



Standard Terms and Conditions for Kiwa BCS Services

§ 1 Introduction and Scope

Unless expressly agreed otherwise in writing, these Standard Terms and Conditions are valid for all offers, services and contractual relations between the enterprise Kiwa BCS ÖKO-GARANTIE GmbH (here: Kiwa BCS) and its clients (operator).

The scope of orders is defined by the respectively valid versions of the norms and standards as offered in the Kiwa BCS Service Portfolio (i.e. Regulations (EU) No. 834/2007 and 889/2008 and or their amendments and updates, NOP (USA), JAS (Japan) and others), and as laid down in the individual contract and the respective additional dispositions.

§ 2 Extension and Execution of the Order

Orders transmitted by telegraph or phone will be accepted by Kiwa BCS only on the risk of the client. Oral declarations or agreements of our employees have to be confirmed in writing by the management to become effective. Changes of the scope of services shall be valid in written form only. Deadlines for the execution of the order shall not be binding, unless they are explicitly in written form agreed as binding.

§ 3 Rights and Obligations of the Operator

1. The operator has the duty to accept the announced dates for inspections. Only in exceptional cases the operator may ask for another appointment. Unannounced inspections have to be accepted in any case.
2. The operator shall disclose and demonstrate to Kiwa BCS and all persons assigned by Kiwa BCS (experts, inspectors/auditors or expert companies) in detail the sequence of operations (production and sales) of his undertaking.
3. The operator shall give the Kiwa BCS inspectors unhindered access to all relevant units of his undertaking during the period of inspection and present or provide all documents, no matter in which form, and to give any information deemed necessary for the purposes of proper inspection. He has to facilitate sample taking and interviews of the employees, above all regarding unannounced inspections.
4. The operator has the duty to check and sign the Kiwa BCS inspection/evaluation report of the Kiwa BCS inspector at the end of the inspection.
5. The operator shall keep the relevant documents and in case of an inspection by the inspection authority shall allow the inspection authority to have a look at these documents and shall grant them the same rights as to Kiwa BCS.
6. The operator undertakes to fulfil all requirements of the norms, fixed in the Kiwa BCS service offer and contract, including all annexes, amendments and implementation regulations.
7. The operator agrees in a binding way to carry out in due time all measures to be imposed on him by the inspection body if need be, and to submit himself to the penalties laid down in the list of penalties.
8. The operator shall document all complaints about his products, to inform Kiwa BCS about these complaints and to expound the measures taken to remedy the faults.
9. The operator has to inform Kiwa BCS immediately about all changes in form and content which are related to the respective inspection programme.
10. The operator can refuse inspectors due to prejudices or conflict of interest. The non-acceptance has to be pre-

sent within two weeks from having knowledge of the reason of refusal.

11. The operator is obliged to make declarations regarding certification only in respect of the scope for which certification has been granted. In addition he is obliged to ensure, that no certificate or report or any part thereof is used in a misleading manner.
12. In case of termination/suspension and/or withdrawal of certification, any references to the Kiwa BCS certification or advertising with this must be omitted immediately. In case the certificate is still valid at this point, its original shall be returned to Kiwa BCS.

§ 4 Prices

Unless otherwise agreed in written form, invoices shall be drawn up according to the service-based Kiwa BCS scales of fees valid at the respective time, and on the basis of the latest issue of the corresponding service catalogue (standard inspection programme). Additional services or other activities that have not been explicitly included in the order, e.g. unannounced, urgent inspections in case of suspicion, sample taking, analyses or other investigations necessary for the clarification of problems referring to the conformity regarding the norm/standard fixed in the contract, will be invoiced separately. Prices do not include VAT.

In case that, outside of Germany, VAT or any other relevant local taxes will have to be paid on the payable amount of the invoice, these will have to be covered by the client.

§ 5 Conditions of Payment

1. Scales of fees contain partially the option of a country specific prepayment between 50 and 100% directly after signing the contract. The payment of the remaining sum has to be made after the evaluation and always before granting the certification decision.
2. Unless agreed otherwise, invoices have to be paid net immediately upon receipt.
3. Services rendered are payable on delivery of the inspection report. The client is obliged to pay independently of any possibly agreed deadline for objections.
4. Certificates will only be issued after full payment.
5. An operator is not empowered to withhold or compensate Kiwa BCS' invoices, as long as his demand has not been confirmed as unanimously accepted or legally valid.

§ 6 Protection of Work Results

The operator shall guarantee that reports, inspection results and information produced within the service of Kiwa BCS are only used for the intended purposes. Duplication and publication of inspection results, information, or the like - also for marketing purposes - require prior written consent of Kiwa BCS. Copies of certificates have to be clearly marked as such. Kiwa BCS preserves the right to legally prosecute unauthorized use or misuse of work results, and especially the falsification of certificates.

§ 7 Secrecy

1. Kiwa BCS shall guarantee to forward all achieved results regarding the order only to the operator and on request to the responsible inspection authority, and neither to publish them nor to give them to third parties without his consent. Kiwa BCS shall further guarantee to keep secret all information given by the operator regarding the order and also to swear Kiwa BCS employees and agents to secrecy by contract.



2. With the signature of the contract, the operator accepts the publication of the validity of certification confirmations issued by Kiwa BCS on the Kiwa BCS web site. This information is accessible by authorization only.

§ 8 Sample taking and Execution of Analyses

1. If necessary Kiwa BCS will arrange through its representatives the taking of samples on the premises of the operator and the execution of laboratory analyses regarding the respective parameters considered relevant.
2. Regarding the execution of the analyses and the completeness and correctness of the results, the Standard Terms and Conditions of the respective commissioned laboratory apply exclusively, and it is also solely liable.
3. Unless otherwise agreed in written form, samples given to Kiwa BCS for analysis shall be kept for a maximum of three months at the commissioned laboratory, if the nature of the products allows such procedure. After this period the samples shall be destroyed. The operator shall bear the costs if he wishes the samples to be returned to him.
4. The inspected operator bears the costs of the analyses.

§ 9 Transition from a certification body to another one

1. The condition for transmission of data to the new certification body taking up the resigning operator is that Kiwa BCS has been forwarded by the client a proper dismissal in writing of the contractual relation with Kiwa BCS at least 6 months before end of the calendar year. In this case Kiwa BCS is not obliged to ask the leaving client for data release.
2. The resigning client has to provide proof towards Kiwa BCS regarding the new contractual relationship with the certification body taking him up.
3. Primarily, the leaving client must have fulfilled completely all his financial obligations towards Kiwa BCS, so that the data of the resigning client can be forwarded to the new certification body taking up the former Kiwa BCS's client in order to facilitate the transition to the new certification body.
4. Kiwa BCS's liability will expire at the moment from that Kiwa BCS effectively won't have any access available to a resigning client nor to relevant data for the norm compliance. This also is particularly valid for the surveillance of the completion of corrective measures and for placing on the market of incorrectly produced or labelled goods.
5. In case of missing implementation of measures, Kiwa BCS must inform the new certification body which shall be blamed for the following-up of outstanding corrective measures.

§ 10 Remedy of Faults

The operator shall guarantee to accept and thoroughly check the final report drawn up by Kiwa BCS. Objections against statements, requirements and sanctions mentioned in the inspection report have to be raised in written form within one week after handing over. Claims for remedy of faults lapse after a period of six months, starting with the day of acceptance of the inspection report by the operator.

Obvious incorrectness in the inspection report, like e.g. spelling mistakes, arithmetical errors, or formal faults shall be remedied by Kiwa BCS as soon as such faults and mistakes are detected and acknowledged.

In case the operator rejects the report or parts of it, Kiwa BCS is entitled to compensation of all costs resulting from the inspection.

§ 11 Liability

1. Kiwa BCS is liable according to the legal requirements in cases of damages of life, body or health and for damages resulting from intent and gross negligence by its legal representatives or leading employees.

2. In case of simple negligence of contractually significant duties or of gross negligence of contractually non-significant duties, the obligation of Kiwa BCS for compensation of damages of materials and assets is limited to that damage, which was to be foreseen when signing the contract. Duties are considered as contractually significant as soon as:

- their fulfilment is enabling the conclusion of the contract,
- their breach represents a risk for the fulfilment of the contract and
- the contractual party always trusts that they are met.

Liability for material and financial damage is limited to 1,5 M € per event of damage.

3. Further liability for indirect damages is excluded for consequential damages, as long as they had not been foreseeable.
4. Compensation of any kind of damages is excluded, too, when they were caused by the fact that the operator has presented incomplete or wrong information to Kiwa BCS or didn't fulfil his duties of cooperation, as mentioned for example under § 3 of these Standard Terms and Conditions.
5. Reference is made to § 8 of this document, concerning liability at sample taking, and to § 9, concerning change of inspection body.
6. Kiwa BCS shall not be liable for damages if it will be only able to perform its services partly or not at all, caused by Force Majeure, meaning events which are out of the reach of control by Kiwa BCS, which, even using eventually appropriate measures, can neither be avoided nor be previewed by Kiwa BCS.

§ 12 Adjustment Clause

1. In case of a change of the regulation, a corresponding recommendation or instruction by the inspection authority or the liability insurance company, Kiwa BCS may unilaterally adjust this contract.
2. The declaration of adjustment shall come into effect three months to the end of the month after receipt by the operator.

§ 13 Partial Nullity

1. If any provision of these Standard Terms and Conditions is or becomes void, the remaining part shall remain unaffected. The void provisions shall be replaced by new stipulations which best serve the purpose of the void provisions.
2. Regarding possible legal successors of the parties to this contract the Standard Terms and Conditions remain in effect.

§ 14 Law, Place of Fulfillment, Arbitration Proceedings

1. All litigations shall be governed by German Law exclusively.
2. Unless agreed in written form, place of fulfillment is Nuremberg, Germany.
3. All disputes resulting from and related to this contract or concerning its validity will finally be decided according to the arbitration proceedings of the Vienna International Arbitration Centre (VIAC) by one or several arbiters, nominated according to the same rules. Place of the arbitration proceedings is Vienna, Language is English.

These arbitration proceedings do not apply for collection proceedings of Kiwa BCS according to German or European laws. A collection proceeding will remain possible, just as its execution based on the resulting title. In case the contractual partner objects to default summons following a foreseen procedure, the clause of arbitration will be applied.