



# Terms of Use for Certification Bodies (ToU CB)

As of 01 July 2020

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## 1 Scope of Application

- 1.1 The present 4C Terms of Use for Certification Bodies (ToU CB) shall apply to all business dealings between the cooperating Certification Body (cooperating CB) and 4C Services GmbH (4C). The respective current version of the ToU CB will be available on the 4C website as from the date on which it enters into force.
- 1.2 The ToU CB become valid by the cooperating CB accepting them as provided for in chapter 3.3 of the 4C Certification Body Regulations.
- 1.3 Any deviating ToU CB shall herewith be opposed explicitly.
- 1.4 The 4C Code of Conduct, 4C System Regulations and 4C Certification Body Regulations of the respective 4C certification system shall be the subject matter and content of the 4C certification system operated by 4C. These documents shall form the basics of cooperation between the cooperating CB and 4C, and the certification activities performed by the cooperating CB. In case of contradiction, the following order of these documents shall apply:
  - ToU CB
  - 4C System Regulations
  - 4C Certification Body Regulations
  - 4C Code of Conduct

(in their respective current versions) – collectively hereinafter called “Regulations”.

## 2 Rights and Duties of the Cooperating Certification Body

- 2.1 The cooperating CB shall grant, renew, or withdraw 4C certificates based on the audit results to Managing Entities (MEs) or Intermediary Buyers (IBs) against all 4C certification requirements in accordance with the Regulations. The cooperating CB shall be responsible for the compliance of the IB or ME and its 4C Unit with the 4C requirements to that the cooperating CB issues the certificate, and for the whole validity period of the certificate issued.
- 2.2 The cooperating CB shall inform the potential IB or ME and its 4C Unit that wants to be certified against 4C requirements upon conclusion of the Service contract that certification under 4C will be permitted only after accepting the 4C Terms of Use for IB (ToU IB) or 4C Terms of Use for ME (ToU ME), whichever is applicable. The cooperating CB shall be permitted to perform an audit for the purpose of issuing a certificate only if a valid Service contract has been concluded between the IB or ME of a 4C Unit and the cooperating CB, and if the cooperating CB is not in possession of any confirmation of the termination of an application or rejection of the application for the requested 4C audit by 4C. The cooperating CB shall not be entitled to conduct 4C audits with the aim to recommend a 4C certification without the validation of the ME’s application by 4C.

- 2.3 Prior to conducting a 4C audit for an IB or a 4C Unit, the cooperating CB must check on the 4C website whether or not the IB or 4C Unit is suspended and until when the suspension is valid.
- 2.4 The cooperating CB shall be obliged to verify within the framework of each 4C audit the correctness of the information provided by the IB or ME and/or any subsequent update of such information with regard to completeness and correctness. The completely and correctly filled out documents must at the latest be submitted to 4C via the 4C portal with the transmission of the certification documents. Such obligation shall also apply if the cooperating CB becomes aware of any change to such information outside a 4C audit.
- 2.5 The cooperating CB shall be obliged to enable and allow integrity assessments by 4C as specified in the 4C System Regulations and 4C Certification Body Regulations. If requested by 4C, the cooperating CB shall inform 4C immediately about scheduled and expected audit dates by the cooperating CB.
- 2.6 To the extent that the activities mentioned in Section 2.5 are carried out at locations on which third parties, in particular the IB or 4C Unit, handle 4C certified coffee, the cooperating CB must have such third parties confirm to them in writing at the beginning of the audit the access and control rights.
- 2.7 The cooperating CB shall ensure that the access and control rights in accordance with Sections 2.5 and 2.6 will only expire eighteen months after the termination date of any contractual relations between 4C and the cooperating CB and/or between 4C and the IB or ME of a 4C Unit.
- 2.8 The cooperating CB shall inform 4C without delay of any unsuccessful audit. An audit is considered unsuccessful, if the auditor conducting the audit or the CB evaluating the audit results comes to the conclusion to not issue a certificate due to non-compliances with the 4C requirements.
- 2.9 In the case of any termination of the Service contract concluded with the IB or ME of a 4C Unit, the cooperating CB shall be obliged to immediately inform 4C about this termination in writing.

### **3 Rights and Duties of 4C**

- 3.1 4C owns and operates the 4C System.
- 3.2 4C shall be entitled to adjust the Regulations at any time, in order to ensure or improve the integrity of the 4C System. Section 9 remains unaffected.
- 3.3 4C will recognize the certificates issued by the cooperating CB in accordance with the Regulations.
- 3.4 4C may, in the individual case, give binding instructions to the cooperating CB regarding the application of the 4C requirements, define audit requirements, in particular if the IB or ME of

a 4C Unit changes the CB, and provide conditions for the IB or ME according to which a positive certification decision is to be issued.

- 3.5 4C undertakes to treat as confidential any information provided by the cooperating CB if disclosure is not required by law or a court. The publication of information according to the ToU CB on the 4C website is expressly permitted and will not require prior written approval from the CB, notwithstanding the individual provisions of the ToU CB. However, 4C shall be entitled to make publicly available on the 4C website any certificates issued by the cooperating CB to the IB or ME and its 4C Unit as valid, declared null and void and or expired, including the content of the certificates.

#### **4 No Set-Off**

The CB may only offset claims asserted by 4C against any counterclaims which are undisputed or have been recognized by res judicata.

#### **5 License Fees for the Cooperating Certification Body**

The cooperating CB is not obliged to pay any licence fees to 4C. If there are changes on the requirement of license fees, the process of revision of the ToU CB and notification of changes to CBs will be followed as laid down in Section 9.

#### **6 Confidentiality, Data Protection, Publications of Third Party Data / Information on Third Parties, Exemption**

- 6.1 4C collects, stores, and uses personal data insofar as this is permitted by legal regulations or ordered by the legislator. 4C will treat personal data as confidential and according to the provisions of the applicable data protection law.
- 6.2 4C shall exclusively store and process the data of the cooperating CB for the purposes resulting from the present ToU CB.
- 6.3 The cooperating CB agrees with the publication of its name, logo, address, point of contact, e-mail address and web address on the 4C website, 4C portal, as well as in print media and other public and non-public appearances of 4C. If the cooperating CB provides personal data regarding third parties, for example by naming contact persons, it must be responsible for the completeness and correctness of such data and must ensure that 4C is entitled to use, make publicly available and transmit such data to other third parties without violating third party rights. The cooperating CB shall exempt 4C from any and all claims, including claims for compensation for damages, asserted against 4C by third parties due to any violation of their rights based on the use, publication or disclosure of such data to other third parties.

- 6.4 Without affecting the rights of third parties, the cooperating CB must ensure that 4C may publish on the 4C website the entire information content of 4C certificates it issues.
- 6.5 Within the framework of the audit, the cooperating CB must therefore ensure that the necessary third-party approvals are available in written form. The cooperating CB must agree that the above-mentioned data and documents are made publicly available to the extent that its rights are concerned.
- 6.6 Subject to the stipulations above, any data collected, stored, and used by 4C must not be made publicly available or passed on by 4C to third parties. Such data (e.g. including, but not limited to, completed audit reports, Improvement Plans, Business Partner Maps) shall only be made publicly available by 4C or be passed on to third parties if the cooperating CB or the respective third party concerned have given their explicit consent to the publication or passing on of this data, or if 4C is obliged to pass on this information by law or due to official or judicial conditions or orders. The consent of the cooperating CB or third party has to be given in writing. The consent of third parties, e.g. Business Partners of a 4C Unit may be given as part of the audit.
- 6.7 Should the IB or ME of a 4C Unit change the CB, 4C is entitled to give access to the new CB any and all data collected by 4C concerning the IB or 4C Unit in connection with the ToU IB and ToU ME, in particular with regard to previous certifications and audits of the cooperating CB and/or previous integrity assessments.
- 6.8 Should the cooperating CB contact 4C, related information shall be stored for the purpose of processing the request as well as in the event of any follow-up questions arising to the extent allowed by the applicable laws.
- 6.9 4C takes technical and organizational security measures to protect the data collected in connection with the performance of the ToU CB, including any personal data, against loss, manipulation, or unauthorized third-party access. The technical procedures used in this context shall be developed further and improved according to the technological progress. 4C points out that it is not possible to guarantee comprehensive, absolute protection.

## **7 Liability of the Cooperating CB**

- 7.1 The cooperating CB shall be obliged to compensate 4C for any loss suffered due to any culpable infringement of its contractual duties and especially the Regulations. The cooperating CB shall exempt 4C from any claim asserted against them by third parties due to culpable infringements or culpable violations of its contractual duties and especially the Regulations.
- 7.2 In the event of a culpable serious infringement as specified in the 4C System Regulations and 4C Certification Body Regulations, 4C is entitled to claim a contractual penalty calculated at equitable discretion but limited to EUR 10,000.00 (in words: ten thousand). 4C has the right to claim for damages exceeding the contractual penalty. The contractual penalty is credited against the claim for damages.

- 7.3 In the event of lateness in concluding the 4C audits or Annual Update evaluation according to the deadlines as specified in the 4C System Regulations, the cooperating CB must pay a fine of EUR 1,000.00 (in words: thousand) for each case to 4C.

## **8 Liability of 4C**

- 8.1 The 4C certification system takes into account the relevant (legal) requirements regarding the demonstration of the sustainability of coffee which, in particular, arise from the recognition of the 4C certification system, official conditions, and orders and as well as voluntary self-commitments. 4C shall continuously update the certification system in accordance with these stipulations. 4C shall not be liable for the existence of the legal requirements regarding the demonstration of the sustainability of coffee, in particular in the event of any changing interpretation or application of these legal requirements on the part of courts or authorities, if available.
- 8.2 4C is liable for any damage caused by its legal representatives, or its performing agents and vicarious agents on the basis of the culpable injury to life, body or health, according to the Product Liability Act (Produkthaftungsgesetz), as well as within the framework of an expressly assumed guarantee. Furthermore, the liability of 4C, its legal representatives and its performing agents and/or vicarious agents shall be excluded, insofar as the damage is not caused by grossly negligent or intentional violations of duty of its legal representatives or officers.
- 8.3 In the event of any grossly negligent or intentional behaviour of the other performing agents, the liability shall be limited to cases of violation of the material contractual duties.
- 8.4 In the event of ordinary negligence, the liability shall be limited to any foreseeable damage typical for the contract which arises from the violation of material contractual duties.
- 8.5 Insofar as the liability of 4C is excluded or limited, this shall also apply to the personal liability of the representatives, performing agents and vicarious agents of 4C.

## **9 Changes of the Terms of Use for CBs, Validity and Termination of the Cooperation**

- 9.1 Any changes to these ToU CB shall be notified by 4C to the cooperating CB in text form by e-mail no later than two months before the proposed effective date. The cooperating CB shall be deemed to have agreed to the changes if it does not submit its rejection of them in writing or by e-mail before the proposed effective date. 4C shall make specific reference to this presumed approval in its notice. The cooperating CB may then terminate the cooperation as of the proposed effective date of the changes, without notice and without charge. 4C shall make specific reference to this right of termination in its communication.
- 9.2 The cooperation between the cooperating CB and 4C is valid starting from the date it accepts the ToU CB to become the 4C cooperating CB, until there is any termination decision made either by the cooperating CB or 4C, by the following provision.

- 9.3 Either 4C or the cooperating CB may terminate the cooperation by giving three months' notice in writing to the end of a month. Any existing certificates issued by the cooperating CB resulting from 4C audits performed by the cooperating CB will remain valid.
- 9.4 4C may terminate the cooperation without prior notice and with immediate effect especially if (i) there is substantial doubt as to whether the cooperating CB is complying with the contents of the ToU CB or with the Regulations or the applicable statutory provisions on sustainability or the requirements of the 4C System, or (ii) it is suspected that the applicable statutory provisions on sustainability or requirements within the 4C System are being violated. Existing certificates issued by the cooperating CB resulting from 4C audits performed by the cooperating CB will remain valid unless there is substantial doubt as to compliance with the above provisions in the case of specific certificates.
- 9.5 As specified in the 4C Certification Body Regulations, the CB, in order to cooperate with 4C, must be accredited against ISO/IEC 17065 by an accreditation body which is a signatory or a member that is not yet signatory of the International Accreditation Forum (IAF). The expiry of the cooperating CB's accreditation will automatically cause this cooperation to be terminated on the date on which the accreditation expires, without separate notice being given. Any existing certificates issued by the cooperating CB resulting from 4C audits performed by the cooperating CB will remain valid.
- 9.6 4C will not be obliged to pay compensation for any losses incurred by the cooperating CB as a result of terminating the cooperation.

## 10 Miscellaneous

- 10.1 All documents mentioned in this ToU CB as well as the 4C Glossary are a binding part of the contract and can be found on the 4C website [here](#).
- 10.2 The law of the Federal Republic of Germany shall apply under exclusion of the UN Convention on Contracts for the International Sale of Good (CISG).
- 10.3 The place of jurisdiction for all disputes arising from the ToU CB shall be Cologne.