

Inspection and Certification Ordinance of TÜV NORD Systems GmbH & CO. KG for material-technical products and manufacturer acc. to AD2000, CPD, CPR and verification and surveillance

1 Scope and Definition

The Inspection and Certification Ordinance applies to the performance of inspections and the issuing of certificates for products, continuous surveillance and approval of manufacturer by the Notified Body / Certification Body for Construction Products (hereinafter also referred to as the "Certification Body") and the testing laboratories of TÜV NORD Systems GmbH & Co. KG for the fields of activity relating to construction product system 1, 1+, 2+, 3 so well as AD2000, including verification and surveillance. It also applies for the use of identification number of the Certification Body in connection with the CE marking acc. to CPD / CPR. The inspection and certification activities are performed specifically on the basis of the German law relating to the supply of products on the market (Product Safety Law - ProdSG). The inspections are performed within the framework of the conformity assessment procedures in accordance with the Directive 89/106/EEG respectively 305/2011/EEG, German rule "Landesbauordnung" and AD2000.

Specifically, the inspections involve activities such as the performance of tests and inspections for specific characteristics of the product, manufacturing procedures and / or manufacture qualification, with the aim of verifying specific.

Certificates are considered certifications of conformity in the meaning of Directive 89/106/EEG respective 305/2011/EEG, German rule "Landesbauordnung" and AD2000

Products manufacturer in the meaning of this Inspection and Certification Ordinance are products and manufacturer acc. to BauPRL, BauPVO, LBO and AD2000.

2 Inspection and certification procedure

2.1

The Client assigns the Certification Body to perform an inspection and/or certification. When a certification order is issued for the first time, the Certification Body and the Client conclude a written contract.

Upon the assignment of each order to the Certification Body, as a significant component of the contract, the Client shall recognise the Inspection and Certification Ordinance, as amended, as binding. Any contractual relationships shall be subject to the Inspection and Certification Ordinance valid from time to time. The valid Ordinance is available for download under www.tuev-nord.de (under General Terms and Conditions) and a hard copy can be provided upon request.

By concluding a contract and accepting the further applicable documents specified therein, the Client declares that the same application for certification has not been submitted to any other Certification Body. The Certification Body must be informed in writing if the product submitted for certification has already been the object of a comparable order from another Notified Body. The Certification Body must be notified of the result of this inspection.

2.2

The Client provides the Certification Body or the testing laboratory with the product to be tested, and with the necessary documents and/or information, and ensures that the Certification Body has access to the corresponding areas of its company.

2.3

The Client provides the documents and/or information required for the performance of the inspection to the Certification Body free of charge and freight costs. Shipping takes place at the Client's risk. If the return of documents and/or information has been agreed, this shall be done at the expense of the Client.

2.4

The inspection and certification orders are processed in the order in which the documents and/or information are received.

2.5

Inspections are performed in the testing laboratory or at the premises of the Client. Also other inspection locations may be agreed in consultation with the Client.

The Certification Body is entitled to involve subcontractors. The order shall be issued after consultation with the Client.

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2.6

Following completion of the inspection and/or certification procedure, the Client is provided with a written inspection report. If the product, the manufacturing process and / or the QS / QA system of the production plant conform to the corresponding requirements of the respective directives, the Certification Body shall issue the applicant with a certificate. The certificate may contain conditions for its validity. The certificate may have one or more appendices attached. The Certification Body shall provide the inspection report and certificate also in electronic form as the case may be.

2.7

For each inspection and certification, the Client pays fees corresponding to the fee schedule of TÜV NORD Systems GmbH & Co. KG in its applicable version, unless an alternative arrangement has been agreed.

2.8

The Client is obliged to retain the documents and/or information relating to the inspection and/or certification application, and particularly also the certificate of conformity, for a period of at least 10 years after the expiry of the certificate. Any more extensive provisions of law shall remain unaffected by this. Upon request from the Certification Body, the Client shall submit these documents and/or information, including after the conclusion of the inspection and/or certification application.

The Certification Body and the testing laboratory are not liable for any damage to inspection samples and/or documents and/or information provided, either as a result of or during the inspection, or as a result of burglary, theft, fire, water or transportation. TÜV NORD Systems GmbH & Co. KG is obliged only to exercise such care as it is used to exercising in its own matters (Section 690 of the German Civil Code (BGB)).

2.9

In the event of refusal to issue a certificate, the Certification Body is not liable for the disadvantages suffered by the Client as a result of such refusal, except in cases of intent or gross negligence.

2.10

The Client shall be informed about the expiry of the accreditation and/or the approval of the testing laboratory and/or the Certification Body; thereafter, the Client is no longer entitled to advertise using references to this accreditation or approval.

2.11

If intended by the technical rule to issue a certificate, the Certification Body performs an initial inspection of the manufacturing site at the Client's expense. The Client is provided with a written inspection report.

2.12

Monitoring of the final assessment by means of unexpected visits

For the purpose of ensuring consistent product quality the Certification Body performs checks of the internal manufacturer product testing (final assessment) by means of unexpected visits, at the expense of the Client or certificate owner. The frequency will depend on the production rate and size of the batch, but will be at least one visit per year.

In addition, the Certification Body may at any time without prior announcement, visit the manufacturing sites and the storage premises which are specified in the certificate (for foreign holders of the certificate also the storage premises of the authorized agents and subsidiaries, for importers also their storage premises) and can take free of charge samples of pressure equipment for which the certificate is issued in order to conduct checks.

3 Certificates

3.1

Issue of the certificate and utilisation of the identification number of the Certification Body in conjunction with the CE marking

3.1.1

The authorisation to use the identification number of the Certification Body only applies to those natural or legal entity and the products, the manufacturing process and / or the production plant that are explicitly listed on the certificate. In the event of an intended transfer to another natural or legal entity, the Client or holder of the certificate shall inform the Certification Body in good time. Only the Certification Body has the authority to alter the certificate or transfer it to a third party.

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3.1.2

The certificate shall only be valid for the products, the manufacturing process and / or the production plant as inspected.

3.1.3

The Client or certificate holder is obliged to immediately report to the Certification Body in writing any damage to products that are covered by the scope of the certification.

3.1.4

Payment of annual fees according to the fee schedule of TÜV NORD Systems GmbH & Co. KG may be agreed for the certificates.

3.2

Expiry, declaration of invalidity, limitation, suspension and withdrawal of certificates

3.2.1

A certificate shall expire if

- the contract for the inspection and/or the certification of the product and the use of the marking are terminated by the Client or certificate holder;
- the Client or certificate holder waives the right to the certificate and notifies the Certification Body of this in writing;
- the Client or certificate holder rejects in writing alterations made to the Inspection and Certification Ordinance within a period of 6 weeks after it comes into effect or after the possibility of notice;
- the Client or certificate holder becomes insolvent or an application for insolvency is rejected due to lack of assets;
- there are changes in the statutory requirements, the requirements of the accrediting body, or the rules of engineering on which the certificate is based. The validity of the certificate shall be extended if it is established by means of a repeat inspection at the expense of the Client or certificate holder, within a reasonable period set by the Certification Body, that the certified product, the manufacturing process and / or the production plant also conforms to the new regulations;
- the (basic) certificate on which it is based becomes invalid;
- the Client or certificate holder terminates its business operations, or
- the Client or certificate holder is obliged to withdraw the product from the market.

3.2.2

If necessary, a certificate may be suspended or withdrawn by the Certification Body if it is established within the conformity surveillance process that the product, the manufacturing process and / or the production plant no longer fulfils the requirements. In such case, the Certification Body shall require the Client to take reasonable corrective measures.

If the Client does not take these corrective measures or such measures are not sufficient to ensure that the requirements are fulfilled, the Certification Body shall limit all affected certificates, suspend them or withdraw them.

The certificate is withdrawn if the conformity of the products with the certified product or inspection sample is no longer guaranteed or the inspection report in the meaning of point 2.6 on which the certificate is based is no longer suitable to form a basis for the product certification.

Same is valid for the manufacturing process and / or the production plant.

3.2.3

A certificate may be declared invalid, limited, suspended or withdrawn by the Certification Body without notice, in particular if

- procedures or contents in the inspection and certification procedure are subsequently determined to have deviated from the regulations;
- the Certification Body was not properly approved for certification by the competent authority;
- the competent authority orders the declaration of invalidity, limitation, suspension or withdrawal;

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- no corrective measures are taken or such measures are not sufficient to ensure that the requirements are fulfilled;
- any subsequent inspection of the products bearing the marking reveals defects;
- defects not identifiable or not identified during the inspection are subsequently found in the products;
- the certificate/markings or inspection report is used in misleading or otherwise unacceptable advertising;
- the fees due are not paid, after reminders, within the period set by the Certification Body. If the fees do not relate to a specific certificate, the Certification Body decides to which certificate this measure shall relate;
- on the grounds of facts that were not identifiable at the time of the inspection, the continued use of the marking is no longer justified due to its significance on the market;
- certificates or copies of certificates have been altered and hence falsified;
- it is established that the certified product is indisputably or demonstrably plagiarised;
- the proper implementation of inspections is not demonstrated by the Client or certificate holder despite of a written request by the Certification Body within a period of 4 weeks;
- the Client refuses to allow visits to the manufacturing and testing equipments or the storage premises by the delegated representative of the Certification Body or the taking of products by the Certification Body in order to conduct checks or
- deficiencies are found during the regular check according to section 2.

3.2.4

After the expiry, declaration of invalidity, limitation, suspension or withdrawal of a certificate, the original of the concerned certificate must be returned to the Certification Body immediately. In the event of a limitation of validity, the Certification Body shall issue a new certificate with the content of the restriction. In the event of suspension, the certificate shall remain with the Certification Body until the Certification Body ends the suspension.

3.2.5

The Certification Body shall give the Client or certificate holder the opportunity to comment before the invalidity, suspension, limitation or withdrawal of the certificate is declared, unless obtaining such comment is not reasonable given the urgency of the action that has to be taken.

3.2.6

The Certification Body retains the right to announce the declaration of invalidity, limitation, suspension or withdrawal of certificates within the framework of its statutory obligations.

The Certification Body reports to the approving authority

- any case in which a certificate is refused, limited, suspended or withdrawn;
- any request for information relating to conformity assessment activities that it receives from the market surveillance authorities.

The Certification Body is authorised within the framework of its statutory obligations to provide the approving authority upon request with such information as required for the fulfilment of its surveillance functions, and to provide any other support required. The Certification Body is entitled, in particular, to provide the approving authority upon request with the documents on which the conformity assessment is based.

The Certification Body shall send relevant information regarding the negative and also, upon request, regarding the positive results of conformity assessments to the other notified bodies, which are notified under the respective harmonisation regulations of the European Union, pursue similar activities and cover products of the same type.

The Certification Body informs other notified bodies regarding the certificates and/or any supplements it has issued or withdrawn, and provides its notifying authorities at regular intervals or upon request with a list of all certificates and/or supplements it has refused, suspended, or otherwise limited.

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If requested by the Commission, the member states and the other certification bodies, they shall be submitted a copy of the certificate and/or its supplements. If requested by the Commission and the member states, they shall be submitted a copy of the technical documents and the results of the inspections performed by the Certification Body. The Certification Body retains a copy of the certificate, its appendices and supplements, and of the technical dossier, including the documents submitted by the Client, until the validity period of the certification has expired.

Moreover, the Certification Body shall report any improper use of certificates of which it becomes aware in particular to the approving authority. This shall not be subject to any specific consent from the Client or certificate holder. The Client or certificate holder is obliged to inform the Certification Body immediately regarding any improper use of certificates issued by the Certification Body, as soon as the Client becomes aware of this.

3.2.7

The Client or certificate holder shall automatically lose the right to affix the marking to the products listed in the certificate, as soon as the certificate expires, or is suspended, limited, declared invalid, or withdrawn.

3.2.8

The certificate holder is furthermore obliged to remove the marking from any relevant products to which he has access, or to destroy the products and give the Certification Body the opportunity to perform a corresponding subsequent inspection.

3.2.9

The Certification Body shall not be liable, except in cases of intent or gross negligence, for any disadvantages accruing to the Client or certificate holder in conjunction with the limitation, suspension, expiry, declaration of invalidity or withdrawal of the certificate, or the publication of the measures specified under section 3.2.4.

4 Publication of inspection reports and certificates

4.1

The Client or owner of certificates or inspection reports may only disclose and/or use these in their full and unabridged form, specifying the date of issue. Publication or duplication, including of excerpts, shall always require the prior written approval of the Certification Body.

4.2

The Notified Body reserves the right to publish the name of the Client or certificate holder and certified products, the manufacturing process and / or the production plant, e.g. in the form of reference lists. This shall not be subject to any specific consent from the Client or certificate holder.

5 Obligations of the Certification Body and the Client or certificate holder

5.1

Obligations of the Certification Body

The Certification Body undertakes to treat as confidential any information relating to the company of the Client or certificate holder, and only to use it for the agreed purpose. Documents of the company shall not be disclosed to third parties without the approval of the Client or certificate holder. This does not apply to any disclosure of information for reasons of statutory or official obligations.

5.2

Obligations of the Client or certificate holder

The Client or certificate holder is obliged for the duration of the validity of the certificate:

- to provide the Certification Body with such documents as are required for the inspection and/or certification process, and to provide access to the Certification Body where required;
- to inform the Certification Body regarding any intended alteration of the certified products (e.g. enhancement or the replacement of components), the manufacturing process and / or the production plant before this is implemented, and to subject the alterations to approval by the Certification Body;

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- to enable the Certification Body to perform any necessary inspections and monitoring within the framework of the certificate issuing process;
- to immediately remedy any defects subsequently found in certified products, and to take appropriate measures to minimise the damage. The Certification Body must be informed immediately in such cases;
- to inform the Certification Body upon request regarding any and all complaints and countermeasures taken.

6 Offences against the Inspection and Certification Ordinance

6.1

The Certification Body is entitled, in the event of culpable offences against the Inspection and Certification Ordinance being demonstrated, and in particular in the event of unlawful use of the certificate, to demand a contractual penalty of up to EUR 10,000.00 for each case of violation. The appropriateness of the extent of the contractual penalty shall be subject to examination in a court of law. Use of the certificate shall in particular be considered unlawful if a product is offered for sale or circulated bearing the marking before the certificate is issued, or if inadmissible advertising is published.

6.2

The Certification Body reserves the right to terminate the contract for inspection and/or certification without notice and with immediate effect, and to declare invalid and withdraw any further certificates owned by the Client or certificate holder, where as a result of an offence against the Inspection and Certification Ordinance, the Certification Body can no longer rely on the contractual good faith and reliability of the Client or certificate holder.

6.3

In addition, the Certification Body reserves the right to demand from the Client or certificate holder a replacement of the expenses that have been incurred by the offence against the Inspection and Certification Ordinance.

7 Complaints

The Client or certificate holder is entitled to file complaints against inspection and certification decisions. The complaint must be submitted to the Certification Body.

The Certification Body is obliged to justify its decision to the party submitting the complaint. If no agreement is reached even after this justification, the party submitting the complaint shall have recourse to the courts.

8 Access for accreditation bodies and approval-issuing authorities

Upon issuing the order, the Client or certificate holder assents to grant access for employees of the accrediting body or approving authorities of TÜV NORD Systems GmbH & Co. KG to its facilities, within the framework of the monitoring of the Certification Body.

9 Indemnification

If claims are made by third parties against the Certification Body for reasons of the use of the inspection report, the certificate or the marking by the Client or certificate holder, on the basis of the principles of product liability, the Client or certificate holder is obliged to indemnify the Certification Body against all claims of third parties. The same shall apply in all cases in which claims are made against the Certification Body as a result of advertising statements of the Client or certificate holder, or for any other reason relating to the conduct of the latter.

10 Commencement of the Inspection and Certification Ordinance

The Inspection and Certification Ordinance shall become effective on 01 November 2012, subject to any transition periods, and shall remain effective until a new Inspection and Certification Ordinance becomes effective.

Any previous versions of this Inspection and Certification Ordinance shall become ineffective at the specified date, subject to any transition periods.