



## ISCC 255 Terms of Use

As of: 01 February 2017

# ISCC Terms of Use

## Preamble

ISCC System GmbH (ISCC) operates globally applicable certification systems for demonstrating compliance with sustainability requirements according to legal regulations or voluntary agreements, in particular the sustainability requirements of the *Renewable Energy Directive 2009/28/EC* amended through *Directive (EU) 2015/1513* (RED) and *Fuel Quality Directive 2009/30/EC* amended through *Directive (EU) 2015/1513* (FQD) (in the following referred to as RED and FQD) of the European Union and national rules and systems existing for the national implementation of these directives.

ISCC does not perform any certifications itself. Certificates or statements of conformity are exclusively issued by recognised certification bodies that have concluded a cooperation agreement with ISCC and as such are published on the ISCC website on the basis of a certification system operated by ISCC.

## 1. Scope of Application and Contract Documentation

- 1.1 In addition to the system usage agreement concluded according to Item 3.1, these terms of use shall regulate the use of an ISCC certification system by the System User and the resulting rights and duties of the parties.
- 1.2 The use of the services and of the ISCC website shall exclusively be governed by the following terms of use and the currently applicable versions of the ISCC fees and tariffs, the logo usage guidelines, the system standards of the ISCC certification system and the ISCC Integrity Program. In the event of the logo usage guidelines and the ISCC Integrity Program, the currently applicable version shall be the version published on the website of ISCC at the beginning of the audit (first day of the audit) of a certification (first certification or renewal of the certificate). The currently applicable version of the fees and tariffs and of the system standards shall be governed by the following provisions.
- 1.3 The system standards of the ISCC certification shall be the subject matter and content of certification systems operated by ISCC.
- 1.4 Any deviating general terms and conditions of the System User are explicitly rejected.

## 2. Definitions

- 2.1 **Audit** is a review of the compliance with the sustainability requirements existing on the basis of legal requirements or voluntary agreements as part of an ISCC certification system performed by a certification body, by ISCC or by a person commissioned by ISCC. A distinction shall be made between certification audits and/or recertification audits performed by a certification body with the aim of issuing certificates or statements of conformity for the first time and/or of renewing them, surveillance audits performed by a certification body or by ISCC following the issue of a certificate, and integrity assessments as part of the ISCC Integrity Program performed by ISCC or a person commissioned by ISCC.
- 2.2 **Integrity of the ISCC Certification System** is its suitability to ensure that the sustainability of biomass is demonstrated on a reliable basis. It is ensured by way of a worldwide consistent application of the ISCC certification system according to the sustainability requirements established by law or due to voluntary commitments and – in the event of recognition of the ISCC certification system by government agencies or independent bodies – according to the requirements for recognition.
- 2.3 **ISCC Integrity Program** means the review procedures and processes provided for in the “ISCC Integrity Program” as specified in the ISCC Document 201 Governance in order to ensure the integrity of the ISCC certification system whilst in use and during certification. For this purpose, integrity assessments are performed by ISCC or by independent auditors commissioned by ISCC with regard to the System Users and the certification bodies.
- 2.4 **Integrity Assessment** is an audit performed by ISCC or by independent auditors commissioned by ISCC with regard to System Users and certification bodies as part of the ISCC Integrity Program.
- 2.5 **ISCC Certification System** is a certification system operated by ISCC, such as
- ISCC DE, a certification system recognised by the German *Bundesanstalt für Landwirtschaft und Ernährung (BLE)* [Federal Office for Agriculture and Food], or
  - ISCC EU, a certification system recognised by the European Commission, or
  - ISCC PLUS, a certification system for food and feed as well as for other technical/chemical or bioenergetic applications.
- 2.6 **National System** is a national rule of an EU member state to implement the sustainability requirements of the RED and FQD.
- 2.7 **Personal Data** are all particulars about the personal or factual circumstances of a specific or identifiable natural person. This includes such data by means of which the identity of a person can be determined, e.g. name, address email address or IP address.
- 2.8 **System Basics** are the basic principles of the respective ISCC certification system that are published in the currently applicable version on the ISCC website and which are referred to as such. Insofar as the ISCC certification system is recognised by a government agency or an independent body, as a rule, the system basics shall be the basis for recognition.
- 2.9 **System User** is any natural or legal person that concluded a contract with ISCC regarding the use of an ISCC certification system for the purpose of obtaining a certificate or a statement of conformity.
- 2.10 **System Standards** are the standards and requirements defined in the system basics of the respective ISCC certification system in their currently relevant specification by way of system updates and audit procedures.

- 2.11 **System Updates** are the explanations and information sent to the System Users by email on the application of the standards and requirements defined in the system basics. System updates are published in the client login section of the ISCC website.
- 2.12 **Surveillance audit by ISCC** is the surveillance of an audit performed by the certification body, including a surveillance audit by the certification body, that is accompanied and observed by a representative of ISCC or by an auditor assigned by ISCC.
- 2.13 **Surveillance audit by the certification body** is an audit of a System User performed by the certification body to verify compliance with System Standards during the period of validity of a certificate.
- 2.14 **Audit procedures** are checklists and information provided for certification bodies regarding the implementation of standards and requirements which are defined in the system basics and specified in the system updates and which must be taken into account by the System Users and certification bodies. ISCC publishes the currently applicable audit procedures in the client login section of the ISCC website.
- 2.15 **Certificates** are attestations which confirm that the System User has met the sustainability requirements imposed upon their business. So-called **Statements of conformity** are equal to certificates; they are issued to System Users by ISCC DE to whom no certificate may be issued within the meaning of the German *Biomassestrom-Nachhaltigkeitsverordnung (BioSt-NachV)* [Biomass-electricity-sustainability Ordinance] or the German *Biokraftstoff-Nachhaltigkeitsverordnung (Biokraft-NachV)* [Biofuel Sustainability Ordinance], as they are not interfaces within the meaning of these ordinances.
- 2.16 **Certification** is an inspection procedure by means of which the prerequisites for issuing a certificate are assessed.
- 2.17 **Certification Body** is an independent natural or legal person recognised by an EU member state, the European Commission or a national accreditation body of an EU member state for the certification of market participants that has concluded a cooperation agreement with ISCC.
- 2.18 **Certification Systems** are systems for the purpose of demonstrating the sustainability of biomass, in particular those which ensure from an organisational viewpoint the fulfilment of the requirements pursuant to the RED and FQD and/or a national system adopted on the basis of these directives for the production, supply and transport of liquid biomass and biofuel. Certification systems on the basis of the RED and FQD comprise standards to define in more detail the requirements of these directives and/or of the national systems adopted on its basis and to evidence its compliance as well as to control this evidence.
- 2.19 **Certification Agreement** is the contract concluded between the System User and the certification body.
- 3. Contract and Conclusion of the Contract, Storage of the Text of the Contract, Contract Language**
- 3.1 The prerequisite for the System User to use an ISCC certification system is the conclusion of a contract between the System User and ISCC (System Usage Agreement).

- 3.2 The presentation of information regarding the certification systems operated by ISCC on the internet, in print media or other media shall not be offers for the conclusion of a System Usage Agreement. By sending the ISCC form "ISCC Registration Form" (ISCC form) fully completed by them (all mandatory fields) to the email address stated in the ISCC form, the System User shall make the binding declaration with regard to their offer concerning the conclusion of the System Usage Agreement (registration). The System User may download the currently valid ISCC form via the ISCC website. The System User shall provide complete and accurate information in all mandatory fields and shall make the declarations required. Insofar as it is possible to directly and/or indirectly allocate it to a natural person, the information provided in the ISCC form is in part personal data which is subject to the provisions set out in Item 9. ISCC will promptly confirm the receipt of the completed ISCC form. The confirmation of receipt of the ISCC form shall not yet present a binding acceptance of the contractual offer. The confirmation of receipt may be linked with the declaration of acceptance.
- 3.3 The conclusion of the System Usage Agreement requires that the System User has concluded a certification agreement with a certification body (Item 2.15) in advance. The System User shall indicate the date of the contract concluded with the certification body in the ISCC form.
- 3.4 ISCC shall only conclude System Usage Agreements with companies (Section 14 *BGB* [*Bürgerliches Gesetzbuch* – German Civil Code] as well as legal persons under public law and special funds under public law, but not with consumers (Section 13 *BGB*).
- 3.5 In the event of incomplete and incomprehensible information provided in the ISCC form, ISCC may request that the information be corrected by the System User. The request for correction does not constitute an acceptance of the System User's offer. The sending of the amended ISCC form subsequently forwarded by the System User shall be a new binding offer for the conclusion of a System Usage Agreement.
- 3.6 The contract shall be concluded following the sending of the confirmation of registration and the transmission of the registration number by ISCC to the System User by email. ISCC shall be entitled to accept the contractual offer represented by the sending of the ISCC form within seven (7) working days following the receipt by ISCC. ISCC shall be entitled to reject the System User's offer without indicating any reasons. In particular, ISCC shall not be obliged to accept the offer even though a certification agreement with a certification body exists, including such offers which are made for good cause following the termination of a previous System Usage Agreement with ISCC due to a notice of termination given by ISCC.
- 3.7 The terms of use may be downloaded via the ISCC website at any time. The registration is stored by ISCC. Upon written request, ISCC will send a copy of the registration to the System User.
- 3.8 The contract shall exclusively be concluded in German and English.

#### **4. Rights and Duties of the System User**

- 4.1 The System User shall be entitled to use the ISCC certification system to obtain a certification if an effective System Usage Agreement exists and if no suspension pursuant to Item 10.7 exists. Without an effective System Usage Agreement, the certification body shall not be entitled to make a certification on the basis of an ISCC certification system and to issue a certificate. In the event of a termination of the certification agreement, the certification body shall be obliged towards ISCC to declare null and void and to withdraw a certificate, which is valid beyond the end of the contract, at the time of the termination of the contract.
- 4.2 The System User shall be obliged to comply with the system standards of the ISCC certification system in their currently applicable version. ISCC may adjust the system standards to ensure the integrity of the ISCC certification system (Item 2.2). Any changes in the system standards shall be pointed out to the user by way of system updates which provide for a period within which the change has to be implemented. In the event of the change in the system standards, the System User shall be entitled to terminate the System Usage Agreement according to Item 13.2. The currently valid version of the system standards is published on the publicly available sites (system basics) and/or in the client login section (system updates, audit procedures) of the ISCC website.
- 4.3 With regard to each issue or renewal of a certificate by the certification body, the System User shall be obliged to review the information provided during the registration and/or subsequent updates in terms of their accuracy and shall notify ISCC of any change in writing, by email or fax without any delay. Should no notification be made, ISCC assumes that the information currently available continues to be valid. Regardless of this, during the duration of a certificate, the System User shall be responsible for promptly informing ISCC about any change in the information provided during the registration or any information which subsequently replaces such information. In particular, sentences 1 to 3 shall also apply with regard to the System User's duty to provide accurate information about any and all certification systems used by them for the certification of sustainability. This shall apply to both the certification systems used prior to the registration with ISCC and such systems used simultaneously to the use of an ISCC certification system. Sentences 1 to 3 shall also apply to the designated ISCC contact person at the System User and the respective contact information (e.g. email address). This means, the System User shall provide ISCC with up to date contact details of at least one representative of the System User.
- 4.4 The System User's obligation towards the certification body to provide any and all data and documents relevant to the audit shall also encompass such data and documents concerning unsustainable products as well as delivery notes, Proofs of sustainability, reports and mass balances which were issued as part of other standards or certification systems.
- 4.5 The System User shall be obliged to allow a representative of ISCC or an independent auditor assigned by ISCC to participate in audits performed by the certification body (certification, recertification or surveillance audits) and to grant this representative or auditor the rights laid down in Item 4.7 Sentence 4.
- 4.6 The System User shall also be obliged to meet their duties towards ISCC arising from the certification agreement, insofar as ISCC may be harmed as result of a violation of these duties. In this respect, ISCC shall be included in the protective effects of these duties and may assert a claim for compensation in the event of a violation of any of these duties.

- 4.7 If requested by ISCC, the System User shall be obliged to allow integrity assessments to be performed by ISCC or independent auditors according to the ISCC Integrity Program in the currently applicable version as specified in ISCC Document 102 Governance. ISCC will notify the System User about the request with a proposed date for the assessment four weeks prior to the proposed date in writing, by e-mail or fax. If the System User cannot confirm the proposed date the System User shall be obliged to immediately provide ISCC with two alternative dates. These alternative dates shall lie within a period of two months from receipt of the written notification as laid down in Sentence 2. ISCC shall also be able to conduct integrity assessments without prior notice or with notice less than four weeks prior to the proposed date. ISCC will apply these two options only in exceptional circumstances, such as indications of serious infringements of environmental or social requirements or if there is suspicion of fraudulent behaviour and immediate investigations are required. The ISCC representatives or the auditors commissioned by ISCC with the implementation of the integrity assessment shall be
- 4.7.1 granted access to the properties, business premises, operating rooms and storage rooms as well as means of transport during business and working hours,
  - 4.7.2 allowed to make inspections of the properties, premises and means of transport as laid down in Item 4.7.1,
  - 4.7.3 allowed to inspect the business documentation available in written and electronic form, unless a connection with the performance of the duties arising from this System Usage Agreement can be excluded from the outset, as well as granted the right to examine these documents,
  - 4.7.4 provided with all information required.

These duties shall continue to persist 18 months following the termination of the System Usage Agreement concluded between ISCC and the System User.

- 4.8 The System User shall be obliged to comply with the laws, ordinances, directives and ratified treaties of the country in which the System User operates. This means that the System User shall be obliged to have in place all applicable and valid permits or licenses for the System Users' type of operation, to avoid any illegal activities, particularly to avoid corrupt practices, bribery and fraud. If a System User is legally convicted for violations of the law, this will be considered as an infringement of the ISCC terms of use according to the principles specified under Item 10.
- 4.9 The System User shall be obliged to provide the relevant data required to fulfil the legal reporting requirements of ISCC towards the European Commission. To fulfil this obligation, the System User shall be obliged to report to ISCC the amount of feedstocks (raw materials) and biofuels certified under ISCC, by country of origin and type.
- 4.10 The System User shall be obliged to make available to the certification body all evidence required to verify the conformity of sustainability claims (material declared to be sustainable) that were made during the previous period of certification. This particularly applies, if the System User changes the certification body (i.e. recertification will be performed by a different certification body), in case of a gap in the certification period, in case the System User changes the certification scheme, or in case the System User was certified under more than one scheme at the same time.

- 4.11 If sampling is applied during an ISCC audit, the System User shall be obliged to provide a list of all individual operations that are considered for calculating the sample (e.g. farms, dependent warehouses or dependent collecting points). This list shall be provided to the CB to be forwarded to ISCC together with the relevant audit documentation.

## **5. Rights and Duties of ISCC**

- 5.1 ISCC provides the ISCC certification system.
- 5.2 ISCC shall be entitled to adjust the system standards of the ISCC certification system at any time in order to ensure or improve the compliance with the requirements of legal regulations or voluntary commitments concerning the demonstration of the sustainability or integrity of the ISCC certification system. In particular, the right to adjust shall exist in the event of a change in legal regulations, official conditions or orders or in the event of a changed interpretation of the law by courts or authorities. ISCC shall promptly inform the System User by email about any changes in the system standards.
- 5.3 ISCC does not perform any audits for issuing certificates and does not issue any certificates. ISCC does not warrant for the issue of the certificate by the certification body. On the basis of the cooperation agreement existing between ISCC and the certification body, ISCC shall be entitled to give binding instructions to the certification body regarding the application of the system standards.

## **6. Fees**

- 6.1 The System User shall pay the following fees for the use of the ISCC certification system:
- 6.1.1 With regard to the registration, a one-off registration fee shall incur according to the tariff system applicable at the date of the registration. The System User shall be invoiced for the registration fee by the certification body with which they concluded the certification agreement. The payment shall exclusively be made to the certification body that forwards the fee to ISCC. The payment made to the certification body shall constitute full discharge of any obligations. The duty to pay the registration fee shall exist regardless as to whether or not the certification is realised and the certificate is issued.
- 6.1.2 With regard to the issue of a certificate, a certificate fee pursuant to the tariff system applicable at the date of the certification audit shall incur. The System User shall also be invoiced for this fee by the certification body. Sentences 2 to 4 of Item 6.1.1 shall apply accordingly.
- 6.1.3 With regard to each metric ton of biomass or other products declared to be sustainable as part of an ISCC certification system, a quantity-dependent fee (tonnage fee) shall be paid pursuant to the tariff system which applies at the date specified in Item 14.1. For members of ISCC e.V., a reduced tonnage fee shall apply according to the tariff system applicable at this date. The System User shall be obliged to provide the certification body with accurate and complete data regarding the relevant quantities according to Sentence 1. ISCC shall invoice the System User for the tonnage fee.

The tonnage fee shall become due for payment following the receipt of the invoice and shall be paid no later than within 14 days following the receipt of the invoice (receipt of payment on the account of ISCC). As from this date, ISCC shall be entitled to invoice the System User for the statutory default interest according to Section 288 Para. 2 *BGB*, currently eight (8) percentage point above the base interest rate published by the *Deutsche Bundesbank* [German Federal Bank] every six months. A processing fee amounting to EUR 15.00 will become due for payment if the tonnage fee is not paid within 30 days following the receipt of the invoice. Should this period be exceeded, a further processing fee of EUR 15.00 shall become due for payment following the expiry of another 30 days in each case.

Should the System User also fail to settle an invoice issued by ISCC to the System User within a period of 14 days following the receipt of a written request for payment dispatched following the expiry of the 14-day payment term (the decisive factor shall be receipt of the money on the account of ISCC), ISCC shall be entitled to give notice of termination of the System Usage Agreement for good cause and/or to suspend the services provided by ISCC, such as customer service via phone or e-mail and the display of the System User's certificate on the website of ISCC, until the System User has settled the invoice. ISCC shall threaten the termination for good cause and/or the suspension of services in the written request of payment. ISCC shall threaten and perform the suspension of display of the certificate on the website of ISCC only if a suspension of display of the certificate on the website of ISCC is permissible according to applicable law or to the conditions of recognition of the ISCC certification system.

- 6.2 The currently valid version of the tariff system is published on the ISCC website.
- 6.3 The System User's obligation to pay the fees contractually agreed upon with the certification body shall remain unaffected.

## **7. No Set-Off**

The System User may only offset claims asserted by ISCC against any counterclaims which are undisputed or have been recognised by declaratory judgment.

## **8. Property Rights and Reference Lists**

- 8.1 ISCC shall be entitled to list the System User's company name and logo in the reference lists and to publish them on the internet and in print media for providing factual information upon prior explicit written consent of the System User for each individual case. ISCC shall not be entitled to use the information in any other way. Incidentally, Item 9 shall apply.
- 8.2 The System User may only use the ISCC logo after obtaining the prior, explicit and written consent of ISCC. ISCC shall give this consent upon request and verification on a case-by-case basis.
- 8.3 The content made available by ISCC on the internet shall be subject to copyright protection. Therefore, the System User shall not be permitted to copy, process or distribute this content beyond the use granted by ISCC on a case-by-case basis.



- 8.4 ISCC shall be entitled to publish press releases by making reference to the use of the ISCC certification system by the System User upon prior explicit written consent of the System User for each individual case.
- 8.5 The System User shall be entitled to publish press releases by making reference to the System User's use of the ISCC certification system, as long as the System User holds a valid certificate as part of an ISCC certification system.
- 9. Confidentiality, Data Protection, Publications of Third Party Data/Information, Exemption**
- 9.1 ISCC collects, stores and uses personal data insofar as this is permitted by legal regulations or ordered by the legislator. ISCC will treat personal data as confidential and according to the provisions of the applicable data protection law.
- 9.2 ISCC shall exclusively store and process the System User's data for the purposes resulting from this System Usage Agreement taking into account the relevant statutory provisions and these terms of use.
- 9.3 ISCC shall be entitled to make publicly available on the ISCC website any certificates and statements of conformity issued to the System User as valid, declared null and void and expired, including the annex of the certificate (Annex of the Certificate – List of Warehouses/Collection Points: with regard to first gathering points or logistic centres, e.g. list of warehouses) as a PDF file as well as the content of the certificates and of their annexes. Information provided on a certificate usually comprises the name and address of the certified unit, the name and address of the certification body, the issue date as well as site-specific information regarding the products and the calculation of greenhouse gas emissions. With regard to certificates for first gathering points or central offices, ISCC shall furthermore be entitled to make publicly available via the ISCC website the geo coordinates of the certified sites via the web-based service for the visualisation of geo data, "Google Maps", provided by Google Inc. or via similar services, such as "Google Earth".
- 9.4 The annex of the certificate (Annex of the Certificate – List of Warehouses/Collection Points) may also encompass information regarding third parties that are not System Users (company name/trade name, address, country). This data is subject matter of the certification. The System User shall bear full responsibility for the complete and accurate provision of such data and shall ensure that ISCC is allowed to use this data as part of the performance of the System Usage Agreement, to make it publicly available and to transmit the data to third parties, in particular also pursuant to Item 9.7, in each case without violating third party rights. The System User shall exempt ISCC from any and all claims, including claims for compensation, which are asserted against ISCC by third parties due to a violation of their rights by the use, publication or transmission of their data.
- 9.5 Subject to the stipulations above, as a rule, any data collected, stored and used by ISCC is not made publicly available or passed on by ISCC to third parties. Such data (e.g. audit reports, completed audit procedures) will only be made publicly available by ISCC or be passed on to third parties if the System User or the respective third party concerned (for example agricultural operations, farms or plantations) have given their explicit consent to the publication or passing on of this data, or if ISCC is obliged to pass on this information by law or due to official or judicial conditions or orders. The consent of the System User or third party has to be given in writing; the System User may also give such consent in text form following the conclusion of the System Usage Agreement (registration). The consent of third parties, e.g. points of origin (premises) or producers (agricultural operations, farms or plantations) may be given as part of the audit. If the System User provides personal data regarding third parties, e. g. by naming contact persons, he is responsible for the completeness and correctness of

such data and ensures that ISCC is entitled to use, make publicly available and transmit such data to third parties without violating third party rights. Item 9.4 Sentence 4 shall apply accordingly.

- 9.6 Should the System User change the certification body, ISCC shall be entitled to forward to the new certification body any and all data collected by ISCC concerning the System User in connection with the performance of the System Usage Agreement, in particular with regard to previous certifications and audits of other certification bodies and/or previous integrity assessments.
- 9.7 Should the System User contact ISCC (for example, by contact form or email), the information is stored for the purpose of processing the request and in the event of any follow-up questions arising.
- 9.8 ISCC takes technical and organisational security measures to protect data collected in connection with the performance of the System Usage Agreement, including any personal data, against loss, manipulation or unauthorised third party access. The technical procedures used in this context are developed further and improved according to the technological progress. ISCC points out that it is not possible to guarantee comprehensive absolute protection.
- 9.9 Upon request, ISCC shall at any time provide the System User with information about the data stored with ISCC and associated with the System User. With regard to corresponding requests for information and questions, the System User may contact ISCC in writing, by email or fax.
- 9.10 The System User and the concerned third parties shall be entitled at any time to withdraw a consent given for the use, publication and transmission of personal data with effect from the moment of withdrawal as far as the withdrawal is not in conflict with the protection of the ISCC certification system against misuse and fraud, legal prescriptions or official or judicial obligations or directives. A withdrawal according to Sentence 1 shall not affect the right of ISCC to publish any expired, withdrawn or forged certificates. Existing legal obligations of ISCC to use, publish or transmit the data shall remain unaffected by the withdrawal of the consent. The System User may have their data stored with ISCC amended, blocked or deleted, if this is not in conflict with the factors named under Sentence 1. Should any legal retention and provision periods oppose the deletion of the data, the System Users may have his data blocked. The revocation pursuant to Sentence 1 and the request pursuant to Sentence 4 shall entitle ISCC to give notice of termination of the agreement for good cause, if it is thus no longer possible to perform the System Usage Agreement according to the applicable legal provisions and the relevant voluntary commitments as well as the system standards.

## **10. Infringements of the System Standards, infringements of duties from the terms of use and Liability of the System User**

- 10.1 Any infringements of system standards or duties from Items 4.5 and 4.7 committed by the System User (infringement) may result in biomass or other products declared to be sustainable, which fail to meet the legal requirements or requirements existing due to voluntary commitments with regard to the demonstration of sustainability, entering the market or having an adverse effect on the integrity or recognition of the ISCC certification systems. Furthermore, infringements may trigger legal duties of ISCC, certification bodies or authorities, such as duties to publish, duties to report towards authorities or national registers. Infringements will be handled according to the

principles specified in chapter 10 “Non-conformity and sanctions” of ISCC Document 102 Governance.

- 10.2 Minor infringements are such infringements which are insubstantial according to the scope of irregularities. These are those infringements which have not or cannot result in the consequences set out in 10.1 Sentence 1. In the event of a minor infringement, ISCC may give a warning. A warning may be connected with conditions for the System User which are suited to prevent future infringements or ensure the future compliance with the system standards during the period of validity of the certificate and the fulfilment of which is reasonable for the System User by weighing the mutual interests. Repeated minor infringements of the same kind shall be deemed to be a serious infringement according to Item 10.3.
- 10.3 Serious infringements shall be such infringements which are relevant according to the scope of irregularities. These are those infringements which have resulted or may result in the consequences set out in 10.1 Sentence 1. For example, a serious infringement shall be considered to exist, if the System User
- 10.3.1 issues delivery documents or proofs of sustainability for sustainable goods as part of an ISCC certification system despite no valid certificate being available at the date of issue, or
- 10.3.2 is certified according to more than one recognised certification system and registers the same quantity of sustainable biomass or other products in two different mass balances ("double accounting") and, in both cases, sells or forwards them as being sustainable, or
- 10.3.3 accounts and declares biomass or other products to be sustainable, the sustainability of which cannot be fully traced, verified or validated, in particular also in the event of missing self-declarations of the point of origin or the (agricultural) producer, or
- 10.3.4 infringes any regulations concerning mass balancing and thus markets or forwards any unsustainable goods as sustainable goods as part of an ISCC certification system, or
- 10.3.5 fails to attend the duty to allow a surveillance audit according to Item 4.5, or
- 10.3.6 fails to attend the duty to allow the conduct of integrity assessments according to Items 4.7 Sentence 1 and Sentence 4. The System User fails to attend the duty according to Item 4.7 Sentence 1, if the System User
- does not participate in the proposed date according to Item 4.7 Sentence 2 and
  - does not propose alternative dates or does not participate in these alternative dates within the time period according to Item 4.7 Sentence 3, unless the System User is not liable for the neglect.
- 10.3.7 fails to attend the duty according to Item 4.8.
- 10.4 Very serious infringements shall be intentional, in particular also systematic infringements, particularly violations with the intent to defraud.
- 10.5 ISCC shall be responsible for classifying the infringement as being minor, serious, or very serious and for assessing the System Users' fault as part of a case-by-case examination by applying the principles defined in Items 10.1 to 10.4. With regard to this examination on a case-by-case basis, ISCC may take adequate fact-finding measures, in particular to request that the documents concerning the event be provided by the certification body, that the documents concerning the event be submitted by the System User and that a statement be provided by both the certification body and the System User. Should a System User communicate an infringement to ISCC in a proactive and timely manner, this might be taken into

account as an attenuating circumstance with regard to the assessment of the gravity of the infringement. Proactive and timely communication shall be excluded, if the infringement was only revealed as a result of a check carried out by the certification body.

- 10.6 In the event of a culpable infringement according to Items 10.3 or 10.4, the certification body shall be obliged to promptly declare the System User's certificate null and void and to withdraw it. The rights of the certification body arising from the certification agreement, that is, to declare certificates null and void and to withdraw them, shall remain unaffected.
- 10.7 If, in the event of ordinarily negligent infringements pursuant to Item 10.3, the certificate is declared null and void and withdrawn by the certification body, ISCC may suspend the System User for a repeated certification (recertification) for a period of up to six (6) months (suspension). In the event of grossly negligent infringements pursuant to Item 10.3 or in the event of infringements pursuant to Item 10.4, ISCC will impose a suspension. The suspension shall amount to up to 12 months with regard to grossly negligent infringements according to Item 10.3. With regard to infringements pursuant to Item 10.4, the suspension may be up to 60 months. Should ISCC not impose a suspension, the System User may immediately arrange for being recertified. In this case, ISCC may link the recertification to conditions according to Item 10.2. Sentence 4. If the certification was made according to ISCC-DE, a recertification is only possible if the prerequisites for issuing a new certificate are met according to Section 26 Para. 2 of the *Verordnung über Anforderungen an eine nachhaltige Herstellung von flüssiger Biomasse zur Stromerzeugung* [Ordinance on the requirements for sustainable production of liquid biomass for electricity generation] (*Biomassestrom-Nachhaltigkeitsverordnung*) dated 23 July 2009, *BGBI. [Bundesgesetzblatt – Federal Law Gazette]* I 2009, 2174, in the currently applicable version and/or according to Section 26 Para. 2 of the *Verordnung über Anforderungen an eine nachhaltige Herstellung von Biokraftstoffen* [Ordinance on the requirements for sustainable production of biofuels] (*Biokraftstoff-Nachhaltigkeitsverordnung*) dated 30 September 2009, *BGBI. I* 2009, 3182.
- 10.8 In the event of grossly negligent infringements pursuant to Item 10.3 and in the event of infringements pursuant to Item 10.4, ISCC shall also be entitled to give notice of termination for the System Usage Agreement for good cause. In the event of a notice of termination given for good cause, a new registration shall also be excluded for the suspension period provided ISCC has simultaneously imposed a suspension for the recertification according to Item 10.7 Sentences 1 to 4.
- 10.9 Should a certificate be declared null and void and be withdrawn due to infringements of the system standards or should ISCC suspend the System User for a recertification, ISCC may publish this information on the ISCC website. Moreover, ISCC shall be entitled to notify authorities, other certification systems and certification bodies of the declaration of invalidity or withdrawal of the certificate and the suspension.
- 10.10 Any further consequences of an infringement based on legal regulations, official decisions or rules of a national or international system, or a voluntary commitment shall remain unaffected.
- 10.11 The System User shall be obliged to compensate ISCC for any loss suffered due to any culpable infringements according to Items 10.2 to 10.4 or culpable violations of other contractual duties. The System User shall exempt ISCC from any claims asserted against them by third parties due to culpable infringements or culpable violations of other contractual duties.
- 10.12 In the event of a culpable serious infringement according to Item 10.3 ISCC is entitled to claim a contractual penalty calculated at equitable discretion, but limited to EUR 10,000.00 (in words: ten thousand). Basis for the assessment of the contractual

penalty is the sum of the System User's material advantages resulting from the infringement and ISCC's expenditures necessary to secure their rights resulting from the infringement. Subject to the preconditions laid down in section 343 of the German Civil Code [BGB] the System User is entitled to claim for reduction of the contractual penalty. ISCC has the right to claim for damages exceeding the contractual penalty. The System User has the right to prove that damages are lower than the contractual penalty. The contractual penalty is credited against the claim for damages.

## **11. Liability of ISCC**

- 11.1 The ISCC certification system shall take into account the relevant (legal) requirements regarding the demonstration of the sustainability of biomass which, in particular, arise from legal regulations, the recognition of the ISCC certification system, judicial or official conditions, orders and interpretations of the law as well as commitments. ISCC shall continuously update the certification system in accordance with these terms of use. ISCC shall not be liable for the existence of the legal requirements regarding the demonstration of the sustainability of biomass, in particular in the event of any changing interpretation or application of these legal requirements on the part of courts or authorities. ISCC shall not be liable for the activities of the certification authorities; this shall also apply insofar as certificates and corresponding information is published on their website.
- 11.2 ISCC shall be liable for any damage caused by them, their legal representatives, or their performing agents and vicarious agents on the basis of the culpable injury to life, body or health according to the statutory provisions. Furthermore, the liability of ISCC, their legal representatives, or their 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 their legal representatives or officers. 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. 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.
- 11.3 ISCC shall reserve the right to plead contributory fault. In particular, the System User shall be obliged to back up the data according to the current state-of-the-art technology.
- 11.4 Insofar as the liability of ISCC is excluded or limited, this shall also apply to the personal liability of the representatives, performing agents and vicarious agents of ISCC.

## **12. Revocation and Withdrawal**

Should the System User cancel the registration within seven (7) days following the receipt of the confirmation of registration and prior to any certification in writing, by email or fax towards ISCC and the certification body, the registration shall expire and the System Usage Agreement shall be terminated. No registration fees shall be charged in this case. In order to observe the deadline, the timely receipt of the notification with ISCC and the certification body shall be required.

## **13. Duration of the Contract, Termination**

- 13.1 The System Usage Agreement shall be concluded for an indefinite period of time.

- 13.2 The System User may terminate the System Usage Agreement concluded with ISCC at any time and at any date. ISCC may terminate the System Usage Agreement concluded with the System User if there is good cause according to Item 13.3. Once the notice of termination takes effect, the registration and the System User's right to use the ISCC certification system shall terminate. At this date, any certificates issued according to the ISCC certification system are no longer valid and will be marked accordingly on the ISCC website. Following the notice of termination taking effect, the System User shall promptly return to the certification body any certificates which expire after the effective date of the notice of termination.
- 13.3 The right to give notice of termination for good cause shall remain unaffected. Good cause shall exist if facts exist due to which it can no longer reasonably be expected from the party giving notice of termination to continue the contractual relationship up to the expiry of the notice period or up to the agreed termination of the contractual relationship taking into account all circumstances of the individual case and by weighing the interests of both contracting parties. In particular, good cause for ISCC to give notice of termination shall exist if
- 13.3.1 the System User is without a valid certificate for more than 12 weeks, except in the event of a suspension, or
  - 13.3.2 no effective certification agreement exists or the certification agreement has been terminated or ended otherwise, or
  - 13.3.3 the System User, grossly negligently or with intent, provides inaccurate or incomplete information to the certification body, in particular with regard to the quantities relevant to the tonnage fee.
  - 13.3.4 ISCC receives notice that a current System User was originally certified under ISCC as a different legal entity, but with the same person(s) in charge, which did not become recertified to avoid the verification of compliance with the ISCC requirements. For example, this includes a "new" company that is set up and certified to avoid a recertification audit including the verification of the conformity of sustainability claims (material declared to be sustainable) that were made during the previous period of certification.
  - 13.3.5 ISCC receives notice that a System User was originally certified under ISCC as a different legal entity, but with the same person(s) in charge, which was suspended from recertification and the "new" legal entity was set up and certified to circumvent the suspension from recertification by ISCC.
- Item 6.1.3 Para. 3, Item 10.8 and Item 9.11 Sentence 6 shall remain unaffected. Item 13.2 Sentences 2 to 4 shall apply accordingly in the event of a termination for good cause.
- 13.4 Any notice of termination shall be given in writing, by email or fax. ISCC shall confirm the notice of termination by sending a confirmation of termination of the registration.

#### **14. Validity and Amendment of the Terms of Use**

- 14.1 In each case, the terms of use applicable at the beginning of the audit (first day of the audit) of a certification (first certification or renewal of the certificate) shall apply. The terms of use applicable at this point of time shall be presented to the System User by the certification body at the beginning of the audit and shall be accepted by the System User by signature. In case of amendments of the terms of use the System User has the right to terminate the System Usage Agreement without notice at no charge by informing ISCC in accordance with Item 13.4. The certification body is obliged to separately advise the System User of his right to terminate the System Usage Agreement.

14.2 At the beginning of the audit, the System User shall recognise the currently valid version of the terms of use by way of their signature. Thus, this version shall be included in the System Usage Agreement and be relevant for the respective certification.

14.3 The currently valid version of the terms of use may be retrieved on the ISCC website with the effective date.

## **15. Miscellaneous**

15.1 Should the System User not agree with any decisions made or measures taken by ISCC, they may appeal and/or object according to the conflict resolution process specified in chapter 9 "Conflict Resolution" of ISCC Document 102 Governance in the currently applicable version which may be downloaded from the ISCC website.

15.2 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).

15.3 The place of jurisdiction for all disputes arising from the System Usage Agreement and these Terms of Use shall be Cologne.

15.4 In the event of inconsistencies between the German and the English version of these Terms of Use the German version of these Terms of Use shall prevail.

Date, place

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Signature (System User)