

General Terms and Conditions (GTC) of ARS PROBATA GmbH

I. Terms, definitions and scope

1. Terms and definitions

The terms and abbreviations used in these Terms and Conditions shall be interpreted as follows:

"Client"	Client shall be the entity that is commissioning the Contractor.
"Contractor"	Contractor shall be ARS PROBATA GmbH. In the context of organic inspection procedures the Contractor shall act as the inspection body, for all other certification procedures the Contractor shall act as a certification body.
"Inspection body"	(hereinafter abbreviated IB) shall be ARS PROBATA GmbH
"Policy"	the entire set of rules issued by the relevant standard owner
"Standard owner"	Business associations, enterprises that publish a set of substantive requirements, e.g. IFS Management GmbH, the German Association for Controlled Alternative Animal Husbandry (KAT), etc. Where the organic farming sector is concerned, this term refers to the state authorities.
"Certification Programme"	a certification system evaluating the conformity of certain products and/or management systems which are subject to identical requirements, specific rules and procedures, e.g. IFS Food, IFS Broker, KAT, as amended.
"Certification body"	(hereinafter abbreviated CB) shall be ARS PROBATA GmbH
"Certification system"	The rules, procedures and management for performing certifications and/or audits.

2. Scope

These General Terms and Conditions apply to all services rendered by the Client and to all rights and obligations of the contracting parties resulting from the contractual relationship with the Client. Deviating terms and conditions of the Client shall not become part of the contract. Any contrary acknowledgements by the Client with reference to its terms and conditions are hereby expressly objected. Where these General Terms and Conditions are translated into other languages, the German wording alone shall prevail in the event of a translated provision conflicting with the German Terms and Conditions.

II. General clauses

1. Conclusion of the contract

(1) Before launching the certification/inspection procedure, the Contractor and the Client shall clarify between themselves:

- which certification program is to serve as the basis for carrying out the certification/inspection,
- whether the Client's application is to be assigned to a certification program,
- whether that certification program is subject to accreditation,
- which parts of the Client's business are to come within the scope of certification.

(2) On the basis of that information, the Contractor shall draw up a quotation for audits/inspections against the relevant Certification Programme. Unless otherwise agreed, the quotation shall apply to all sites or branches of the Client's business that are covered by the certification.

(3) A contract between Client and Contractor is deemed concluded if the Client accepts the Contractor's quotation without reservation by submitting the Contractor a written acknowledgement within the binding period of the quotation or, in the case of inspections in accordance with the EU rules for organic farming, by both parties signing the inspection agreement. This clause shall also apply to the extent that the organic inspection procedure requires the presentation of further original documents to the competent authority.

2. Object of contract

The Contractor shall carry out certification and monitoring in accordance with the relevant service description given in its quotation as well as the underlying policies and, upon successful completion of the inspection procedure, shall issue a certificate/confirmation/attestation.

The Contractor shall perform the following tasks on the Client's premises:

(1) Carry out the certification/inspection procedure in accordance with the relevant certification programme's applicable specifications and requirements, and on the basis of the applicable accreditation standard, both as amended. The Client shall carry out all its activities under this Contract in accordance with the current specifications and requirements of the relevant Certification Programme (policies, checklists, guidance, legal rules) and/or the requirements laid down in organic legislation, and in conformity with the accreditation standard as amended. This applies to all the clauses of this Agreement.

(2) Certification includes the products and technologies that are initially named on the Certification Application form and any changes of which the Contractor has been given written notification prior to an evaluation, and which the Contractor has approved.

(3) Carry out independent, unbiased audits/inspections and all related activities such as drafting a report, uploading the report to the database associated with the Certification Programme (should this be required by the standard owner), decide on certification decision and, where applicable, take samples and issue a certificate/confirmation/attestation (provided that the requirements have been met).

3. Liability

(1) In accordance with the statutory provisions, the Contractor shall be liable for any culpable injury to life or limb, or health impairment. It shall be liable for intent and gross negligence – on whatever basis provided for by law – including intent and gross negligence on the part of his representatives or vicarious agents. In the event of a grossly negligent breach of duty, liability is limited to the typically occurring, foreseeable damage.

(2) As provided for by statute, the Contractor shall also be liable for damage resulting from its culpable breach of any essential contractual obligation. An essential contractual obligation is an obligation the fulfilment of which is a prerequisite that enables the proper execution of the contract, and on compliance with which the other party can rely and reasonably expect. In this case, liability is limited to the typically occurring, foreseeable damage.

(3) The Contractor shall bear unlimited liability in the event of fraudulent intent or non-compliance with any guarantee or warranty it has given.

(4) Insofar as the Contractor's liability is excluded or limited, this likewise applies to the liability of its representatives or vicarious agents.

(5) The limitation period for claims for damages is governed by the statutory provisions.

4. Remuneration

(1) The remuneration stated in the quotation shall be binding. Unless otherwise agreed, all prices are quoted net of value-added tax (VAT) which shall be added where applicable.

(2) Unless otherwise agreed, the remuneration shall be due for payment without deduction within 14 days after receipt of the invoice. The legal provisions regarding the consequences of late payment apply.

(3) If the Client is in arrears with the invoiced amount despite payment being due and a reasonable grace period having been set, the Contractor can withdraw from this contract, withdraw the certificate/confirmation/attestation (if included in the in the standard owner's rules), claim damages for non-performance, and refuse further execution of the services contracted for. If the Contractor withdraws on the aforementioned grounds, the Client is not entitled to claim compensation for such withdrawal.

(4) Objections to the Contractor's invoices shall be raised in writing within two weeks of receipt of the invoice.

5. Personnel

The Contractor shall provide qualified personnel who meet the requirements for the carrying out the duties in accordance with the relevant Certification Programme.

6. Term of contract

(1) This contract shall be concluded for Contractor indefinite period.

(2) The contract may be terminated at the end of a calendar month provided that six months' notice has been given.

- (3) If the Client closes its operation, it may terminate the contract prematurely at the end of the month after two weeks' notice. Proof of termination (e.g. business deregistration) must be sent to the Contractor.
- (4) The right of either party to termination without notice for an important reason remains unaffected. An important reason for the Contractor's termination without notice in particular exists if the Client submits an application for the opening of insolvency proceedings on his assets, or when the opening of such proceedings is refused because of lack of assets.
- (5) Notice of termination shall be given in writing.

7. Confidentiality, Data Protection

- (1) The Client is obliged to maintain confidentiality regarding all confidential information obtained in the context of the contractual relationship. Confidential information is any information that contains business or trade secrets or is designated as confidential.
- (2) The Contractor must maintain secrecy concerning all confidential information that it obtains as part of the contractual relationship under these GTC. Confidential information is any information that contains business or trade secrets, or that has been designated as being confidential. The Contractor shall use confidential information only for the contractual purposes provided for in these GTC. It is authorised to disclose confidential information, insofar as in the course of its activities as a CB/IB it is required to do so on the basis of a legal provision or of the accreditation body/standard owner's specifications. Such disclosure does not constitute a breach of the duty of confidentiality in accordance with paragraph 1 of this clause.
- (3) Other disclosures require the prior written consent of the client.
- (4) In the event of the Client selects a different CB/IB, data will be forwarded according to the specifications of the relevant standard owner.
- (5) The Contractor's obligation to maintain confidentiality shall apply for the duration of this contract and shall continue for a period of five years after its termination.
- (6) The Contractor is required to inform employees who are legitimately consulted to carry out the work of confidentiality as described above.
- (7) The Contractor shall process personal data in accordance with the data protection regulations. The particulars of data processing can be found in the Contractor's Data Protection Statement at the following link: www.ars-probata.com/Datenschutz.

8. Client's rights of opposition and appeal

- (1) The Client may lodge an appeal, a protest, or an objection, or initiate a dispute in writing. The Contractor must have received an objection no later than six months after the Contractor's communication of the certification results. The Contractor shall make a decision concerning the objection within 20 working days. The Contractor shall make an initial response to an appeal within ten working days. A detailed written response will be given after a thorough examination of the appeal.
- (2) The proceedings for objection and appeal procedures are governed by the current version of standard operating procedure AL-06/VA-04. Details can be found in the standard operating procedure at the following link: www.ars-probata.com/EinspruchUndBeschwerde

III. Certification-related clauses

1. Obligations and responsibilities of the CB/IB

- (1) The CB/IB shall carry out independent, unbiased audits/inspections using approved auditors/inspectors.
- (2) The CB/IB shall draw up the audit reports/inspection reports stating the outcome of the audit/inspection and, where specified by the relevant standard owner, upload the relevant data to the central database.
- (3) The CB/IB shall decide on certification, if provided for in the Certification Programme, based on the review of documents and/or on-site inspections and, where applicable, review the corrective action plan.
- (4) Insofar as the agreed certification and/or inspection procedure has been completed with a positive result, the Contractor shall furnish the Client with the relevant certificate/confirmation and/or attestation if provided for in the Certification Programme. The term of the certificate/confirmation and/or attestation shall depend on the stipulations of the relevant certification system.

(5) The Contractor undertakes to carry out the above-mentioned activities in an unbiased, independent, conscientious and professional manner observing the purpose of this contract. It undertakes to document the results of the audits/inspections in a manner that ensures they can easily be made available at any time. For this purpose, the Contractor shall itself create the technical means necessary to ensure that data can be retrieved smoothly from the database (where the Certification Programme provides such database) observing the relevant specifications of the standard owner.

(6) The Contractor shall enable the standard owner and, insofar as stipulated by law, the competent official bodies, to view this documentation and report on the audit/inspection activities in accordance with the current statutory provisions.

(7) Audits/inspections can take place announced and/or unannounced, as specified in the Certification Programme.

(8) The Contractor shall require its employees to observe and comply with the applicable provisions of food legislation, in particular the hygiene requirements, and to comply with the Client's current occupational health and safety and accident prevention rules.

(9) Subcontracts shall be awarded in compliance with the specifications of the standard owner. The approval of the Client must be obtained in advance, if work is to be awarded to a subcontractor.

(10) The Contractor shall immediately notify the Client of the Contractor's loss of any necessary approvals/recognitions.

(11) The Contractor's auditor/inspector shall record meticulously and comprehensibly all the information required for certification. Where the Client has given its consent, the record and/or the relevant report can be supplemented with operational records (e.g. standard forms, labels, etc.) from the Client's operation.

(12) In the closing meeting, the main issues revealed by the audit/inspection shall be discussed with the Client. Any significant incidences of non-compliance with the requirements of the respective Certification Programme should be approached. However, a decision on certification shall not be made at this point.

(13) The monitoring procedure may include the following steps:

- obtaining information and explanations,
- requesting documents and records,
- unannounced event-driven audits,
- surveillance audits.

The nature and scope of the Contractor's monitoring activities shall be based on the findings of previous audits/inspections and product-specific requirements.

(14) The Contractor may carry out additional actions as necessary (e.g. requesting specific documents, carrying out event-driven audits) in order to convince himself that the specifications for certification are being complied with.

(15) If the Contractor decides to "withdraw", "suspend", or "block" certification/approval, the original of the certificate/confirmation and/or attestation must be returned to the Contractor or be demonstrably destroyed.

If violations in the use of the certificate/confirmation/attestation are detected in statements during the certification process/inspection procedure, the Contractor shall apply sanctions and/or take action against the Client. If the certification/approval is ended, suspended, or withdrawn, its use, or reference to it, in business correspondence including all advertising materials and other documents (e.g. stationery) shall be discontinued.

(16) Any failure to comply with the agreed use of information about the certification or control process and/or the agreed use of the certificate/confirmation and/or attestation may result in the withdrawal of the certificate/confirmation/attestation. Should subsequent evidence come up that a certification does not meet the requirements of the Certification Programme, the certificate/confirmation and/or attestation can be suspended or withdrawn.

(17) The suspension or withdrawal of the certificate/confirmation and/or attestation must be in writing. The Client may submit a complaint, an appeal, objection or case of dispute, which must be in writing; see Clause II. 8.

2. Obligations and responsibilities of the Client

In order to carry out the audit/external inspections efficiently, the Client shall comply with the following rules and provisions.

The Client undertakes to

(1) provide the Contractor with all relevant information and documentation necessary for calculating the audit duration and performing the audit and/or inspections in good time.

- (2) create all the physical, technical and staffing conditions necessary for the proper conduct of the specified audit and inspection activities.
- (3) cooperate with a view to the effective implementation of these GTC.
- (4) always meet the current requirements of the Certification Programme, including the implementation of any amendments of which the Contractor has given notice.
- (5) inform the Contractor of the name of the contact person and to allow the Contractor access to all necessary sections of the operation during working hours.
- (6) ensure that its data processing system does not allow systematic or manual alteration of process data.
- (7) notify the Contractor in writing and without delay of any modifications to products, processes, controls, or changes in the company's organisation, insofar as they are essential for the certification and/or implementation of these GTC. Such modifications and changes may include, for example:
 - changes to a company's legal, commercial, or organisational or ownership status;
 - changes of its address and/or operational sites;
 - changes to the product or method of manufacture;
 - changes of organisation or management (e.g. key positions, decision-making processes, or technical staff);
 - significant changes to the quality management system.
- (8) agree to an on-site audit/inspection being witnessed by competent bodies (e.g. the German accreditation body DAkkS GmbH, the head office of the relevant Certification Programme, employees of the competent organic authority) to verify the Contractor's activities.
- (9) observe relevant copyrights, and to use the certificate and/or quality mark and protected content, such as the logo, only in accordance with the terms of use of the relevant Certification Programme and/or rights holder.
- (10) inform the Contractor without delay, or at the latest within the time period specified in the Certification Programme, if products do not meet the specifications of the Certification Programme, or if other events (e.g. recall, product warning, etc.) occur that may affect the certification status.
- (11) allow audits to be accompanied by witness or shadow auditors.
- (12) allow the relevant standard owner to carry out Client audits/inspections itself.
- (13) ensure that the certificate/confirmation and/or attestation and/or certification process statements and the organic inspection body number are unique only for the description of conformity with the standards for the certified scope of the audit/inspection in accordance with Client's specifications, and that they are used only during their periods of validity. The Client shall not provide any untrue or misleading information relating to certification.

In the case of the Contractor's decisions on "withdrawal", "suspension", or "blocking" of the certification, the certificate/confirmation/attestation and/or the organic inspection body number may no longer be used by the Client; in particular, the Client shall refrain from any advertising referring to the certification, and the Client shall take the measures required by the relevant Certification Programme.

Insofar as the terms and conditions of the relevant Certification Programme do not provide otherwise, the Client shall abstain from using the current certificate/confirmation and/or attestation or the organic inspection number for business purposes, e.g. as proof to customers or authorities, or for advertising purposes, e.g. on its website. Its use is conditional on the existence of a currently active certification under the relevant Certification Programme.

The authorisation for the use of the certificate and/or the confirmation/attestation issued by the Contractor or for the use of the certification mark applies solely to the areas of the Client's business specified in the scope of the certificate/confirmation and/or inspection. Its use in relation to scopes that have not been specified is expressly prohibited.

The Client is not authorised to amend the certificate/confirmations/attestation or the certification mark in any way.

The right of use expires if there is no valid certificate or confirmation, in particular when the relevant surveillance steps have not been carried out. That entitlement also expires when the validity of the certificate/confirmation and or attestation has ended. The Client further
- (14) acknowledges that the audits/inspections only amount to a sampling of the operation, and do not constitute a statement as to long-term compliance with the specified certification requirements.
- (15) ensures that a surveillance audit under the certification and/or inspection procedure is carried out in good time before the expiry of the certificate/confirmation/attestation.

(16) irrevocably authorises the Contractor – irrespective of the outcome of the audit – to inform the relevant standard owner of the order for, and of the results of, the audit (if specified by the Certification Programme). This information will be filed in a database, if such there be, maintained by the standard owner. For organic farming certification procedures, the Client authorises the Contractor to report to the competent authorities.

(17) allows all the certification documents and/or copies thereof, as specified in the Certification Programme, to be made available to third parties.

(18) needs to make sure that all the products and production procedures/processes/and systems that are to be described in the report and shown on the certificate/confirmation/attestation can effectively be examined at the time of the audit/inspection.

(19) enables and supports the Contractor's investigation of any complaints that relate to requirements of the Certification Programme. Records of complaints shall be maintained, archived, and made available to the Contractor on demand. The Client shall implement such measures that ensure compliance with the certification requirements. The measures shall be documented.

(20) sees to it that any certification documents to be furnished third parties are copied in their entirety, or exactly as specified in the Certification Program.

(21) Subsequent to the audit/inspection, the Client shall sign the auditor's/inspector's on-site record.

(22) The Client shall inform the Contractor of the company's contact person responsible for implementing the GTC.

(23) If the Contractor is working on the Client's premises, its sites or branches, it shall be the Client's duty to ensure that all of the occupier's duties to maintain safe conditions are being met, unless some other arrangement applies because of circumstances, or some agreement with the Contractor.

(24) The Client shall indemnify the Contractor against any claims by third parties concerning a breach of their rights due to the Client's irregular use of the certificate/confirmation/attestation. The Client undertakes to reimburse the Contractor for any legal costs incurred in its defence.

IV. Miscellaneous clauses

1. Amendment of these General Terms and Conditions

The Contractor reserves the right to amend or supplement these General Terms and Conditions for important reasons, provided that this does not unduly disadvantage the Client. Important reasons are, in particular, a change in its legal situation, changes due to technical progress, the addition or omission of a Certification Programme, fundamental modifications of the relevant Certification Programme made by a standard owner or by accreditation bodies, or other equivalent reasons. The Contractor will inform the Client of any such change by notifying the amended content in writing, e.g. by mail or fax. The changes will take effect if the Client does not object in writing to their inclusion in the GTC within six weeks of receipt of the notice of amendment.

2. Further issues

(1) All arrangements for the execution of this contract, including these General Terms and Conditions, made between the Contractor and the Client are set out in full in writing in the quotation. There are no verbal ancillary agreements. All changes must be made in writing.

(2) Should one or more provisions of this contract be ineffective or unenforceable, the validity of the remaining provisions shall remain unaffected.

(3) This Agreement is governed by the laws of the Federal Republic of Germany.

(4) Berlin is agreed as the place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship if the Client is a merchant, a legal entity under public law, or a special fund under public law. This also applies if the Client does not have its general place of business in the Federal Republic of Germany.

V. Associated rules and regulations/documents

Unless otherwise agreed, the following rules, regulations and documents also apply to the certification procedure:

- (1) The current version of the standard/set of rules of the Certification Programme
- (2) The current versions of guidance documents including checklists, assessment bases and associated documents of the Certification Programme
- (3) The current version of the "PÖL-04/FB-14" list of measures (Maßnahmenkatalog)
- (4) The "AL-06/VA-04" objection and appeal procedure (Einspruchs- und Beschwerdeverfahren)
www.ars-probata.com/EinspruchUndBeschwerde
- (5) The current version of the Contractor's data privacy declaration
www.ars-probata.com/Datenschutz
- (6) Insofar as the Certification Programme is subject to an accreditation standard, it shall be the current version of that accreditation standard.

Contact

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Certification Body for Food Safety Systems

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