

# Wintershall Dea Conditions of Purchase for the Provision of Temporary Workers

May 2019



wintershall dea

## 1. General

**1.1** These conditions of purchase form an integral part of contracts on the provision of Temporary Workers (hereinafter "Temporary Workers") between the service provider (hereinafter "Contractor") and Wintershall Dea GmbH or its affiliated companies<sup>1</sup> located in Germany, respectively, (hereinafter "Principal"), insofar and to the extent not agreed otherwise in an individual contract (hereinafter "Employee Leasing Agreement"). All agreements between Contractor and Principal require the written form.

**1.2** Deviating agreements and ancillary agreements are only effective when they are agreed in writing and signed by both the Contractor and Principal. This also applies to changes to this written form requirement. Terms of business of the Contractor shall only apply if and insofar as the Principal has explicitly accepted them in writing. The Contractor's terms of business shall also not apply if the Principal should accept any services in the knowledge that the Contractor has purported to deliver them on its general terms of business that deviate from or are in conflict with these conditions of purchase.

## 2. Settlement of Temporary Manpower

**2.1** The commissioning by the Principal and the confirmation by the Contractor must be agreed in writing prior to commencement of the assignment. The temporary manpower for every Temporary Worker begins and ends at the times specified in the Employee Leasing Agreement.

**2.2** The specific request for Temporary Workers by the Principal is done via an Employee Leasing Agreement by the Principal; the request shall contain details on job assignment, qualification, duration of assignment, etc.

**2.3** The Contractor warrants that the Temporary Workers included in the tender will be available to the Principal for at least three working (3) days as of the date specified in the offer. The standard submission period is three (3) working days. Deviating times will be specified to the Principal by the Contractor in accordance with the inquiry. The Contractor does not have any claim to the type or quantity of Temporary Workers commissioned by the Principal.

**2.4** The Contractor determines whether the transfer for the temporary workers in the tender, taking into account any previous lease periods to be credited pursuant to sections 1 (1b) sentence 2 and 8 (4) sentence 3 Act on Temporary Employment Businesses (AÜG), shall lead to the 18 month maximum lease term in the sense of § 1 para. 1b AÜG and/or the 15-month period applicable to a deviation from the principle of equality pursuant to § 8 para. 4 AÜG being exceeded. For the calculation of the deadline the month has to be estimated at 30 calendar days (§ 191 BGB). The result must be communicated to the Principal.

**2.5** The Contractor is obligated to fulfill the services using its own employees. Assigning subcontractors and/or the assignment of Temporary Workers from subcontractors (so-called chain condensation) is not permitted (§1, para. 1 sentence 3 AÜG).

## 3. Remuneration, Invoicing

**3.1** The remuneration for the hours of work actually performed by the Temporary Workers, and verified by signature by the Principal's responsible units on site, is set forth in the agreed billing rates. The billing rates for such job profiles, which have not yet been confirmed, but which have been negotiated with Procurement in advance, result directly from the Employee Leasing Agreement.

**3.2** The billing rates include pro-rata costs such as wages, ancillary wage costs, all incurred surcharges (e.g. industry surcharge rates (applicable collective bargaining agreement for the chemical industry) and/or hardship allowances (for noise, heat, dust,

among others). Other possibly incurred surcharge rates shall be itemized separately.

Also included are costs for hygiene trainings, health check-ups, personal protection equipment (including safety shoes, safety goggles, hard hat, protective gloves, etc.) and occupational safety instructions. The Principal reserves the right to invoice the Contractor for the costs incurred for the initial occupational safety instructions conducted by the Principal separately. The billing rates shall exclusively follow the agreements reached in the respective Employee Leasing Agreement and are independent from the agreement between the Contractor and the Temporary Worker(s).

**3.3** The Contractor warrants to at least pay the minimum hourly pay resulting from the legal order issued on the basis of § 3a AÜG in each case, or, insofar as such a legal regulation is not in force at the time of the transfer, to at least pay the minimum wage (in the respective amount) in accordance with § 1 MiLoG to the employees assigned to the Principal. The Contractor shall be liable vis-à-vis the Principal for any damages incurred due to the non-compliance with the above assurances, in particular if the Principal is subjected to claims for compensation by other companies based on the contracting party's liability arising from § 13 MiLoG in conjunction with § 14 of the Employee Assignment Law (AEntG).

**3.4** Travel expenses for assignments at the Principal's site shall not be reimbursed. In addition, travel expenses, including accommodation costs, shall only be reimbursed for official business upon prior agreement with the Principal and subsequent documentation of expenses.

**3.5** Billing shall occur exclusively on the basis of time sheets approved by the Contractor and Principal; the time sheets must include the day, month and year, at least the daily commencement of work, end of work and daily duration of assignment and duration of breaks. The time sheet must be verified by the Contractor on a weekly basis. A requirement for billing are the time sheets, which have been approved by the contracting parties, and attached to the respective invoices. The payment terms shall be agreed in writing for each commissioning.

**3.6** All agreed amounts are understood to be exclusive statutory value added tax (VAT), provided the tax is incurred.

**3.7** Any permanent hiring of Temporary Workers shall under no circumstances result in any commissions which are to be paid by the Principal to the Contractor.

## 4. Sustainability, Business Ethics

The Principal conducts its business in accordance with the principle of sustainable development and adheres to internationally recognized fundamental standards for occupational health and safety, environmental protection, labor and human rights as well as responsible corporate governance (hereinafter "ESG Standards"). The Principal has described its understanding of the ESG Standards in the Supplier Code of Conduct (<https://wintershalldea.com/en/procurement>). The Principal expects the Contractor to adhere to the ESG Standards. Furthermore, the Principal calls upon the Contractor to ensure that all its Temporary Workers adhere to the ESG Standards likewise. The Principal shall have the right to check adherence to the ESG Standards, either itself or through third parties that it commissions, with prior notice.

## 5. Contractor's Obligations

**5.1** The Contractor warrants that he possesses an unlimited permit for temporary manpower in accordance with § 1 para. 1 of the Act on Temporary Employment Businesses.

<sup>1</sup> Except for Wintershall Dea Deutschland AG and its affiliated companies.

# Wintershall Dea Conditions of Purchase for the Provision of Temporary Workers

May 2019



wintershall dea

**5.2** The Contractor undertakes to submit a copy of the permit to the Principal and warrants to inform the Principal immediately in writing of the expiration and of any changes to the permit as well as its non-renewal, retraction or revocation of the permit, the probable completion of the settlement process and the statutory settlement date in accordance with § 12 para. 2 of the Act on Temporary Employment Businesses (AÜG).

**5.3** The Contractor warrants that the Temporary Workers satisfy the requirements specified in the job profiles, that they actually possess the necessary qualifications arising from the Employee Leasing Agreement and can easily be integrated into the Principal's work processes. The Contractor is liable for the proper selection of its Temporary Workers with respect to the function agreed in the Employee Leasing Agreement.

**5.4** The Contractor guarantees that the transfer of the temporary workers mentioned in the Employee Leasing Agreement, taking into account any previous lease times to be applied pursuant to § 1 (1b) sentence 2 AÜG, shall not lead to the 18-month maximum lease term in the sense of Section 1 (1b) of the AÜG being exceeded. The Contractor is liable to the Principal for all damages arising as a result of the non-compliance with this assurance.

**5.5** The Contractor shall conduct a workstation inspection at the respective workstation, document the inspection and submit the documentation to the Principal. The Principal shall review the documentation and can add any justified changes, if necessary.

**5.6** In fulfilling the contract, the Contractor must observe the statutory provisions on the prevention of illegal employment, in particular in form of illegal employment (Act on Combating Clandestine Employment), illegal temporary manpower (Act on Temporary Employment Businesses), unlawful employment of foreign workers (Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory as well as § 284 of the Social Code (SGB III)) and fraudulent benefit claims (§ 60 SGB I).

**5.7** Any personal protection equipment supplied by the Contractor shall be procured in accordance with the relevant specifications issued by the Principal and must at least comply with the Ordinance on safety and health protection in the use of personal protection equipment at the work place (PPE usage regulation).

**5.8** The Contractor shall ensure the use of Temporary Workers on short notice, complying with possible termination notice period relevant for the Temporary Worker.

## 6. Liability Insurance

The Contractor shall maintain sufficient liability insurance at its own expense for damage for which it or its subcontractors or agents for which it is vicariously liable are responsible. Evidence of the amount of insurance coverage for each occurrence of damage shall be provided to the Principal upon request. The Contractor's contractual and legal liability remains unaffected by the extent and amount of its insurance coverage.

## 7. Contractor's Submission and Documentation Obligations

**7.1** The Contractor warrants to assure that the Temporary Workers will present their identity cards prior to the commencement of work. Temporary workers from the new EU countries (as of 2004), shall submit their passport or identity card and work permit or exemption from the work permit requirement. Temporary workers from non-EU countries shall submit their passport, residency permit/-residence entitlement or free movement declaration and work permit.

**7.2** The Contractor shall obligate the Temporary Workers it employs to comply with statutory and company-related safety requirements and regulations and, in particular, comply with statutory accident prevention codes. The Contractor is obligated to provide corresponding verifications upon request by the Principal.

Furthermore, the Contractor shall obligate the Temporary Workers it employs to comply with additional special requirements of the Principal for contractors regarding safety, health and environmental protection (refer to the Principal's site regulations "Sicherheitsbestimmungen für Kontraktoren" at <https://wintershalldea.com/en/procurement>). The Principal shall be solely responsible for the updating of the internal guidelines provided under the specified link.

The Contractor warrants to present, upon request of the Principal, qualification verifications (e.g. certificates, driver's license, documentation on occupational medical health check-ups, knowledge of the German language, etc.), and evidence of qualification for satisfying requirements arising from the respective Employee Leasing Agreement. The Principal reserves the right to conduct an appropriate suitability test.

**7.3** The Contractor warrants, in accordance with the Ordinance on Occupational Health Care (ArbMedVV) to arrange for mandatory medical check-ups for its Temporary Workers, and make check-ups available which comply with the provisions set forth in the Annex to the ArbMedVV. The Principal shall receive a copy of the check-up verification if the check-ups are conducted by an occupational physician employed by the Contractor.

**7.4** The Contractor warrants that he will provide the Principal with verification on the payment of contributions to the social security provider at the time the contract is concluded / on an annual basis (clearance certificate by the tax authorities, employment agency, pension insurance provider, health insurance provider and accident insurance). The Principal is entitled to demand such verifications at any time.

**7.5** The Contractor shall provide the Principal with the first and last name, birth name, date of birth and nationality of the respective Temporary Worker in preparation of the written Employee Leasing Agreement. Accompanying documents shall be submitted at the same time.

## 8. Principal's Obligations

**8.1** The Employee Leasing Agreement from the Principal shall state which special features the intended work will have and which professional qualifications are required. Insofar as temporary workers are employed for a period longer than 15 months, calculated from the start of the transfer, but at the earliest from 1 April 2017 and taking into account, as the case may be, previous lease periods pursuant to § 8 para. 4 sentence 3 AÜG, – the Principal will also specify in the respective Employee Leasing Agreement which essential working conditions, including remuneration, are applicable.

**8.2** The Principal shall instruct the Temporary Worker on the specifics of the workplace and the scope of responsibilities in terms of safety and health protection. This shall include the instruction and training in the use of personal protection equipment intended to protect against fatal hazards or permanent injuries.

**8.3** The Principal warrants to comply with statutory duty of care obligations arising from the use of workers in its plants.

**8.4** The Principal is obligated to inform the Contractor of any work-related accidents immediately to ensure that the mandatory legal accident reports can be filed.

## 9. Authority to Issue Instructions

**9.1** The Principal may employ the Temporary Worker for the function specified in the Employee Leasing Agreement. The Contractor insofar transfers its claims to work performance vis-à-vis and with consent of the Temporary Worker.

**9.2** The Principal is entitled to issue all instructions to the Temporary Worker which are relevant for the type and scope of the area of responsibility defined in the Employee Leasing Agreement. The contractual relationship exists exclusively between the Contractor and the respective Temporary Worker in accordance with the Temporary Employment Businesses.

# Wintershall Dea Conditions of Purchase for the Provision of Temporary Workers

May 2019



wintershall dea

## 10. Principle of Equality (§ 8 AÜG)

**10.1** The Contractor declares that he is bound by the collective industry bargaining agreement for the Association of the German Temporary Work Industries (iGZ), alternatively to the collective bargaining, wage framework and collective wage agreement of the German employers' association of the temporary employment industry (BAP) and that the working conditions for Temporary Workers arise from the respective collective bargaining agreement and the possibly applicable collective bargaining agreement regarding industry surcharges.

**10.2** Should the Contractor not be subject to collective bargaining agreements, the Contractor shall declare that the employment relationship with the Temporary Worker shall be governed by the Employee Leasing Agreement reference to the industry collective bargaining agreement of the Association of the German Temporary Work Industries (iGZ) in the latest valid version, alternatively governed by the collective bargaining, wage framework and collective wage agreement of German employers' association of the temporary employment industry (BAP) in the latest valid version.

**10.3** Insofar as temporary workers, taking into account, as the case may be, previous lease periods pursuant to § 8, para. 4, sentence 3 AÜG, are transferred for a period of time longer than 15 months – calculated from the start of the transfer, but at the earliest from 01 April 2017 – the Contractor ensures compliance with the principle of equality, pursuant to § 8, para. 1 AÜG from the sixteenth month of the transfer. The Contractor is liable to the Principal for all damages arising as a result of the non-compliance with this assurance.

**10.4** The Contractor is obligated to present the current verification with the preceding regulations at any time. The Principal is entitled to demand such verifications at any time.

## 11. Removal and Replacement of Temporary Workers

**11.1** The Principal is entitled to terminate the assignment with immediate effect, without adhering to any termination notice period, should the Temporary Worker not fulfill the requirements arising from the respective Employee Leasing Agreement. The Contractor, upon demand by the Principal, shall provide a suitable replacement, to the extent possible, without delay.

**11.2** The Contractor, upon demand by the Principal, shall provide suitable replacements in cases of excused absence (e.g. due to illness, vacation, leave of absence and similar) or unexcused absence of a Temporary Worker immediately.

## 12. Termination of Employee Leasing Agreement

**12.1** The Principal is entitled to terminate an Employee Leasing Agreement at any time while adhering to a notice period of two (2) calendar days prior to the commencement of work. The Contractor shall not have any claims regarding remuneration, damages or other payments in case of such a termination. After commencement of work, the Principal is entitled to terminate an Employee Leasing Agreement, even without stating any reasons, at any time while adhering to a notice period of two (2) working days. The Contractor shall not be entitled to any further claims with exception of the agreed remuneration for the assignment of the Temporary Worker.

**12.2** The Principal is entitled to terminate the Employee Leasing Agreement without notice if the Contractor does not comply with the Principal's request to remove, replace or provide a substitute for the employee.

**12.3** The Contractor is entitled to terminate an Employee Leasing Agreement while adhering to a notice period of four (4) weeks.

## 13. Extraordinary Termination

**13.1** The Principal and Contractor are entitled to terminate the Employee Leasing Agreement for good cause with adhering to a termination notice period in accordance with § 314 of the German Civil Code (BGB). Any termination must be in written form.

**13.2** Further rights legally provided to the Principal regarding termination, termination for good cause and rescission from the contract shall remain unaffected by this provision.

## 14. Data Protection

**14.1** The Contractor warrants to comply with all applicable data protection provisions and, if necessary, obtain declarations of consent from its employees for the data collection, data processing and use of data necessary for the executing the contract.

**14.2** In case the Contractor, in the course of the performance of the respective contract, receives from the Principal or otherwise obtains personal data related to employees of Principal (hereinafter referred to as "Personal Data") the following provisions shall apply.

If processing of Personal Data disclosed in the aforementioned manner is not carried out on behalf of the Principal, Contractor shall only be entitled to process Personal Data for the performance of the respective contract. Contractor shall not, except as permitted by applicable laws, process Personal Data otherwise, in particular disclose Personal Data to third parties and/or analyze such data for its own purposes and/or form a profile.

If and to the extent permitted by applicable laws, Contractor is entitled to further process the Personal Data, in particular to transmit Personal Data to its affiliated companies for the purpose of performing the respective contract. Contractor shall ensure that Personal Data is only accessible by its employees, if and to the extent such employees require access for the performance of the respective contract (need-to-know-principle). Contractor shall structure its internal organization in a way that ensures compliance with the requirements of data protection laws. In particular, Contractor shall take technical and organizational measures to ensure a level of security appropriate to the risk of misuse and loss of Personal Data.

Contractor will not acquire ownership of or other proprietary rights to the Personal Data and is obliged, according to applicable laws, to rectify, erase and/or restrict the processing of the Personal Data. Any right of retention of Contractor with regards to Personal Data shall be excluded.

In addition to its statutory obligations, Contractor shall inform Principal in case of a Personal Data breach, in particular in case of loss, without undue delay, however not later than 24 hours after having become aware of it. Upon termination or expiration of the respective contract Contractor shall, according to applicable laws, erase the Personal Data including any and all copies thereof.

## 15. Information Protection, General Act on Equal Treatment (AGG)

**15.1** The Contractor warrants to comply with the Principal's provisions on information protection to the extent necessary for the commissioning. The Temporary Workers employed by the Contractor shall be obligated to comply with the information protection provisions. The Principal shall provide the Contractor with the current provisions governing information protection.

**15.2** The Contractor warrants to comply with the provisions of the General Act on Equal Treatment. In particular, the Contractor shall inform the Temporary Workers on the inadmissibility of discriminations based on race, ethnic origin, gender, religion, ideology, handicap, age or sexual identity and the inadmissibility of

# Wintershall Dea Conditions of Purchase for the Provision of Temporary Workers

May 2019



wintershall dea

harassments or sexual harassments in the meaning of the General Act on Equal Treatment and take the necessary steps to prevent such occurrences (§ 12 AGG). If employees of the Principal or third parties assert claims vis-à-vis the Principal, particularly those in accordance with § 15 para. 1 AGG, which are based on discriminations or harassments originating from a Temporary Worker and which fall under the responsibility of the Contractor, the Contractor shall indemnify the Principal from such claims including any incurred costs. The same shall apply if employees of the Principal or third parties assert claims against the Principal in accordance with § 15 para. 2 AGG based on discriminations or harassments originating from a Temporary Worker.

## 16. Suspension of Employee Leasing Agreement

In case of strikes, lock-outs, temporary shutdowns (regardless of the reason), and for the duration of works meetings, the Principal can demand that work is suspended without having any payment due for the down times.

## 17. Principal's Site Regulations

The Principal's site regulations are an essential part of these provisions. The Principal's site regulations, in their latest version, are available on the internet at <https://wintershalldea.com/en/procurement> and can be called up by the Contractor. The Contractor warrants to comply with the latest version of the Principal's site regulations when executing the contract. The Contractor warrants that the Principal's site regulations (Sicherheitsbestimmungen für Kontraktoren) have been distributed to all Temporary Workers and that they are familiar with the regulations and will ensure, within reason, that the Temporary Workers comply with the regulations. The Principal shall be solely responsible for the up-to-dateness of the site regulations provided under the specified link.

## 18. Documents, Confidentiality, Rights of Use

**18.1** The Contractor is obliged to keep confidential all technical, scientific, commercial and other information obtained either directly or indirectly within the scope of the contract, in particular the information given in Principal Documentation (hereinafter "Confidential Information"). The Contractor may not exploit Confidential Information for commercial purposes, make it the object of industrial property rights, pass it on or make it accessible to third parties in any way.

Confidential Information may not be used for any purpose other than fulfilling the contract. The aforementioned confidentiality obligation shall continue to apply for a period of ten (10) years after the Employee Leasing Agreement has ended.

**18.2** This confidentiality requirement shall not include any information that the Contractor lawfully possessed prior to the Principal's disclosure of such information, or is lawfully known to the public, or has been lawfully obtained from a third party. Also excluded from this confidentiality requirement shall be information that is disclosed to persons subject to a legal obligation to confidentiality, whereas the Contractor shall not release such a person from its obligation to confidentiality. The burden of proof for such an exception lies with the Contractor.

**18.3** The Contractor shall ensure that its Temporary Workers and other vicarious agents deployed to fulfill the contract are obliged to confidentiality prior to the leasing according to the above confidentiality provisions by means of appropriate contractual agreements, too. Upon request, the Contractor shall confirm compliance with these obligations to the Principal in writing.

**18.4** The Principal reserves the right to also demand that the Temporary Workers sign a separate confidentiality agreement.

**18.5** The Contractor shall specifically undertake all required, appropriate precautions and measures to effectively protect the Confidential Information obtained at all times against loss or

against unauthorized access. This includes in particular the creation and maintenance of appropriate, required access and entry precautions for facilities, repositories, IT systems, data storage devices and other information storage devices, especially those which contain Confidential Information. This also includes informing and instructing those people who are granted access to Confidential Information pursuant to this clause. The Contractor is required to promptly notify the Principal in writing in the event that Confidential Information is lost and / or accessed by unauthorized parties.

**18.6** Any obligations to preserve the confidentiality of commercially sensitive information pursuant to the Energy Industry Act and the duty to disclose non-discriminating information that may be commercially advantageous pursuant to the Energy Industry Act shall not be affected by the aforementioned requirements.

**18.7** The Contractor shall grant the Principal rights of use free from any restrictions as to area, content or time for all plans, drawings, graphics, calculations and other documents related to the contract, in all known media formats including electronic media, internet and online media saved to all imaging, audio and data storage devices, for the contractually agreed purposes or purposes implied as per the contract. This information may have either been prepared by the Contractor itself or by third parties.

**18.8** Moreover, the Contractor shall grant the Principal an exclusive right to use and exploit work results that the Contractor created specifically for the Principal or had third parties create for the Principal, and shall obtain any necessary rights from third parties. Pre-existing rights of the Contractor or of third parties shall remain unaffected hereby.

**18.9** The Contractor, by means of a corresponding contractual agreement with the Temporary Worker, shall have ensured that all possible industrial property rights attributable to the Temporary Worker are assigned to Contractor in advance.

## 19. Severability Clause, Applicable Law, Place of Jurisdiction

**19.1** The contract shall be construed and be subject to the substantive laws of the Federal Republic of Germany with the exclusion of (i) the United Nations Convention on Contracts for the International Sale of Goods ("CISG") dated 11 April 1980 and (ii) the applicable law rules in Germany on the conflict-of-laws.

**19.2** The place of fulfillment is the Principal's registered office. At the Principal's option the place of jurisdiction shall be either the court competent for the Principal's registered office or the court competent according to the applicable law.

**19.3** The invalidity or unenforceability of any provision or part of a provision of a contract shall not affect the continued existence of the respective contract. Should one of these provisions be or become ineffective due to an infringement of compelling law, this shall not affect the validity of the remaining provisions. In such a case, the contractual partners are obligated to replace the ineffective provision with a legally valid regulation that is as close as possible to the result originally intended. The same applies to any regulatory gaps.