

# FS MS General Terms and Conditions

## §1 General

- 1.1. Unless agreed otherwise, the business relationship between 3cert and any person applying for certification services (the “client”) shall be governed exclusively by these General Terms and Conditions (GTCs).
- 1.2. Any terms in the contract that are in conflict with these GTCs are not accepted unless they are conformed expressly in writing by 3cert.
- 1.3. These GTCs shall be valid for all future business transactions with the client insofar as these involve legal transactions of a similar nature.
- 1.4. 3cert has the right to change these GTCs if and to the extent necessary to enable 3cert to perform its services in accordance with changed or amended certification requirements.
- 1.5. 3cert will inform the client about any amendments to the GTCs within a reasonable period of at least three months. The client has the possibility to object to the change of the GTCs within the prescribed period. If the client does not object within that period, the amended GTCs shall be agreed and applied between the parties. In case the client objects both parties have the right to terminate the contract with a notice period of one month from the receipt of the objection at 3cert.
- 1.6. The scope of the services to be rendered by 3cert shall be specified in writing when the order is placed. If there is any proposed change or extension in the specified scope of the order during execution of the order, then it shall be reduced to writing in advance.
- 1.7. Certification, suspension, withdrawal or cancellation of a certificate shall be in accordance with the applicable conformity assessment requirements.
- 1.8. Major non-conformities in an audit may require a re-audit of the pertinent sections of the Management System. Re-audits may cover the entire system if it is found necessary by the lead auditor. Re-audits will be conducted at prevalent daily rates at the time of occurrence.
- 1.9. Audits may get extended due to the nature of the findings of the auditors. Such situations may result in extra charges. The lead auditor shall discuss such situations with the client before any action is taken.
- 1.10. Where on-site activities conducted by 3cert personnel require personal protective equipment, 3cert and the client shall agree upon supply of such in advance of any visit.

## §2 Definitions

- 2.1. The term “Accreditation Bodies” is used to describe all bodies, scheme owners and registration offices that have registered or accredited 3cert for certification on the basis of laws, standards, regulations or contracts for the certification of clients.
- 2.2. The term “audit” is used in the following to describe all types of audits according to the relevant standards and accreditation bodies, for example initial certification audits, surveillance audits, recertification audits, follow-up audits, additional audits, audits for special reasons, etc.
- 2.3. “Application” means the request for services by a client starting with first enquiry.
- 2.4. “Contract” means the outline of services to be rendered by 3cert to the client.
- 2.5. “Certification Requirements” means any and all laws, standards, directives, regulations, rules, regimes and other requirements from accreditation bodies according to which 3cert assesses, audits and/or certifies.
- 2.6. A "Report" issued by 3cert to the client indicates whether or not a recommendation to issue a certificate should be made.
- 2.7. A “Certification Mark” is a sign & symbol awarded to the client in the defined format.
- 2.8. An "auditor" is part of the personnel, who performs conformity assessment on behalf of 3cert on a permanent or contractual basis.

## §3 Rights and obligations of 3cert

- 3.1. 3cert is an independent service provider and provides services to all clients equally with respect to impartiality and independence rules.
- 3.2. 3cert and all its personnel will keep confidential any kind of verbal and written information received from the companies in relation with conformity assessment activities, this information is shared only upon

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request of related Accreditation Bodies/designating authorities. For other third parties, the information will be shared only on court decision. In this case, the client will be certainly informed.

- 3.3. The selection of the auditors and experts to be used is the responsibility of 3cert. 3cert is obliged to use only those auditors who have been appointed by the management of 3cert on the basis of their professional qualifications. The auditors cannot make any declarations binding on 3cert regarding the final granting of a certificate.
- 3.4. The number of auditors to be used for certification is determined by 3cert. As a rule, the certification audit shall be managed by a lead auditor.
- 3.5. 3cert shall endeavor to minimize disruptions to the operational process during the performance of the audit on the client's premises.
- 3.6. 3cert is entitled to keep and publish lists of companies certified by it. The consent on the part of the client is hereby deemed to have been granted.
- 3.7. Due to its duties as an accredited certification body, 3cert is entitled to allow observers of the Accreditation Body to participate in the audit upon their request and to grant the commissioned persons access to the premises. By accepting the contract, the client agrees to be included in the reference list of 3cert. Objections to this must be communicated to the 3cert in writing. The employees of these bodies are also obliged to maintain confidentiality.
- 3.8. In case of changes of standards or guidelines of the accreditation body on which the certification was based, 3cert informs the client including the effects on the certificate. The issued certificate does not certify the client's conformity with legal requirements.
- 3.9. 3cert shall take all reasonable steps to ensure that whilst on the client's premises, its personnel comply with all health and safety regulations of the client, provided that the client makes 3cert aware of the same.
- 3.10. 3cert is entitled to conduct audits for special reasons. An audit for a special reason is also to be carried out as a consequence of a requested extension of the scope and all audit activities are to be defined in order to decide whether an extension can be granted or not. This can be done in conjunction with a surveillance audit. Audits announced at short notice can be carried out by 3cert to investigate complaints or as a consequence of changes and/or client certifications. The selection of the audit team shall be made under special due diligence aspects, as the company cannot raise any objection against the selection of the auditors.
- 3.11. 3cert is entitled to delegate the performance of services in parts to subcontractors.
- 3.12. 3cert provides the client and the accreditation body with the determination and justification of the audit time as part of the contract and records the data according to the specifications.
- 3.13. The fees quoted to the client cover all stages of work to be carried out by 3cert. 3cert reserves the right to increase charges during the registration period. 3cert may also increase its fees if the client's instructions change or are found to be not in accordance with the initial details supplied to 3cert prior to it providing the relevant fee in the Contract. Clients will be notified of any increase in fees.
- 3.14. 3cert reserves the right to increase the prices at the beginning of a month in the event of increasing internal costs. This is done by written notification, which must be sent 1 month (change period) before the intended entry into force. If the price increase does not exceed 5%, the client has no special right of termination on the occasion of this price increase. In the event of a price increase of more than 5%, the client shall be entitled to object in writing or to terminate the contractual relationship at the end of the amendment period. Otherwise, the changed prices shall be deemed to have been agreed upon after expiry of the change period.
- 3.15. 3cert points out that the validity of the certification is dependent on the accreditation of the certification body. Suspension or withdrawal of the accreditation leads to the invalidity of the certificate.

### §4 Rights and obligations of the client

- 4.1. The client is obliged to make all necessary arrangements for the implementation of the assessment/evaluation and monitoring, including consideration of the review of documentation and records, access to the appropriate equipment, location(s), area(s) and personnel. If the applicant refuses to have its premises audited, even though they are necessary for the certification process, the applicant will be advised that certification will not be granted.

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- 4.2. In order to allow 3cert to comply with the applicable health and safety legislation the Client shall provide 3cert with all available information regarding known or potential hazards likely to be encountered by 3cert personnel during their visits.
- 4.3. The client is entitled to reject the auditors proposed by 3cert without giving reasons. The client must notify 3cert of the rejection immediately after the auditors have been announced. In this case, 3cert shall submit a new proposal. The client is entitled to such a right of rejection once in phase 1 and 2 of the initial certification according to §2 of these GTC. If the right of rejection is not exercised immediately after notification of the auditors, the auditors proposed by 3cert shall be deemed accepted. Thereafter, only 3cert shall decide on a change of the auditors.
- 4.4. The client is obliged to make all necessary arrangements for the participation of observers. For witness audits / special audits the client will allow the employees or agents of the accreditation bodies of 3cert to carry out witness audits or special audits in all the client's operations. The client undertakes to ensure such witness audits or special audits are possible at the client's manufacturers and subcontractors.
- 4.5. The client is responsible for the conformity with the requirements for certification.
- 4.6. The client is obliged to ensure that the auditors are truthfully informed, when questioned, about all facts and processes that may be of importance for the audit.
- 4.7. The client is allowed to pass on the evaluation in its complete form. The passing on of only an excerpt of the evaluation is not permitted. Certification documents may only be reproduced and passed on in their entirety.
- 4.8. If the client is not able to attend the agreed audit date due to its own fault, it shall be obliged to reimburse 3cert for the expenses incurred in preparing the date.
- 4.9. The client is obliged to maintain the independence of the auditors. For this purpose, it shall refrain from anything that could negatively influence the independence, in particular offers of consulting services or employment, orders for its own account or separate fee agreements.
- 4.10. The client has to inform 3cert immediately and without being asked about all important changes of its management system and its organization, e. g. takeover of the client by another company, change of the field of activity, business closure or expansion, opening of bankruptcy proceedings or composition proceedings, change of certified subareas or similar.
- 4.11. Furthermore, the client is obliged to regularly carry out measures for the maintenance of the management system and to document them in a verifiable manner. For this purpose, internal audits and corresponding evaluations of the management system are to be carried out by the top management.
- 4.12. If the client is informed by 3cert of changes to the Accreditation Body or standards on which the certificate is based, it is obliged to implement any adjustments required to maintain the certificate in consultation with 3cert.
- 4.13. The client has the possibility to express their dissatisfaction actively or passively. An evaluation sheet for the 3cert service and the auditor service is always sent along with the report in order to derive potential for improvement for the future. In case of serious incidents, the client can bring them to 3cert by an active complaint in order to initiate an appropriate correction or clarification. The defined procedure for complaint handling can be requested from 3cert upon request and can be found on the website.
- 4.14. The durations given in Section 5 paragraph 5.8, 5.9, 5.13, 5.14, 5.18, 5.19) should be followed by the client.
- 4.15. For procedures according to DIN ISO 45001, the client is obliged to inform 3cert immediately in the event of special incidents, e. g. serious occupational accident, serious violation of legal and / or official regulations, etc., and to grant 3cert access to all important areas and documented information upon request. This also applies if 3cert is informed of these incidents by third parties.
- 4.16. For certifications according to ISO 13485, the following applies: The client is responsible for compliance with the legal regulatory requirements, which include the safety and performance of the medical devices. In case of non-compliance, a notification to the regulatory authority about reportable incidents has to be made.

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### §5 Conformity assessment and certification process

- 5.1. 3cert evaluates the conformity assessment application received and the decision on accepting or rejecting the application will be communicated to the client. In case the application is accepted a Contract is prepared.
- 5.2. The initial certification audit must have been started within 1 year of contract agreement.
- 5.3. The certification process comprises an initial certification audit for the initial issue of a certificate or a recertification audit for the repeat issue of the certificate plus regular surveillance audits in the phases between initial certification and recertification or recertification and the next recertification.
- 5.4. The client can provide dates to perform the audit, and this is considered by 3cert against the background of capacities and practicability. Audit dates should be scheduled at least 4 weeks in advance and should not be re-scheduled without a minimum of 2 weeks advance notice. If the client re-schedules the audit without the requisite advance notice, the client may be obliged to reimburse 3cert for all expenses already incurred for travel preparations.
- 5.5. In the event that the client fails to cooperate in the agreement of or adherence to audit dates and if it is therefore impossible for the audit to be performed within the deadlines given in these GTCs, then 3cert is entitled to terminate the contract for good cause. Other compensation and other claims remain unaffected. 3cert is also entitled to suspend or withdraw a certificate that has already been granted.
- 5.6. The initial certification audit is carried out in two stages, where the contract does not stipulate anything to the contrary, namely a readiness analysis ("stage 1") and an on-site audit at the client's facility / facilities ("stage 2"). The audit report is produced after stage 2. The results of stage 1 can necessitate changes to the planning of stage 2, e. g. audit duration, composition of the audit, selection of the audit team members team or date of the audit. It is also possible to mandate that Stage 1 must be carried out again in full or in part subject to a charge.
- 5.7. The duration between the end of stage 1 and the beginning of stage 2 is of a maximum of 6 months, if nothing is agreed to the contrary. If it is not possible to comply with this 6-month deadline because of a reason for which the client is responsible, then the client is obliged to pay for the repetition of stage 1. The client will receive a separate offer for this work.
- 5.8. In case that there are areas of concern that could be classified as nonconformity during Stage 2 audit, the client is informed to define and send root cause analysis and a corrective and preventive actions plan within 14 days after the nonconformities are delivered. If not, the client is contacted and ensured that it is sent. If the plan is not sent by the client despite the warning within 30 days, the process is terminated.
- 5.9. In order to prove the implementation of the corrections, corrective and preventive actions listed in the action plan, the client shall submit corresponding objective evidence to 3cert. For the submission of the objective evidence, a deadline of no longer than 3 months from the last day of the performed certification audit applies. The discrepancies are considered closed when the audit and release by the certification body has taken place. In case that implementation of corrective actions of the identified major non-conformity(s) cannot be submitted to 3cert, subsequently reviewed and released within 6 months after the last day of the stage 2 audit, another stage 2 audit will be performed before certification or maintenance of certification is recommended.
- 5.10. Certification Decision is made by 3cert following orderly execution of the initial certification audit or the recertification audit. 3cert takes the certification decisions at its own discretion within the constraints of applicable normative/regulatory requirements and based on the information and documents received in the course of the audit. Certifiers may take different decision from the audit team's, may request additional document or additional audit. In case that the certification decision is positive, the certificate is issued in the form of 1 original certificate in English. Requested additional copies will be made available at an additional charge. The "Logo and Certification Mark Work Instruction" shall apply accordingly.
- 5.11. If the certification decision is negative, then a certificate would not be issued as the prerequisites for the certificate to be issued would not have been not fulfilled. The client will be informed accordingly. In this case both parties are entitled to terminate the contract for good cause. Other compensation and other claims remain unaffected. Issuance of a certificate may be associated with conditions. It is possible that the resolution of defects can be demanded within a certain deadline so that the client must independently

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resolve defects and confirm this in writing. The condition could also be further inspection, i. e. a further audit or inspection of documentation.

- 5.12. Surveillance audits are performed to maintain the validity of the certificate. During the validity of the certificate the client is obliged, in accordance with the contract and the regulations of the Accreditation Body or the applicable standards, to arrange for 3cert to perform surveillance audits within the given deadlines. In case the audit cannot be carried out due to reasons from client side, the certificate will be suspended. Audit frequency can be increased according to the nature of nonconformities defined during the audit. In case of increase, the client will be charged for the surveillance audit according to the signed surveillance agreement.
- 5.13. In the case of surveillance audits, it is appropriate that evidence of the performance of root cause analyses and the determination of planned corrective actions are submitted to the certification body within 14 days from the last day of the respective surveillance audit. If not, the client is contacted and ensured that it is sent. If the plan is not sent by the client despite the warning within 30 days, the process is terminated.
- 5.14. After review and approval of the submitted root cause analysis and planned corrective actions of minor nonconformities maintenance of certification may be recommended. Proof of the implementation of the corrective measures is provided by submitting objective evidence during the next regular audit.  
In order to prove the implementation of the corrections, corrective and preventive actions listed in the action plan for major nonconformities, the client shall submit corresponding objective evidence to 3cert. For the submission of the objective evidence, a deadline of no longer than 3 months from the last day of the performed certification audit applies. The discrepancies are considered closed when the audit and release by the certification body has taken place. In case that implementation of corrective actions of the identified major non-conformity(s) cannot be submitted to 3cert within 3 months, but the client has provided justified reasons in written, the reasons will be assessed. Upon assessment, the decision of resuming the certification process or suspension or withdrawal of certificate is decided by assigned certifier.
- 5.15. If the client properly closes the nonconformities identified during the surveillance audit in due time or no nonconformities are defined during the audit, in accordance with the certification decision, the certificate will remain valid for the period mentioned on the certificate.
- 5.16. The client shall pay the agreed payment annually to register the certificate and is included in the list of certificate holders.
- 5.17. Recertification must be performed for the extension of the certificate in accordance with the more detailed provisions in the contract after 3 years. At least 6 months before the certificate validity period is over, 3cert shall contact the client to plan the audit within the certificate validity period. The recertification audit is equivalent to the process for the initial certification audit.
- 5.18. In case that there are nonconformities during recertification defined, the client is informed to define and send root cause analysis and a corrections, corrective and preventive actions plan within 14 days after the last day of the audit. If not, the client is contacted and ensured that it is sent. If the document is not sent by the client despite the warning in 30 days, the process is terminated.
- 5.19. In order to prove the implementation of the corrections, corrective and preventive actions listed in the action plan, the client shall submit corresponding objective evidence to 3cert. For the submission of the objective evidence, a deadline which is based on the validity of existing certificate but maximum 3 months from the last day of the performed certification audit applies. In case that the corrections and corrective actions of major nonconformities are verified prior to the expiry date of certificate recertification is recommended.  
In case that the recertification activities are finalized within 6 months after the expiry date, the certificate is restored. The issue date of certificate is based on recertification decision, but the expiry date is based on the prior certification cycle.  
Otherwise, at least another stage 2 audit is conducted prior to recommending certification and a certificate no is defined ending the certification history of the client.
- 5.20. Follow-up audits are performed in case that non-conformities are identified in the course of audits that should be verified on-site. It is at the discretion of 3cert to carry out a follow-up audit. The costs are calculated according to expenditure and the up-to-date price list. Follow-up audits are performed on the

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dates agreed with the client. If the requirements are not met even after two follow-up audits, the certificate will not be issued.

- 5.21. 3cert may perform additional audits, either unannounced or by providing the client with short notice thereof. This may occur if 3cert becomes aware of reasons for a possible withdrawal of the certificate in order to review the implementation of corrective actions, to investigate complaints or after a change of laws, standards, guidelines or agreements upon which the certification is based. 3cert will produce a separate offer for the additional audit. In case the client does not accept short notice / unannounced audit and / or impedes the assessment team from auditing the certificate will be suspended. A suspension decision will be communicated to the client and the authority. In case at the end of the audit, requirements are proved not to be fulfilled, the certificate will be suspended or withdrawn considering the nonconformity. Suspension / withdrawal decision together with the reasons are communicated to the client in writing.

### §6 Suspension, withdrawal and recovery of the certificate

- 6.1. In compliance with the certification requirements, 3cert is entitled to restrict, suspend, revoke and / or withdraw the right to use at any time.
- 6.2. Suspending the certificate's entire scope or a part thereof is an intermediate precaution that is taken before withdrawing the certificate. Certificate suspension period cannot exceed 6 months. 3cert retains the right to suspend certificates on the following conditions:
- The client makes significant changes that have an impact on the certification requirements or interrupts the activities (Upon client's request)
  - The client demonstrably violates its contractual or financial obligations towards 3cert.
  - Reorganizations of the certification unit invalidate the management system. The new certification will then be issued after an audit.
  - The client does not comply with the obligations associated with the certification, e. g. the obligations to inform 3cert about changes.
  - 3cert becomes aware that the client was involved in accidents or events (e. g. health-threatening or fatal events) which are within the scope of the certification or related to it.
  - The necessary surveillance audit or another audit commissioned by 3cert is not completed or is not completed in due time or if the result of the audit shows that the certification requirements are no longer fulfilled.
  - Deviations are found which are not or have not been eliminated within the agreed period.
  - The client violates rules for the use of 3cert certificate and does not stop this violation even after two requests.
  - A certified management system of a client does not meet the certification requirements – Including the requirements for the effectiveness of the management system – permanently or seriously.
  - Prerequisites for the certificate's issuance are not fulfilled (any longer), e. g. because incomplete or untrue information was provided in the certification process;
  - In case of sanctions placed on the client's origin country on the related sector (Health, medical device) by United Nations, European Commission and the United States
  - The necessary surveillance audit or another audit ordered by 3cert is not carried out fully or within the deadline;
  - The surveillance audit results in the certification requirements no longer being fulfilled;
  - Other grounds reasons exist for the withdrawal of certification in accordance with these GTCs or the contract.
  - The contract with 3cert regarding certification ends;
- 6.3. In case the client seriously fails to fulfil certification requirements, partially or entirely, 3cert restricts the client's certificate scope so that the unfulfilled requirement's part will be excluded.
- 6.4. In all the situations not needing technical evaluation like not accepting surveillance audit, not fulfilling financial liabilities, the non-timely closing of nonconformities the certificate will be suspended directly

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without need to certification decision. In all the other cases suspension decision is taken with certification decision.

- 6.5. 3cert informs the client of suspension of the certificate together with the justification in writing on its it's letterhead paper.
- 6.6. Once the reasons for suspension are successfully eliminated or related activity for cancelling the suspension is carried out, the client is informed of the continuation of the certificate and takes back all its rights on that. Throughout the suspension period, the client may keep the certificate, but shall not benefit from any rights granted by the certificate.
- 6.7. In case the client cannot eliminate the suspension reasons in 6 months, the certificate will be withdrawn.
- 6.8. Certificates may be directly withdrawn according to the level of nonconformities and in the following situations:
  - The client goes bankrupt or ceases the activities
  - The client does not use the certificate for the address and scope defined on the certificate
  - The client presents false and misleading information during the audit
  - The audits prove that the client's management system is totally ineligible
  - The client alters the certificate and the annexes
- 6.9. Other than these situations, the clients themselves can request the certificate withdrawal. Withdrawal request is taken in writing. The request is evaluated, and the client is informed following its approval.
- 6.10. 3cert shall inform clients in writing of certificate cancellation together with the justifications. The client sends the original certificate(s) to 3cert upon withdrawal.
- 6.11. 3cert has the right to publicly release the necessary information about certificate suspension, scope reduction and withdrawal. Clients can object to the certificate's suspension, scope reduction and withdrawal. Besides, suspended, withdrawn and certificates with reduced scope are announced.
- 6.12. 3cert shall not be liable for damages incurred by the client due to the justified suspension or justified withdrawal of the certificate.
- 6.13. In the event that the client decides to retrieve the withdrawn certificate, the application process shall start over.

### §7 Extension or limitation of the scope

- 7.1. If there is a corresponding reason and/or evidence, the previous scope must be changed accordingly. This can lead to an increase or reduction of expenses. This topic should be brought to the attention of 3cert in advance by the client.

### §8 Time limits, delay, impossibility

- 8.1. Time limits shall only be binding if mutually agreed upon by both parties. Binding time limits to be respected by the client are defined as time limits set by 3cert during a certification process, particularly time limits set for corrective measures by the client.
- 8.2. In case 3cert's performance is delayed by more than 10 calendar days the client shall be entitled to set a reasonable additional period within which the performance is to take place. Should 3cert fail to meet this new deadline for reasons to be accounted for by 3cert or ascertain that performance is no longer possible for a reason accounted for by 3cert, the client shall have the right to withdraw from the contract.
- 8.3. In the event that 3cert is prevented from performing or completing any service for which the contract has been made by reason of any cause out of 3cert's control, including, but not limited to, acts of God, war, terrorist activity or re or if travel warnings; failure to obtain permits licenses or registrations; illness, death or resignation of personnel or failure by Client to comply with any of its obligations under the contract, then 3cert is released from its obligations to provide audit services for the duration of the disruption. The contractual parties are obliged to inform each other of such hindrances and to adjust their obligations to the changed circumstances in good faith.

### §9 Termination of Contract

- 9.1. The contract shall expire when services have been completed and all payments have been made.

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- 9.2. The client may terminate the contract/work with or without cause at any time by giving 3 months' written notice of termination to 3cert, such termination being subject to the client effecting the payment for the services satisfactorily performed prior to the effective date of termination.
- 9.3. 3cert may terminate this contract, by not less than 30 calendar days' written notice to the client, in case the client refuses to cooperate – even after having been demanded to cooperate within a reasonable period; the client attempts to falsify the result of the order; insolvency proceedings are opened on the client's assets or if the same is rejected due to lack of assets; the client has not paid a due invoice within a reasonable period despite a reminder.
- 9.4. If 3cert determines deviations in the course of an audit and these are not resolved in time (period given in Section 5 paragraph 5.8, 5.9, 5.13, 5.14, 5.18, 5.19) by the client, 3cert is entitled to terminate the contract for good cause. Other compensation and other claims remain unaffected. Depending on the client's decision, the process may start from application stage.
- 9.5. If the certificate is withdrawn, 3cert is entitled to terminate the contract for good cause. Other compensation and other claims remain unaffected.
- 9.6. Upon termination of this contract, the client shall make the following payments to 3cert: remuneration for services satisfactorily performed prior to the effective date of termination, other expenses, provisional sums and contingency for expenditures actually incurred prior to the effective date of termination; in case of suspension of works by the client, the payments of works successfully completed by 3cert shall not be suspended due to client's default/ failure.
- 9.7. Following the withdrawal of the certificate or the end of the certificate validity the client must stop all use of the usage object certificate, particularly any advertisement that refers to the usage object certificate, the use of a Certification Mark and logo related to the certificate, or the service by 3cert upon which it is based and must return all certification documents demanded by 3cert. All certificates must be submitted to 3cert.

### §10 Jurisdiction, applicable law, disputes

- 10.1. The contract, modifications, additions and subsidiary agreements thereto must be in written form if no stricter form is required by law. The form requirements are also valid for changes to or the cancellation of this form clause.
- 10.2. Should one or several of the provisions under this contract be or become ineffective, the contracting parties shall replace the invalid provision with a legally valid provision that comes closest to the content of the invalid provision in legal and commercial terms.
- 10.3. The place of jurisdiction for all disputes arising in connection with this contract shall be Malta.
- 10.4. The contractual relationship is governed exclusively by the substantive law of Malta.

### §11 Arbitration board

- 11.1. If a dispute arises between the parties out of or related to the assessments by the auditors or the awarding, withdrawal, or suspension of the certificate, then one of the parties shall give notice thereof to the other party and the parties shall forthwith use their best efforts to negotiate in good faith and settle such dispute.
- 11.2. If any such dispute has not been settled amicably through negotiations between representatives of the parties after twenty-eight (28) days of the aforesaid notice, or other period as may be agreed between the parties, it shall be finally settled under the Rules of Arbitration of the Malta Arbitration Centre, as given in Subsidiary Legislation 387.01 and its subsequent amendments or equivalent legislative enactment applicable from time to time. The dispute shall be settled by three arbitrators appointed in accordance with the said Rules, and the arbitration shall be carried out in the English language in Malta. The obligations of the Parties shall not be altered by reason of any arbitration being conducted or to be conducted during or after the Term.



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### §12 Liability

- 12.1. 3cert undertakes to exercise due care and skill in the performance of the services and is liable without limitation for damage caused by injury to life, body or health or other damage caused by 3cert negligence for which it would be illegal to exclude or limit its liability.
- 12.2. In cases involving a fundamental breach of contract, 3cert will be liable even where minor negligence is involved. For this purpose, a “fundamental breach” is a material contractual obligation, the performance of which permits the due performance of the contract and which the client may rely on being complied with. Any claim for damages for a fundamental breach of contract shall be limited to the amount of damage reasonably foreseen as a possible consequence of such breach of contract at the time of the breach (reasonably foreseeable damage), unless any of the circumstances described in section time limits delay, impossibility apply.
- 12.3. 3cert shall not be liable for personnel made available by the client to support 3cert in the performance of its services regulated under this contract, unless personnel made available may be regarded as vicarious agents of 3cert. If 3cert is not liable for personnel made available by the client under the foregoing provision, the client shall indemnify 3cert against any claims made by third parties.
- 12.4. The limitation periods for claims for damages shall be based on statutory provisions.

### §13 Confidentiality

- 13.1. “confidential information” is any oral or written proprietary information, documents, images, drawings, know-how, data, samples and project documentation which one party (the “disclosing party”) hands over, transfers or otherwise discloses to the other party (the “receiving party”). Confidential information also includes paper copies and electronic copies of such information. but shall not include any information which is or hereafter becomes generally known to the public; was available to the receiving party on a non-confidential basis prior to the time of its disclosure by the disclosing party; is disclosed to a party by an independent third party with a right to make such disclosure.
- 13.2. All confidential information which the disclosing party transmits or otherwise discloses to the receiving party in accordance with this agreement may only be used by the receiving party for the purposes of performing the purpose of the contract, unless expressly otherwise agreed in writing with the disclosing party; may not be copied, distributed, published or otherwise disclosed by the receiving party, unless this is necessary for fulfilling the purpose of the contract or 3cert is required to pass on confidential information, inspection reports or documentation to the authorities or third parties that are involved in the performance of the contract; must be treated by the receiving party with the same level of confidentiality as the receiving party uses to protect its own confidential information, but never with a lesser level of confidentiality than that which is objectively required.
- 13.3. Unless otherwise required by requirements of authorities, all confidential information shall remain the property of the disclosing party. The receiving party hereby agrees to immediately return all confidential information, including all copies, to the disclosing party, and/or, on request by the disclosing party, to destroy all confidential information, including all copies, and confirm the destruction of this confidential information to the disclosing party in writing, at any time if so requested by the disclosing party but at the latest and without special request after termination or expiry of this contract. This does not extend to include reports and certificates prepared for the client solely for the purpose of fulfilling the obligations under this contract, which shall remain with the client. However, 3cert is entitled to make file copies of such reports, certificates and confidential information that forms the basis for preparing these reports and certificates in order to evidence the correctness of its results and for general documentation purposes.

### §14 Copyrights

- 14.1. All exclusive and common copyrights to the documents created by 3cert remain with 3cert.
- 14.2. The client may use the documents created under the contract only for the contractually agreed purpose. The client may only use the result in full, not in excerpts and only for the agreed purpose.

## FS MS General Terms and Conditions

### §15 Data protection

15.1. 3cert processes personal data for the execution of the contractual relationship in compliance with the applicable data protection regulations, provided that the processing of personal data is necessary for the fulfillment of the contractual obligations contract existing towards the client (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016). Insofar as this is legally required in individual cases, 3cert will conclude supplementary agreements under data protection law with the company and provide information under data protection law.

### §16 Acknowledgement

16.1. The client acknowledges that it has received, read and understood these GTCs of 3cert along with the Contracts and invoices and agrees and undertakes to accept the same without any reservation/objection and agrees to fully abide by the same.