

Inspection and Certification Ordinance for the issuing of certificates and the use of conformity marks for products

1 Scope of the Inspection and Certification Ordinance

The Inspection and Certification Ordinance applies to the issuing of certificates for products by TÜV NORD Luxembourg s.a.r.l. (hereinafter also referred to as the "Certificate" and "Notified Body").

2 Inspection and certification procedure

2.1 The Client assigns the Notified Body in writing to perform a certification and to issue a marking, if necessary. When a certification order is issued for the first time, the Notified Body and the Client shall conclude a contract. Such a contract shall – as an integral part – contain a certification programme.

2.2 The product to be tested (model) and the related documentation shall be transmitted to the Notified Body together with the order, if possible. Insofar as several test samples are required, the Client shall be informed of the number of test samples that are needed by the Notified Body. The Client shall ensure a free of charge and freight prepaid delivery of the test samples in a packaging appropriate for the relevant test sample.

The packaging shall also facilitate the return of the model, if necessary. The costs for returning the model to the Client shall be borne by the Client.

2.3 The inspection and certification orders shall be processed according to the certification programme in the order in which the documents and the test samples are received.

2.4 The inspection location shall be determined by the Notified Body. The inspections shall be performed in the in-house or external testing laboratory determined by the Notified Body or – if the type of product requires or allows it – at the premises of the Client. If the inspections are performed in testing laboratories that are not part of the TÜV NORD Group this shall be carried out in consultation with the Client.

2.5 Following completion of the inspection and certification procedure, the Client shall be provided with a written inspection report and, if the inspection has shown no defects, a certificate and, if applicable, the permission to carry / apply a stipulated marking.

2.6 For each certification procedure, the Client pays fees.

2.7 After issuing the certificate the submitted test samples shall, if possible for this construction type, be taken into safekeeping by the Notified Body or shall be handed over to the Client for safekeeping. If safekeeping of the test samples is not possible, a sufficient documentation shall be prepared.

As the case arises, individual agreements shall be made with the Client concerning the whereabouts of test samples which did not receive a certificate after having been inspected.

The Notified Body shall not be liable for damage to test samples caused by the inspection or through burglary, theft, fire or water. It is obliged only to exercise such care as it is used to exercising in its own matters (Section 690 of the German Civil Code (BGB)).

2.8 If a certificate is not issued, the Notified Body shall not be liable for any disadvantages for the Client that arise from the refusal.

2.9 If it is required by the module underlying the conformity assessment, the Notified Body shall perform an initial inspection of the production facility at the expense of the Client before issuing the certificate. The results shall then be recorded in a report and the cycle for regular checks shall be specified according to section 4.

3 Certificates

3.1 Issue of the Certificate and the use of the marking

3.1.1 Permission to use a marking is only granted to the company and production facilities and those products that are mentioned on the valid certificate. If it is intended to relocate a production facility or carry out a transfer of the company to another company or to another company owner, the owner of the certificate or the certificate holder shall inform the Notified Body of this in good time.

Only the Notified Body has the authority to transfer the certificate to a third party.

3.1.2 Payment of annual fees according to the fee schedule of TÜV NORD Luxembourg may be agreed for the certificates.

3.1.3 In principle, the marking issued may be changed with respect to its size but not to its form. The representation of markings with a height less than 5 mm or deviations with respect to the colours require a special arrangement.

The mode of marking the certified products with the conformity mark shall be presented to the Notified Body before placing them on the market.

3.1.4 The certificate holder is obliged to continuously monitor the manufacture of the products furnished with the marking in order to ensure compliance with the test sample, and he shall properly carry out the control inspections required by the Notified Body.

3.1.5 Upon the transfer of the certificate to the legal successor of the certificate holder, or for other special reasons, an additional control symbol specified by the Notified Body must be attached by the certificate holder in addition to the marking for products to be manufactured, upon request of the Notified Body, in order to ensure that the Notified Body can distinguish products from different manufacturing times.

3.1.6 Modifications to the products involving a deviation from the certified designs shall be immediately reported to the Notified Body. The Notified Body is entitled to declare that evidence of the manufacturer proving the compliance with good engineering practice or an additional inspection are necessary before issuing the certificate.

3.1.7 Insofar as significant defects are ascertained in conjunction with the inspection of a submitted product and the Client has already delivered products which correspond to the test sample, the certificate can only be issued for the newly submitted and modified test sample if the manufacturer changes the designation of the type with respect to the products which have already been delivered.

3.1.8 The certificate shall only be valid for the complete product (as it was checked as model).

3.2 Expiry or declaration of invalidity of a certificate

3.2.1 A certificate shall expire if

- the date of validity has expired;
- the contract on the certification of products and on the issuing of a marking terminates;
- the certificate holder waives the right to the certificate or discontinues the production of the certified product;
- the certificate holder does not accept the amendments to the Terms and Conditions, the Inspection and Certification Ordinance or the fee schedule of the Notified Body as binding after a transition period specified in section 8;
- the certificate holder becomes insolvent or an application for insolvency is rejected due to lack of assets;
- the rules underlying the certificate were changed and possible transition periods have expired. The validity of the certificate shall be extended if, within a reasonable period set by the Notified Body, it is established by means of a

repeat inspection at the expense of the certificate holder that the certified products also comply with the new regulations.

- 3.2.2 Moreover, a certificate may be declared invalid or terminated by the Notified Body if
- defects not identifiable or not identified during the inspection are subsequently found in the products;
 - the examination of the products furnished with the marking reveals defects;
 - products furnished with a marking do not correspond to the certified test samples;
 - evidence of the proper performance of control inspections on the business premises of the owner of the certificate or at another test facility is not demonstrated within 4 weeks, in spite of a written request from the Notified Body (see section 3.1.4),
 - the owner of the certificate refuses to allow a visit of the manufacturing and testing facilities or warehouse by the representative of the Notified Body, or the removal of products for the purposes of checks by the Notified Body,
 - considerable defects are detected in the quality assurance during the regular inspection, according to section 4.1,
 - the fees due are not paid, after reminders, within the period set. If the fees do not relate to a specific certificate, the Notified Body decides to which certificate this measure shall relate,
 - the marking is used in misleading or otherwise unacceptable advertising;
 - on the grounds of facts that were not clearly identifiable at the time of the inspection, the continued use of the marking is no longer justified due to its significance on the market.
- 3.2.3 The declaration of invalidity will be published.
- 3.2.4 In cases where the Notified Body withdraws the certificate due to the product's non-compliance with the certified requirements, the certificate holder shall receive the possibility - within a specified period of up to four weeks - to make a proposal for re-establishing the conformity. If this proposal is sufficient the certificate holder shall re-establish the conformity within an agreed period but not longer than the duration of a surveillance period. During this period the certificate shall be suspended.
- 3.2.5 The certificate holder shall lose the right to affix the marking to the products listed in the certificate, as soon as the validity of the certificate expires or it is declared invalid.
- 3.2.6 After the validity of the certificate expires or after a declaration of invalidity is stated the certificate shall be returned to the Notified Body even though the holder is granted the permission to sell the remaining stocks using the marking.
- 3.3 Sale of products furnished with the marking after the validity of the certificate has expired (sales permit)
- 3.3.1 After the validity of the certificate expires or after a declaration of invalidity is stated the following may be granted:
- The sale of the available remaining stock of ready-to-use final products for a reasonable period but not longer than 12 months.
 - The assembly of the available prefabricated individual parts that at that time were intended for the manufacture of the final product in its original certified construction type for a quantity specified by the Client. However, it shall not be granted for a period longer than 6 months after the validity of the certificate has expired.
- 3.3.2 Upon request, stocks of finished products furnished with a marking shall be immediately reported to the Notified Body by making a statutory declaration that is suitable to be used in court.
- 3.3.3 For the duration of the sale permit the general Terms and Conditions and the Inspection and Certification Ordinance of the Notified Body remain valid.
- 3.3.4 If a sales permit is not granted or withdrawn the certificate holder shall be obliged to remove the marking from any relevant products to which he has access, or to destroy the products and give the Notified Body the opportunity to perform a corresponding subsequent inspection.

In special cases the Notified Body is entitled to claim a recall.

4 Regular surveillance

- 4.1 After each successful product certification the Notified Body monitors the use of the certificate and the marking in compliance with the contract.
- 4.2 In order to ensure that the product quality remains constant the Notified Body, depending on the applicable certification programme, will perform regular inspections of the production and inspection facilities as well as of the QA system, the costs of which shall be borne by the certificate holder.
- 4.3 Moreover, the Notified Body will be entitled at any time - without prior notification - to inspect the production facilities and business premises and warehouses and to take a free of charge sample of the products which were granted a certificate to perform an inspection.
- 4.4 The certificate holder shall receive a written report on the result of the inspection
- 4.5 If defects are found during the inspection, the certificate holder shall bear the incurring costs.
- 4.6 The certificate holder is obligated to inform the Notified Body about serious customer complaints.
- 4.7 The certificate holder is obliged to report any damage relating to tested products to the Notified Body.

5 Publication of inspection reports and certificates

The certificate holder may only disclose inspection reports and certificates in their full and unabridged form, specifying the date of issue. Any publication or reproduction shall require the prior approval by the Notified Body.

6 Consumer Information

The Notified Body retains the right to publish a list of the certified products to provide information to the consumers.

7 Offences against the Inspection and Certification Ordinance

The Notified Body is entitled, in the event of culpable offences against the Inspection and Certification Ordinance being demonstrated, and in particular in the event of unlawful use of the possibly agreed marking, to demand a contractual penalty of up to EUR 5,000.00 for each case of violation.

Use of the marking shall also be considered unlawful, if a product is offered for sale or circulated bearing the marking before the certificate is issued, or if inadmissible advertising is published.

8 Complaints

It is possible to file an objection against inspection and certification decisions and to appeal against the performance of procedures. Objections against European or international procedures such as notified bodies groups, IECCE or IECEx shall be addressed to the complaints board of the respective system.

9 Commencement of and Amendments to the Inspection and Certification Ordinance

This Inspection and Certification Ordinance shall become effective on 01 December 2011.

- 9.1 It shall lose its effectiveness after the introduction of a new Inspection and Certification Ordinance and a transition period of 6 months.
- 9.2 The Client or the certificate holder shall be particularly informed of the commencement of a new or the invalidation of the current Inspection and Certification Ordinance.

10 Access for accreditation personal

By awarding the contract the Client agrees to allow access to his premises to the employees of the accreditation body of the TÜV NORD Luxembourg s.a.r.l. as part of the surveillance by the Notified Body.