

Agreement

regarding the use of test results
of the initial type test of RAICO Bautechnik GmbH
acc. to EN 14351-1 and EN 13830

between

RAICO Bautechnik GmbH
represented by Bernd Schweinberger and Hagen Weber
Gewerbegebiet Nord 2
87772 Pfaffenhausen

– hereinafter referred to as the **“System Provider”**

and

represented by

– as the system user and manufacturer, hereinafter referred to as the **“Manufacturer”**

I. Preamble

In the Federal Republic of Germany, the Construction Products Directive has been transposed into national law by the Construction Products Act (German: BauPG), amongst others. The BauPG applies amongst others for construction products, for which harmonised standards have been developed.

The harmonised standard EN 14351-1 has been developed for the construction products “Windows and external pedestrian doorsets without resistance to fire and/or smoke leakage characteristics“, and the harmonised standard EN 13830 for the construction product “Curtain walling”.

In compliance with the BauPG in conjunction with EN 14351-1 and/or EN 13830, windows and external doors and/or curtain walls must bear the CE mark of conformity to be able to be placed on the market. Manufacturers of the named construction products may only attach the CE mark of conformity after having verifiably fulfilled the requirements in accordance with EN 14351-1 and/or EN 13830 for their product in a conformity assessment procedure. According to the respective table ZA.2 of the stated standards, conformity system 3 or conformity system 1 may be applied for doors and windows and/or curtain walls. An initial test (InitialTypeTesting - ITT) performed by a notified body, is an integral part of conformity systems 3 and 1 respectively.

The Guidance Paper M of the European Commission dated 04.05.2005 regarding the Construction Products Directive allows under item 4.13.2 for the possibility that a System Provider may perform an ITT and that its customers/manufacturers as the system processors shall thereupon be authorised to make use of its ITT verifications for their CE mark of conformity (so-called cascading ITT). EN 14351-1 in the version of Amendment A 1 (EN 14351-1:2006 A1:2010) explicitly standardises (hierarchically staggered initial type tests) the prerequisites of the cascading procedure under item 7.2.5.

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It is assumed that the Manufacturer can also make use of the ITT verifications of the System Provider - in particular with regard to Guidance Paper M - within the framework of EN 13830, although the version valid upon conclusion of this agreement does not (yet) contain detailed specifications or the cascading procedure. Should this conception prove to be incorrect, no reciprocal claims shall exist between the partners to this agreement, irrespective of the type of claim and whatever the legal cause.

This agreement serves for the authorisation of the Manufacturer to make use of the ITT verifications of the System provider in the sense of the "Cascading ITT".

II. ITT verifications

1. For the following construction products

Window systems: FRAME⁺ 65 W, 75 W, 75 W-I, 75 WB, 75 FF

Window systems: WING 50 A, 50 SK, 105 D

Façade systems: THERM⁺ 50 A-I, 56 A-I, 50 H-I, 56 H-I, 76 H-I, 96 H-I, 50 S-I, 56 S-I, 76 S-I

Façade systems: THERM⁺ 50 A-V, 56 A-V, 50 H-V, 56 H-V, 76 H-V

the System Provider shall have an ITT performed by a notified body; the ITT verifications issued by said body are available for downloading at www.raico.de.

2. The Manufacturer is aware of its obligation to keep the ITT verifications for a period of ten years after discontinuation of production.

III. System descriptions

1. The System Provider has created a system description for each construction product listed under II.; these system descriptions are available for downloading at www.raico.de.

2. The Manufacturer shall confirm that all necessary construction, processing, utilisation, assembly and maintenance information as well as the specifications for the factory production control have been submitted in the respective system descriptions, and that it has included or will include the information/specifications in its factory production control (FPC).

3. The Manufacturer shall undertake to produce exclusively in compliance with the system descriptions in accordance with the above section III. item 1 of this agreement.

4. The Manufacturer shall remain committed to exclusively fulfil all requirements of the respectively applicable system of conformity both autonomously and independently; the System Provider shall therefore not assume liability in this respect.

5. It is the responsibility of the Manufacturer that its manufactured product complies with the product tested by the System Provider for which the respective ITT verification has been issued. The Manufacturer is aware that it must be able to provide documented verification that the applied combination of components and its production process complies with the product tested by the System Provider, for which the respective ITT verification has been issued.

IV. Compensation for use

The parties agree that no compensation for use shall be due to the System Provider for the use of the ITT verifications/system descriptions in accordance with the available download under www.raico.de.

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V. Right of usage

1. The System provider shall allow the Manufacturer in accordance with VIII. the designated use of the ITT verifications and system descriptions during the contractual period while observing the Construction Products Directive, the standards applicable for the constructions products in accordance with II., in particular EN 14351-1 and EN 13830, as well as all specifications set forth in this agreement, in particular observing the system description in accordance with III.
2. The System Provider shall exclusively authorise the Manufacturer to utilise the ITT verifications and system descriptions in accordance with the foregoing item 1.; forwarding of the ITT verifications and/or system descriptions to third parties for unauthorised purposes is forbidden.
3. The System Provider shall be authorised to convince itself of the proper use of the ITT verifications and system descriptions on the manufacturer's premises during the contractual period in accordance with VIII.

VI. Right of prohibition

The Manufacturer shall undertake to refrain from any use of the ITT verifications and system descriptions that may breach any obligation of this agreement. This shall particularly apply in the following cases:

- The Manufacturer does not produce in compliance with the system description set forth in III.
- The products do not comply with the characteristics declared in conjunction with the CE mark of compliance.
- The Manufacturer forwards the ITT verifications and/or system descriptions to third parties without authorisation (cf. V.).

VII. Liability

1. The Manufacturer shall be solely and exclusively liable for the correct processing and proper placing on the market of the products for the marking of which it uses an ITT verification of the System Provider. In particular the Manufacturer shall be solely liable for the proper CE marking. Accordingly, the Manufacturer shall also be responsible for a proper factory production control (FPC).
2. If third parties should address the System Provider with regard to a breach of the obligations of the Manufacturer from this agreement, the Manufacturer shall undertake to release the System Provider from any third party claims resulting from or in conjunction with products for which the Manufacturer uses an ITT verification of the System Provider.

VIII. Duration and Termination of the Agreement

1. This agreement shall come into force upon being signed by the contracting parties.
2. The duration of this agreement shall depend on the validity of the ITT verifications (Enclosure 1). After expiration of the validity of one or several ITT verifications, the System Provider shall not be obliged to the extension or new provision of the respective ITT verifications.
3. During the term of the agreement, the System Provider shall be authorised to terminate the agreement insofar there is a substantial ground. A substantial ground shall in particular be if the manufacturer should breach an obligation of this agreement. Termination shall therefore in particular be possible in the following cases:
 - The Manufacturer produces CE-marked products in the sense of II. not according to the system description in accordance with III.
 - The products do not comply with the characteristics declared in conjunction with the CE mark of compliance.

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- The Manufacturer forwards the ITT verifications and/or system descriptions to third parties without authorisation (cf. item V.).

4.

4.1 The right of usage in accordance with V. shall lapse upon expiration of the term in accordance with the foregoing item 2.

4.2 In the case of a termination in accordance with the foregoing item 3, the right of usage in accordance with V. shall lapse upon receipt of the letter of termination of the System Provider.

IX. Other

1. All amendments/supplements to this agreement shall be concluded in writing for purposes of evidence and shall be subject to the written form.
2. If individual provisions of this agreement should be void and of no effect, the validity of the remaining provisions shall remain unaffected.
3. German law shall apply in case of any disputes resulting from or in conjunction with this agreement.

Place, date

Place, date

Signature System Provider

Signature Manufacturer

Enclosures 1, 2, 3