

kiwa



Partner for progress

General Terms and Conditions in regard to the services of Kiwa GmbH



Version 1 / 1. November 2014



1. General provisions

1.1 Unless otherwise explicitly agreed in writing, all offers or services of Kiwa GmbH (hereinafter referred to as „Kiwa“), all contractual relations between Kiwa and the Customer arising from or relating to the latter (hereinafter referred to as „contractual relations“) and also the contractual agreements subsequently entered into shall be subject to these General Terms and Conditions of Business.

1.2 Kiwa shall provide all services exclusively for those natural/legal persons under private or public law from whom it has received the order („Customer“). The contractual relations between the Customer and Kiwa shall not bring about any protective effect in favour of third parties. Anything to the contrary shall require an express contractual agreement.

1.3 Unless Kiwa receives any written instructions from the Customer to the contrary, no party other than the Customer itself shall be entitled to give Kiwa instructions on providing the contractually agreed services.

1.4 If an agreement materialises between the Customer and Kiwa, the Customer acknowledges the validity of these General Terms and Conditions of Business as binding upon it. Where certification services or any testing and inspection services to be provided in this regard are made the subject of the contractual relations, the Customer further acknowledges the validity of the Testing, Inspection and Certification Regulations (TICRs) as binding. The TICRs may be inspected on Kiwa's website and printed out at any time. Where any provisions of these General Terms and Conditions of Business are in conflict with provisions of the TICRs in the case of agreements that are simultaneously subject to the TICRs, the provisions of the TICRs shall take precedence over these General Terms and Conditions of Business.

1.5 Any deviating, conflicting or supplementary General Terms and Conditions of Business of the Customer or verbal subsidiary agreements shall not form an integral component of the agreement unless Kiwa expressly acknowledges their validity in writing.

2. Conclusion of the agreement

Agreements governing inspections and certifications of products, processes and services shall require to be made in writing in the form of an agreement signed by both parties in order to be legally valid. Otherwise contractual relations between Kiwa and the Customer may be substantiated informally in writing or verbally. Orders placed verbally shall be confirmed by Kiwa in writing, in electronic form or text form. Solely such confirmation shall be pertinent in regard to the content of the contractual relations in this case.

3. Services of Kiwa

3.1 Only the contractual provisions agreed between the Customer and Kiwa and the purpose specified in the agreement shall set out the scope of the services to be provided by Kiwa. Any deviations from the latter shall require an express written agreement. The services to be provided by Kiwa shall not include the services that are provided by the Customer itself.

3.2 Where advance payment has been agreed between the Customer and Kiwa, Kiwa shall only commence provision of the services once the agreed amount of the advance payment has been received in full.

3.3 Kiwa shall provide its services with the necessary degree of care, in accordance with the contractual provisions. In doing so, it shall take specific and contractually agreed instructions of its Customer into consideration. In the event of a lack of specific instructions, Kiwa shall provide its services with the degree of care customary within the industry, observing the pertinent commercial practices, paying attention to the generally accepted rules of technology.

3.4 Kiwa cannot guarantee a particular outcome desired by the Customer, and shall only submit declarations in the course of objectively applying its expert knowledge. The Customer shall bear the risk in regard to the usability of the results of the services provided by Kiwa, in particular for any use deviating from the purpose stipulated in the agreement.

3.5 When carrying out any agreed tests, Kiwa shall take the materials and test items provided by the Customer or selected by Kiwa itself after consulting with the Customer as a basis. Any test results obtained by Kiwa shall refer exclusively to the tests items which are supposed to be tested by Kiwa in accordance with the agreement in place with the Customer.

3.6 In so far as Kiwa receives documents on any contractual relationship between the Customer and any third parties or documents of a third party, such as inspection and test reports, product descriptions, data sheets, etc., the latter shall, notwithstanding the provisions of any other agreement, only be evaluated as information, without their extending or limiting Kiwa's area of responsibility or the agreed obligations incumbent upon the latter.

3.7 The Customer acknowledges that, by providing its services, Kiwa does not assume the position of either the Customer or a third party, nor does it exempt the latter from any obligations or assume, limit or revoke obligations towards third parties on the part of the Customer or vice versa, or exempt the Customer from such obligations vis-à-vis third parties or exempt third parties from obligations vis-à-vis the customer, in any other way. To that extent, Kiwa also will not take on the task of issuing any notifications whatsoever vis-à-vis third parties (authorities, Rapex, etc.) con-

cerning the contractually accepted services or the results of them without a separate mandate. Such task is to be taken on by the Customer, who is the only party that needs to pay attention to adhering to any statutory notification requirements. The Customer shall likewise continue to bear sole responsibility for the obligations incumbent upon it as manufacturer of a product in the case of a mandate taken on by Kiwa.

3.8 Should the Customer provide Kiwa with work results of a third party as the basis for the services to be provided by Kiwa, Kiwa shall take such results as the basis for providing its services without examining them. In the absence of any other explicit and written agreement, it shall not examine such work results of third parties. It is also not obliged to do so. Kiwa shall, in such cases, in the absence of any other explicit and written agreement, also not take on any liability whatsoever for the accuracy and completeness of the work results created by the third party or any consequences, if faults are found. The latter shall also apply in so far as such faults may have an adverse impact upon Kiwa's services or even render the latter unusable.

3.9 Any services contractually taken on by Kiwa shall, in the absence of any other agreement, be carried out based on the statutory provisions, the rules and regulations governing the creation and use of the services and the generally accepted rules of technology. Should there be multiple suitable procedures, Kiwa shall, following consultation with the Customer, use those procedures which Kiwa deems suitable for technical reasons, reasons relating to business organisation and/or economic reasons. Where no pertinent norms, rules and regulations, standards or statutory provisions govern the agreed contractual services, or where the Customer explicitly

insists on the services being carried out in a different way (especially on tests or inspections which use different procedures from those laid down in these provisions), Kiwa shall establish the manner in which the services are to be rendered in consultation with the Customer. In the case of tests and inspections that are taken on contractually it does, however, need to be ensured that an objective test or inspection procedure is thus guaranteed, on a transparent basis. Should the latter not be possible, Kiwa may decline a test or inspection or the continuation of the latter, and terminate any agreements concluded on the latter. The same shall apply if, based on the quantity or properties of the test items (in that respect, also due to lack of intact packaging), it is not possible to carry out an objective testing or inspection procedure on a transparent basis and, in spite of a subsequent grace period set by Kiwa, the customer does not subsequently provide test items in a sufficient quantity and/or quality, so that an objective testing procedure can be conducted on a transparent basis.

3.10 Once contractually accepted tests, inspections or other investigations have been concluded, Kiwa shall prepare a report on the latter. This will be derived from the results of the services contractually provided by Kiwa. Such results will only be evaluated by Kiwa if the latter has been agreed upon between the parties. In that respect, such an evaluation shall be based on existing technical rules and regulations and generally accepted technical standards, commercial practices and other circumstances which, in Kiwa's opinion, need to be observed. In the event of tests or inspections that are flawed with deficiencies, the report will show any deviations from the basis for testing and inspection as ascertained. To that extent, Kiwa shall, however, not indicate any possible solutions without a separate agreement.

3.11 Reports by Kiwa shall exclusively reflect the facts established as at the date of the test within the scope of what has been contractually agreed or any other guidelines established by Kiwa that define and regulate the tests in accordance with Art. 3.9. Kiwa shall not be obliged to make reference to any other values or facts or report on the latter. Reports by Kiwa, the subject of which is the testing of samples, shall exclusively be in response to such samples and shall not make any statements about the remainder of the delivery/lot from which the samples have been taken. The foregoing provisions shall also apply to the transmission of results obtained by Kiwa to customers, unless Kiwa prepares a report on the latter.

3.12 Kiwas shall make reports available in writing, in electronic form or in text form. The customer accepts that messages and reports transmitted electronically (in particular over the Internet) may be lost, changed or falsified, with or without the help of third parties, that e-mails are not protected from access by third parties, and that Kiwa therefore does not accept any liability whatsoever for the confidentiality and integrity of e-mails which have left Kiwa's sphere of responsibility. Kiwa shall likewise not accept any liability for any computer viruses occurring in connection with the electronic transmission of data and any technical damage which may be incurred to the customer as a result.

3.13 Kiwa shall be entitled to sub-contract any services to be provided to the customer, in whole or in part, to a third party. The customer authorises Kiwa to disclose to sub-contractors any information required for fulfilling the services assigned. Notwithstanding the latter, the transfer of services to a sub-contractor shall be dependent upon the customer's consent, in so far as ser-

vices are concerned which are covered by Kiwa's testing, inspection and certification regulations or in so far as the latter is stipulated in DIN EN ISO/IEC 17020 and 17065.

4. Delivery and taking back of test items

4.1 Samples, test material or test items (hereinafter uniformly referred to as „test items“) are to be provided to Kiwa by the customer along with the full accompanying technical documentation necessary for conducting a test (e.g. structural overview of the test setup, processing instructions, certificates pertaining to safety-related components used, any other technical documentation), adhering to the regulations on hazardous materials or any other statutory transport regulations, free of rights of third parties, at Kiwa's premises, or - depending upon what has been contractually agreed - at a different location, where the test is supposed to be carried out (test location). Notwithstanding what has been set out above, Kiwa may also stipulate another test location, if the end of this is to ensure that the test environment does not falsify the test results and fulfils the testing requirements. Kiwa shall inform the customer accordingly. In cases where the test is to be carried out for the purpose of a subsequent certification, the test location needs to be accredited by the certification authority.

4.2 Documents are generally to be handed over in German. It shall be possible to present them in another language following prior consultation with Kiwa. However, Kiwa reserves the right to have individual passages presented to it in German, or to prepare corresponding passages itself at the customer's expense.

4.3 Should multiple test items be required,

Kiwa shall inform the Customer of the number required. If need be, Kiwa may also request additional test items free of charge.

4.4 The test items provided by the Customer need to be labelled with the the Customer's name and bear any other label requested by Kiwa. The Customer shall bear the costs and risk of delivery of the test items, unless collection by Kiwa has been agreed. Should the test items be shipped by the customer, they need to be properly packed, taking into account any instructions issued by Kiwa. The packaging needs to be chosen in such a way that it can also be used to return the items to the customer. In the case of sampling and transport by Kiwa, the responsibility for the transport and storage of the test items shall pass to Kiwa on site upon Kiwa accepting the items. Any special services, such as the provision of suitable test vessels for processing the order or technically appropriate sampling being carried out by Kiwa, are to be agreed separately.

4.5 Any test items collected, including any unused samples, are to be kept until the tests have been concluded and the test report has been prepared. Kiwa shall only keep the test items for a longer period of time if the latter arises from statutory regulations, the testing standards or product specifications applicable to the tests, the agreement between the customer and Kiwa or DIN EN ISO IEC 17025. In such a case, the statutorily required storage periods arising from the latter shall apply. Once the test report has been prepared or once the above-mentioned deadlines have expired, the tests items shall, at Kiwa's option, either be returned to the customer or disposed of, in regard to which Kiwa's responsibility for such test items shall simultaneously lapse. In the event of the items being returned, the customer shall be required to pay any handling fees

and freight charges incurred. The customer shall bear the risk of the return transport. Should the test items be disposed of, the customer shall bear the costs of disposal.

4.6 The customer shall, at Kiwa's request, be required to collect any test items or any other material, including any documentation handed over, which a customer sends Kiwa without being requested to do so or without any separate agreement being entered into extending to the latter, at its own expense, without delay. Kiwa shall not accept any responsibility or liability whatsoever for the latter, and in fact also not for storing such items properly.

4.7 The customer warrants that any test items that it hands over to Kiwa for the provision of the services instructed or which Kiwa may take as samples on site itself, with its consent, are free of any rights of third parties, that any company designations, trademarks or any other business designations on products are in compliance with the statutory requirements, and that, by instructing Kiwa to carry out services, it does not infringe or impair any rights of third parties (including any copyrights). To that extent, the customer shall free and relieve Kiwa from any claims made by third parties.

4.8 The customer shall be required to compensate Kiwa for any losses incurred through handing over test items disregarding the above provisions.

5. Obligations on the part of the customer

5.1 The customer shall assist Kiwa in providing the services. In the case of on-site services, it shall in particular grant Kiwa the necessary

access to its grounds and premises where the contractually agreed services are supposed to be provided, and supply qualified staff, as well as any other equipment, aids and infrastructure required for Kiwa to carry out the services. It shall inform Kiwa without delay on any circumstances concerning Kiwa's fulfilment of the agreement, as well as name a contact person entitled to represent the company who is available during the usual business hours. It shall, moreover, be required to take any steps necessary in order to eliminate or remove any hindrances or interruption that may prevent Kiwa from being able to carry out the services. It shall also ensure that Kiwa is provided with all the information, instructions and documentation required for carrying out the mandate in sufficient time for Kiwa to be able to provide the agreed services as contractually agreed (at least 48 hours prior to commencement of the agreed services).

5.2 The customer hereby authorises Kiwa to obtain the information required to provide the contractually agreed services from parties involved, authorities or third parties, and shall grant a separate power of attorney in regard to the latter upon request.

5.3 The customer shall, in the event of tests being carried out on site, take all steps necessary to ensure the physical safety and legal security of the working conditions, sites and facilities during the time that Kiwa carries out the contractual services taken on, on its own responsibility. The latter shall in particular apply to ensuring any special requirements in regard to occupational safety. If necessary, the customer shall inform Kiwa about such requirements prior to the contractually agreed services being carried out. Any protective equipment that goes beyond the scope of per-

sonal protective equipment shall - unless anything to the contrary has been agreed - be provided by the customer at its own expense. Briefings on occupational safety for employees of Kiwa are to be conducted by professionally trained staff of the customer, and the customer shall bear sole responsibility for the latter. To that extent, the customer may, on its part, not base its decision on any recommendations put forward by Kiwa, regardless of whether it requested such or not.

5.4 The customer shall moreover inform Kiwa in writing about any known risks or dangers associated with carrying out the services or taking a sample or which are connected with the test items or conducting an examination - regardless of whether such risks actually exist or may only potentially exist - prior to providing the contractually agreed services. Examples of such risks might be the existence or possibility of radiation, any toxic, hazardous or explosive components or materials, or environmental pollution or toxins.

5.5 Should the customer be provided with equipment or documentation by Kiwa, the latter shall remain Kiwa's property. The customer undertakes to handle the latter carefully, treat any documents provided confidentially, not pass them on to third parties without Kiwa's consent, and return them to Kiwa once the mandate has come to an end.

5.6 In addition to the statutory obligation to formally accept any contractually provided services that do not have any substantial defects, Kiwa may require the customer to accept self-contained parts of the services that can be used independently, as long as such partial services have been provided as contractually agreed, without any significant defects, and the customer has

already received them or uses them as agreed.

5.7 The use of the company name and/or registered trademarks of Kiwa for promotional purposes, regardless of what nature, is not permitted unless Kiwa has granted its prior written consent.

6. Deadlines and dates for the provision of services / additional expenses in the event of interruptions

6.1 Deadlines and dates for the provision of services by Kiwa shall only be binding if they have explicitly been agreed in writing in advance or have been confirmed by Kiwa in writing.

6.2 Should an agreed or confirmed date for the provision of services not be adhered to for reasons which are the customer's fault, any costs incurred to Kiwa thereby are to be borne by the customer. Kiwa shall, in such a case, be entitled to make use of any testing facilities reserved for other purposes. The customer may not assert any rights against Kiwa arising from the latter. The latter shall in particular apply to the extent that no adequate or suitable test facilities are then available for carrying out the contractually agreed services, or the latter are temporarily unavailable, and the services contractually taken on by Kiwa are delayed as a result.

6.3 Adherence to agreed deadlines or dates or any that have been assured or confirmed by Kiwa shall require that any documents, samples and test items to be delivered or made available by the customer in accordance with the agreement are received in good time in the contractual form, and also that any obligations that need to be fulfilled by the customer for Kiwa to perform the services are likewise fulfilled in good time (espe-

cially the obligations to co-operate, the provision of information and powers of attorney or the obligations in accordance with Art. 5 above) are met by the customer. No deadline agreed or assured or confirmed by Kiwa shall begin to run prior to that. The obligations to be met by the customer also include the timely payment of any fees due, include any advance payments agreed. Should the customer fall into arrears with payment, Kiwa shall no longer be bound by any dates agreed, assured or confirmed by Kiwa.

6.4 Any dates or deadlines agreed or confirmed or assured by Kiwa shall be extended in so far as Kiwa is hindered in providing the services and the hindrance is, for example, caused

- by a circumstance that falls within the customer's sphere of risk (and in fact especially because the customer does not comply with an obligation necessary for the provision of services);
- by rights of retention in its own services legitimately exercised by Kiwa due to any remuneration payments not having been made;
- through strikes or any lock-out at Kiwa's works or at any business otherwise working on behalf of Kiwa ordered by the employer's professional representative bodies;
- through Acts of God or any other circumstances that cannot be averted by Kiwa. The latter shall also apply to adverse weather conditions with which Kiwa would not normally have had to reckon when concluding the agreement or confirming or committing to date.

The extension of any agreed deadlines shall be calculated in accordance with the duration of the hindrance, with an additional period of time for resuming work, as well as taking into consideration the fact that it is not at all certain that, after eliminating the hindrance, sufficient or suitable

test facilities will immediately be available again at Kiwa's premises.

6.5 Should a hindrance or disruptive event not be Kiwa's fault, the customer shall reimburse Kiwa for any additional expenditure necessarily incurred thereby, which is incurred for the purpose of completing the agreed services to be provided by Kiwa in comparison to the period required for the work being uninterrupted. The additional expenditure incurred is - if possible - to be settled in accordance with the agreed contractual prices (unit price, hourly rates, etc.). Should nothing further have been agreed in that respect, remuneration is to be paid for the latter within the range usual in the industry.

7. Termination of the agreement

7.1 The agreement concluded between the customer and Kiwa may be terminated for a significant reason without limitation. Both parties may likewise terminate an agreement if grounds exist for which neither Kiwa nor the customer is responsible that lead to Kiwa not being able to provide or continue to provide the contractually agreed services for a period of at least 12 months (and in fact also not in regard to any ancillary services) or commence the latter, or the execution of the contractually accepted services being interrupted for such a period of time.

7.2 Kiwa may in particular terminate an agreement concluded with the customer in the following circumstances:

- If the customer fails to carry out an action or undertake any other obligation incumbent upon it and thereby causes Kiwa to become unable to provide or continue to provide the contractually accepted services;

- if the customer fails to make a payment due or otherwise falls into arrears with payment;
- if the customer discontinues its payments, insolvency proceedings have been filed by the customer itself, such proceedings are instituted over its assets or the institution of them is declined due to lack of insolvency assets;
- if the execution of an objective test procedure on a transparent basis is not guaranteed in regard to tests or inspections commissioned due to lack of norms, rules and regulations, standards or any statutory provisions, or due to lack of sufficient samples, test materials or any other test items of sufficient quality (cf. Art. 3.9).

7.3 It is a prerequisite of termination in accordance with Art. 7.2 that Kiwa previously sets the customer a reasonable deadline for fulfilling the agreement or for subsequent fulfilment of the omitted action that it is incumbent upon the customer to fulfil and declares that Kiwa will terminate the agreement following the fruitless expiry of the grace period so set.

7.4 Any termination is to be declared in writing.

7.5 In the event of termination, the services provided until such time as the termination takes effect are to be charged for in line with the contractual prices and paid for by the customer. In the event of termination under Art. 7.2, Kiwa may, moreover, also demand the portion of the agreed remuneration attributable to the part of its services no longer carried out. It must, however, allow anything that it has saved by way of costs in consequence of the termination of the agreement or acquired or failed to acquire in bad faith through using its resources elsewhere to be offset. The same shall apply in the event of termination for

a significant reason under Art. 7.1, in so far as the latter is the customer's fault. Notwithstanding the foregoing provisions, the customer shall, following termination, in any event, bear the costs already incurred to Kiwa for completing the contractually agreed services, which will no longer be reimbursed to Kiwa following termination. Any further claims on the part of Kiwa (in particular for compensation for damage, any claims for reparation under Sec. 642 German Civil Code (BGB) for the period of the delay in acceptance) shall not be affected thereby.

8. Restriction on use / confidentiality / advertising material, whether online or in other media

8.1 The customer may only use the reports or expert opinions prepared within the scope of the contractual relations, along with all the tables, calculations and other details, as well as any other services and work results, for the purpose for which such reports or expert opinions are intended, as agreed, following payment of the agreed remuneration in full. The customer shall, however, not be permitted to alter or edit reports or expert opinions or only use excerpts from them. It shall only be permissible to pass on reports, expert opinions or any other work results of Kiwa to authorities or any other public bodies in so far as and as long as the latter is necessary or required by law in accordance with the contractually stipulated purpose. Furthermore, any publication or reproduction of the reports, expert opinions or any other work results of Kiwa - also in the form of excerpts - in particular over the Internet or for promotional purposes, as well as any other passing on of the latter to third parties, shall only be permissible upon having obtained Kiwa's prior written consent.

8.2 Unless anything to the contrary emerges from Art. 8.1 above, the customer shall be obliged to treat the documents and information received from Kiwa within the scope of the contractual relations, including the content of the offer and the contractual relationship existing with Kiwa, especially any trade and business secrets, confidentially.

In the absence of any other statutory obligation which may exist, it shall not pass the latter on to third parties or use them without authorisation for its own purposes without Kiwa's prior written consent. It shall, moreover, take all reasonable precautions to protect the information and documentation from unauthorised access, unauthorised disclosure, duplication, being passed on or any other unauthorised use.

8.3 Should a judicial or official request for the disclosure of information or documents be issued, which the customer has obtained within the scope of the contractual relations, it shall inform Kiwa in writing without delay.

8.4 The requirement for confidential treatment in accordance with the foregoing provisions shall not mutually exist if any information and documents are publicly known or accessible, or they were already known, or they were announced to the party inherently obliged to confidentiality by a third party without any breach of a confidentiality obligation. In regard to the entitlement to disclose information or documents, the party which relies on the present exemption shall bear the burden of explanation and proof.

8.5 Kiwa shall be entitled to publish company names of the customers who run a trade operation (Gewerbe), e.g. in the form of reference lists. The customer hereby grants its consent to the latter.

8.6 The aforementioned obligations shall continue to apply beyond the termination of any contractual relations between the customer and Kiwa.

9. Copyright protection

Kiwa shall retain the copyright in the services provided - in so far as the latter are suitable for that purpose.

10. Terms of payment

10.1 All prices are quoted exclusive of the respective applicable statutory VAT. The latter will be shown separately on invoices. Unless anything to the contrary has been agreed, the costs of journeys for employees of Kiwa, any other outlays, costs of packaging, transport and storage of samples, test items and test material, as well the disposal of the latter, shall be invoiced separately and are to be borne by the customer.

10.2 In the absence of any other agreement, Kiwa may request the customer to make instalment payments for services already provided as agreed, pro rata in the amount to which the value of the services provided correspond in relation to all the services to be provided under the agreement. The VAT is to be shown separately in an interim invoice for payments on account. In so far as Kiwa has provided self-contained and independently usable components of services contractually taken on and the latter have been formally accepted (cf. Art. 5.6), Kiwa may also charge for such services independently, by way of a partial final invoice.

10.3 Unless anything to the contrary has been agreed, invoices shall be due for payment immediately upon receipt.

10.4 The customer may only offset claims on the part of Kiwa if the customer's counterclaims are undisputed or have been established with legal finality. Offsetting shall, moreover, be permissible if the customer wishes to offset any claims for defects orientated towards monetary payment against any claims to remuneration on the part of Kiwa arising from the same contractual relationship.

10.5 The customer may assert a right of retention against any claims by Kiwa if the customer's counterclaim is undisputed or has been established with legal finality and is based on the same contractual relationship. The customer may, furthermore, assert a right of retention in regard to claims to remuneration on the part of Kiwa in so far as the counterclaim is based on rights in regard to defects that the customer is entitled to assert.

10.5 Any foreign taxes and duties of any kind are to be ascertained and borne by the customer and paid on site, to the extent that an obligation to deduct input tax is stipulated under the foreign law. Such taxes and duties shall not reduce the agreed remuneration to be paid to Kiwa. The customer or any other recipient of the invoice shall be jointly and severally liable for correctly ascertaining and paying any foreign taxes, and shall, upon first being requested to do so, free and relieve Kiwa from any losses which may be incurred to Kiwa arising from the non-fulfilment of any fiscal obligations on the part of the debtor.

11. Claims for defects, liability

11.1 Any reports by Kiwa (in particular any prepared after the tests and inspections have been carried out) shall be prepared on the basis of the information, documents and/or samples, test items or test material provided by the customer

or on its behalf. They shall exclusively serve to benefit the customer and -- unless anything to the contrary has been agreed - are exclusively intended for it. Third parties may not appeal to any reports by Kiwa or any other results notified by Kiwa. To that extent, Kiwa shall also not be liable for any claims asserted by such third parties. The latter shall in particular apply to any losses incurred to third parties or competitors due to incorrect or erroneous details or statements made in reports prepared by Kiwa or results notified to the customer. The latter shall also apply to pecuniary losses and indirect losses, such as procedural costs or fees arising from disputes under competition law or trademark law.

11.2 The customer shall draw the necessary conclusions from the reports prepared by Kiwa or any other results notified on its own responsibility. Neither Kiwa nor its senior executives, employees or sub-contractors shall be responsible vis-à-vis the customer or third parties for any kind of actions that have either been implemented or omitted based on reports or any other results notified prepared by Kiwa, or for erroneous tests resulting from unclear, false, incomplete or erroneous information transmitted by the customer.

11.3 Kiwa shall not be liable

- for services partially or entirely not provided, or provided late, in so far as the latter directly or indirectly stems from events that are not Kiwa's fault or are otherwise beyond Kiwa's control. The latter shall in particular apply in the case of an infringement of the customer's obligations established in Article 5 or in the event of actions which the customer has failed to take that are, however, necessary for Kiwa to be able to provide its services.
- Kiwa shall also not be liable for the actions or omissions of staff of the customer, which the

customer makes available to Kiwa under the agreement to assist Kiwa in providing the services, unless the staff made available are to be deemed vicarious agents of Kiwa. Unless Kiwa is liable in accordance with the foregoing sentence for any employees of the customer deployed, the customer shall free and relieve Kiwa from any claims by third parties.

- Kiwa shall also not be liable for the accuracy of the content or the legitimacy of the basis for testing used. Kiwa shall also not be liable for the condition or calibration of the apparatus, instruments or measuring devices used by third parties, or for methods of analysis applied or the qualifications, acts or omissions of the employees of the third party or its analytical results;
- Kiwa shall also not be liable for any losses arising in consequence of changes made to certified products that Kiwa was not made aware of and which were not notified for checking;
- Kiwa shall also not be liable for any damage to test samples or test items and their packaging, and in fact in particular not in consequence of the tests themselves or due to burglary, theft, fire, water or cases of Acts of God. The latter shall also apply to documents of the customer made available.

11.4 In the absence of any agreement to the contrary, Kiwa shall not accept any liability, either vis-à-vis the customer or third parties, for a product of the customer on which Kiwa is providing a contractual service being free of defects and suitable for use. A test conducted by Kiwa with a conclusive expert opinion, report or certificate shall not exempt the customer from its statutory obligation to assume product liability. Kiwa shall also not be liable for any losses caused by the product or its use. Kiwa shall likewise not be liable for indirect or consequential damage, in par-

ticular not for lost profits, interruption to business, loss of a business opportunity, a reduction in the goodwill of the business or any costs associated with product recalls. Kiwa shall also not be liable for any losses, damage or costs which may be incurred to the customer as a result of a claim by a third party (in particular if product liability claims are asserted). Kiwa is, for its part, not an insurer or guarantor, and also does not provide any services of that nature. Kiwa can only assume liability for the services being suitable for the customer's purpose if a corresponding guarantee assurance has expressly been given in writing.

11.5 The customer is to notify Kiwa in writing about any defects in services provided or any events giving rise to damage within 30 days of discovering the latter. Should the latter be obvious defects, which already existed at the time of Kiwa's services being handed over to the customer or formally accepted by the customer, the aforementioned deadline shall begin to run upon such services being handed over or formally accepted; otherwise, it shall begin to run as at the date on which the defect or event became evident to the customer. Should the customer miss this deadline for notifying obvious defects, no liability for defects shall exist on the part of Kiwa for such obvious defects that were not notified.

11.6 Kiwa's liability for defects in the services provided shall initially be limited to subsequent fulfilment within a reasonable period of time. Should the subsequent fulfilment fail, the customer shall be entitled to reduce the invoice or withdraw from the contract, at its option.

11.7 Any liability on the part of Kiwa in regard to defects in services provided, as well as any arising from any other contractual or pre-contractual breaches of duty, shall become statute-barred af-

ter 12 months, counting from the statutory commencement of the period of limitation. Sentence 1 above shall not apply in the case of a structure or a work, the success of which consists in providing planning or monitoring services for the latter, or an item which, as per its usual purpose, has been used for a structure and has caused the latter to be defective.

11.8 In so far as Kiwa is liable, notwithstanding any legal grounds Kiwa's liability shall be limited, in particular in the case of any breach of duties arising from the contractual obligation, or tort, to cases of gross negligence or wilful intent. Any liability for slight negligence is excluded, unless an infringement of a material obligation on the part of Kiwa exists. A material obligation in this sense shall be understood to mean any obligation, the fulfilment of which at all enables the agreement to be duly implemented in the first place, and adherence to which the customer may usually rely on. In the latter case, the claim for compensation for damage shall, however, be limited to the contractually typical foreseeable damage. In the case of any existing liability on the part of Kiwa, the latter shall be limited to a total amount of 2,5 Mio Euro.

Kiwa hereby expressly makes an offer upon conclusion of the agreement to its customers to accept a greater maximum amount of liability in return for payment of a separate fee. In the case of any impending greater losses, in addition it is recommended to take on supplementary insurance, and Kiwa will also assist, upon the customer enquiring, the customer with the conclusion of such insurance prior to concluding the agreement.

11.9 The above limitations of liability in favour of Kiwa shall equally apply to the personal liability of employees of Kiwa, as well as the vicarious agents instructed by Kiwa.

11.10 The limitations of liability set out in this Article 11 shall uniformly not apply

- to losses arising from injury to life, the body or the health which are Kiwa's fault or which are based on any wilful or negligent breach of duty on the part of a legal representative or vicarious agent of Kiwa;
- to any other losses based on grossly negligent or intentional breach of duty by Kiwa or one of its legal representatives or vicarious agents;
- to any liability on the part of Kiwa under the Product Liability Act;
- to any liability on the part of Kiwa in so far as Kiwa has not complied with a warranty provided.

No reversal of the burden of proof shall be associated with the above provisions in Article 11 to the detriment of the customer.

12. Data privacy

Kiwa shall save and process personal data exclusively for the purpose of handling the business relations with the customer. The customer agrees to data being stored in this respect and to the use of its data and documentation in Kiwa's data processing system.

13. Requirement for the written form

Any amendments or additions to the contractual provisions agreed between Kiwa and the customer shall require to be made in writing. In so far as, in accordance with the General Terms and Conditions of Business or based on any other contractual provisions, the written form is stipulated, such a requirement for the written form may only be dispensed with in writing.

14. Place of jurisdiction, place of performance and applicable law

Any disputes arising from the contractual relations between the customer and Kiwa, including these general terms and conditions of business, shall be subject to the application and interpretation of the law of the Federal Republic of Germany, subject to exclusion of the regulations of international private law. The exclusive place of jurisdiction for all such disputes shall, in so far as the customer is a merchant, legal entity under public law or special fund governed by public law, be Hamburg. Hamburg shall likewise be the place of performance. Kiwa shall, however, also be entitled to take legal action against the customer at its general place of jurisdiction.

15. Adaptation of the General Terms and Conditions of Business

Any amendments to these General Terms and Conditions of Business (T&Cs) shall be notified to the customer in text form no later than two months prior to the proposed date of their taking effect. The customer's consent shall be deemed to have been received if the customer has not notified Kiwa that it objects to the amendments prior to the proposed date from which they are to take effect. Kiwa shall make special reference to this acceptance effect in its notification about the offer to amend its T&Cs. Should the customer decline the offer to amend these T&Cs, each party shall be entitled to terminate the agreement by giving three months' notice to the end of the respective current month, within one month of Kiwa receiving the declaration that the amendments are declined.

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Herausgeber

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