



PM 102E
January 2012

Testing and Certification Procedure

of the VDE Testing and Certification Institute
(VDE Institute)

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



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1. Scope

This Testing and Certification Procedure is valid for all services rendered by the VDE Prüf- und Zertifizierungsinstitut GmbH – hereinafter referred to as "VDE Institute" – for external customers, among other things for the following specified activities:

- 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
 - 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

2. Contractual Basics

In the event of an order, the following regulations apply in addition to this Testing and Certification Procedure PM 102:

- VDE Certification Marks, Certificates, Attestations PM 045
- Schedule of Prices and Services of the VDE Institute PM 103

3. Basic Provisions

- 3.1. The VDE Institute operates according to fundamental rules and procedures, which guarantee it is independent, impartial and nondiscriminatory. The applied normative or statutory regulations are generally recognized. Adjustments of the VDE testing and certification requirements shall be disclosed.
- 3.2. The actual scope of the services to be rendered by the VDE Institute is the result of the regulations agreed upon by the parties. This does not involve any protective effects for third parties. 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 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.
- 3.5. The VDE Institute has the right to commission third parties selected by it to provide the services.
- 3.6. The information obtained as part of the activity shall be kept in confidence. 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.
- 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.
- 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 case of insolvency or foreign debtor protection proceedings similar in nature to the German insolvency proceedings on the part of the customer, the VDE Institute has the right to discontinue the provision of services without incurring any resulting claims of the customer. In such an instance, any issued certificates and assessments expire and the customer no longer has the right to use certification marks granted by the VDE Institute unless the VDE Institute decides otherwise. However, in doing so, the VDE Institute shall reasonably consider the legitimate interests of the customer and not intentionally inflict damage.

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- 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 in this regard.
- 3.13. The VDE Institute shall advise the certificate holder in a timely manner of any relevant changes in the basis of certification.
- 3.14. The certification body 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.
- 4.2. When placing the order, the customer shall provide the VDE Institute with all documents and information necessary for the order.
- 4.3. The required 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. The fees do not include VAT and possibly incurring foreign taxes and other charges; VAT is applicable at the respective statutory rate. Foreign taxes and other charges of any kind shall be calculated and strictly borne by the invoice recipient as long as according to a foreign law the obligation to deduct tax is stipulated. They do not reduce the amount due to VDE Institute.
- 4.5. The amounts invoiced are payable without discount upon receipt of the invoice. A right of retention and a right of the customer to set-off are excluded. In the case of default, interest of 5% over the base interest rate shall be due.
- 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 approval holder, the customer and the invoice recipient are jointly and severally liable for the correct calculation and payment of foreign taxes and other charges and have 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 Certification of Technical Products

5.1. General Provisions

- 5.1.1. Trademarks, marks, or other business names on 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.
- 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 certification mark according to PM 045:
 - 5.1.4.1. The location of the places of manufacture for the respective product must be specified.
 - 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 shall inspect, 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. The VDE Institute shall not be liable for any damage incurred by the customer as a result of this denial.

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 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. 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.
- 5.2.4. 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. If the customer so desires, these samples can be returned to the customer at his risk and expense.

5.4. Certification of Products

- 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 certification mark of the VDE pursuant to PM 045 can be granted.
- 5.4.2. Certification marks may only be affixed in the immediate vicinity of the trademark and type designation.
- 5.4.3. Products that bear a certification mark of the VDE Institute or the type designation of one of the products certified by the VDE Institute are subject to conformity control tests to determine whether the products still conform to the originally certified version of the product. The costs for this conformity control shall be borne by the customer.
- 5.4.4. Annual fees shall be paid for products that have been granted a certificate with conformity control. In justified instances, a quantity-bound certification with specification of a production period is possible. The particulars in this regard must be separately stipulated.

- 5.4.5. The certificate holder shall inform the VDE Institute of serious marketplace incidents with respect to his VDE-certified products (e.g. product recalls or complaints from market regulatory authorities).

5.5. Surveillance of Manufacturing

- 5.5.1. During the validity period of a certificate with conformity control and 12 months thereafter, the VDE Institute may visit at any time and without prior notice and at the expense of the certificate holder, the manufacturing and administrative facilities and respective warehouses specified in the certificate and select for inspection those products for which a certificate was granted and inspect said products.
- 5.5.2. If the inspection does not take place directly in the places of manufacture, the certificate holder shall promptly send at his expense the selected products to the place of inspection indicated by the VDE Institute.
- 5.5.3. The certificate holder receives written notification of the inspection results.

6. Management Systems

6.1. 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 pre-audit, certification audit, follow-up audit, re-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 follow-up audits during the validity period of the certificate. A follow-up audit is then also performed if the relevant regulations have changed.

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

6.2. Assignment of Auditors

- 6.2.1. 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.
- 6.2.2. The customer may request to see documents from the VDE Institute regarding the qualifications of the auditors.
- 6.2.3. 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.

6.3. Additional Provisions regarding System Certification

The 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.

7. Additional Provisions regarding Certificates and Certification Marks

- 7.1. A certificate granted in connection with a marks approval is only valid when it is published on <http://www.vde.com/certificate>.
- 7.2. Certificates and other certifications are not transferable.
- 7.3. Upon positive certification, the customer obtains the right to use the respective certificate and if applicable, the respective 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 and unauthorized use is not permitted.
- 7.4. The holder of a certificate is obliged to inform the VDE Institute of all intended changes that could impact the certified product, the certified system or the place of manufacture with respect to the certification attributes.
- 7.5. When products bearing the certification mark of the VDE Institute 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. Expiration of a Certificate

8.1 The certificate shall expire

- upon termination
- upon withdrawal
- upon expiry of the validity
- if the certificate holder becomes insolvent or bankruptcy proceedings have been initiated against him (also refer to 3.10)
- if defects are found when retesting the products bearing a certification mark or the products do not conform to the approved test samples

8.2 If a certificate expires, the certificate holder loses the right to use the certificate and the respective certification marks. In particular, the certificate holder is not allowed to put into circulation any products specified in the certificate that bear the respective certification mark.

8.3. 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 certification mark of the VDE Institute 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.
- If a sales permission is not granted or is withdrawn, the certificate holder is obliged to remove the 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.

9. Termination of Certificates

- 9.1. Terminations by the certificate holder require a six-month term of notice (either per June 30 or per December 31). Cables according to the HAR procedure require a term of notice that is six weeks prior to the end of the year.
- 9.2. The VDE Institute may terminate the certificate if the requirements for the granting of a certificate change.
- 9.3. 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.
- 9.4. The termination must be made in writing.

10. Withdrawal and Suspension of Certificates

- 10.1 A certificate can be withdrawn without notice if the requirements for the certification no longer exist. A withdrawal is particularly possible
 - if the certificate holder has ceased to perform his activities as part of the certification,
 - if, after the certificate is granted, circumstances become known the knowledge of which during the certification and surveillance procedure would have negatively impacted the certification,
 - if defects are determined during the term of the certificate,
 - 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 the certificate holder does not accept the amendments of the Testing and Certification Procedure PM 102 or Schedule of Prices and Services PM 103 after expiry of the transitional period set forth therein,
 - 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 according to his own statement, have not been manufactured by him,
 - if, in the case of system certification, the customer makes organizational changes that impact the management system,

- if another such important reason exists that particularly disturbs the relationship between the VDE Institute and the certificate holder (e.g. certificate counterfeiting).
- 10.2 The VDE Institute has the right to make public the withdrawal of a certificate and in justified cases, to impose a two-year retention period on accepting new certification orders.
- 10.3 If the certificate holder is no longer meeting the certification requirements for an existing certification, the VDE Institute in justified cases can initiate the suspension of the respective certificate for a maximum of six months instead of withdrawing the certification. During this time of certificate suspension, the certificate holder has the opportunity to provide proof that the certification requirements are fulfilled again. For verification purposes, VDE Institute can conduct appropriate inspections at the cost of the certificate holder. If the certificate holder cannot prove the correction of the deviations within the set period, the certificate will be withdrawn upon expiry of the set period.
- The right of the certificate holder to use the certificate and the given certification marks is suspended during the suspension phase. All other provisions concerning the control measures and payments continue to be valid to the full extent.

11. Special Inspections, Expert Opinions and Tests

- 11.1. 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.
- 11.2. 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.

12. Appeal Procedure

- 12.1. Any disputes between the customer and the VDE Institute shall first be submitted to an Appeal Committee with the objective of reaching an amicable settlement. So 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.

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- 12.2. Either party may have recourse to the Appeal Committee which shall meet within three weeks after the receipt of a founded appeal. 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.
- 12.3. The Chairman of the Appeal Committee shall use his best efforts in accordance with his duty to reach an amicable settlement between the parties.
- 12.4. 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.
- 12.5. 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.

13. Warranty, Liability, Rescission, Contractual Penalty

- 13.1. The warranty of the VDE Institute is first limited to the supplementary performance within a reasonable amount of time. If supplementary performance is not successful, i.e. it is not possible, unacceptable for the customer, unjustifiably refused by the VDE Institute or improperly delayed then the customer at his discretion is entitled to request reduction of payment or rescission of the contract.
- 13.2. The warranty period is one year from the transfer of risk. The transfer of risk is the provision of services, i.e. the notification concerning the performance of the commissioned services by the VDE Institute.
- 13.3. The VDE Institute assumes no liability with respect to the customer or third parties that the product or equipment of the customer is free of defects and suitable for use. Therefore, VDE Institute is not liable for damages caused by the product or equipment or respectively their use.
- 13.4. The VDE Institute is only liable in cases of intention or gross negligence. A liability for slight negligence is excluded unless there is injury to life or health, or the VDE Institute violates an essential contractual obligation. In the latter case, the claim for damages is limited to the typical contractual, predictable damage.

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- 13.5. The VDE Institute shall not be liable for any damage to the samples resulting from testing, burglary, theft, fire, water, or other force majeure events. This also analogously applies for the documents provided by the customer.
- 13.6. A liability for the fact that the service is appropriate for the purpose of the customer is only assumed by the VDE Institute if a respective warranty statement has been expressly provided in writing.
- 13.7. To the extent that third parties assert claims against the VDE Institute, the customer indemnifies and holds harmless the VDE Institute from any such claims.
- 13.8. The liability limitations of the VDE Institute are similarly applicable for personal liability of the employees of the VDE Institute as well as the vicarious agents appointed by the VDE Institute.
- 13.9. The VDE Institute is entitled, in the following cases, to rescind the contract without the customer being able to assert loss or damage.
- impossibility
 - default or a material breach of duty on the part of the customer
 - force majeure
 - strike
 - natural disasters
- 13.10. The VDE Institute is entitled to impose a fine of up to € 50,000.00 if infringements against this Testing and Certification Procedure PM 102 are established or if a certification mark is used unlawfully.

14. Miscellaneous

- 14.1. 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).
- 14.2. The place of jurisdiction is Offenbach/Main.
- 14.3. Should any provision of these regulations be 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.
- 14.4. This Testing and Certification Procedure PM 102 shall be effective as of January 1, 2012.
- 14.5. This PM 102 is valid for contracts that have been concluded between the VDE Institute and the customer before January 1, 2012 unless the customer objects to the validity in writing within three months after this PM 102 is published.

