsible for the condition or calibration of the apparatus, instruments and measuring devices used, the analysis methods applied, the qualifications, actions or omissions of third-party personnel or the analysis results.
- for any damage resulting from changes in certified products that have not been brought to KIWA's knowledge and reported for review.
- for damage to test samples or test items and their packaging, in particular, not as a result of the tests themselves nor through burglary, theft, fire, water or cases of force majeure. This also applies to documents provided by the Customer.

**10.4.** KIWA accepts no liability towards the Customer or third parties, subject to another agreement, for a product or produce of the Customer, for which KIWA performs a contractual service, being free of defects and suitable for use. A test conducted by KIWA with a final assessment, report or certificate does not exempt the Customer from its statutory product liability or any other legal or contractual obligations that may apply to it. KIWA is also not liable for damage caused by a product or produce manufactured or distributed by the Customer or by its use. Nor is KIWA liable for indirect or consequential damages, in particular, not for lost profits or sales reductions, lost business, production losses, loss of business opportunities, reduction of company value or reputation damage as well as costs in connection with a product recall. Nor is KIWA liable for any losses, damages or costs that the Customer may incur as a result of claims by third parties (including those arising from the assertion of product liability claims).

KIWA is not an insurer or guarantor and does not provide any services to this end. KIWA only assumes liability for the service being suitable for the Customer's purpose, if a corresponding guarantee promise was expressly made in writing.

- 10.5.** The Customer must notify KIWA in writing of any defects in performance or events giving rise to damage within 30 days of discovery. If these are obvious defects that already existed at the time of transfer or acceptance of KIWA's services to or by the Customer, the aforementioned period shall begin upon transfer or acceptance, otherwise at the time when the defect or the event has become obvious to the Customer. If the Customer misses this deadline to report obvious defects, KIWA's liability for defects for such obvious non-notified defects shall be excluded.
- 10.6.** KIWA's liability for defects in the services provided shall initially be limited to supplementary performance within a reasonable period. If supplementary performance fails, the Customer is entitled to reduce or, at its discretion, withdraw from the contract.
- 10.7.** Liability claims against KIWA for defects in services rendered as well as for other contractual and pre-contractual breaches of duty shall become statute-barred after 12 months calculated from the beginning of the statutory limitation period.
- 10.8.** Insofar as KIWA is liable, KIWA's liability for compensation, regardless of the legal grounds, in particular, in the case of a breach of obligations arising from the Contractual Relationship or from tort, shall be limited to gross negligence and intent. Liability for simple negligence is excluded, unless KIWA violates an essential contractual obligation. Essential contractual obligation means any obligation, the fulfilment of which enables the proper execution of the contract in the first place and on the compliance of which the Customer may regularly rely. In the latter case, the claim for damages is limited to the contractually typical, foreseeable damage. In the event that KIWA is liable, this liability shall be limited to a total amount of € 1 million. KIWA hereby expressly offers its Customers to accept a higher maximum liability amount upon payment of a separate fee upon conclusion of the contract. If there is a threat of higher damage, taking out supplementary insurance is also recommended, with which KIWA will assist the Customer on request before conclusion of the contract.

**10.9.** The above-mentioned limitations of liability in favour of KIWA equally apply to the personal liability of KIWA's employees as well as the vicarious agents engaged by KIWA.

**10.10.** Insofar as claims of the Customer are excluded or limited in accordance with the provisions of this Clause 10, this also applies to third parties (especially suppliers of the Customer, including their employees, vicarious agents and directors) who incur or are jeopardized by any damage or disadvantage in connection with KIWA's contractual performance. In this respect, the Customer shall indemnify KIWA from any such claims.

**10.11.** The limitations of liability in this Clause 10 uniformly do not apply

- to damages arising from injury to life, limb or health for which KIWA is responsible or which are based on an intentional or negligent breach of duty by a legal representative or a vicarious agent of KIWA,
- to other damages arising from a grossly negligent or intentional breach of duty by KIWA or one of its legal representatives or vicarious agents,
- to KIWA's liability under the Product Liability Act,
- to KIWA's liability, as far as KIWA has not adhered to a guarantee provided.

The above regulations in Clause 10, do not alter the burden of proof to the detriment of the Customer.

## 11. Data protection and archiving

**11.1.** KIWA—if relevant—stores and processes personal data exclusively in order to process the Contractual Relationships with the Customer. Read more on data protection on our website at:

<https://www.KIWA.com/de/de/datenschutz/>

**11.2.** KIWA undertakes to keep all materials related to the certification and monitoring procedures for a particular

certificate for the period specified by the respective accreditation body or by law.

**11.3.** At the end of the archiving period, KIWA will deliver or dispose of all materials at its sole discretion, unless otherwise directed by the Customer. The costs incurred to carry out such a direction will be invoiced to the Customer.

**11.4.** Unless otherwise agreed, specimens will be returned to the Customer at the Customer's expense after completion of the project. The Customer undertakes to retain the tested device for type examinations.

## 12. Written form

Any modification or amendment to contractual agreements between KIWA and the Customer shall be made in writing. To the extent that these General Terms and Conditions or other contractual provisions require the written form, this written form requirement can only be altered in writing.

## 13. Place of jurisdiction, place of performance and applicable law

All disputes arising from the Contractual Relationship between the Customer and KIWA under these General Terms and Conditions are subject to the application and interpretation of the law of the Federal Republic of Germany to the exclusion of the provisions of international private law. The exclusive place of jurisdiction for any and all disputes is, insofar as the Customer is a merchant, a legal entity under public law or a special fund under public law, Hamburg; Hamburg is also the place of performance. However, KIWA is also entitled to seek redress from Customers at their general place of jurisdiction.

## 14. Adaptation of the GTC

Changes to these General Terms and Conditions (GTC) shall be offered to the Customer at the latest in writing two months before the proposed effective date. The consent of the Customer is deemed to have been given if the Customer has not notified KIWA of a rejection of such an offer prior to the proposed date of application of the changes. KIWA will especially point out this acceptance effect in its offer to change the GTC. If the Customer rejects the offer to change the GTC, each party within one month after KIWA's receipt of the rejection has the right to terminate the contract with a period of three months to the end of the then current month.