

Agreement

on the use of test results from initial tests
performed by voestalpine Krems GmbH
pursuant to EN 14351-1 between

voestalpine Krems GmbH
Schmidhüttenstraße 5
3500 Krems
Austria

(hereinafter referred to as the system provider) and

(system recipient and manufacturer, hereinafter referred to as the manufacturer).

1. Preamble

The Construction Products Regulation (CPR, EU Regulation 305/2011), dated 9 March 2011, sets forth harmonized rules for the marketing of construction products in the European Union. The rules pertaining to economic players went into effect on 1 July 2013. Council Directive 89/106/EEC (Construction Products Directive), dated 21 December 1988, was overridden by the Construction Products Regulation (CPR).

The Construction Products Regulation obligates manufacturers of construction products subject to a harmonized standard to issue a declaration of performance (compare Sections 4–7 of CPR) and to label such products with the CE marking (compare Sections 8, 9 of CPR) before such products are placed on the market. The harmonized EN 14351-1 standard applies to products designated as windows and external pedestrian door sets without resistance to fire and/or smoke leakage characteristics. Therefore, effective 1 July 2013, all manufacturers of windows and external door sets are obligated to issue a declaration of performance and, based on the declaration, to label their products with the CE marking.

The manufacturers are also obligated to create technical documentation as a basis for the declaration of performance and to describe all essential elements in connection with the prescribed system for the purpose of evaluating and verifying performance constancy. The respective system must be named in the declaration of performance (compare Section 6, Paragraph 2b of CPR). Possible systems are described in Attachment V of CPR. The relevant product standard determines which system is applicable. At the time this agreement is signed, the standard still uses the terms of the older Construction Products Directive (CPD) because the EN 14351-1 standard is older than the Construction Products Regulation (CPR). An example of such a term is conformity systems.

Based on Table ZA 2 of EN 14351-1, systems 1 and 3 are applicable to windows and external door sets whose components are subjected to an initial test by a notified authority (Attachment ZA of the standards) or determination of the product type based on a type test (see Attachment V of the CPD).

In determining the product type, manufacturers can replace the type test or type calculation by appropriate technical documentation pursuant to Section 36, Paragraph 1 c of the CPD. The technical documentation must prove that the construction product subject to a harmonized standard is a system consisting of components „duly assembled by the manufacturer following precise instructions given by the provider of such a system or of a component thereof, who has already tested that system or that component for one or several of its essential characteristics in accordance with the relevant harmonized technical specification“ (so-called cascading method).

The system provider has had one system/several systems tested with respect to one or several essential product characteristics. The test results are summarized in the form of initial-type-test (ITT) certificates. Based on the present agreement, the system provider permits the manufacturer to create the declaration of performance based on the respective test results.

2. ITT certificates

2.1. The system provider ensures that all ITT certificates for his systems are issued by a notified agency. The ITT certificates issued by this agency are made available to the system recipient after the present agreement has been signed. The system provider issues the ITT certificates in German and/or English.

2.2. The manufacturer is aware of his obligation to archive ITT certificates as constituents of the technical documentation and as a basis for declarations of performance. Archival is mandatory for a period of ten years from the time the respective construction product is placed on the market (see Section 11, Para. 2 of CPD). Should the European Commission change this period for products made by the manufacturer, the manufacturer shall take the new period into due consideration (see Section 11, Para 2, Sub-paragraph 2, CPD).

2.3. All rights to the ITT certificates and their content belong to the system provider to the extent that they are not reserved for the notified agency. The manufacturer shall take into full account all usage conditions of the notified agency.

3. System documentation and „precise instructions“

3.1. The system provider has created system documentation/precise instructions in the interest of Section 36, Para. 1c of the CPD as set forth under Section 2.1 for the designated systems. This system documentation and these instructions (in German and English) are available for downloading at www.voestalpine.com/vrame.

3.2. The manufacturer ensures that all required engineering, processing, assembly, usage and maintenance information are available for the respective system documentation/instructions and that this information has been/will be integrated into his in-house production monitoring.

3.3. The manufacturer is obligated to produce in accordance with Section 3.1 of this agreement and exclusively in compliance with the system documentation/instructions.

3.4. Without any assistance and on his own accord, the manufacturer is obligated to fulfill all stipulations of the respective system used for evaluation and verification of performance constancy. The system provider's liability for performance characteristics in the manufactured construction product shall not be assumed.

3.5. The manufacturer is solely responsible for verifying that his manufactured product is identical with the product tested by the system provider and for which the corresponding ITT certificate was issued. Should components be used that were not tested or not tested in the same manner as those tested by the system provider, the system provider shall withdraw all test documentation made available to the manufacturer. In such a case, all CE certificates issued to the customer shall lose their validity. All claims to damages, including warranty and guarantee claims asserted by the customer and his clients, shall be null and void in such a case with respect to all components supplied by the system provider.

3.6. The manufacturer is aware that he is liable to provide documented proof that the combination of components and the manufacturing processes used by him correspond in every way to the product tested by the system provider and for which the respective ITT certificate was issued.

4. User fee

A user fee is not charged for use of the ITT certificates or system documentation.

5. Usage authorization

5.1. The system provider permits the manufacturer for the term of the agreement (Section 7), to use the ITT certificates and system documentation as intended for the systems named in Section 2.1 and in compliance with the CPD, all standards applicable to the construction products, EN 14351-1 in particular, and all provisions of this agreement, especially with respect to the system documentation of Section 3.

5.2. The system provider exclusively authorizes the manufacturer to use the ITT certificates and system documentation pursuant to Section 5.1. The sharing of ITT certificates and/or system documentation with a third party for non-intended use is prohibited. Intended use or sharing is permitted to the extent that the manufacturer is obligated based on the CDP or other legal stipulations such as in the course of an audit conducted by market surveillance authorities.

5.3. The system provider is authorized during the term of the agreement and based on Section 8 to verify authorized use of ITT certificates and system documentation at the manufacturer.

6. Injunctive relief

The manufacturer is obligated to refrain from all unauthorized usage of ITT certificates and system documentation as set forth in the provisions of this agreement. An infringement on this obligation is particularly constituted by one of the following:

- The manufacturer does not produce his products according to the system documentation set forth in Section 3.
- The products do not correspond to the declaration of performance and/or CE marking.
- The manufacturer shares the ITT certificates and/or system documentation to unauthorized users (compare Section 5).

7. Liability

7.1. The manufacturer is responsible for compliance with all producer obligations set forth in the CPD. The manufacturer is especially responsible for the following:

- Correct product processing
- Proper in-house production monitoring
- Properly prepared declarations of performance
- Declarations of performance and any other required information compliant with the so-called Reach Directive (see Section 6, Para. 5 of CPD), see Section 6, etc., in Attachment III of CPD)
- Properly issued declarations of performance (see Section 7 of CPD)
- Proper product placement on the market, particularly with respect to proper CE marking (see Section 8.9, CPD)
- Compliance with further manufacturer obligations pursuant to Section 11 of CPD, particularly with respect to the creation and attachment of the user instructions and safety information in the language of the respective member state (see Section 11, Para. 6, of CPD), whereas the manufacturer is authorized to use system documentation for creation of the user instructions and safety information.

7.2 The manufacturer is obligated to comply with all standards/legislation (see Section 60 of CPD) issued by the European Commission with respect to interpretation of the CPD. The manufacturer is also obligated to regularly inform himself of the current state of affairs and legal status. The manufacturer is aware that the CPD is a more recent directive whose interpretation is not yet fully clarified. All risks in connection with this directive shall be at the expense of the manufacturer.

7.3 In the event that a third party contacts the system provider as a result of gross negligence or intentional infringement on the manufacturer's obligations, the manufacturer shall be obligated to indemnify the system provider of any third-party claims arising from or in connection with products for which the manufacturer uses an ITT certificate for the purpose of CE marking.

8. Term and termination of the agreement

8.1. This agreement shall go into effect at the time it is signed.

8.2 The term of this agreement shall be based upon the validity term of the ITT certificates. As soon as one or several ITT certificates loses its validity, the system provider shall not be held responsible for providing any extension or procuring a replacement of any expired ITT certificate.

8.3 During the term of the agreement, the system provider reserves the right to terminate the present agreement in the event of good cause. Good cause is constituted by an instance in which the manufacturer does not meet his obligations as set forth in the present agreement. Termination is justified in one of the following cases:

- The manufacturer does not produce his products according to the system documentation set forth in Section 3.
- The products do not correspond to the declaration of performance and/or CE marking.
- The manufacturer shares the ITT certificates and/or system documentation to unauthorized users (compare Section 5).

8.4.1 At the time this agreement expires pursuant to Section 8.2, the right of use shall become null and void as set forth in Section 5. This does not affect in any way the obligation of the manufacturer to archive ITT certificates as constituents of the technical documentation and as a basis for declarations of performance for a period of ten years from the time the respective construction product is placed on the market. Within this period, the manufacturer is permitted to share documentation following expiry of the term as long as he is obligated to do so by the CPD or other legal stipulations, e.g. in the course of an audit by market surveillance authorities.

8.4.2 In the event of termination pursuant to Section 8.3, usage authorization set forth in Section 5 shall become null and void upon receipt of the system provider's notice of termination. The provisions set forth in Section 8.4.1, sentences 2 and 3, shall apply accordingly.

9 Miscellaneous

9.1 All amendments and additions to this agreement are subject to written form for evidentiary purposes.

9.2 Should any provision herein be held illegal or otherwise invalid, the validity of the remaining provisions shall remain in full force and effect and shall not be affected by the illegal or invalid provision.

9.3 Applicable Austrian law shall apply exclusively to the settling of any disputes arising from this agreement. The place of jurisdiction for all disputes arising from this agreement shall be the Provincial Court in Krems.

Location, date

Location, date

Company stamp and signature

Company stamp and signature
voestalpine Krems GmbH