

Agreement No.  
xxxx

## Translation

*In any case, the German original shall prevail.*

# Agreement

## on the Testing/Certification of Products

The following agreement is concluded by and between

Principal: \_\_\_\_\_

Reference: \_\_\_\_\_

Street, No.: \_\_\_\_\_

Telephone: \_\_\_\_\_

Post Code, City: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Country: \_\_\_\_\_

VAT no.: \_\_\_\_\_

[represented by: \_\_\_\_\_] \*)

– hereinafter referred to as the “Principal” –

and

Deutsche Gesetzliche Unfallversicherung e.V. (DGUV),  
represented by its managing director Dr. Stefan Hussy,  
who is represented by the director of the Testing and Certification Body  
its **Institut für Arbeitsschutz (IFA)**

**Dr. Peter Paszkiewicz**

– hereinafter referred to as the “Contractor” –

### 1. Scope of Performance

The Contractor shall provide the following performance:

- testing of slip resistance according to DIN EN 16165 annex A (for barefoot areas)
- testing of slip resistance according to DIN EN 16165 annex B (for shoed areas)
- testing of spill displacement volume according to DIN 51133 (V-class for shoed areas)
- testing of friction coefficient with the tribometer according to DIN EN 16165 annex D

The test is to perform as:

- Orientation test
- Type examination
- Type examination with DGUV test certificate

Should the test object be included in the [IFA Handbook Digital - Tested Floor Coverings - Positive List](#) (only for type examination with DGUV Test Certificate)?  Yes  No

### 2. Item for Testing

Product designation: \_\_\_\_\_

Type/ Article: \_\_\_\_\_

Manufacturer: \_\_\_\_\_

Colour: \_\_\_\_\_

Size: \_\_\_\_\_

Surface structure: \_\_\_\_\_

Note: \_\_\_\_\_

### 3. Previous tests

Were previous tests on samples with the same name or type done?

If YES, specify test report number and test institute:

\_\_\_\_\_

What was changed?

\_\_\_\_\_

#### 4. Integral Parts of the Agreement

The integral parts of this Agreement are these provisions and

- a) the Contractor's offer (*insofar as applicable* Nr. ....) dated .....
- b) the Principal's application together with enclosures dated .....
- c) the applicant's own information dated .....
- d) the Standard Terms and Conditions (see Annex and [www.dguv.de/dguv-test/pzo](http://www.dguv.de/dguv-test/pzo))
- e) The Rules of Procedure for Testing and Certification (DGUV Grundsatz 300-003) of the Contractor as amended at any time ([www.dguv.de/dguv-test/pzo](http://www.dguv.de/dguv-test/pzo))
- f) the schedule of fees of the Testing and Certification Body in force at any time in accordance with No. 7 of this Agreement .....
- g) the principles of Testing and Certification (Principles of Testing) dated July 2018
- h) the other integral parts of this Agreement: .....

In case of contradictions, the following provisions take precedence over the other integral parts. Apart from this the prescribed sequence shall apply.

#### 5. Control Measures

The Contractor shall implement control measures according to Chapter 3.3 of the Rules of Procedure for Testing and Certification in order to monitor certification.

#### 6. Testing Conducted by Subcontractors

The following tests/part tests are conducted by subcontractors:

The subcontract is awarded to the following body:

The resulting costs shall be invoiced to the Principal.

#### 7. Basis of Testing and Certification

Testing and certification shall take place on the following basis:

....

Insofar as the basis of testing and certification changes during the term of this Agreement, the amended versions shall apply to the testing. These versions shall be provided to the Principal prior to testing.

#### 8. Fees

The fees payable for the order shall be invoiced according to the schedule of fees (No. 3(f) of this Agreement) on the basis of hourly rates, unless otherwise agreed. Agreements have to be in text form at least. Testing and certification shall be invoiced according to the schedule of fees in force at the time the contract is concluded.

Repeat testing, subsequent testing, controls of production facilities, spot-check testing and other control measures and services shall be charged according to the schedule of fees in force at the time the measures are taken.

The following also applies:

- a) An advance payment in the amount of ..... is agreed.
- b) Fees are also charged in cases where testing or certification is abandoned on grounds for which the Testing and Certification Body is not responsible or where the decision on certification is negative.
- c) The Principal may invoke rights of retention solely insofar as its counter-claim is based on the same contractual relationship.
- d) A setoff may be made against claims of DGUV solely on the basis of final or undisputed claims.

#### 9. Term of Agreement

The Agreement shall end when the validity of the certificate expires, unless notice of termination is issued beforehand.

**10. Publication**

- 9.1 The Principal authorizes the Contractor to publish the fact that a certificate has been issued.
- 9.2 Special considerations with relevance to GS certification: The contractor must publish a list of all certificates issued for the award of the GS mark. For each certificate, the contractor must provide all the data required for the clear identification of the relevant product bearing the GS mark. This must also include the publication of suitable illustrations (German Product Safety Act, ProdSG, section 22.1). You are under an obligation to provide the contractor with suitable illustrations in PDF or JPG file format. By providing the illustrations, you grant the contractor the irrevocable right to store the illustrations in the DGUV Certificate Database and to publish them on the internet for as long as the GS mark is valid.

**11. Miscellaneous**

- 11.1. All notifications, declarations etc. that the Principal is obliged to issue hereunder or under the Rules of Procedure for Testing and Certification shall be addressed at least in text form to the Contractor at the above-mentioned address [*alternatively: e-mail, secure server*].
- 11.2. The present terms alone apply to this Agreement; other terms, in particular the Principal's standard terms and conditions, shall not become part of this Agreement even where no explicit objection is raised.
- 11.3. Should a provision of this Agreement become invalid or inoperative no matter on what legal ground, this shall not affect the validity of the remaining provisions hereof. The invalid or inoperative provision shall be replaced by a logically different provision.
- 11.4. Agreements, covenants, promises and other arrangements and declarations as well as the notification of all results obtained within the context of providing performance shall be binding only if they are confirmed in writing by the Contractor. This also applies to amendments to this clause. Amendments and supplements to the agreement have to be in writing.
- 11.5. There are no oral covenants.
- 11.6. This Agreement is governed by German law to the exclusion of the rules on conflict of laws under private international law and the UN CISG.
- 11.7. Place of performance for all liabilities arising under this Agreement is the registered office of the Contractor's place of business.
- 11.8. The venue for all disputes arising from or concerning this Agreement is Bonn.

....., ..... (date)                      ....., ..... (date)

.....  
(on behalf of the Principal)

.....  
(on behalf of the Contractor)

# Translation

*In any case, the German original shall prevail.*

## **Standard Terms and Conditions for Agreements with the Testing and Certification Body in DGUV Test for the Testing/Certification of Products, QM Systems and Processes**

### **1. Provision of Performance**

- 1.1. The agreed performance shall be provided in compliance with the provisions in force at the time of conclusion of the agreement. Where orders for testing or certification are concerned, the Contractor is not responsible for the accuracy or verification of the provisions underlying the testing (e.g. European Directives/Regulations, accident prevention regulations), standards or programmes (e.g. principles of testing, certification programmes), unless otherwise agreed in writing.
- 1.2. The Principal agrees to provide any cooperation in good time and free of charge.
- 1.3. In the absence of a written agreement to the contrary, the Contractor is entitled to determine the method and nature of the testing at its duly exercised discretion.
- 1.4. The testing shall be deemed to have been completed upon preparation of the test report. The performance provided within the context of monitoring a certificate issued shall be deemed to have been provided after completion of the individual performance. The Principal is under an obligation to accept without undue delay. If the Principal fails to comply with its obligation to accept without undue delay, acceptance shall be deemed to have taken place four (4) weeks after performance has been provided.

### **2. Termination**

- 2.1. The contracting partners are entitled to terminate with immediate effect for good cause. Notice of termination shall be issued in writing.
- 2.2. The right to terminate with immediate effect arises especially if
  - insolvency proceedings are commenced or imminent against the assets of one of the contracting partners,
  - a statutory amendment, a modification of standards, principles of testing or of the Rules of Procedure for Testing and Certification render(s) a contractual amendment necessary, and where such amendment is not brought about after a corresponding demand and setting of a deadline,
  - a contracting party fails to comply with obligations to perform or cooperate hereunder following a corresponding demand and setting of a deadline, or is in breach of such obligations. In exceptional cases no demand is necessary and no deadline has to be set if
    - o the holder of a certificate fails to comply with its obligation to enable test personnel or auditors of the Testing and Certification Body to implement unannounced control measures at its operational or production facilities during normal hours of business, in particular to access the premises of the plant, to inspect documentation, to inspect all sites and areas, to question personnel and subcontractors, and to take samples from the ongoing production,
    - o the holder of a certificate fails to comply promptly with its obligation to notify all - including planned - modifications in the manufacturing of the products in relation to the certified type to the Testing and Certification Body in text form (i.e. especially modifications of the manufacturing process, of the components used, relocation of the manufacturing premises or transfer of the production to third parties),
    - o the holder of a certificate fails to comply promptly with its documentation obligation as regards complaints made by third parties or fails to take appropriate measures, or fails to inform the Testing and Certification Body promptly in text form about the relevant documentation and the measures taken.
- 2.3. The performance provided up to the date on which notice of termination is issued shall be paid by the Principal.
- 2.4. The Principal's right of termination based on Sec. 648 of the German Civil Code (BGB) shall remain unaffected by this clause.
- 2.5. Where the agreement covers several products, partial termination of the contractual obligations concerning the relevant product according to Clause 2.1 - 2.4 is possible.

### **3. Terms of Payment**

- 3.1. All performance shall be invoiced with statutory VAT. All bank charges in relation to payment of the invoice shall be borne by the Principal.
- 3.2. The invoice amount shall be paid without deductions within 30 days of receipt of the invoice. The Testing and Certification Body may require reasonable advance payments and may invoice completed partial performance. Travel that has taken place is deemed to be partial performance.
- 3.3. Where performance is provided by third parties, the Contractor shall issue a separate invoice for the resulting costs.
- 3.4. Complaints about invoices shall be notified to the Contractor in writing within an exclusionary period of 14 days after receipt of the relevant invoice.
- 3.5. The test report/certificate shall be provided after conclusion of the tests/certification and after receipt of all payments due.

### **4. Warranty**

- 4.1. The Contractor warrants that tests will be conducted free of defects and that a test report will be prepared. The Contractor assumes no warranty for the correctness, flawless quality and functioning of the inspected or tested parts within facilities; the same applies to the construction, the selection of materials and the correct type of construction unless these elements constitute the subject-matter of the relevant agreement.

- 4.2. The performance provided shall be verified by the Principal without undue delay. Obvious errors and defects in performance shall be notified in writing within 14 days of receipt of the notification of results; otherwise the performance shall be deemed accepted.
- 4.3. The warranty obligation is initially limited to the rectification of defects within a reasonable set period. If the Contractor fails to rectify defects within the set period or if the rectification of defects is unsuccessful, the Principal may demand a reduction in the fees or rescission of the contract. Damages claims for damage caused by defects or for consequential damage, no matter on what legal ground, are excluded unless the occurrence is covered by Clause 5.2.

## **5. Liability**

- 5.1. The liability of the Contractor, of its executive bodies and of institutions and persons acting on its behalf, for negligence in case of damage to property is limited to an amount of damage of EUR 1.0 million; the same limitation applies to other damage that is neither personal injury nor damage to property and which is not derived from such damage. Liability for damage caused to a type through a commercial or professional activity of the Contractor, its executive bodies or persons/institutions acting on its behalf (e.g. adaptation, repairs, transportation, testing, storage and the like) - outside the confines of the contractual testing - shall only be assumed up to an amount of EUR 100,000.
- 5.2. The limitations on liability according to Clauses 5.1 and 4.3 do not apply in case of intent, gross negligence and a breach of material contractual obligations (i.e. where failure to satisfy such obligations jeopardizes the object of the contract and on satisfaction of which the Principal may, as a rule, rely) or in case of culpable injury to life, limb or health. In case of a breach of material contractual obligations, however, liability is assumed solely for damage typical for the type of contract that was foreseeable at the time of conclusion of the contract.
- 5.3. Liability for disadvantages suffered by the Principal through failure to issue or through revocation of a certificate is excluded.
- 5.4. If the type to be tested has already been delivered to a customer, the Principal shall cause the third party to enter into an agreement with the Contractor on a limitation of liability in accordance with Clause 5.1. If a corresponding agreement is not provided within two (2) weeks after conclusion of the contract, the Contractor shall be entitled to terminate with immediate effect in accordance with Clause 2.
- 5.5. Each occurrence of damage relating to the performance provided shall be notified in writing to the Contractor and to the office of DGUV Test, Alte Heerstraße 111, 53757 Sankt Augustin, Germany, without undue delay.
- 5.6. Insofar as claims for damages against DGUV are excluded or limited, this also applies to the personal liability of the executive bodies, experts and other employees as well as vicarious agents of DGUV.

## **6. Limitation Period**

All claims with the exception of the claim for fees and claims based on Sec. 438(1)(2) and Sec. 634a(1)(2), German Civil Code (BGB), shall become statute-barred one year after the onset of the statutory limitation period. Sentence 1 above does not apply to liability for damages arising from culpable injury to life, limb or health or where there is a breach of material contractual obligations. Nor does sentence 1 above apply to other damage caused by intent or gross negligence.