Surveillance and Certification Agreement

between

as the manufacturer of the Construction Products named in § 1 - hereinafter referred to as the Manufacturer -

and

TÜV Rheinland Industrie Service GmbH
Am Grauen Stein
D - 51105 Köln

as the Monitoring and Certification Body for Construction Products (identification number 0035) recognised and notified under the European Construction Products Directive (89/106/EEC) and the Construction Products Regulation – Regulation (EU) No. 305/2011 - hereinafter referred to as TIS -

The following Surveillance and Certification Agreement is concluded between the above-named parties:

§ 1
Subject Matter of the Surveillance and Certification

The Surveillance and Certification by TIS includes the named production plant and Factory Production Control of the construction products named in the following.

Construction products:

☐ Execution of steel and aluminum structures/kits acc. EN 1090-1
☐ for metal construction made of mild steel to EN ___________ ¹, made of aluminium to EN 15088¹
☐ Filler metals and fluxes for fusion welding of metallic materials to EN 13479

The Construction Products subject to Factory Production Control are described in greater detail in the monitoring report or in the certificate.

Manufacturing plant(s):

§ 2
Fundamentals of External Surveillance and Certification

The External Surveillance of the manufacturing plant and the FPC are used to check regularly, whether the manufacture of the Construction Products are subject to Factory Production Control (FPC) by the Manufacturer and whether the related requirements of the harmonised technical specifications are met.

An Factory Production Control certificate is issued if the Factory Production Control conforms to the requirements of the named technical specifications.

¹ Number of the applicable harmonised standard(s), please add
§ 3
Carrying out of the External Surveillance and Certification

1. TIS is responsible for carrying out the Surveillance and Certification of the Factory Production Control according to the Certificate of Conformity system defined in Annex ZA of the named technical specifications (System 2+).

2. The external surveillance includes:
   a) initial surveillance and assessment of the manufacturing plant and the Factory Production Control (FPC)
   b) regular surveillance and assessment of the manufacturing plant and the Factory Production Control
   c) issuing of surveillance reports

3. The external surveillance is carried out according to the provisions of the technical specifications according to § 2. In justified cases the TIS can order and carry out special or extra surveillance.

4. TIS prepares a surveillance report on the results of each external surveillance, which it sends to the Manufacturer without delay.

5. The TIS representatives are authorised to enter the operating and storage rooms of the Manufacturer during operating hours, including the distribution warehouse, and to carry out the necessary actions in relation to the surveillance.

6. The certification procedure includes:
   a) Determination that the manufacture of the Construction Products is subject to Factory Production Control by the Manufacturer and the contractually agreed surveillance.
   b) Assessment and evaluation of the results of the Factory Production Control and surveillance and determining that the Factory Production Control conforms to the relevant technical specifications according to § 2.
   c) Issue of an FPC certificate of the Factory Production Control for the Construction Products and the manufacturing plant named in § 1 and/or in the surveillance report.
   d) Thereafter, regular assessment, evaluation and determination in accordance with Para. b).
   e) Define and take suitable measures if it is found that the Factory Production Control no longer conforms to the technical specifications named in § 2 or other requirements listed in § 2 are not fulfilled; in case of serious defects, withdrawal of the EC certificate of the Factory Production Control.

§ 4
Obligations of the Manufacturer

1. To ensure that the Surveillance and Certification is carried out properly, the Manufacturer shall provide TIS with the following information and documents:
   a) Details of the Construction Products named in § 1 and the production process.
   b) Demonstration of the setting up and carrying out of the Factory Production Control according to the provisions of the technical specifications according to § 2.
   c) Records of the results of the Factory Production Control including product tests and evaluation of the results.
   d) If the Manufacturer was previously in a contractual relationship with another body for the Construction Product and manufacturing plant, the relevant results of the surveillance and product tests as well as the previous certification shall be submitted to TIS. In this context, they also permit TIS to obtain information from these bodies directly.

2. The Manufacturer is obliged to notify TIS in writing of any changes, concerning TIS, in the manufacture of the Construction Products named in § 1, changes to important parts of the production-related plant equipment and any relevant skilled personnel. They are obliged, on request, to provide information about
all physical, chemical and technological properties of the Construction Products relevant for the external surveillance.

3. TIS shall be notified immediately in writing of any interruption in manufacture of the Construction Products, which makes contractual regular surveillance impossible, and details of the expected duration. The same applies to restarting manufacture.

4. If TIS notifies the Manufacturer that the FPC certificate has been withdrawn (see § 3 Para. 6.e) or this Surveillance and Certification Agreement is terminated according to § 6 or § 8, the Manufacturer shall submit to TIS the FPC certificate issued by TIS immediately. The FPC certificate will then be marked invalid.

§ 5

Reporting and Duty to Provide Information

1. TIS is entitled to notify the respective highest competent building control authority and the Deutsche Institut für Bautechnik (German Institute of Construction) about the results of the certification and the associated external surveillance, to issue information about these and to allow them to examine the corresponding documents.

2. If the Manufacturer lodges objections against the notified results of the external surveillance within one month of receipt, the TIS checks the results and if necessary carries out extra surveillance. If the Manufacturer’s objections are justified TIS shall pay for the costs, otherwise the costs shall be borne by the Manufacturer.

3. If this Surveillance and Certification Agreement is dissolved, TIS is entitled to make the results of the Surveillance and Certification available to the next certification body engaged by the Manufacturer.

§ 6

Breaches und Defects

1. If breaches of the provisions of the technical specifications named in § 2 are found, TIS will call on the Manufacturer to correct the defects within a certain period reasonable for the type and scope of production, which in general should not exceed one month. After this period has expired, TIS can order and carry out special surveillance.

2. If errors or breaches of the technical specifications named in § 2 are found during the surveillance, which could result in danger for public safety or order, especially a risk to life, health or the natural basis of life, the TIS shall notify immediately the competent highest building control authority and the Deutsche Institut für Bautechnik.

3. If the special surveillance or the next regular surveillance show that the defects have not been removed, the TIS is entitled to cancel the Contract without notice, to stop the surveillance and to withdraw the FPC certificate. It is also entitled to withdraw the FPC certificate and/or cancel the Contract without notice, if repeated irregularities have been found, which no longer ensure compliance of the Factory Production Control with the provisions of the technical specifications named in § 2. In both cases the Manufacturer is then no longer entitled to label the Construction Products with the CE marking.

§ 7

Confidentiality

TIS personnel are obliged to maintain confidentiality vis-a-vis third parties. With the exception of the duty to report and provide information defined in § 5 and § 6, information about the contents of the Contract and decisions made during its execution shall only be provided with the Manufacturer’s consent.

This does not apply to requests for information received from law courts or authorities in the cases provided for in law or for the announcement of the signing of contracts.
§ 8
Cost Arrangements, Payment Terms and Conditions

1. TIS is entitled, before providing any service, to require a reasonable advance payment or to request interim payments in line with the progress of the provision of services.

2. The costs for factory surveillance and for preparing the surveillance reports as well as for the certification including preparing FPC certificates on the Factory Production Control will be billed according to the agreed pricing arrangements or at cost. The amount is due for payment immediately after invoicing without any deductions whatsoever. Discounts will not be given.

3. The party liable for costs is always the Manufacturer.

4. If the Manufacturer becomes in arrears with payment, TIS is entitled to demand interest at a rate of 8% above the base rate of the Deutsche Bundesbank. If, despite a reasonable grace period, the Manufacturer is in arrears with payments, TIS is entitled to cancel the Contract without notice.

§ 9
Publication, Advertising

1. The Contract may only be published in its entirety and without change.

2. The Manufacturer shall only forward surveillance reports in full to third parties, unless TIS has agreed to the passing on of excerpts. FPC certificates shall only be reproduced or published in full and without change.

3. The Manufacturer is entitled to refer to the surveillance of the Factory Production Control in their business documents as well as on the Construction Product, its packaging and the corresponding delivery notes. The text of this reference shall not contradict the required CE marking. They shall only refer to the construction products and the manufacturing plant named in § 1 and they always required the prior consent of TIS. Use of the “TÜVRheinland” logo is not permitted.

4. The Manufacturer is obliged to remove all information of this type immediately or to deface it following the end of the contractual relationship or if the FPC certificate becomes invalid.

5. TIS is entitled to include details of the Manufacturer, manufacturing plant and surveilled construction products in the list of issued certificates intended for publication.

§ 10
Liability

1. TIS's liability to pay compensation and reimburse costs is limited to Euro 2,600,000 regardless of the reason for the liability.

2. This limitation of liability in accordance with Para. 1 does not apply if damages are due to deliberate act or grossly negligent behaviour or fraudulent intent of TIS or its vicarious agents, and for damages due to the breach of obligations, for the fulfilment of which TIS has provided a guarantee and for losses resulting from fatal or physical injuries, damage to health or damage for which TIS is liable under the German Product Liability Law.

3. In case of breach of a cardinal obligation, TIS is liable even in case of slight negligence. Cardinal obligations in this sense are essential contractual obligations, whose fulfilment makes proper implementation of the Contract possible and compliance with which the Client (Manufacturer) should be able to trust. A claim for compensation in case of breach of cardinal obligations is limited to the loss typical and foreseeable (typically foreseeable loss) at the time of the contractual breach as a possible consequence of the Contract breach, provided none of the cases named in Para. 2 exists.

4. TIS is not liable for workforce who the Manufacturer makes available as support in accordance with this Contract for services to be provided by TIS. The Manufacturer shall release TIS from any claims made by third parties.
5. The Manufacturer shall release TIS from claims for compensation made by third parties due to use of the audit inspection, surveillance and certification results.

§ 11
Contract Term

1. The Contract comes into force after it has been signed on the date named with the signature and is valid for an unlimited time.

2. The Contract can be cancelled in writing by either of the Parties to the Contract with a quarter-year notice period to the end of the year; the right to cancel without notice in accordance with § 6 Para. 3 and § 7 Para. 4 remains unaffected by this.

3. Notwithstanding the notice period named in Para. 2, the Contract ends on the day on which the technical specifications named in § 2 become invalid, provided they are not replaced immediately by new issues.

4. If the contractual relationship is cancelled, the Manufacturer is obliged to return the issued FPC certificate(s) to TIS immediately; TIS will then mark them "invalid".

§ 12
Legal Venue

The legal venue and place of performance is Cologne, Germany.

§ 13
Agreed Law

German law only shall apply to the legal relationship between the Manufacturer and TIS. The written and spoken negotiation language is German.

§ 14
Written Form

Any changes to the Contract shall be made in writing.

The Contract contains 5 pages and 2 Appendices. It is issued in 2 identical copies.

Manufacturer:

Place, Date ______________________ Signature of the management and company stamp

TÜV Rheinland Industrie Service GmbH,
Notified Body 0035

Cologne,

Place, Date ______________________ Head of the Surveillance and Certification Body

Annexes:

1. Testing and Certification Regulations, General terms and conditions and procedural guidelines for tests and certifications within the scope of the assessment and verification of the constancy of performance of construction products

2. General terms and conditions of business of TÜV Rheinland Industrie Service GmbH