

## **Appendix 2**

### **ProTerra General Terms of Certification**

#### **Preamble**

ProTerra Foundation operates globally verification and certification systems for evidencing social responsibility, sustainability, traceability and Non-GMO requirements for agricultural commodities due to legal regulations or voluntary agreements. Furthermore, ProTerra Foundation provides trainings to farmers, trainers and auditors based on the ProTerra Standard. ProTerra Foundation develops research projects in the area of agriculture, agricultural commodities and related industries. ProTerra Foundation being the Scheme Owner does not perform any certifications itself. Pro Terra Foundation takes all the necessary measures that conformity with sustainability, Non-GMO requirements and complete traceability of the agricultural commodities is demonstrated on a reliable basis and services based on ProTerra Standard are provided on a high quality level. It is ensured by way of a worldwide consistent application of the ProTerra Standard and quality assurance monitoring on all levels.

Certificates or statements of conformity are exclusively issued by recognized Certification Bodies that have been approved and have executed a Cooperation Agreement with the ProTerra Foundation and, as such, will have their names published on the ProTerra website.

#### **1. Scope of Application and Contract Documentation**

- 1.1 These Terms of Certification applies to all business dealings between the Cooperating Certification Body and ProTerra Foundation in connection with the Cooperation Agreement. Additional contractual documents shall be the contractual documents mentioned in the Cooperation Agreement. The respective current version of the General Terms of Certification as well as of the additional contractual documents will be available on the ProTerra website.
- 1.2 Any deviating General Terms and Conditions of the Cooperating Certification Body are explicitly rejected.
- 1.3 The Requirements on Certification Bodies and the ProTerra Certification System (ProTerra Standard and ProTerra Certification Protocol) shall form the basics of cooperation and the certification by the certification bodies.
- 1.4 Any changes to these General Terms of Certification, the Integrity Program (to be developed), the Guidelines and Requirements for the Use of the ProTerra Logo and Trademark and the Fees and Tariff Structure shall be notified to the Cooperating Certification Body no later than two months before the proposed effective date. The Cooperating Certification Body shall be deemed to have



agreed to the changes if it does not submit its rejection of them in written form before the proposed effective date.

## 2. Definitions

As used in this document, the following terms have the indicated meanings:

ProTerra Certification System: The ProTerra Standard and the Certification Protocol are the basic principles of the ProTerra Certification System. They are published in the currently applicable version on the ProTerra website.

Audit is an assessment of the compliance with the indicators of the ProTerra Standard and related legal requirements performed by a Certification Body, by ProTerra Foundation or by a person commissioned by ProTerra Foundation. Audits against the ProTerra standard can be done on Level I (Agricultural production), Level II (Handling, Transport and Storage) and on Level III (Processing and Manufacturing). Chain of Custody is another layer that can also be assessed against the Standard for compliance.

A distinction shall be made between the following:

- Certification audits and/or re-certification audits performed by a Certification Body with the aim of issuing certificates or statements of conformity for the first time and/or for renewing them.
- Audits as risk assessments without issuing a certificate, but providing a report on non-compliances and critical points to be corrected.
- Integrity assessments or surveillance audits.

Audit Guidelines are guidance information provided for certification bodies regarding audit procedures as well as interpretation and application of the indicators which are defined respectively in the ProTerra Standard and the Certification Protocol. ProTerra publishes the currently applicable Audit Procedures and Guidelines on the ProTerra website

Certificates are attestations issued by a Cooperative Certification Body which confirm that the System User has met the requirements imposed upon their business.

Cooperating Certification Body is a Certification Body approved by the ProTerra Foundation that has executed a Cooperation Agreement with The ProTerra Foundation.

Cooperation Agreement is the agreement (including its appendices) concluded between the Cooperating Certification Body and ProTerra Foundation, based on the General Terms of Certification.

Requirements on Certification Bodies are the requirements laid down in the Certification Protocol under “Approval of Certification Bodies”; the currently applicable version of which is published on the ProTerra website.

ProTerra Integrity Program means the review procedures and processes provided in order to ensure the integrity and quality of the services based on the ProTerra standard. For this purpose, integrity assessments and surveillance audits are performed.

Integrity Assessment is an audit performed by ProTerra Foundation or by independent auditors commissioned by the ProTerra Foundation with regard to System Users and Cooperative Certification Bodies as part of the ProTerra Integrity Program, following certification, certification renewals, gap-audits or any service based on the ProTerra Standard.

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, e-mail address or IP address.

Confidential Company Data are all non-published particulars about a company or factual circumstances of a specific site or company. This includes the name, location, turn-over or factual circumstances related to a specific site.

System User is any natural or legal person that executed an agreement with a Cooperating Certification Body or Service provider regarding the use of services based on the ProTerra Standard.

Certification Agreement or Service Agreement is the contract executed between the System User and the Cooperating Certification Body or the Service provider.

Complaints are the formal expression of dissatisfaction by any person or organization which relates to the services based on the ProTerra Standard.

Appeal is a request for reconsideration of any decision made by the Board, a Committee or the management of the ProTerra Foundation.

### **3. Duties of the Cooperating Certification Body**

- 3.1. Activities under any ProTerra certification system may be carried out only if the Cooperating Certification Body has a valid recognition issued by a competent government agency or an accreditation body, which is a member of the International Accreditation Forum (IAF) or European Co-operation for Accreditation (EA). The details of the approval requirements and procedures are laid down in the ProTerra Certification Protocol in its latest version available on the ProTerra website.

- 3.2 The Certification Body is required to inform ProTerra and document about any changes that may affect its accreditation. This may include reports of audits and surveillance by the accreditation body.  
ProTerra will monitor and evaluate the accreditation status including the validity of accreditation certificates of the approved Certification Bodies.
- 3.3 The Cooperating Certification Body shall timely inform System users (their clients) that they must apply for membership of the ProTerra Network and accept the Terms of Use in order to execute a Certification or Service Agreement with the Cooperating Certification Body for conducting certification or gap-audits or other services under the ProTerra Standard. The Cooperating Certification Body shall be permitted to perform an audit only if a valid Certification or Service Agreement has been concluded between the System User and the Cooperating Certification Body and if the System User has applied for membership of the ProTerra Network.
- 3.4 The Certification Body is responsible for its decisions and its obligations towards its clients and cannot subcontract these, unless to another Cooperating Certification Body and with the approval of ProTerra. It is responsible to keep valid all relevant accreditation, as agreed by ProTerra.
- 3.5 With each certification, the Cooperating Certification Body shall provide the System User with the current version of the Terms of Use, published on the ProTerra website.
- 3.6 Audits are to be performed in accordance with the respective applicable Requirements on Cooperating Certification Bodies, the Certification Protocol and the ProTerra Standard. ProTerra may give binding instructions to the Cooperating Certification Body regarding the application of the Standard, define audit requirements, and provide conditions for the System User according to which certificates are to be issued.
- 3.7 The audit procedures applicable at the time of the audit under the ProTerra Standard on which the certification or gap-audits are based are to be followed and used for documenting the entire audit and audit reports are to be filled out both completely and correctly.
- 3.8 The Cooperating Certification Body shall be obliged to verify within the framework of each audit the correctness of the information provided by the System User during the ProTerra Network application for membership and/or any subsequent update of such information and to notify ProTerra via e-mail of any change without delay, at the latest, however, together with the transmission of the certification documents. Such obligation shall also apply if the Cooperating Certification Body becomes aware of any change to such information outside an audit.
- 3.9 The Cooperating Certification Body shall be obliged to issue the audit reports within 30 days after the audit has taken place. The Cooperating Certification Body will have a maximum of two weeks to review the report and one week

after that to issue the certification decision. After a positive certification decision, the Cooperating Certification Body shall issue the certificate to the System User within two weeks if the conditions for the issuing of a certificate are fulfilled

- 3.10 Immediately and no later than 5 working days after issuance of the certificate, the Cooperating Certification Body shall inform ProTerra in all detail of the issued certificate as well as the names of the auditors involved in the audit and shall send to ProTerra or up-load in the ProTerra Database the following documents (Certification Documents):
  - 3.10.1 a copy and/or a scan of the certificate in visualised form (PDF file);
  - 3.10.2 a copy and/or a scan of the completed audit procedures in visualized form (PDF document) or, in the case of Excel-based audit procedures, a copy of the electronic file (Excel document) as well as a visualised form thereof (PDF document);
  - 3.10.3 a copy of the Progress Report on previous agreed Corrective Actions to be taken by the System User.(where applicable);
  - 3.10.4 a corrective Action Plan on non-conformities (to be sent after latest 3 months after the audit).
- 3.11 In the event of a surveillance audit by the Certification Body, the Certification Body shall be obliged to forward to ProTerra the documents according to Items 3.10.1 and 3.10.2 after completion of the audit immediately and without further request.
- 3.12 The Cooperating Certification Body shall be obliged to enable and allow surveillance audits by ProTerra if requested by ProTerra. The Cooperating Certification Body shall inform ProTerra within 5 working days about scheduled and expected audit dates (certification, recertification or surveillance audits by the Cooperating Certification Body) of a System User.
- 3.13 Once a year, as of 15 February, the Cooperating Certification Body shall provide ProTerra with a report of the significant disparities, corrective actions and risks found in the course of the audits and checks performed within the previous year.
- 3.14 The Cooperating Certification Body shall motivate a timely re-certification of the System User.

#### **4. Use of the ProTerra Logo and the ProTerra Seal**

- 4.1 The Cooperating Certification Body shall be both entitled and obliged to proper use on the certificates issued the ProTerra Logo made available by ProTerra

Foundation for this purpose.

- 4.2 The Cooperating Certification Body checks the correct use of the ProTerra Logo in printed matters or on the Systems User's website or any other means of media and communications. Misuse or infringement of the ProTerra Logo has to be reported by the Cooperating Certification Body to the ProTerra Foundation, also when detected either during an audit or upon notification otherwise. The obligation to inform ProTerra of misuse or infringe of the ProTerra Logo and Seal where applicable shall also include misuse by a third party.
- 4.3. If the System User wishes to use the logo in any other way, especially in the form of the ProTerra Seal on-product, the Cooperating Certification Body shall inform ProTerra Foundation of this accordingly. An agreement on the use of the ProTerra Logo and Seal shall in such an event be concluded directly between ProTerra Foundation and the System User. The exclusive rights to the ProTerra Logo and Seal held by ProTerra Foundation shall be unaffected by this.

## **5. Integrity Program/ Rights of Access and Inspection**

- 5.1 In order to ensure a consistent and objective audit and certification process by all Cooperating Certification Bodies, ProTerra Foundation runs an Integrity Program (document to be developed) based on Integrity Assessments on the ProTerra System User and at Certification Body office. This audits are planned randomly or targeted based on risk evaluation or reacting to complaints.
- 5.2 At all locations where the Cooperating Certification Body performs activities associated with the Cooperation Agreement and on which it exercises material control, the Cooperating Certification Body must enable employees of ProTerra and/or auditors commissioned by ProTerra Foundation:
  - to enter sites, offices, production and storage premises and means of transport during business hours or hours of operation;
  - to undertake inspections
  - to inspect and audit all relevant written and electronic business records available;
  - to request the necessary information,
  - to take samples; and
  - to accompany the Cooperating Certification Body on ProTerra audits and/or carry out its own control audits of companies that have already been certified (surveillance audit by ProTerra Foundation).
- 5.3. Costs of surveillance audits and Integrity assessments shall be divided equally between the ProTerra Foundation and the Cooperating Certification Body.
- 5.4 To the extent that the activities mentioned in point 5.1 are carried out at locations on which third parties, in particular the System User, exercise



material control, the Cooperating Certification Body shall have such third parties confirm to them in writing at the beginning of the audit the access and control rights mentioned in point 5.2.

- 5.5 Based on the Integrity Assessments as defined in item 5.1, ProTerra Foundation can classify Certification Bodies in different categories of performance and can decide on sanctions ranging from simple warning to suspension and termination of the Certification Agreement. Decisions on suspension and termination of the Certification Agreement are made public on the ProTerra Website.

## **6. Complaint and Appeal**

- 6.1. In principle, resolutions for conflicts shall be made near the source of the dispute, with the participation of the parties involved and with the aim to reach an amicable settlement. If such an amicable settlement cannot be reached, then the following procedures apply:

6.1.1. Conflicts resulting from or regarding to the relation between the Certification Body and the System User based on the ProTerra Standard (e.g. appeal against refusal of a certification) shall be resolved by the arbitration body of the relevant Cooperating Certification Body.

6.1.2 Conflicts resulting from decisions and procedures of the ProTerra Foundation respective the Board or Committees or the ProTerra Staff shall be resolved by the following items.

- 6.2. Complaints and appeals based on 6.1.2. shall meet the following requirements:

- They shall be addressed in written form to the Secretariat of the ProTerra Foundation.
- The complaint or appeal submitted shall be accompanied by documents defining the situation in a way that any impartial person gets a clear idea of the situation.
- Complaints submitted regarding issues caused by a ProTerra Committee or Working Group shall contain additional documentation that the complaint has already been submitted to the Committee / Working Group without achieving a satisfactory result.

- 6.3 The Arbitration Board is responsible for the Management of the procedure. The Arbitration Board is installed by the Board of the ProTerra Foundation on a case-by-case base and is formed by three persons representing different levels of the value chain. The members of the Arbitration Board shall have no vested, or conflict of interests in the appeal and shall not be involved in the appealed decision. They elect a chair among themselves. The convening of the

Arbitration Board is made within two months after receipt of the complaint or appeal.

- 6.4. The Arbitration Board shall hear the parties involved before making a decision. The results of the hearings as well as of meetings are documented. In critical cases, the Arbitration Board can consult an independent expert. The decision of the Arbitration Board shall be made by simple majority within a maximum of 6 months after receipt of the complaint. The decision of the Arbitration Board is documented in a report that shall be submitted to the Board of the ProTerra Foundation. Based on the report of the Arbitration Board, the Board of the ProTerra Foundation decides on acceptance of the complaint or appeal. The decision is binding and completes the arbitration process.

## **7. Certificate Fees and Licence Fees**

- 7.1 The Cooperating Certification Body is to collect certification fees from System Users according to the ProTerra Fees and Tariff Structure by invoicing the fees to System Users. Payment to the ProTerra Foundation according to the above specified invoices is due within 30 days after the Audit has taken place. Other arrangements for payment of fees to the ProTerra Foundation are to be agreed between the Cooperating Certification Body, The ProTerra Foundation Executive Director and President, and by the System user.
- 7.2 The Cooperating Certification Body must pay the annual licence fees and the licence fees per certificate or statement of conformity issued.
- 7.3 The annual licence fee shall become due for the first time upon conclusion of the Cooperation Agreement in accordance with the applicable Fees and Tariff Rates and, subsequently, once a year as of the respective anniversary of the conclusion of the Cooperation Agreement in accordance with the Fees and Tariff Rates applicable at that point in time.
- 7.4 The licence fees per certificate or statement of conformity issued shall become due for the Cooperating Certification Body at the moment the Cooperating Certification Body issues a certificate or statement of conformity to the System User. ProTerra notifies the Cooperating Certification Body about and invoices the sum of the due licence fees for certificates at least quarterly or monthly upon request by the Cooperating Certification Body.

## **8. Confidential data handling and publications of third party data**

- 8.1 The ProTerra Foundation collects, stores and uses personal data and non-published company data insofar as necessary for a credible application of the



ProTerra Standard with the services defined and permitted by legal regulations or ordered by the legislator.

- 8.2 ProTerra shall exclusively store and process the data of the Cooperating Certification Body for the purposes resulting from the Cooperation Agreement taking into account the relevant statutory provisions and the present General Terms of Certification.
- 8.3. ProTerra Foundation will treat personal data and non-published company data as confidential and according to the provisions of the applicable data protection law. The confidential treatment of data covers ProTerra Foundation Staff as well as all the non-employed members of Committees and the ProTerra Foundation Board during the time of their service as well as **at least** 5 years after termination of their service term.
- 8.4. Certificate Reports 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 Cooperating Certification Body shall ensure the complete and accurate provision by the System User of such data.
- 8.5. The Cooperating Certification Body agrees to the publication of its name, logo, address, point of contact, e-mail address and web address on the ProTerra website as well as in print media of ProTerra Foundation and other public and non-public appearances of ProTerra Foundation.  
If the Cooperating Certification Body provides personal data regarding third parties, for example by naming contact persons, it shall be responsible for the completeness and correctness of such data and shall ensure that ProTerra Foundation is entitled to use, make publicly available and transmit such data to third parties within the framework of the execution of the Cooperation Agreement without violating third party rights. The Cooperating Certification Body shall indemnify and hold harmless ProTerra Foundation from any and all claims, including claims for compensation for damages, asserted against ProTerra by third parties due to any violation of their rights based on the use, publication or disclosure of such data to third parties.
- 8.6 Subject to the stipulations above, as a rule, any data collected, stored and used by ProTerra shall not be made publicly available or passed on by ProTerra to third parties. Such data (e.g. including, but not limited to audit reports, completed audit procedures) shall only be made publicly available by ProTerra or be passed on to third parties if the Cooperating Certification Body and the respective third party or System user concerned have given their explicit consent to the publication or passing on of this data, or if ProTerra Foundation is obliged to pass on this information by law or due to official or judicial conditions or orders. The consent of the Cooperating Certification Body and third party has to be given in writing.
- 8.7 Should the System User change to another Cooperating Certification Body, ProTerra shall be entitled to forward to the new Cooperating Certification Body

any and all data collected by ProTerra concerning the System User in connection with the performance of the System Usage Agreement, in particular with regard to previous certifications and audits of the Cooperating Certification Body and/or previous integrity assessments.

- 8.8 ProTerra Foundation takes technical and organisational security measures to protect data collected, 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. ProTerra Foundation however points out that it is not possible to guarantee comprehensive absolute protection.

## **9. Infringements of ProTerra Standards by System Users**

- 9.1 In the case of any infringement of the System User against the ProTerra Standard and Procedures, the Cooperating Certification Body shall be obliged to inform ProTerra Foundation as soon as possible upon discovery and in all detail of the event, the circumstances resulting in the infringement being discovered, the cooperation of the System User in discovering the infringement and the measures already taken by the System User for the purposes of damage prevention or damage limitation and to ensure future fulfilment of the requirements. At first request of ProTerra Foundation, the Cooperating Certification Body shall provide ProTerra Foundation without delay with any and all documents related to the event and provide a written statement, in particular with regard to the severity of the infringement in accordance with the Terms of Use applicable to the System User as well as with regard to the degree of fault (simple or gross negligence, intent, fraudulent information).
- 9.2 If ProTerra Foundation defines obligations in case of minor infringements, the Cooperating Certification Body shall verify the fulfilment of such obligations within the framework of the next audit.
- 9.3 In the case of any culpable, serious infringement of the System User in accordance with the Terms of Use applicable to the System User, the Cooperating Certification Body shall be obliged to promptly declare the System User's certificate null and void and to withdraw it. ProTerra may also give corresponding instructions.

Approved by the Board, 18, March 2015