

# Testing and Certification Procedure

of the VDE Prüf- und Zertifizierungsinstitut GmbH

(VDE Institute)

(For information purpose only. In any case the German version shall prevail.)

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## 1. Personal and Objective Scope

Personally this Testing and Certification Procedure, PM 102, of the VDE Testing and Certification Institute (hereinafter referred to as **VDE Institute**) shall apply for all customers. The customer is often simultaneously the certificate holder in the common case of the possible issuance of a certificate. If the customer and the certificate holder are staffed differently, then the customer must ensure that the valid versions of this Testing and Certification Procedure, PM 102, as well as other contractual bases, come to the certificate holder's attention and that the certificate holder is bound by this Testing and Certification Procedure, PM 102, as well as by the other contractual bases in the same way as the customer is relative to VDE Institute. VDE Institute shall owe all of the services under this Testing and Certification Procedure, PM 102, as well as those under the other contractual bases solely to the customer.

(Due either to the fact that the same person is involved or that litigation is the same, the certificate holder shall also be designated as **customer** within the context of this Testing and Certification Procedure, PM 102.)

Objectively this Testing and Certification Procedure, PM 102 – insofar as applicable – shall apply to all of the orders placed with VDE Institute, on the basis of which VDE Institute shall render the activities itemized below, inter alia:

- Testing and certification of technical products, mainly electro-technical components, appliances, product systems, machines, and equipment (hereinafter referred to as "**products**").

This includes, among other things, the following types of tests:

- Safety tests regarding electrical, mechanical, thermal, chemical, toxic, radiological and other hazards
- Test of the electromagnetic compatibility (EMC) and the impact of the electromagnetic fields (EMF)
- Testing of energy efficiency and environmental protection
- Acoustic and noise emission measurements
- Usability tests
- Testing of conformity with directives
- Evaluation and certification of management systems (hereinafter referred to as "**systems**")
- Factory inspections and Factory certification
- Evaluations in the development, procurement, production respectively shipment process
- Document inspections
- Issuing of expert opinions, statements and test reports for information

- Expertise regarding standards, other technical regulations and statutory provisions
- Additional services, insofar as this Testing and Certification Procedure, PM 102, is referred to within the context of the order.

VDE Institute does not recognize conflicting or supplementary business terms and conditions of the customer, although VDE Institute does not expressly controvert them.

## 2. Contractual Basics

In the event of an order, the following regulations apply in addition to this Testing and Certification Procedure PM 102, each accessible under <https://www.vde.com/tic-en/about-us/general-terms-and-conditions>:

- VDE Certification Marks, Certificates, Attestations PM 045
- Schedule of Prices and Services of the VDE Institute PM 103
- Code of Conduct for all associated companies of Verband der Elektrotechnik Elektronik Informationstechnik e. V.
- Data Protection Information

In case of conflicts, the provisions of the Code of Conduct shall apply first; then this Testing and Certification Procedure, PM 102; the VDE Certification Marks, Certificates, Attestations, PM 045; and finally the Schedule of Prices and Services of VDE Institute, PM 103, shall apply.

## 3. Basic Provisions

- 3.1. The basic policies and procedures according to which VDE Institute works guarantee its independence and impartiality, and are nondiscriminatory. The normative or legal regulations applied are generally accessible. VDE Institute shall announce amendments of the testing and certification requirements to the customer.
- 3.2. The client and the VDE Institute agree that the contract concluded between the parties shall not have any protective effects in favour of third parties, unless expressly agreed otherwise. The VDE Institute is not obliged to report on circumstances outside the scope of the contracted services. The services to be rendered by the VDE Institute expressly do not include the services to be performed by the customer himself (e. g. independent taking of test samples).
- 3.3. The VDE Institute operates a documentation system which indicates the certification procedures are implemented properly.
- 3.4. The VDE Institute reserves the right to refuse to conduct tests on the basis of non-standardized test procedures which would jeopardize the results or would not be meaningful, unless the VDE Institute has expressly agreed to conduct an appropriate test within the order.
- 3.5. The subcontracting of tests, entirely or partially, is possible.

- 3.6. The information obtained as part of the activity is kept principally in confidence by the VDE Institute. However, a disclosure of said information e. g. to the authorities and accreditation bodies is permissible to the extent that the purpose of the contract or the accreditation rules so require or it fulfills statutory obligations. The customer hereby confirms that the VDE Institute may disclose such information and the customer grants access to public authorities and accreditation bodies if requested.
- 3.7. If the customer is provided with documents by the VDE Institute, these remain the property of the VDE Institute. The customer undertakes to keep these documents in confidence and not to forward such documents to third parties without the prior consent of the VDE Institute. The customer has to return these documents on request of the VDE Institute and destroy any copies.
- 3.8. The customer may disclose the test reports, expert opinions, and other such documents obtained from the VDE Institute to third parties only verbatim including their respective preliminary remark and with specification of the date of issue.
- 3.9. The VDE Institute has the right to provide third parties with information as to the validity of a certification.
- 3.10. In the event of a substantial deterioration of the client's assets, through which claims of the VDE Institute are endangered through no fault of the VDE Institute, or if the client discontinues its services or necessary cooperation actions without the VDE Institute being responsible for this, the VDE Institute is entitled at its discretion to discontinue the provision of its services and to withdraw from the part of the order not yet fulfilled, to demand security or advance payment or cash payment concurrently against performance. In this case the customer shall not be entitled to compensation for damages.
- 3.11. The customer consents to having its documents and data electronically stored in data processing systems of the VDE Institute.
- 3.12. The certification body of the VDE Institute is responsible for its decisions with respect to granting, retention, expansion, limitation, rescission and withdrawal of a certification. There is no enforceable claim on a certificate. Certification is only granted by the VDE Institute if the respective granting requirements are fulfilled. The certification body alone decides on the existence of the prerequisites for granting the certification. If the conditions for the granting are not fulfilled, the granting is replaced by a justified refusal in writing.
- 3.13. The VDE Institute shall advise the customer in a timely manner of any relevant changes in the basis of certification.
- 3.14. The certification body of the VDE Institute ensures that every decision regarding certification shall be made by persons who have not conducted the assessment of the product or system.
- 3.15. All persons or committees participating in the certification process are free from all types of commercial and financial pressure and their decision is not influenced or bound by instructions in any such fashion.

#### 4. Placement of Orders and Accounting

- 4.1. The order shall be placed by the customer in writing; preferably by using a form that can be obtained from the VDE Institute. VDE Institute can accept the order within three weeks. The customer shall be bound to the order placed for the duration of this period. The period begins on the day of dispatch of the order.
- 4.2. When placing the order, the customer shall provide the VDE Institute with all documents and information necessary for the order. The customer must do this without delay no later than VDE Institute's acceptance of the order. The customer shall be responsible for the completeness of the documents and information. Incomplete or untimely provision of the documents and information required to execute the order may impair the timeliness or quality of the order's execution or render order execution impossible.
- 4.3. The agreed advance payment must be received before the commissioned services will be provided. Partial invoices can also be issued with respect to the services already rendered.
- 4.4. Foreign taxes and other charges of any kind shall be determined, borne, and paid on site by the customer if the obligation to deduct tax is stipulated according to foreign law. They do not reduce the amount due to VDE Institute. Apart from that, the fees shall comply with the Schedule of Prices and Services, PM 103.
- 4.5. Invoice amounts shall be payable in full upon invoice receipt. A lien and a right of the customer to offset shall be excluded unless the lien or the customer's claim to the offset is undisputed or legally established. Statutory default interest shall be owed in the event of default.
- 4.6. The customer is entitled to the results of the commissioned service only after the final invoice has been settled and all applicable foreign taxes and other charges have been paid.
- 4.7. The customer is liable for the correct calculation and payment of foreign taxes and other charges and has to indemnify upon first request VDE Institute from any loss or damage that result from failure of the party liable for payment to fulfill tax duties.

#### 5. Testing and/or Certification of Technical Products

##### 5.1. General Provisions

- 5.1.1. Trademarks, marks, or other business names on products or in terms of products (hereinafter referred to as "trademark") must comply with legal requirements so that a product certification can be granted. In particular the customer must have the required rights to the presented products and the trademarks.
- 5.1.2. The customer shall send the required number of test samples with the accompanying documents at his own expense to the address specified. The test samples must bear the customer's name and the reference given by the VDE Institute. They should be shipped in packaging that can be re-used for their return.
- 5.1.3. A picture of the trademark for registration must be attached to the application for product certification; in the case of insulated cords, this can be a sample of the manufacturer's identification threads. Changes respectively modifications to the trademark used on the product require the prior approval of the VDE Institute.

- 5.1.4. The following also applies with respect to certification orders for use of a trademarked VDE Certification Mark according to PM 045:
- 5.1.4.1. The customer must specify the location of the places of manufacture for the respective product.
- 5.1.4.2. The customer must prove that the places of manufacture for the products to be tested are so technically equipped and managed that a uniform production according to the certified version is guaranteed and suitable test equipment is available in these facilities for testing the product's compliance with the test basis. The customer himself is obliged to regularly conduct production, inspections and surveillance tests required by the VDE Institute and to furnish proof of these tests by presenting the corresponding test reports.
- 5.1.4.3. The VDE Institute may inspect without prior notice – in presence of the customer or by the customer appointed persons, to the usual operating times and at the customer's expense – the places of manufacture to determine whether the requirements specified in sub-clause 5.1.4.2 have been fulfilled.
- 5.1.4.4. If the VDE Institute refuses to grant a certificate, it shall substantiate this decision in writing to the customer.

## **5.2. Product Testing**

- 5.2.1. Test samples shall be tested according to current applicable normative requirements (generally on the basis of VDE specifications) as well as other technical regulations, guidelines and legal requirements. If there are no relevant technical regulations, the VDE Institute at its reasonable discretion considers the generally recognized rules of technology when determining the respective test basis to be used and informs the customer of such before the start of the test.
- 5.2.2. During tests to obtain a VDE Certification Mark, a registration number or a certificate (e. g. EC type-examination certificate) it will be verified whether a product fulfills the relevant requirements.
- 5.2.3. The customer is aware that the testing must or can damage the test samples. VDE Institute shall be liable for damage to the test samples solely under clause 15.
- 5.2.4. If there is a change in a place of manufacture for an existing certificate (relocation or expansion), an identity check shall be performed on a product sample from the new place of manufacture at the expense of the customer to determine whether it still conforms to the originally certified version of the product.
- 5.2.5. Tests for the preparation of an expert opinion, a statement respectively a test report for the information of the customer can also be created according to test procedures or test specifications given by the customer.

## **5.3. Use of the Test Sample**

- 5.3.1 The VDE has the right to keep reference samples for proof of the identity of the sample provided for the test or send them to the customer at his expense for safe-keeping.

- 5.3.2. If a reference sample is sent back to the customer, he shall properly store and protect the reference sample and other documents specified by the VDE Institute from damage for at least 36 months beyond the validity of the certificate. The customer shall make the documents available to the VDE Institute at any time and free of charge for purpose of comparison with marketed products bearing a VDE Certification Mark.
- 5.3.3. Test samples that are no longer required will be disposed of by the VDE Institute at the customer's expense. At the customer's request, risk and expense, the test samples can be returned or stored until collection.

#### **5.4. Certification of Products, Conformity Control**

- 5.4.1. If it is determined with the test of a product that the product meets the requirements of the relevant test basis, a certificate and/or an approval to affix a trademarked VDE Certification Mark pursuant to PM 045 can be granted. In justified instances, a quantity-bound certification with specification of a production period is possible. The particulars in this regard must be separately stipulated.
- 5.4.2 VDE Certification Marks may be used only in the immediate vicinity of origin marks and type designation.
- 5.4.3. Products bearing a VDE Certification Mark or the type designation of a product certified at VDE Institute shall be subject to VDE Institute's regular conformity control for ensuring compliance with the originally certified product execution.

As part of regular conformity control, VDE Institute shall be authorized to inspect the customer's manufacturing and business premises and associated warehouses indicated on the certificate between one and four times annually during the validity of a certificate and for 12 months thereafter. The inspection shall be conducted at the customer's expense without prior announcement during ordinary hours of operation in the presence of the customer or of persons determined by the customer. In this connection, VDE Institute may remove and review products for inspection for which a certificate has been issued.

If the inspection doesn't take place directly at the manufacturing site, the client has to ensure that he has the removed product or products immediately remitted at his cost to the place designated by VDE Institute for inspection.

- 5.4.4. VDE Institute can also conduct additional conformity control as soon as it has evidence of or receives instructions concerning, e.g., market participants who in VDE Institute's estimation require conformity control beyond that regularly performed to ensure compliance with the originally certified product execution. This is done by checking the products, which VDE Institute has procured either on the market or – if necessary for VDE Institute's verification – according to the procedure followed during regular conformity control by removal of products after inspection of the manufacturing and business premises and associated warehouses.
- 5.4.5. The customer shall receive a written notification about the result of the inspection. The customer has to compensate VDE Institute for each conformity control.
- 5.4.6. For products for which VDE Institute has issued a certificate with a VDE Certification Mark, annual fees are payable for the use of the VDE Certification Mark unless the certificate is restricted to a maximum of one year.



- 5.4.7. The VDE Institute is authorized to use the results obtained as part of compliance monitoring with regard to the manufacturing facility as part of production-facility certification under clause 6. The confidentiality obligation imposed under clause 3.6 shall remain unaffected.

## 6. Factory Certification

A separate order shall be placed by the customer in writing for requesting an independent factory certification. The general regulations for factory surveillance as part of product certification remain unaffected.

The issuance of a production facility certification is only possible on the basis of stand-alone inspections or inspections of manufacturing facilities conducted by VDE Institute under subcontract

The surveillance of the factory is performed – unless otherwise agreed between the VDE Institute and customer – on the basis of the relevant European factory inspection procedure.

During the validity period of the factory certificate the VDE Institute is entitled to perform a factory inspection without prior notice – in presence of the customer or by the customer appointed persons, to the usual operating times and at the customer's expense – to determine whether the conditions for maintaining the certification are still given.

The factory certificate granted is valid for one single factory and related to the indicated product categories. The factory certificate has a validity of 12 months starting from the date of inspection.

The follow-up inspection for continuing the validity of the certificate can be performed within 3 months after the expiry date.

The granted factory certificate is not transferrable to other factories and does not entitle to use on the products manufactured at the factory any of the VDE Certification Marks. It does not include a statement about the results of conformity tests performed on samples selected.

## 7. Management Systems

### 7.1. Expert Opinion and Certification

The commissioning of the VDE Institute for an expert opinion and certification of management systems is carried out in accordance with relevant legal and normative regulations and other provisions. The given regulations and deadlines are especially applicable for the certification audit (audit of stage 1 and audit of stage 2), surveillance audit, re-certification audit, post-audit as well as for the validity of certificates.

For the purpose of performing the certification audit, the customer shall submit the management system documents to the VDE Institute at least four weeks prior to the audit.

The results will be presented to the customer in the form of an audit report. In the event of a positive assessment and corresponding decision by the certification body, the customer will also receive a certificate regarding the conformity of the management system with the underlying regulations.

The VDE Institute shall determine whether the requirements of the initial certification are still fulfilled by performing annual surveillance audits during the validity period of the certificate. A surveillance audit is then also performed if the relevant regulations have changed. The surveillance audits shall be performed without prior notice, in presence of the customer or by the customer appointed persons, to the usual operating times.

The VDE Institute shall inform the customer about changes in the certifications and follow-up processes during the validity period of the existing certification.

## 7.2. Assignment of Auditors

- 7.2.1. The VDE Institute assigns audits only to auditors who are appointed by the VDE Institute in consideration of the relevant regulations and on the basis of their professional qualifications.
- 7.2.2. The customer may request to see documents from the VDE Institute regarding the qualifications of the auditors.
- 7.2.3. The customer has the right to refuse the auditor(s) proposed by the VDE Institute without any reason once. Additional refusals must be justified in writing. The VDE Institute shall use its best judgment when reaching a decision about the additional refusals.

## 7.3. Additional Provisions regarding System Certification

The VDE Certification Marks may be used for commercial purposes, e.g. on correspondence documents and for promotional material such as brochures. They may only be used for the certified organizational units of the customer, the certified area of application and only within the validity period documented on the certificate. They may not, under any circumstance, be used in a manner allowing the conclusion to be drawn that the system certification refers to any certain product or factory.

## 8. Additional Provisions regarding Certificates and VDE Certification Marks

- 8.1. A certificate granted in connection with a marks approval is only valid when it is published on [www.vde.com/certificate](http://www.vde.com/certificate)
- 8.2. Certificates and other certifications are not transferable.
- 8.3. Upon positive certification, the customer obtains the right to use the respective certificate and if applicable, the respective VDE Certification Mark in accordance with the provisions of this Testing and Certification Procedure PM 102 for business purposes, including the use for advertising purposes, but this right is revocable at any time. A misleading or otherwise improper or unauthorized use is not permitted.

- 8.4. The customer is obliged to inform the VDE Institute in due time of all intended changes that could impact the certified product, the certified system or the place of manufacture with respect to the certification attributes.
- 8.5. When products bearing the VDE Certification Mark are brought into the European Union (EU) economic area, they must be presented to customs authorities along with true copies of the original certificates of all outwardly recognizable VDE Certification Marks.
- 8.6. The customer shall inform the VDE Institute about serious incidents regarding his VDE certified products in the market (e. g. product recalls or complaints from market surveillance authorities).

## 9. Expiration of a Certificate

- 9.1. The certificate shall expire
- when the certification conditions lapse or when withdrawn, each with immediate effect (discussed below under clause 10),
  - on termination with expiration of the termination period (discussed below under clause 11),
  - upon expiry of the validity or
  - if the customer becomes insolvent or bankruptcy proceedings have been initiated against him
- 9.2. If a certificate expires, the customer loses the right to use the certificate and the respective VDE Certification Marks. In particular, the certificate holder is not allowed to put into circulation any products specified in the certificate that bear the respective VDE Certification Marks.
- 9.3. Immediately after the certificate expires, a sales permission can be granted as per the following requirements for the current stock of finished products for an appropriate period of time, however not exceeding two years:
- The original basis of certification continues to be valid and there are no statutory or other requirements in opposition (if applicable, the sales permission is to be limited to the expected validity period of the original certification basis).
  - The number of finished products in stock that bear a VDE Certification Mark must be disclosed to the VDE Institute in a legally binding manner before the sales permission is granted.
  - The provisions of the Testing and Certification Procedure PM 102 and the Schedule for Prices and Services PM 103 are valid for the duration of the sales permission in the respective manner and
  - If a sales permission is not granted or is withdrawn, the customer is obliged to remove the VDE Certification Mark from the products of the type in question that are in stock or can be recalled, or destroy said products and permit the VDE Institute to conduct a verification of these measures.

## 10. Automatic Termination with omission of the certification conditions, Withdrawal and Suspension of Certificates

10.1. An issued certificate expires with immediate effect as soon as all of the conditions for obtaining a certificate (hereinafter referred to as **certification conditions**) are no longer met, unless this occurred without the customer's exercising influence. This shall not apply if VDE Institute would also have issued the certificate even under the new prerequisites.

When the certificate expires, nothing changes if the certification conditions are reestablished after expiration. In this case, the certificate shall remain expired until the time at which a new certification is issued.

10.2. If the conditions for a certificate's automatic expiration are not present, then VDE Institute can withdraw an issued certificate with immediate effect,

- (i) if the customer conducts himself in gross breach of contract, or
- (ii) when a change of status in comparison to the time when the certificate was issued arises or is detected, unless VDE Institute would not have taken the altered status into consideration as part of the earlier certification issuance, for example, because the changed status is not material or has no relation to the issuance of the certificate.

A withdrawal may come into consideration hereafter, especially

- if the customer has ceased to perform his activities as part of the certification,
- facts become known after certificate issuance that could have had a detrimental impact on certification during the certification and monitoring procedure,
- if the customer violates certification regulations of the VDE Institute,
- if the customer does not pay the invoices of the VDE Institute within the specified payment periods, does not pay taxes or charges or does not provide the required proof of paid taxes or other charges within one week after payment of the invoice of VDE Institute.
- if, after a certificate is granted, it becomes known that the trademark has already been protected for a third party,
- if products appear on the market which bear the customer's trademark, but have not been manufactured by him,
- if, in the case of system certification, the customer makes organizational changes that impact the management system,
- if an otherwise material reason — also possibly lying outside the contractual relationship — is present, in particular when the relationship of trust between VDE Institute and the customer is disrupted (e.g., due to certificate forgery or denial of access during unannounced monitoring).

- 10.3 Instead of a withdrawal, VDE Institute can arrange suspension of the relevant certificate for a maximum period of six months. The customer's right to use the certificate and the VDE Certification Mark shall be in abeyance during the suspension phase. VDE Institute shall lift the suspension if the customer produces evidence during the suspension that the reason for the suspension no longer applies. VDE Institute can conduct suitable reviews to verify the evidence in return for corresponding compensation. VDE Institute shall withdraw the certificate if the customer fails to produce evidence during the suspension.

All other formalities for monitoring and compensation shall continue to apply in full.

- 10.4 The VDE Institute has the right to make public the automatic termination or withdrawal of a certificate and in justified cases, to impose a two-year retention period on accepting new certification orders.

## 11. Termination of Certificates

- 11.1. Terminations by the customer require a six-month term of notice (either per June 30 or per December 31). Services according to the HAR procedure require a term of notice that is six weeks prior to the end of the year.
- 11.2. VDE Institute shall be authorized to terminate the certificate as soon as the certification conditions are no longer given, and this has occurred without exercise of influence by the customer (e.g., due to normative changes). This shall not apply if VDE Institute would also have issued the certificate even under the new conditions.
- 11.3. In cases of termination by the VDE Institute, the term of notice is basically six months; however, it does not extend beyond the expiry of certificate requirements.
- 11.4. The termination must be made in writing.

## 12. Special Inspections, Expert Opinions and Tests

- 12.1. In addition to the procedures described in clauses 5 and 6, the VDE Institute also offers inspections and conformity assessments within the scope of expert opinions and product tests in preliminary and ongoing production and/or shipment processes in order to examine product and process attributes for the customer.
- 12.2. This service can be utilized for all products and is not limited to VDE-certified products. The content and scope of the tests are agreed with the customer ahead of time. As part of this service, products can be examined with respect to attributes agreed upon by the recipient and manufacturer/supplier, including safety aspects, functionality, packaging, processing, completeness, etc. The agreed scope of service does not include products that are not part of the random sample group.

## 13. Appeal Procedure

- 13.1. Any disputes between the customer and the VDE Institute may be treated – if both parties agree – at first in an Appeal Committee with the objective of reaching an amicable settlement.

Either party may have recourse to the Appeal Committee within a period of 4 weeks after the other party has received the notification. If the other party agrees to an Appeal Committee procedure within two weeks, the Appeal Committee shall meet within another three weeks. It shall consist of:

- one or two members appointed by the customer,
- one or two members appointed by the VDE Institute
- and the Chairman of the Appeal Committee appointed by the Permanent Advisory Committee of the VDE Institute who shall convene the negotiations

- 13.2. As long as the aforesaid procedure has not been concluded, recourse to ordinary courts shall be excluded. This shall not apply with regard to provisional (preliminary) remedies. These shall be decided upon by the competent court.
- 13.3. The Chairman of the Appeal Committee shall use his best efforts in accordance with his duty to reach an amicable settlement between the parties.
- 13.4. The settlement achieved shall be logged and signed by the Chairman and the parties. If applicable, necessary remedial actions shall be examined on the basis of their effectiveness and be documented.
- 13.5. If settlement cannot be reached within a period of six weeks after the first meeting of the Appeal Committee, the parties may have recourse to the courts.

## 14. Warranty

- 14.1. VDE Institute assumes no guarantee vis-à-vis either the customer or third parties that the test object, e. g., the tested product or production, the tested manufacturing facility, or the tested management system is error-free or fit for use, unless the absence of errors/suitability for use is expressly part of the test and certification order.
- 14.2. VDE Institute assumes in principle no warranty that VDE Institute's service is suitable for the customer's purposes.
- 14.3. The following rules shall each apply insofar as the customer's warranty rights and warranty claims come into consideration under the law or according to agreement:
- 14.3.1 The warranty of the VDE Institute is first limited to the supplementary performance within a reasonable amount of time. If the subsequent performance fails, the customer is entitled to choose between a reduction of the remuneration (reduction) or withdrawal from the contract.
- 14.3.2 The warranty period is one year from the transfer of risk. The transfer of risk takes place with the provision of services and the notification concerning the performance of the commissioned services by the VDE Institute.
- If VDE Institute owes damage compensation under clause 15 on the basis of warranty, the warranty period shall conform to legal regulations in this respect.
- 14.3.3 Liability for damages shall remain unaffected by Clause 14 and shall be governed by Clause 15.

**15. Limitation of the liability for compensation of the VDE Institute**

- 15.1. VDE Institute shall be liable for all damages arising for the client under legal regulations if VDE Institute, its legal representatives, employees, or agents violate a contractual or legal obligation intentionally or with gross negligence,
- 15.2. If VDE Institute, its legal representatives, employees, or agents simply violate a contractual or legal obligation through ordinary negligence, then claims for damages by the customer against VDE Institute, of whatever nature and for whatever legal reason, shall be excluded unless there is a prior negligent violation of an essential contractual obligation. In this case the liability is limited to the amount of damages foreseeable and typical for the contract at the time of conclusion of the contract. An essential contractual obligation in this sense shall be one the fulfillment of which renders proper execution of the order possible in the first place and on the compliance with which the customer regularly relies and may rely.
- 15.3. The above exclusion or limitation of liability shall not apply to any liability under the German Product Liability Act or in the event of culpable injury to life, limb or health.
- 15.4. Legal burden-of-proof rules shall remain unaffected by the above-mentioned provisions.
- 15.5. The above-mentioned provisions shall apply equally to the personal liability of legal representatives, employees, or agents of VDE Institute.

**16. Right of withdrawal of the VDE Institute**

- The VDE Institute is entitled to withdraw from the contract in legal cases and if the provision of services is/becomes subsequently impossible through no fault of the VDE Institute or
- due to extraordinary circumstances for which the VDE Institute is not responsible, the performance of the agreed services is delayed by more than six weeks or becomes impossible.

Exceptional circumstances include force majeure such as, but not limited to, natural disasters or business interruptions due to strikes as well as official interventions.

In the event of withdrawal, a claim for damages shall only exist in accordance with Clause 15.

**17. Contractual Penalty**

VDE Institute shall be entitled to demand a penalty of up to €100,000.00 from the customer for each detected violation of this Testing and Certification Procedure, PM 102, or for any wrongful use of the VDE Certification Mark unless the customer is not responsible for the breach of duty. The amount of the contractual penalty shall be determined by the VDE Institute at its equitable discretion according to the nature and severity of the violation. The customer shall be entitled to have the amount of the contractual penalty verified as part of the complaint procedure described in clause 13 or by the competent court.

The total amount of the contractual penalty is limited to €300,000.00 per calendar year. The possibility of asserting further damages remains unaffected. The contractual penalty shall be deducted from any damage compensation.

**18. Data protection**

- 18.1. The VDE Institute processes the customer's personal data as described in more detail in the "Data Protection Information". The persons concerned are entitled to the rights described therein.
- 18.2. The customer is obliged to inform his representatives, employees affected by the data processing or other persons employed in connection with the order of the "data protection information".

**19. Miscellaneous**

This document is governed by the laws of the Federal Republic of Germany with the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

The place of jurisdiction is Frankfurt/Main provided that the customer is a merchant, legal entity of public law or of special fund under public law.

Should any provision of these regulations be invalid or become invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by another, which corresponds to the same or at least the similar intention of these regulations.

This Testing and Certification Procedure PM 102 shall be effective as of July 20, 2018. The revision is a contractual component even for existing contracts and replaces the previous version as long as VDE Institute communicates the revision to the customer, and the customer does not object to it within two weeks after receipt of the communication at least in text form (email or fax suffice). As part of the communication, VDE Institute has to inform the customer about the possibility of objecting and about the consequences of not filing an objection in a timely manner or at all.