

General Terms and Conditions Kiwa BCS Öko-Garantie GmbH

Kiwa BCS Öko-Garantie GmbH

September 2019



**Trust
Quality
Progress**

General Terms and Conditions Kiwa BCS Öko-Garantie GmbH

Table of Contents

1.	General - Scope	3
2.	Scope and execution of the assignment	3
3.	Rights and obligations of the client	3
4.	Prices	4
5.	Payment terms	5
6.	Protection of work results	6
7.	Confidentiality and data protection	6
8.	Sampling and analysis	6
9.	Switch of control body	7
10.	Warranty	7
11.	Liability	8
12.	Adjustment clause	9
13.	Severability clause	9
14.	Law, place of fulfilment and jurisdiction	9

1. General - Scope

Unless expressly agreed otherwise in writing, these General Terms and Conditions apply to all offers, services and contractual relationships between Kiwa BCS Öko-Garantie GmbH (hereinafter Kiwa BCS) and its clients.

The scope of performance of assignments is set out in the current valid versions of the normative regulations defined in the Kiwa BCS service offer's respective contract (e.g. EU Organic Regulation (EC) No. 834/2007, NOP, JAS, etc.) and the associated supplementary provisions.

2. Scope and execution of the assignment

Kiwa BCS only accepts telegraphic and telephone assignments at the risk of the customer. Verbal statements, confirmations or promises made by our employees or vicarious agents must be confirmed in writing by the management in order to be valid. Deadlines for the execution of the assignment are considered to be non-binding if they are not expressly agreed upon in writing as binding.

Kiwa BCS shall inform the client of outsourcing activities to another site. Kiwa BCS shall bear the responsibility for the outsourced activities.

According to DIN EN ISO 17065 in point #6.2.2.4 f), the client generally has a right to object to activities delegated by Kiwa BCS to third parties to execute the contract purpose. This does not release the client from the obligation mentioned above in paragraph 1 towards third parties commissioned by Kiwa BCS, which are useful for carrying out the purpose of the contract between the client and Kiwa BCS. Any objections must be submitted in writing to Kiwa BCS.

Kiwa BCS maintains a list of subcontractors (D-DE_05-010_List Subcontractors Laboratories), which will be made available to the client on request.

Kiwa BCS is entitled to deviate from the aforementioned list and to appoint another subcontractor at short notice and depending on the situation. No supplementary obligation to inform the client arises for Kiwa BCS.

3. Rights and obligations of the client

3.1 The client is obligated to accept appointment notifications for tests; only in exceptional cases can these be rescheduled. Unannounced inspections shall be allowed in any case.

3.2 The client is obligated to disclose and demonstrate the operation (production, distribution, etc.) in detail to Kiwa BCS and the persons commissioned by Kiwa BCS (experts, inspectors/auditors or expert companies). This also applies to the participation of observers.

3.3 The client is obligated to give the Kiwa BCS supervisory bodies unrestricted access to all relevant parts of the company during the testing period and to make all data and documents (e.g.: supplier, customer, subcontractor directories), of whatever form, accessible and to provide all information deemed necessary to carry out the control and associated assessment process, as well as to allow and support sampling or interviewing of employees. This also applies, in particular, to unannounced inspections.

3.4 The client is obligated to check and countersign the Kiwa BCS inspector's inspection/evaluation report.

3.5 The client is obligated to keep the control documents and, in case of an inspection by competent authorities, to grant them insight and the same rights as Kiwa BCS.

3.6 The client undertakes to comply with all regulations of the respective standards agreed upon as the test subject, including all valid annexes, changes, implementation regulations and other normative documents, the fulfilment of which is relevant in relation to the product requirement in the respective area of application (certification requirements). Certification requirements may also include additional requirements that Kiwa BCS places on the client in order to comply with Kiwa BCS's relevant accreditation standard DIN EN ISO 17065.

The obligation to comply with the certification requirements also applies to test items in ongoing production.

In addition, the client undertakes to fulfil certification requirements relating to the use of conformity marks and information related to the certified product.

3.7 The client hereby bindingly declares to carry out the measures imposed by Kiwa BCS through the certification decision, respectively on time and to submit to the sanctions agreed in accordance with the sanction catalogue.

3.8 The client is obligated to document complaints regarding its products, to inform Kiwa BCS and to explain which measures have been taken to remedy the defects.

3.9 The client is obligated to inform Kiwa BCS without delay of any substantive and formal changes which are relevant in the context of the respective applicable control procedure or scope and which could affect its ability to fulfil the certification requirements.

3.10 The client is entitled to refuse inspectors due to justified concerns of bias or proven conflicts of interest, whereby this refusal must be made within a period of two weeks from gaining knowledge of the reason for refusal.

3.11 The client is obligated to submit declarations of certification only in respect to the area of validity for which the certification was granted. It must ensure that no certificate, report or any part thereof is used in a misleading manner. The client must ensure that certification documents are reproduced and distributed only in their entirety.

3.12 The client is obligated not to use the product certification in a manner that could discredit Kiwa BCS, nor to make any statements about its product certification that Kiwa BCS may deem misleading or unjustified.

The contractor undertakes, when referring to its certification in communication media, such as: documents, brochures or promotional materials, to meet the requirements specified by Kiwa BCS or as set out in the certification program.

3.13 After suspension, termination and/or withdrawal of the certification, any reference to the same, advertising or communication media with the same shall cease immediately. If the certificate is still valid at this time, it must be returned to Kiwa BCS in the original.

4. Prices

Unless otherwise agreed in writing, the rates of the respectively valid fee tables and regulations apply. The currently valid service specifications (standard control programmes) serve as a reference base. Additional services or other activities not expressly agreed in the scope of services (e.g. unannounced inspections, suspicion checks, sampling, analyses or other research necessary to clarify questions in connection with the fulfilment of the relevant test standards) will be invoiced separately. All prices are subject to the statutory VAT.

In the event that, outside of Germany, the invoice amount incurs VAT or other local taxes, these shall be borne by the client.

5. Payment terms

5.1 Fee tables and regulations sometimes include the option of making a country-specific advance payment (between 50% and 100%) immediately after commissioning. The final payment is made after the evaluation has been conducted, but before the certification decision is issued.

5.2 Unless otherwise agreed in writing, invoices are payable net immediately upon receipt.

5.3 The client's payment obligation exists independently of any agreed objection deadlines.

5.4 Certificates and confirmations will only be issued after full payment has been received.

5.5 Client setoffs against invoices of Kiwa BCS are excluded, insofar as the client's counterclaim is not undisputed or adjudicated.

6. Protection of work results

The client warrants that the information, inspection results and assessments as well as certification decisions made by Kiwa BCS within the scope of the assignment will only be used for the intended purpose. Reproduction and publication of inspection results, information or similar—including for advertising purposes—require the prior written consent of Kiwa BCS. The reproduction of certificates is generally only permissible in such a manner that copies are clearly marked as such. Kiwa BCS reserves the right to take legal action against the unauthorized use and misuse of work results, especially the counterfeiting of certificates.

7. Confidentiality and data protection

7.1 Kiwa BCS undertakes to make all results obtained in connection with the assignment available only to the client and—upon request—to the competent authorities and to neither publish nor to disclose them to third parties without consent. Kiwa BCS further undertakes to keep all information of the client received in connection with assignments confidential and to contractually bind Kiwa BCS employees and vicarious agents to confidentiality.

7.2 By signing the contract, the client agrees to the publication of the respective validity of the certificates issued by Kiwa BCS for authorized access on the Kiwa BCS website.

7.3 Kiwa BCS stores and processes personal data exclusively in order to process the contractual relationships with the customer. The customer agrees the respective storage and use of its data and documents in Kiwa BCS's data processing system.

8. Sampling and analyses

8.1 Kiwa BCS shall, if necessary, arrange for its representatives, at the client, to take samples and carry out laboratory tests regarding the parameters deemed relevant respectively.

8.2 For the performance of the analyses and the completeness and correctness of the results, the general terms and conditions of the respective commissioned laboratory, which also has sole liability, apply exclusively.

8.3 Unless otherwise agreed in writing, samples submitted for examination shall, as far as the condition permits, be kept for a maximum of three months at the Kiwa BCS contract laboratory. After this time, the samples will be destroyed. If the return of a sample is desired, this shall be at the client's expense.

The testing costs shall be borne by the client.

Claims of Kiwa BCS, in particular, claims for damages, are excluded pursuant to the provisions in Clause 11 (liability).

9. Switch of control body

9.1 A switch to another control body can only occur after ordinary termination of the contractual relationship between the client and Kiwa BCS. The contract may be terminated with a notice period of six months to the end of the respective year.

9.2 In the event of termination, the client must provide Kiwa BCS with evidence that it has entered a new contractual relationship with a receiving control body.

9.3 Before the client's data can be passed to the receiving control body, the client must fully meet all its financial obligations towards Kiwa BCS.

9.4 Kiwa BCS disclaims all liability in the event of a switch of control body and the resulting loss of access to a departing client and the data relevant for statutory compliance. This

also applies, in particular, to monitoring the compliance with corrective measures and introducing incorrectly manufactured or labelled goods to the market.

9.5 Kiwa BCS is required by law to notify the new receiving control body in case of unfulfilled conditions, in order for this body, as responsible party, to conduct the follow-up.

9.6 Claims of Kiwa BCS, in particular, claims for damages, are excluded pursuant to the provisions in Clause 11 (liability).

10. Warranty

10.1 The client undertakes to diligently review the final report of Kiwa BCS immediately upon receipt. Objections to findings, conditions or sanctions in the inspection reports must be asserted in writing by the client at the latest within two weeks after handover. The client is obligated to give Kiwa BCS the opportunity to rectify the situation and to grant a reasonable deadline. After the final report has been handed over, objections are excluded if they are not asserted in writing within six months.

10.2 Apparent inaccuracies in the inspection report, such as typographical errors, calculation errors or formal defects, shall be promptly corrected by Kiwa BCS as soon as such defects become known and are acknowledged.

10.3 In the event the client's objections or parts of objections are rejected, Kiwa BCS shall be entitled to compensation for all costs incurred in checking these.

10.4 Insofar as claims of the client are excluded or limited in accordance with the provisions of this Number 10, this also applies to third parties (especially suppliers of the client, including their employees, vicarious agents and directors) who incur or are jeopardized by any damage or disadvantage in connection with Kiwa BCS's contractual performance. In this respect, the client shall indemnify Kiwa BCS from any such claims.
In all other respects, Kiwa BCS shall only be liable in accordance with Clause 11 (Liability).

11. Liability

11.1 The liability of Kiwa BCS under contract and law is excluded, unless otherwise agreed below.

11.2 The liability exclusion of Kiwa BCS according to 11.1 does not apply

- to damages caused by Kiwa BCS intentionally or through gross negligence;
- if and insofar as Kiwa BCS is liable according to the mandatory provisions of the Product Liability Act;
- if and insofar as Kiwa BCS has provided a quality or durability guarantee and damages have arisen from the breach of the guarantee;
- in cases of culpable injury to life, limb and health

11.3 In cases of slight and simple negligence of Kiwa BCS, it will be liable—unless already liable for damages according to Clause 11.2—only for violating essential contractual obligations. The liability of Kiwa BCS is limited to the contractually typical damage foreseeable for Kiwa BCS upon concluding the contract or committing the breach of duty. Essential contractual obligation means any obligation, the fulfilment of which enables the proper execution of

the contract in the first place and on the compliance of which the client regularly relies and may rely.

11.4 Liability of KIWA BCS is also excluded for damages that are attributable exclusively to the client's sphere of risk. Furthermore, it is also excluded to the extent that it is based on the client's or its vicarious agents' non-compliance with instructions and stipulations, for example, the client has provided incomplete or incorrect information to Kiwa BCS or has not fulfilled its obligations to cooperate, e.g. from No. 3 of these GTC.

11.5 In the event of force majeure, i.e. events that are beyond the control of Kiwa BCS and which Kiwa BCS cannot prevent or anticipate with due resources, Kiwa BCS shall not be liable, if Kiwa BCS cannot provide some or all services due to this event.

11.6 The above regulations do not alter the burden of proof to the detriment of the client.

11.7 The above exclusions and limitations in favour of Kiwa BCS shall equally apply to the liability of Kiwa BCS for its organs, employees and vicarious agents as well as the personal liability of Kiwa BCS's organs, employees and vicarious agents.

12. Adjustment clause

12.1 Changes to these General Terms and Conditions (GTC) shall be offered to the customer at the latest in writing two months before the proposed effective date. The consent of the customer is deemed to have been given if the customer has not notified Kiwa BCS of a rejection of such an offer prior to the proposed date of application of the changes. Kiwa BCS will especially point out this acceptance effect in its offer to change the GTC. If the customer rejects the offer to change the GTC, each party within one month after Kiwa BCS's receipt of the rejection has the right to terminate the contract with a period of three months to the end of the then current month.

13. Severability clause

13.1 Should individual provisions of these General Terms and Conditions be or become ineffective, this shall not affect the validity of the remaining provisions. The ineffective provisions shall be replaced by provisions as closely as possible reflecting the meaning and purpose of the invalid provisions.

13.2 These General Terms and Conditions are also effective vis-à-vis any legal successors of the parties. The contractual partner of Kiwa BCS undertakes to ensure, if necessary, the effectiveness of these General Terms and Conditions with its legal successor.

14. Law, place of fulfilment and jurisdiction

14.1 All disputes arising from the contractual relationship between the customer and Kiwa BCS under these General Terms and Conditions are subject to the application and interpretation of the law of the Federal Republic of Germany to the exclusion of the provisions of international private law. The exclusive place of jurisdiction for any and all disputes is, insofar as the customer is a merchant, a legal entity under public law or a special fund under public law, Hamburg; Hamburg is also the place of performance. However, Kiwa BCS is also entitled to seek redress from customers at their general place of jurisdiction.