

General Terms and Conditions		D-2E
Version: 07 Date: 14.05.2021		Vérification: Validation:

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1. Scope

All services the Société Nationale de Certification et d'Homologation S.A., hereinafter referred to as "SNCH", renders for third parties, are governed by the Testing and Certification Regulations. These services include:

1. the testing and assessment of products, components, technical product designs in their different stages of development, preparation of technical documentation and expert reports. The services rendered e.g. regarding safety, suitability for purpose, quality and compatibility are based on legal regulations, national, European and international standards and specifications agreed upon with the ordering party, hereinafter referred to as "the Client";
 Manufacturing premises are assessed and periodically inspected with respect to quality measures in connection with the granting of test marks of SNCH for proofs of conformity according to EU/EC Directives, EU Regulations, UNECE Regulations and national regulations and in connection with quality management systems.
 These services are hereinafter referred to as "the Tests";
2. the evaluation and recognition of test and audit reports, certifications of products and QM systems, hereinafter referred to as "Certifications".

2. General provisions

2.1 General

These Conditions shall apply to the services as agreed including consultation, information, deliveries and the like, as well as to contractual obligations for additional technical services.

No general terms and conditions of the Client shall form part of the contract even if these are not further explicitly refused by SNCH.

2.2 Offers

Until the written confirmation of the order by the Client, offers made by SNCH, particularly as regards scope, execution, prices and time limits, remain conditional and are not binding.

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2.3 Performance times and deadlines

The performance times and deadlines agreed in the order confirmation shall be based on estimates of the extent of the work according to the information supplied by the Client. They shall be binding only if SNCH gives written confirmation to this extent.

2.4 Scope of performance

SNCH shall be liable for performance specifications and undertakings or other declarations by its representatives or agents only if such declarations have been designated as binding by SNCH. Unless otherwise explicitly agreed in writing the agreed services shall be performed in accordance with the generally recognized rules of technology and in compliance with the regulations in force at the time of confirmation of the order and SNCH has the sole right to determine the method and type of examination it deems relevant.

2.5 Cooperation

The Client shall guarantee that all cooperation required of him, his agents or third parties will be provided in good time and at no cost to SNCH.

Design documents, supplies, auxiliary staff, etc. necessary for performing of the services shall be made available free of charge. Moreover, the cooperative acts of the Client must correspond to the legal provisions, standards, safety regulations and accident prevention rules applicable in each case.

The Client shall bear any additional cost incurred on account of work having to be redone or being delayed as a result of tardy, incorrect or incomplete information or lack of proper cooperation. Even where a fixed or maximum price is agreed, SNCH shall be entitled to charge extra to cover such additional expenses.

2.6 Confidentiality

Notwithstanding 5.1 (7), SNCH and its employees are bound not to disclose any facts, which come to their knowledge as a result of the order. Written documents, drawings, plans, etc. made available to SNCH and relevant to the execution of the order may be copied (photocopied) for the records of SNCH.

2.7 Copyrights

All copyrights including joint copyrights to expert reports, test results, calculations, descriptions etc. produced by SNCH shall remain with SNCH.

2.8 Data protection

Cf. SNCH Privacy notice on SNCH's website www.snch.lu

3. Contractual bases

1. The Client, places an order with SNCH, or with a technical service designated in Luxembourg, hereinafter referred to as "technical service". If the Client places an order with SNCH, the order may be for testing without certification or subsequent certification, or it may be for certification alone. If the Client places an order with the technical service, this order may be for testing or for certification by SNCH. In the latter case, a certification contract needs to be concluded between SNCH, the Client and the technical service.
2. By placing an order with SNCH or with a technical service, the Client accepts without any restrictions the present General Terms and Conditions of SNCH.
3. The Client has the possibility at any moment to inform SNCH about non-conformities or complaints, related to SNCH's services or in relation to subcontracted activities in the frame of testing, evaluation or certification activities.

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4. Testing provisions

4.1 Site of testing

1. Tests are generally carried out in the laboratories of a technical service or in laboratories bound by contract with SNCH. In consultation with the Client, other test sites can also be agreed upon if these laboratories have adequate competence and proficiency in carrying out the tests. The decision on the test site lies with SNCH.
 In consultation with the Client, the tests can also be conducted in the Client's own laboratories if the assessment by SNCH or by the technical service has given evidence of their competence and proficiency.
 Consent that has been given to the performing of tests in external laboratories can be withdrawn by SNCH or the technical service involved if the fulfilment of the requirements of EN ISO/IEC 17025 are no longer guaranteed or if complaints by SNCH or the technical service concerning the test laboratory are not rectified by the laboratory.
2. If employees of the Client participate in the performance of the tests, the latter may take place only in the presence and under the supervision of an expert from SNCH or the technical service (witness testing). In this case the Client cannot hold SNCH or the Technical service responsible for any damages in the event an employee of the Client has committed a breach of duty, deliberately or through negligence, during the testing. This obligation covers costs both in and out of court.

4.2 Test procedure

1. After placing the order, the Client supplies SNCH or the Technical service with at least one test sample free of charge together with the complete technical documentation required for the evaluation (e.g. constructional data form sheet, risk analysis, operating instructions, certificates on related safety relevant components used or other technical documentation). If necessary, SNCH or the technical service can demand several test samples free of charge. The documents to be submitted to SNCH shall be in German, French or English.
2. Test samples are tested on the basis of statutory provisions and regulations. If no norms, standards or statutory provisions exist on the nature and scope of testing, a test program is developed between SNCH or the Technical service and the Client or between SNCH in collaboration with the Technical service and the Client.
3. Upon receipt of an order SNCH is entitled to demand either a deposit on the remuneration agreed upon or an advanced settlement in full. Details shall be cleared among the parties involved.
 If the Client terminates the contract concluded with SNCH or if both parties agree unanimously to terminate the contract, SNCH is entitled to demand from the Client a certain amount as cancellation fee to cover the costs occurred at the day of the termination. For this purpose and on demand of the Client, SNCH will provide the Client with a detailed list of the incurred costs.
4. On completion of the test procedure the Client receives a written report or, by special request, a full test report listing the non-conformities noted, if any. Suggestions for possible solutions will not be included.
5. The Client may disseminate test reports etc. only in complete and unabridged form. In the actual case, any publication or reproduction for advertising purposes requires the prior written permission of SNCH or the Technical service.
6. If the Client wishes the product testing and if the progress of the test is positive, SNCH or the Technical service, in coordination with the Client, carries out an initial factory inspection to check the manufacturing process, assembly and test facilities and measures of quality management that are essential for the continuous observance of a quality level consistent with the model evaluated. Testing based on statutory provisions or on the specifications of SNCH covers incoming inspection and testing, production control, in-process inspection and testing, and final inspection and testing.

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7. Should the Client wish to apply for a certification after the successful testing of his product, the technical documentation and, if necessary, also the report on the initial factory inspection will be filed with SNCH for certification.
8. SNCH or the Technical service expressly reserve the right to publish, e.g. in the form of reference lists, the corporate names of Clients. The special consent of the Client is not required.

5. Certification provisions

5.1 Basic requirements

1. The only test reports upon which assessments in the course of certification may be based are those produced by laboratories, which have been, accredited according to the rules of EN ISO/IEC 17025 or analogue ISO Guides or which have supplied evidence that they operate according to these codes.
2. As a matter of priority, SNCH carries out assessments and certifications on the basis of the reports of SNCH or the Technical service. In addition, test reports of other test laboratories can also be used for assessment as part of the certification.
3. If the Client will not market a product to be certified under his own name, he has to document with the aid of a "Marks Declaration" the mark of origin under which he intends to place the product on the market. Proof of ownership and, if relevant, contract between licensor and licensee shall be provided for all trademarks.
4. The validity of a certificate is always strictly limited to a specific certificate holder with respect to the product, the brand names and/or logos and the manufacturing premises stated in the certificate. It is always possible to restrict the validity of the certificate. The validity of a certificate may be subject to additional conditions. The transfer of a certificate from the certificate holder to a third party is possible only after consultation with SNCH.
5. Fees shall be paid by the certificate holder for participation in the certification system and the issue of certificates in accordance with the Price List of SNCH or of the Technical service. License and service fees shall also be paid annually for maintenance and filing of the certificates and for the use of test marks. The Certification Body of SNCH can demand prepayment of both the certification fee and the license and service fees prior to certification.
6. The completion of a test with a concluding assessment or with a certificate does not release the Client from his warranty obligation covering defects as stipulated by the contract or his statutory product liability obligation.
7. For the information of national authorities, accreditation bodies, consumers and other interested parties, SNCH reserves the right to publish a list of certified products. Special consent of the certificate holders is not required. Furthermore, SNCH is entitled to transmit or to make accessible to authorities on request the contents of a certificate issued.
8. In case the bases of testing and/or the prerequisites of certification are altered or of infringements by the Client of the certification system rules, SNCH has the right to terminate the certificates instantly. In serious cases it may declare the certificates invalid with immediate effect. SNCH reserves the right to publish the certificates it has declared invalid or withdrawn. The consent of the previous certificate holder is not required.
9. In case a certification number is reserved by a Client for technical production reasons before the related certificate is issued by SNCH, the Client guarantees not to put the related product on the market until the certificate is eventually issued by SNCH.

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5.2 Types of certificates

On the basis of the favorable assessment and evaluation of test reports SNCH issues the following certificates:

- a) Conformity certificates according to UN Regulations,
- b) Conformity certificates according to EU/EC Directives,
- c) Conformity certificates according to EU Regulations,
- d) Conformity certificates according to national regulations,
- e) Certificates according to UIC/IRS, EN and DIN standards

5.3 Client rights arising from certifications

1. During the period of validity of the certificate issued to him, the Client is entitled to bring on the market products covered by a certificate and/or a type approval mark.
2. Further advertising campaigns of the Client, which refer to the activities of SNCH or the subsidiary need to be approved by SNCH or by the Technical service.

5.4 Client obligations arising from certifications

During the period of validity of the certificate or test mark licenses issued to him, the Client is obliged:

1. to monitor the manufacture of the certified products continuously for compliance with the approved types.
2. to allow for production to be inspected at regular intervals by SNCH or the Technical service in the framework of the test mark licenses issued to him.
3. to take note of the findings of the recurrent production controls and of surveillance audits conducted by SNCH or the Technical service
4. to notify SNCH prior to any changes he intends to make in the product, either through further development or through the replacement of components, and to obtain the approval of SNCH. Continued certification depends on the results of an additional test that may have to be carried out.
5. to notify SNCH of any changes in the CoP provision.
6. to record and file all complaints from the market or third parties about the product. At the request of SNCH the Client has to make these details available and to provide information on the measures taken for remediation.
7. to notify SNCH promptly of any intended relocations of inspected manufacturing premises or the intended transfer of his firm to another firm or firm owner.
8. to accept the requirements concerning production control.
9. to reach a contractual agreement with the assembly plant(s), provided the Client as holder of the certificate is not the producer of the product, on the fulfilment of requirements which are essential for the manufacture of the product including the allowing of inspections required.

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10. to immediately rectify any safety defects which appear in products type-approved by SNCH on the basis of a certified type examination and to take suitable measures for minimizing damage in the market. The Client must in any case immediately halt the marketing of the defective product and notify SNCH.
11. to give notice to the authorities by himself or through his authorized representative in his capacity as manufacturer or distributor of the product on the market in case of safety defects.
12. to allow witness audits by the Accreditation Body of SNCH on his manufacturing premises and those of his subcontractors. The Client informs his subcontractors to this effect.
13. to accept that by virtue of reporting obligations that are imposed by law or by authorities, SNCH is entitled to pass on information about the certification concerned. At the request of the Accreditation Body, information, documentation etc. concerning both the contract with the Client and the subject of the contract may be passed on to the Accreditation Body. This includes information about the performance of audits, the granting and withdrawal of licenses, attestations, certificates, etc. and the occurrence of incidents and risks indirectly or directly connected with the tested products. SNCH reserves the right to debit to the Client's account the cost incurred for identifying and clarifying such incidents.

5.5 Restriction, suspension, declaration of invalidity and expiration of certificates

1. Certificates may be restricted, suspended, or declared invalid and revoked by SNCH with immediate effect if:
 - a) the certified product no longer corresponds to the approved type and/or end users or third parties are exposed to risks.
 - b) at the time of the test facts were either ignored, not perceived or judged correctly or were not be recognized which would have precluded certification. This includes e.g. the misplacing of products in certain hazard categories or the classification by types of use.
 - c) defects in the product or system came to light at a later stage or were not noted during periodic inspection, or checks of products already on the market have not been rectified by the holder of the certificate within a reasonable period.
 - d) the holder of the certificate does not have the periodic inspections carried out as defined in the EU/EC Directives, the EU Regulations, the UNECE Regulations, the national regulations or the Testing and Certification Regulations of SNCH, or if he retards or restricts the proper performance of the periodic inspections.
 - e) certificates or copies of certificates have been changed and thus falsified.
 - f) misleading or otherwise impermissible advertising is practiced with test reports or certificates.
 - g) the holder of the certificate fails to pay fees due within the stipulated period following a reminder. If the fees refer to several certificates, SNCH decides which certificates the measure is to cover.
2. Certificates expire if :
 - a) the period of validity stated in the certificate has expired and not been extended.
 - b) the holder of the certificate terminates the „General Agreement“ or the „Certificate Procurement Contract“ or if he waives individual certificates.

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- c) the holder of the certificate becomes insolvent or if a petition for bankruptcy filed against him is dismissed for lack of assets.
 - d) SNCH terminates the certificate by virtue of changes in accreditation regulations and/or in the bases of testing or changes in the use of the product.
 - e) production of the certified type is definitely discontinued.
3. Before declaring a certificate restricted, suspended or invalid, SNCH will give the Client the opportunity to state his views, unless such a hearing is impossible owing to the urgency of the measures to be taken.
4. SNCH is entitled to publish restrictions, suspensions, declarations of invalidity and revocations and the expiry of certificates. In case of infringements, it is entitled to disclose to the competent national authority, to the supervisory authorities, to the Accreditation Bodies, to the licensing authorities, to importers and other interested circles the name and address of the Client involved, the nature of infringement or the reason why the certificate has been declared invalid, including, where appropriate, information about the product etc.
5. SNCH will not be liable for any damages the Client may suffer as a result of the certificate being not granted, restricted, suspended, terminated, declared invalid or revoked.

6. Periodic inspections

6.1 Follow-up services and production control

- 1. In order to ensure and maintain consistent product quality of the certified products, SNCH or the Technical service can carry out inspections of the manufacturing facilities.
- 2. If non-conformities come to the knowledge of SNCH via initial factory inspections, product specific information from third parties or from other channels, SNCH may fix shorter inspection intervals. In special cases SNCH may order additional product tests.
- 3. In addition, SNCH or the Technical service can at any time and without advance warning inspect the products and the production premises mentioned in the certificate and the stores (in the case of foreign certificate holders also the stores of the importers or of the agents and the branch establishments). It can remove free of charge and for monitoring purposes products for which a certificate is granted and also carry out checks in production premises and stores.
- 4. By way of exception, tests can be done on a test sample representative of a series in order to inspect consistent quality of production. SNCH or the technical service can commission other independent and expert agencies to carry out follow-up inspections in its name.

6.2 Costs of follow-up inspections and production controls

The costs of carrying out follow-up inspections and production controls will be invoiced to the certificate holder as per the Price List of SNCH or the technical service.

7. Legal recourse

- 7.1 SNCH is an authority governed by public law. In this capacity SNCH is bound by the non-contentious administrative procedure (*Procédure administrative non contentieuse* or in short *PANC*), as defined by Luxembourg law and its grand-ducal regulation, i.e. the « *Loi du 1er décembre 1978 réglant la procédure administrative non contentieuse* » and the « *Règlement grand-ducal du 8 juin 1979 relatif à la procédure à suivre par les administrations relevant de l'Etat et des communes* ».

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7.2 The Client has the right to obtain communication of the information, which SNCH relied on or intends to rely on in its decision process, except if the said communication would harm important public or third party interests, or if urgency is alleged.

7.3 Except the decision to grant a certificate, a decision of refusal, including a refusal of renewal suspension or revocation of a certificate, shall contain a summary statement of the reasons on which the decision is based, if SNCH:

- refuses to issue, in whole or in part, the certificate
- refuses to renew, in whole or in part, the certificate
- suspends the certificate
- revokes the certificate.

7.4 Unless urgency is alleged, SNCH informs the Client of any intention of revoking the certificate by registered mail with recorded delivery and gives the Client at least 8 days to submit his observations. At request within the above-mentioned deadline, the Client is heard in person by SNCH.

7.5 The decision of refusal, in whole or in part, of refusal of renewal, in whole or in part, issue a certificate or to revoke an already issued certificate shall indicate the legal remedies available against, the deadline to take recourse against decision, the authority to address and the manner to address such authority.

8. Applicable law and jurisdiction - Miscellaneous

8.1 The contractual relationship shall be governed by Luxembourg law. Any dispute between the Client and SNCH arising out of the agreement or in relation with the agreement or the General Terms and Conditions shall be submitted to the jurisdiction of the Courts of Luxembourg-City.

8.2 The Client accepts that SNCH may file and process data relating to persons as far as allowed by the General Data Protection Regulation ("GDPR") (cf. SNCH Privacy notice on SNCH's website www.snch.lu) for its own purposes.

8.3 In order to be effective, oral agreements with technical services must be confirmed in writing. Contract amendments and additions including an amendment to this written form clause must also be in writing in order to be effective.

8.4 The General Terms and Conditions are effective as indicated in the header of this document. All previous Regulations cease to be valid as of that date.

8.5 Should individual provisions or parts of provisions of these General Terms and Conditions become ineffective, the effectiveness of the remaining provisions shall be unaffected. Instead of the ineffective provision, the effective provision, which corresponds to or approximates the sense and intention of the ineffective provision, is considered to have been agreed.