

The Kiwa Regulation for Certification

Version 15-10-2017



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The Kiwa Regulation for Certification lays down the rights and duties of Kiwa and the Client for certifying persons, bodies, management systems, products, processes and services.

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1. Definitions

1.1. **Kiwa**

Kiwa N.V. or the direct or indirect subsidiary of Kiwa N.V. that entered into the Agreement with Client as the contracted party.

1.2. **Client**

The party that has entered into the Agreement with Kiwa. gives its verdict in the form of an arbitral award.

1.3. **Agreement**

Any certification agreement that is entered into for the performance of certification services by Kiwa for the Client, any amendment to such an Agreement, and all legal or other acts in preparation for and/or for the performance of that Agreement.

1.4. **Object of Conformity Assessment**

Any particular material, product, installation, process, system or person to whom or which Conformity Assessment is applied.

1.5. **Conformity Assessment**

The verification that specified requirements relating to a product, process, management system, person or body have been fulfilled. The subject field of Conformity Assessment includes activities such as testing, inspection, examination and certification.

1.6. **Conformity Assessment Result**

The product of any Conformity Assessment (e.g. a report and/or certificate) that may include a finding of nonconformity.

1.7. **Conformity Assessment Scheme**

The rules, procedures and management of Conformity Assessment relating to specified Objects of Conformity Assessment, to which the same Specified Requirements, specific rules and procedures apply as determined by the Scheme Owner.

1.8. **Scheme Owner**

The legal entity that owns and operates a Conformity Assessment Scheme.

1.9. **Specified Requirement**

The stated needs or expectations. Specified requirements may be stated in normative documents such as regulations, standards and technical specifications.

1.10. **Assessor**

Person who performs Conformity Assessments.

1.11. **Observer**

Person who accompanies the Assessor(s) but does not interferes or disagrees with the Conformity Assessment, e.g. supervisors from Kiwa or representatives of the Accreditation Body, Notifying Authority, Regulating Authority or Scheme Owner.

2. Applicability

2.1. The Kiwa Regulation for Certification applies to all Agreements, unless explicitly agreed otherwise in writing.

2.2. If there is any inconsistency between the Kiwa Regulation for Certification and the Conformity Assessment Scheme, the latter will apply.

2.3. When performing Conformity Assessments under license of a Scheme Owner, Kiwa is bound by the requirements imposed by the Scheme Owner. If there is any inconsistency between the Kiwa Regulation for Certification and the requirements imposed by the Scheme Owner, the latter will apply.

2.4. When performing Conformity Assessments under legislation, Kiwa is bound by the applicable legislation. If there is any inconsistency between the Kiwa Regulation for Certification and the applicable legislation, the latter will apply.

2.5. When performing Conformity Assessments under accreditation or notification, Kiwa is bound by the requirements imposed by the Accreditation Body or Notifying Authority. If there is any inconsistency between the Kiwa Regulation for Certification and the requirements imposed by the Accreditation Body or Notifying Authority, the latter will apply.

2.6. If a competent court finds that any provision of the Kiwa Regulation for Certification is inapplicable or violates public order or the law, only that provision will be disregarded and this Regulation will remain in full force in all other respects. A provision that most approximates the parties' intentions will replace any invalid provision.

3. Performance of the Conformity Assessment

- 3.1.** The Client shall cooperate with Kiwa when performing the Conformity Assessments.
- 3.2.** Kiwa is entitled to have all or part of the Conformity Assessment performed by a trainee Assessor who is supervised by a qualified Assessor.
- 3.3.** If applicable, the Client shall accommodate the presence of Observers during the performance of Conformity Assessments.
- 3.4.** Kiwa may outsource all or part of the Conformity Assessments, with the Client's consent, to third parties that meet the requirements of the Conformity Assessment Scheme, unless this is permitted by the Conformity Assessment Scheme or other applicable requirements.
- 3.5.** In case of certification, Kiwa may accept previously drafted third-party reports as its own findings provided that the study was conducted:
- on the same Object of Conformity Assessment for which the Client has made an application;
 - according to the same or a comparable Conformity Assessment method specified in the Conformity Assessment Scheme;
 - by a body that meets the requirements of the applicable accreditation standard.
- 3.6.** Kiwa shall perform tests, calibrations and inspections in accordance with the methods proposed by the Client and as defined in Specified Requirements. Where these are not defined, Kiwa shall select the most appropriate methods or develop Specific Requirements with the Client's consent.
- 3.7.** The Client shall pay all costs involved in getting adequate samples to the test location on time and all costs involved in destroying samples or returning them to the Client.
- 3.8.** Kiwa shall allow the Client to observe the performance of tests or calibrations, provided that confidentiality is ensured for other clients. Any additional costs involved will be charged to the Client.

4. Initial certification

- 4.1.** Kiwa may refuse certification when Kiwa concludes in the performance of the Conformity Assessment that a positive Conformity Assessment Result is not reasonably foreseeable. In that case the applicable Agreement is terminated unless Kiwa and the Client agree otherwise.

5. Maintaining certification

- 5.1.** In case of management system or product certification Kiwa is entitled to impose an additional Conformity Assessment, the costs of which will be invoiced to the Client, for the purpose of:
- a) verifying the Client's initial or continued implementation of corrective actions to remedy one or more nonconformities;
 - b) verifying the Client's removal of the factors that led to the suspension of a certificate;
 - c) validating changes in the Client's organization or processes;
 - d) verifying complaints about the Client made by third parties;
 - e) validating changes in the Conformity Assessment Scheme requirements;
 - f) verifying the Client's correct use of certificates, certification marks, logos and pictograms.
- 5.2.** The Client shall inform Kiwa, without delay, of any matters that could affect the Object of Conformity Assessment to continue to fulfil the requirements of the Conformity Assessment Scheme, including but not limited to:
- a) changes relating to legal, commercial or organizational status or ownership;
 - b) changes relating to organization and management (e.g. key managerial, decisionmaking or technical staff);
 - c) changes relating to the contact address and sites;
 - d) changes relating to the scope of operations under the certificate;
 - e) intended changes to the Object of Conformity Assessment;
 - f) changes that may have an influence on the duration of the Conformity Assessment.
- 5.3.** The Client shall keep records of all complaints and the resultant corrective actions relating to the Object of Conformity Assessment.

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- 5.4.** The Client is not allowed to outsource their activities within the scope of certification, unless otherwise stated in the Conformity Assessment Scheme or agreed between Kiwa and the Client.

Nonconformities

- 5.5.** If nonconformities are found, the Client shall draft an action plan for implementing appropriate corrective actions within the period specified by Kiwa. Kiwa has to approve this plan.

- 5.6.** If there are nonconformities or if the Client has not been able to take adequate measures to address the nonconformities, Kiwa may consider one or more of the following measures depending on the urgency and/or the importance of the nonconformity:

- a)** a written warning;
- b)** an extra Conformity Assessment;
- c)** an increase in or stricter internal control requirements for the Client;
- d)** a temporary increase in the frequency of Conformity Assessments;
- e)** an immediate suspension of the certificate for a specific period of time;
- f)** an immediate withdrawal of the certificate or reduction in the scope of the certificate;
- g)** publishing the measures stated under e) or f) in the media that Kiwa considers suitable for this purpose.

- 5.7.** If the Client does not agree with a nonconformity that Kiwa has identified, the Client may file a complaint according to the applicable procedure for the resolution of complaints (see article 10.1).

- 5.8.** If Kiwa and the Client cannot agree on the correct identification of a nonconformity and the Client is unwilling to implement corrective actions, Kiwa has the right to suspend, withdraw the certificate or reduce the scope of the certificate. The Client may appeal against this decision (see Article 10.2 to 10.4)

6. Suspending or withdrawing certification and reducing the scope of certification

- 6.1.** Kiwa is entitled to suspend all or part of certification or withdraw certification, or reduce the scope of certification if:
- a)** Kiwa imposes this measure in accordance with Article 5.6.e and 5.6.f;

- b)** the Client has failed to meet its financial obligations towards Kiwa;
- c)** The Client does not cooperate with Kiwa when performing the Conformity Assessments;
- d)** the Client does not respect any other term imposed by the Agreement;
- e)** the Client's production is inadequate for the performance of a Conformity Assessment under the requirements of the Conformity Assessment Scheme;
- f)** the Client does not comply with altered Conformity Assessment Scheme requirements (see Article 7.4) before the expiry date of Scheme requirements.

- 6.2.** Kiwa is entitled to suspend all or part of certification if Kiwa is imposing an additional Conformity Assessment in accordance with Article 5.1.

- 6.3.** Kiwa is entitled to withdraw certification or reduce the scope of certification if the Client's certificate has been (partly) suspended and the end date of that suspension has expired without the reason for suspension having been remedied.

- 6.4.** If certification of multi-site management systems is suspended, withdrawn, or the scope of certification is reduced, Kiwa will always suspend, withdraw certification or reduce the scope of certification in their entirety, including all certified sites.

- 6.5.** During suspension period of certification the Agreement remains in force and any obligations under the Agreement remain valid.

- 6.6.** From the date of withdrawal of certification the applicable Agreement is terminated unless Kiwa and the Client agree otherwise.

- 6.7.** Kiwa or the Scheme Owner reserves the right to publish a list of all its suspended and withdrawn certificates.

- 6.8.** Suspending or withdrawing certification and reducing the scope of certification does not affect the Client's financial obligations towards Kiwa.

7. Changes to Conformity Assessment Scheme requirements

- 7.1.** Kiwa or the Scheme Owner shall inform the Client of any actual or expected changes to the Conformity Assessment Scheme requirements and the transitional plan, including the transitional period and whether it involves a supplementary Conformity Assessment.
- 7.2.** The Client shall implement any changes in the Conformity Assessment Scheme requirements.
- 7.3.** If the Client does not agree to the changes and/or the transitional plan, the Client may file a complaint according to the applicable procedure for the resolution of complaints (see article 10.1).
- 7.4.** If the Client does not accept the changes or if the result of the supplementary Conformity Assessment is negative, the certificate will be withdrawn after the expiry of the transitional period. The Client may appeal against this decision (see Article 10.2 to 10.4).

8. Use of certificates, certification marks, logos and pictograms

- 8.1.** During the Conformity Assessment for granting or expanding the scope of certification, the Client may not refer to the fact that certification is pending unless otherwise agreed between Kiwa and the Client.
- 8.2.** As soon as the certificate has been issued, the Client may refer to certification and use the applicable certificates, certification marks, logos or pictograms in their internal and external communications in accordance with the terms and conditions of the certificate, Conformity Assessment Scheme and/or the instructions of Kiwa or a third party that owns the logo/pictogram.
- 8.3.** The Client may not use logos outside the scope of the certificate and/or Conformity Assessment Scheme stating that the Client is certified by Kiwa.

- 8.4.** If the certificate is suspended, withdrawn or the scope of the certificate is reduced, the Client must cease using the applicable certificates, certification marks, logos or pictograms for their internal and external communications. In case of product certification, any products that have already been manufactured, or are manufactured at the time the certificate is suspended, withdrawn or the scope of the certificate is reduced, may no longer be marketed using the certification mark. Any other way of handling the sale of products that have already been manufactured will require Kiwa's express written consent, which Kiwa may grant at its discretion.
- 8.5.** In case of product certification, the Client is not allowed to deliver certified products under different trade names unless this has been agreed between Kiwa and the Client and the products are then delivered under Kiwa's stated conditions.
- 8.6.** The Client is not allowed to make or permit any misleading statement regarding certification, for example:
 - a)** to imply that the certification applies to persons, management systems, products, processes, services and sites that are outside the scope of certification;
 - b)** to refer to the certificate or use the certification mark, logo or pictogram on advertising documents, offers, websites, etc. that do not relate to the Object of Conformity Assessment, for example when making common reference to the certification mark, logo and pictogram if other uncertified objects are also mentioned;
 - c)** to use the certification mark or statement on a product, product packaging or in any other way that could be interpreted as denoting product, process or service conformity when the Client has management system or person certification only;
 - d)** to imply that Kiwa agrees with the Client's quality surveys, laboratory tests, calibration or inspection reports and/or certificates;
 - e)** to state other values for the certified product on advertising documents, offers, websites than those stated on the certificate.

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- 8.7.** With regard to the use of the certificate, the Customer shall:
- a)** always provide a complete copy of the entire certificate when providing a copy;
 - b)** provide a copy of the certificate to their customers on request;
 - c)** refer only to the latest version of a certificate.
- 8.8.** The Client may neither associate their business with Kiwa nor use the logo of Kiwa unless Kiwa has given its express written consent and the business is associated and/or the logo of Kiwa is used under Kiwa's stated conditions.
- 8.9.** The Client shall be required to compensate Kiwa for any loss, damage and expenses arising from any infringements of the provisions set out in Article 8.1 to 8.8.
- 8.10.** The articles 8.1 to 8.9 remain in force after withdrawing the applicable certificate and/or the termination of the applicable Agreement.

9. Confidentiality

- 9.1.** If Kiwa is required by law or by contractual commitments to release confidential information, the Client must be notified of the information provided unless informing the Client is prohibited by law.
- 9.2.** Kiwa shall disclose the existence nor handling of an application to third parties, unless the Client agrees in writing.
- 9.3.** The Observer who wishes to observe Kiwa performing Conformity Assessments at the Client's site, shall observe confidentiality.
- 9.4.** Kiwa may report Conformity Assessment Results anonymously to any interested third party.
- 9.5.** Kiwa may keep a register of all certificates issued and if certificates have been granted under license, and may provide the register to the licensor.
- 9.6.** Kiwa may provide anyone with information about the validity of certificates on request.
- 9.7.** This confidentiality does not affect the authority of Kiwa to make public announcements regarding the withdrawal or suspension (Article 6.7) of the certificate.

10. Complaints and appeal

Complaints

- 10.1.** Complaints from the Client will be handled according to the applicable procedure for the resolution of complaints.

Appeal

- 10.2.** The Client is entitled to appeal against a decision by Kiwa (including suspension, refusing, withdrawing of certification, or reducing the scope of certification) in accordance with the applicable appeal procedure.
- 10.3.** Filing an appeal if a certificate is suspended neither suspends the treatment of nonconformities nor prolongs the period for remedying nonconformities.
- 10.4.** Kiwa will not reimburse any costs that the Client incurs in relation to the appeal process.

11. Termination of the Agreement

- 11.1.** The Client may terminate the Agreement, in whole or in part, with due observance of a minimum period of three calendar months, unless otherwise agreed between Kiwa and the Client.
- 11.2.** When the Agreement is terminated, any certificates issued by Kiwa under the Agreement will be withdrawn immediately, unless otherwise agreed between Kiwa and the Client.

12. Amendment clause

- 12.1.** Kiwa is entitled to amend the Kiwa Regulation for Certification (during the term of the Agreement). Kiwa shall inform the Client about any amendments to this Regulation. If the Client does not accept these amendments The Client may terminate the Agreement on the date that the changes enter into force.

13. Entry into force

- 13.1.** The Kiwa Regulation for Certification comes into force on 15-10-2017.