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RULES OF PROCEDURE

for the execution of the conformity assessment procedure under EU product harmonisation acts

40005-05-E-EN

RULES OF PROCEDURE OF DVGW CERT GMBH

Legal notice

Doc no.: 40005-05-E-EN

5th edition, August 2019

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For the purpose of interpreting this document, only the German version shall be authoritative.

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Rules of Procedure for the execution of the conformity assessment procedure under EU product harmonisation acts

PREAMBLE

DVGW CERT GmbH (**contractor**) is a notified body within the meaning of the European product harmonisation acts. It performs the tasks of a notified body on behalf of various economic operators (e.g. type examination and surveillance). This includes, in particular, the execution of conformity assessment procedures in which a notified body must be involved. The conformity assessment procedure checks whether the product to be tested meets the requirements of the applicable European directives or regulations. A positive conclusion of the conformity assessment procedure and its documentation in the form of a certificate issued by the contractor serves as the basis for preparing a declaration of conformity and marking the product with the CE mark, among others.

The contractor is a notified body in accordance with the EU Gas Appliances Regulation[1] (GAR), the EU Boiler Efficiency Directive[2] (BED), the EU Pressure Equipment Directive[3] (PED) and the EU Construction Products Regulation[4] (CPR).

These Rules of Procedure govern the contractual relationship between the contracting entity (**client**) and the contractor within the framework of performing of the tasks listed above.

SECTION 1: GENERAL

§ 1 Scope

The Rules of Procedure apply to contracts between contractor and client which relate to the certification, testing or surveillance of all products which fall within the scope of European acts or their national transposition acts and for which the contractor has been notified.

§ 2 Definitions

(1) **Manufacturer** means any legal entity, natural person or partnership having legal capacity (undertaking), which manufactures a product or has a product designed or manufactured and markets it under its name or trademark in the European Union. An importer or distributor is also considered a manufacturer where he places a product on the

1 Regulation (EU) 2016/426 of the European Parliament and of the Council of 09 March 2016 on appliances burning gaseous fuels and repealing Directive 2009/142/EC (OJ L 81/99 of 09 March 2016).
2 Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels (OJ L 167 of 22 May 1992, as amended by OJ L 220 of 30.08.1993).
3 Directive 2014/68/EU of the European Parliament and of the Council of 12 May 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of pressure equipment (OJ L 189/164 of 15 May 2014).
4 Regulation (EU) No. 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ L88, 4 April 2011).

market exclusively under his name or trademark or modifies a product already placed on the market in such a way that compliance with the applicable requirements may be affected.

(2) **Authorised representative** means any undertaking established within the European Union which has received a written mandate from a manufacturer to act on his behalf in relation to specified tasks. This may also be the importer or the distributor.

(3) **Importer** means any undertaking established within the European Union which places a product from a third country on the Union market.

(4) **Distributor** means any undertaking in the supply chain, other than the manufacturer or the importer, which makes a product available on the market.

(5) **Type examination** is a part of the conformity assessment procedure whereby the contractor as a notified body examines the type or technical design of the product and verifies whether it satisfies the applicable requirements of the legal regulation.

(6) **Type** is a specimen of the complete product that is representative of the production envisaged.

(7) **Design examination** is the examination of the product based on the technical documentation and supporting evidence of the product.

(8) **Technical documentation** are the documents belonging to the product which must be consulted in order to assess the compatibility of a product with the applicable legal requirements. Depending on the applicable legal requirements, the technical documentation may include the following elements in particular: A general description of the product; conceptual design, manufacturing drawings and schemes of components and sub-assemblies; descriptions and explanations of the plans; a list of standards and technical specifications applied; results of design calculations; examinations, test reports.

(9) **Surveillance** in the production phase is part of the conformity assessment procedure which follows the certification carried out after the type examination and provides for regular monitoring of the manufacturing plants, among other things. The exact scope of the surveillance audit is determined in each case by the modules specified in Decision 768/2008/EC in conjunction with the harmonisation acts applicable to the product (modules A2, C, C1, C2, D, D1, E, E, H, H1).

(10) **Test specification** are technical rules on which the contractor bases his tests. This includes, in particular, applicable DIN, EN or IEC/ISO standards, European guidelines or other published regulations or certification programmes of the contractor.

(11) **Certificate** is the confirmation of the positive completion of a step of the conformity assessment procedure. The validity of the certificate may be limited in time or subject to conditions.

(12) **Manufacturing plant** is the place where the product is manufactured. This also includes manufacturing plants of components.

(13) **Product** is the result of a manufacturing process including associated types and variants of a series for which the same manufacturer is responsible. Types of a series are distinguishable from each other by a certain technical feature and are identical with regard to their other design features. If only the model designation has been changed (e.g. by a distributor), it still remains the same product.

(14) **Components** are intended to be incorporated into other products.

(15) **Major non-conformity** is any deviation from the requirements of the test specifications which has a direct or indirect influence on the safety, hygienic or functional condition of a product and thus results in deficits in terms of usability, performance or environmental compatibility.

(16) **Non-conformity** is any deviation from the requirements of the test specifications that does not constitute a major non-conformity.

(17) **Objection** is an opinion of the client regarding decisions made by the contractor within the context of a conformity assessment procedure.

SECTION 2: CONFORMITY ASSESSMENT PROCEDURE

§ 3 Conformity assessment

(1) Conformity assessment is carried out by way of a conformity assessment procedure. The tasks of the contractor in a conformity assessment procedure are usually divided into type examination and monitoring during the production phase, or auditing as part of a QA system.

(2) A conformity assessment procedure may cover one or more products.

(3) A new procedure must be carried out if components, materials, the operating system software, the design or the manufacturing method of the product has been changed or if test specifications have been changed or revised. This does not apply if the components or the operating system software have already been tested as part of the type examination, if these have been tested separately by the contractor, or if the test specifications provide for a replacement.

(4) The contractor will not start the conformity assessment procedure until the contract has been signed by the client and the contractor.

(5) The contractor monitors the compliance of the manufactured products with the tested type by means of the modules provided for or specified in the applicable product legislation and in accordance with the procedure chosen by the client.

(6) The client ensures that the contractor has access to all manufacturing plants, documents and personnel. This also applies if the client uses the manufacturing plant of a third party.

(7) The client accepts the participation of observers, e.g. assessors of Deutsche Akkreditierungsstelle GmbH (DAkkS) and the contractor's notifying bodies. The cost for the participation of assessors are borne by the contractor.

(8) The contractor carries out the conformity assessment procedure in accordance with the European harmonisation acts applicable to the product to be tested, if the contractor is a notified body for those acts.

(9) After positive completion of the conformity assessment procedure, the contractor issues the client with a certificate in accordance with § 7.

§ 4 Entering into a contract

(1) The client indicates his interest in awarding a contract to the contractor by completing the relevant application form in full and submitting it to the contractor together with the documents listed on the application form. Application forms for the various conformity assessment procedures can be downloaded in their current version form the contractor‘s website (www.dvgw-cert.com) and are available from the contractor‘s service centre.

(2) Both the manufacturer or his authorised representative can act as the client.

(3) After receiving the application documents, the contractor checks the application for completeness and plausibility. If, in the course of the examination, the contractor notices that the application is incomplete or implausible, he informs the client accordingly and enables him to submit or specify his application.

(4) The contractor has the right to reject the application. The contract shall reject the application particularly if:

1. no applicable test specifications exist for the product and / or if no testing laboratories are available in accordance with § 5; or
2. the client has already initiated a conformity assessment procedure with another notified body within the European Union or the Europe an Economic Area for the same product; or
3. the applicant cannot be a client within the meaning of paragraph 2; or
4. the client is in arrears with regard to claims from an earlier contract; or
5. there is clear evidence of a violation of intellectual property rights (e.g. patent or copyright infringement).

(5) If the contractor decides to accept the application, he shall issue a file number for the conformity assessment procedure and send the client a signed order confirmation, by means of which the underlying contract becomes effective. In the order confirmation, the contractor specifies the test programme to be applied.

(6) The terms and conditions set out in the order confirmation, the provisions of these Rules of Procedure, the regulations laid down in the EU product harmonisation acts and all other applicable statutory provisions and regulations, including the recognized rules of technology, form an integral part of the contract.

§ 5 Carrying out the type examination

(1) The type-examination is carried out based on a type, technical documentation and other evidence. The contractor selects representative samples. The contractor may request additional samples if necessary.

(2) The place of the examinations will be agreed in advance between the contracting parties if they are to take place at a location other than the premises of the commissioned body (testing laboratory).

(3) A subcontractor (in particular a testing laboratory) may be involved in the examinations. Any subcontractor will be commissioned either by the contractor or by the client in accordance with the further order arrangements. Commissioning a subcontractor by the client requires the approval of the contractor (DVGW CERT GmbH). The contractor has the right to ensure to the subcontractor or the client that the requirements resulting from the notification are fulfilled in the subcontracting process by imposing appropriate conditions, requirements or other measures on the subcontractor or the client.

(4) As a matter of principle, the contractor carries out the inspection in its entirety. In exceptional cases, test reports provided by the client may be used if:

1. the body carrying out the testing (usually a testing laboratory) is independent of the manufacturer and has a European accreditation according to EN ISO/IEC 17025 at the time of testing and the testing was carried out within the scope of accreditation;
2. the testing laboratory is listed in the contractor‘s notification notice or has its own notification under the appropriate legal framework;

3. evidence is furnished that the product has not changed since it was last tested;
4. there has been no change in the test specifications since the application was submitted; and
5. the test report contains all the information usually contained in the technical documentation.

The contractor decides whether the requirements of nos. 1 to 5 are met and whether the test reports provided by the client can be accepted.

(5) A test report is issued on the results of the tests.

(6) If the product meets the requirements of the applicable EU product harmonization acts, the client receives a certificate. Otherwise, the contractor shall refuse to issue the certificate and shall justify his decision to the client in writing in a comprehensible manner.

§ 6 Carrying out surveillance

(1) If the relevant product legislation do not provide for a specific surveillance procedure, the client may choose between the different surveillance procedures of modules A2, C, C1, C2, D, D1, E, E1, H, H1 in accordance with Decision 768/2008/EC.
The intervals for a repeat surveillance are laid down for each module in the product legislation applicable to the product. Depending on the module, the surveillance interval is between one and two years.

(2) The client is required to inform the contractor immediately of any termination of production. If no test samples are available at the time of the surveillance to be carried out due to a temporary termination of production, the contractor may adjust the surveillance interval in individual cases. In this case, too, the surveillance of the manufacturing plant must be carried out and documented. Regarding compliance with surveillance periods, § 7 (4) applies even if no production takes place.

(3) The client is required to inform the contractor immediately of any resumption of production and to carry out the surveillance within four months after the resumption of production.

(4) The contractor may commission a subcontractor (in particular a testing laboratory or auditor) in connection with the surveillance. The contractor has the right to ensure to the subcontractor or the client that the requirements resulting from the notification are fulfilled in the subcontracting process by imposing appropriate conditions, requirements or other measures on the subcontractor or the client.

(5) The contractor is entitled to pay unexpected visits for the purpose of surveillance and to carry out product tests if necessary.

(6) Surveillance may be terminated in writing by either party with six weeks‘ notice to the end of a calendar year. The right to termination for cause remains unaffected.

§ 7 Certificate

(1) A certificate carrying the name of the manufacturer will be issued for the product. The client may request to receive a supplement to the certificate for different companies, model names or brand names. No supplement will be issued in the scope of the PED. If the manufacturer changes his name, address or model/product designations, the client has to request that the certificate or the supplement to the certificate be reissued with the new information.

(2) The validity of the certificate results from the respective product harmonisation act. The reissue of a certificate to reflect a change in name, address or model/product designation does not extend its validity.

(3) During the period of validity of the certificate, the client is entitled to use the certificate, including for advertising purposes, unless otherwise stated in this paragraph. The client undertakes to enter into a separate license agreement with the contractor regarding the use of the contractor‘s certification mark.

(4) The certificate becomes invalid for the purposes of these Rules of Procedure if:

1. the validity referred to in paragraph 2 has expired;
2. it is replaced by a new certificate;
3. the surveillance intervals pursuant to § 6 were exceeded by more than one year;
4. the client does not facilitate the execution of the surveillance; or
5. other major requirements of these Rules of Procedure are not met.

(5) The contractor may decide to suspend or amend the Certificate if there are reasonable grounds for suspecting any major non-conformity and/or the deadline for submitting evidence of surveillance has been missed by 90 days and/or other major requirements of these Rules of Procedure are not complied with. The client temporarily loses the right to use the certificate if it has been suspended by the contractor. The suspension for major non-conformity or for exceeding the surveillance intervals will be lifted if the client demonstrates compliance with the requirements concerned within 90 days of receipt of the relevant notification. After 365 days at the latest, suspension results in the certificate to expire.

(6) The expiry of a certificate pursuant to § 7 (4) and the suspension of a certificate pursuant to § 7 (5) shall not be affected by lodging an objection pursuant to § 11. If the certificate expires or is suspended, the client undertakes to refrain from making any reference to the certification, in particular in product labelling, advertising material or communication letters.

(7) The client undertakes not to use the certificate in a way that could discredit the contractor and not to make statements regarding certification that could be viewed as misleading or unjustified by the contractor.

(8) In order to continue the certification, the client must submit an application for a new conformity assessment procedure with the contractor before the certificate expires.

§ 8 Disclosure of information to third parties, secrecy

(1) The contractor is entitled to disclose to the competent authorities any knowledge gained in the course of the conformity assessment procedure, provided that he is legally obliged to do so.

(2) The contractor shall keep a register in which all products are included for which valid certificates of the contractor exist and which are monitored by the contractor. The register shall be published on the contractor‘s website. The client agrees to this.

(3) The contractor shall publish the suspension or expiry of a certificate pursuant to § 7 paragraph 4 and paragraph 5 on his website and shall comply with its duty to provide information as required by the acts. The client agrees to this.

(4) The contractor shall treat as confidential any knowledge gained in the course of carrying out the conformity assessment procedure.

(5) The client undertakes to make certification documents available to third parties only in their entirety.

§ 9 Other rights and obligations of the client

(1) The client shall inform the contractor during the certificate's period of validity of any changes with regard to the product or the quality assurance system, its name, address or model/product designations.

(2) The client shall keep a register of complaints received about the certified product. The client shall communicate this register to the contractor at the latter's request.

(3) If there are reasonable grounds for suspecting non-conformity, the client shall, at the contractor's request, have a new type examination carried out, which can also be carried out in the form of partial testing (verification audit).

§ 10 Costs and billing

(1) The costs of the conformity assessment procedure are based on the contractor's price list applicable at the time the contract is signed. The client shall receive the applicable price list at any time upon request from the contractor's service centre, which can be reached by telephone at +49 (228) 9188 888 or by e-mail at info-produkte@dvgw-cert.com.

(2) Costs incurred by using the services of a sub-contractor (e.g. testing laboratories) are invoiced either by the contractor or separately by the respective subcontractor.

(3) The fee will be charged for the contractor's work performed in the conformity assessment procedure. The contractor reserves the right to invoice a portion of his fees immediately after the contract is signed.

(4) In addition to the costs referred to in paragraphs 1 and 2, the contractor charges a registration fee for the certificates valid and suspended as of 1 January of each calendar year. The amount of the registration fee is determined by the price list applicable at the time of invoicing.

(5) The contractor invoices the costs to be paid by the client. The amounts invoiced are due on receipt of the invoice.

(6) In addition to the costs referred to in paragraphs 1 and 2, costs may be incurred for a verification audit. The costs of the verification audit within the meaning of § 9 (3) shall be borne by the client if the non-conformity is confirmed by the verification audit. The same shall apply if an unexpected surveillance pursuant to § 6 (4) is based on reasonable suspicion of non-conformity and the surveillance confirms the non-conformity.

SECTION 3: OBJECTION PROCEDURE AND COMPLAINTS

§ 11 Objection procedure

(1) The client may object to the contractor's decision to issue, refuse to issue or confirm a certificate.

(2) Objections shall be raised within 14 days after receipt of the decision pursuant to paragraph 1.

(3) The contractor shall make a decision regarding the objection within 3 months after its receipt. At the request of the client, an arbitration committee shall be set up for the decision. The costs arising from the use of the arbitration committee shall be borne by the client if the objection proves to be inadmissible or unfounded.

§ 12 Complaints

(1) The contractor has established a complaint management system. Complaints may be brought to the attention of the contractor by any means. The contractor has stored a complaint form on his website, which may be used for complaints.

(2) The client undertakes to investigate any complaints communicated to him and to keep records of all complaints.

SECTION 4: FINAL PROVISIONS

§ 13 Exclusion of liability

(1) The contractor's liability for damages, regardless of the legal basis, in particular for impossibility, delay, defective performance, breach of contract, breach of duties during contract negotiations and tort shall be limited in accordance with the provisions of this § 13 to the extent that it depends on fault.

(2) The contractor shall not be liable in the event of simple negligence on the part of its executive bodies, legal representatives, employees or other vicarious agents, provided that this does not concern a breach of major contractual obligations. Major aspects of the contract are the performance of the conformity assessment procedure (type examination, surveillance) and the issuance of the certificate as well as duties to provide advice, protection and care which are intended to enable the client to use the results of the conformity assessment procedure in accordance with the contract or which are intended to protect the life and limb of the client's personnel or to protect the client's property from considerable damage.

(3) If the contractor is liable for damages pursuant to § 13 (2), such liability shall be limited to damages which the contractor at the time the contract was signed foresaw as a possible consequence of a breach of contract or which he should have foreseen if he had applied customary care and attention. Indirect damage and consequential damage resulting from any faults or defects in the conformity assessment procedure or the certificate are eligible for compensation only if such damage can typically be expected when the results of the conformity assessment procedure or the certificate are used as intended.

(4) The above exclusions and limitations of liability shall apply to the same extent in favour of the contractor's executive bodies, legal representatives, employees and other vicarious agents.

(5) The limitations of this § 13 shall not apply to the contractor's liability due to intentional behaviour, for guaranteed qualities or due to injury to life, limb or health.

§ 14 Severability clause, interpretation and written form

(1) If any provision of these Rules of Procedure is or becomes wholly or partially invalid or null and void, or becomes wholly or partially invalid or null and void as a result of a change in the law or a decision by a supreme court or otherwise, the parties agree that the remaining provisions shall remain in full force and effect. In this case and taking into account the principle of good faith, the contracting parties undertake to replace the invalid provision with a valid provision which comes as close as possible to the meaning and purpose of the invalid provision and which can be assumed to have been agreed by the parties at the time of entering into the contract if they had known or foreseen the invalidity or nullity.

(2) The integral parts of the contract describing the provision of services listed in § 4 (6) shall apply in the sense of a uniform description of services. Should actual or apparent contradictions arise between the integral parts of the contract, the contract shall first be interpreted taking into account the preamble. If contradictions remain thereafter, the more concrete service description shall prevail over the less concrete service description in case of doubt. If this does not lead to a result, the integral parts of the contract shall apply in the order in which they appear in § 4 (6).

(3) Amendments or changes to these Rules of Procedure must be made in writing. This shall also apply to any amendment of this paragraph.

§ 15 Place of jurisdiction, applicable law

(1) The place of jurisdiction is Bonn, Germany.

(2) The laws of the Federal Republic of Germany shall apply.

(3) The language of correspondence is German. The certificates will be issued in German unless the parties have agreed otherwise.