

## GENERAL CONDITIONS OF CONTRACT

### HIRE IN OF TEMPORARY PERSONNEL - AGENCY ("Arbeitnehmerüberlassung")

#### 1 APPLICATION

- 1.1 These Conditions of Contract shall apply to all Purchase Order's issued by the Company for purposes of Personnel hire, where such Personnel are hired through an agency, being the Contractor ("Arbeitnehmerüberlassung").
- 1.2 General terms or conditions of Contractor, whether referred to in quotations, order confirmations, invoice documents or other correspondence shall not apply, unless otherwise explicitly agreed to in writing with the Company and signed by all parties to the agreement.
- 1.3 The provisions stated in the Purchase Order shall take precedence over the Conditions of Contract, subject thereto that, if an amendment of these Conditions of Contract are intended, such amendment shall only be effective where explicitly stated as such in the Purchase Order and with clear reference to the specific article of these Conditions of Contract to be so amended. If such a reference is not explicitly included, these Conditions of Contract shall prevail in so far as there is a conflict between the Purchase Order and Conditions of Contract.

#### 2 DEFINITIONS

- 2.1 Affiliated Company means any entity that directly or indirectly controls, is controlled by, or is under common control with a party. An entity shall be deemed to control any other entity in which it owns or controls, directly or indirectly, 50% or more of the voting stock or interest.
- 2.2 Company means the legal entity explicitly identified in the Contract as the party ordering the Work, acting on its own behalf or for and on behalf of the License Group, as the case may be.
- 2.3 Company Group means Company, the License Group, each of the participants therein, their respective Affiliated Companies and Company's other contractors and their contractors and subcontractor(s) (but shall not include any member of the Contractor Group), personnel employed in or engaged by the aforementioned corporate entities, others whose services are used by Company and Company's invitees.
- 2.4 Company's Representative means the person who at any time is appointed in accordance with Article 5.1.
- 2.5 Conditions of Contract means this document, which sets out the terms and conditions applicable for the Work.
- 2.6 Contract means the agreement between the parties concerning the Work, as reflected in these Conditions of Contract as well as subsequent Purchase Order(s).
- 2.7 Contractor means the entity identified in the Contract as the party performing the Work.
- 2.8 Contractor's Representative means the person who at any time is appointed in

accordance with Article 5.1.

- 2.9 Contractor Group means Contractor, Contractor's Affiliated Companies participating in the Work, its Subcontractor(s) and their contractors and their subcontractor(s), participants in a joint venture or similar partnership involved in the Work and personnel employed in or engaged by all the aforementioned corporate entities.
- 2.10 Day means a consecutive calendar day unless otherwise stated.
- 2.11 Force Majeure means an event or occurrence beyond the control of the party affected, provided that such party could not reasonably have foreseen such event or occurrence at the time of entering into the Contract and could not reasonably have avoided or overcome it or its consequences.
- 2.12 License Group(s) means the participants (at any time) in the license(s) or other joint venture(s) operated by Company for which Contractor is performing the Work.
- 2.13 Personnel means Contractor's personnel hired to Company in accordance with the Contract.
- 2.14 Purchase Order(s) means the document(s) or electronic order(s) issued by Company to initiate Work, in accordance with Article 3.
- 2.15 Third Party means any party, which is not a member of Company Group or Contractor Group.
- 2.16 Work means the provision and hire of personnel by Contractor to Company in accordance with the provisions of the Contract, including all services associated with such hire.
- 2.17 Worksite means any site where Company may assign the Personnel.

### **3 PURCHASE ORDER**

- 3.1 Company shall order Work as required by issuing Purchase Orders.
- 3.2 Any Purchase Order shall be in writing, expressly identified as "Hire of Temporary Personnel (Arbeitnehmerüberlassung)", on a specified numbered form and include references to the Contract number.
- 3.3 Each Purchase Order shall include in writing the full names of all individuals to be assigned as part of the Personnel under such Purchase Order.
- 3.4 Contractor shall refer to the Contract number and Purchase Order number in all correspondence with Company and when invoicing in accordance with Article 11.2.2
- 3.5 These Conditions of Contract shall exclude all other general or special terms and conditions which Contractor may seek to impose or incorporate in the Contract between the parties, or which may be implied by law, trade custom, practice or course of dealing, unless otherwise agreed to between the parties and explicitly included in a written amendment to the Contract.

#### **4 CONTRACTOR'S OBLIGATION TO DELIVER AND COMPANY'S OBLIGATION TO USE THE CONTRACT**

- 4.1 Contractor is obliged to perform the Work as stipulated in or ordered by Company through a Purchase Order, in accordance with the terms and conditions contained in this Contract.
- 4.2 Company has no obligation to hire any minimum number of Personnel except to the extent it is confirmed by a Purchase Order.
- 4.3 Contractor does not exclusively provide personnel services for Company and Company is entitled to use any other contractor for hiring Personnel or categories of Personnel during the term hereof except if otherwise specifically agreed to in the Purchase Order.

#### **5 REPRESENTATIVES OF THE PARTIES**

- 5.1 Prior to commencement of the Work each party shall appoint a representative with responsibility to administer the Contract. A representative may delegate specific tasks to one or more persons appointed by him. In such case the other party's representative shall be notified in writing of the authority given to such appointed person or persons.
- 5.2 Company's Representative and any person authorised by it shall have access, and the right to perform inspections of and verifications of the Personnel provided by Contractor, including but not limited to qualifications and experience, and Contractor shall afford every means and assistance in obtaining the right of access and in carrying out the inspections and verifications.
- 5.3 Company may change Company's Representative at any time and shall notify Contractor of any change in writing.
- 5.4 Contractor shall not without cause change Contractor's Representative or any person Contractor's Representative has delegated specific tasks to, without the prior written approval of Company, which shall not be unreasonably withheld or delayed.

#### **6 PERFORMANCE OF THE WORK**

##### **6.1 General obligations**

- 6.1.1 Contractor shall perform the Work and organise the supply of Personnel that are qualified, skilled and competent in a professional and careful manner and in accordance with the Contract and with all due care and diligence and with the skill to be expected of a reputable international contractor experienced in the types of Work to be carried out under the Contract. As part of such performance Contractor shall:
  - a) ensure safety in all aspects of the Work in order to protect life, health, wellbeing, property and environment, and
  - b) cooperate with Company, Company's Representative and persons appointed by him in accordance with Article 5, and other contractors of Company.

## 6.2 Authority Requirements

- 6.2.1 Contractor shall keep itself informed of and shall comply with all applicable laws, including regulations of any governmental or regulatory body having jurisdiction over the Work and the supply of Personnel in particular, of requirements and orders of public authorities and of applicable trade union and wage agreements.
- 6.2.2 Contractor shall, in due time, obtain and maintain such approvals and permits as are necessary for the performance of the Work, and which must or can be obtained in the name of Contractor. Company shall upon Contractor's request, provide any necessary assistance in this respect in so far as Company is reasonably able to provide such assistance.
- 6.2.3 Company may require that Contractor submits to Company such information about the performance of the Work and about Contractor Group as Company is obliged to submit to the public authorities.

## 6.3 Subcontracting

- 6.3.1 Contractor shall not use personnel hired in from any subcontractors as Personnel under the Contract. Contractor shall not in any other way subcontract any part of the Work without prior written approval from Company, which shall not be unreasonably withheld.

## 6.4 The Personnel

- 6.4.1 All Personnel shall, for the tasks they are required for, be properly qualified, skilled and competent. Contractor shall verify all relevant qualifications of such Personnel. Contractor shall at its own cost ensure that Personnel have passed a relevant safety course and medical examinations, in accordance with existing laws and regulations. For safety reasons, all Personnel shall have a good command of the German language.
- 6.4.2 Contractor may only assign individuals as Personnel for whom he holds an original excerpt from the Federal Central Register (police certificate of good conduct – *Polizeiliches Führungszeugnis*) without any entries. This certificate must be kept available for inspection by the Company at all times and must be updated and obtained from the competent authorities on a regular basis, immediately if there is a suspicion of relevant entries, but at the latest every three years. Upon request, Contractor shall submit these to Company on the same day (if necessary by fax). Upon Contractor's request, Company shall justify its request. If the Contractor cannot present a current excerpt for an individual assigned as Personnel, Company is entitled to request the exchange of such individual at Contractor's costs.
- 6.4.3 Contractor shall ensure that all Personnel provided under the Contract are employed by Contractor on a permanent contract of employment. Contractor shall pay all remuneration and employment benefits whatsoever due to the Personnel. Contractor shall be deemed to be an independent contractor, and shall in all respects ensure that Company shall not be regarded as the employer of the Personnel, even though the Personnel are to work upon the instruction of Company as an integrated part of Company's organisation and/or at Company's Worksite. Prior to the commencement of the assignment, Contractor shall inform each individual to be assigned as Personnel that he or she is hired by Company as temporary personnel (*Leiharbeitnehmer*) and what

the consequences of the equal treatment rule are.

- 6.4.4 Contractor shall be ultimately liable for all payments of salary and other economic benefits and burdens due in relation to its Personnel, including but not limited to payment of tax and employers' contributions in respect of the Personnel and shall strictly comply with the requirements set out in Article 12.
- 6.4.5 Contractor shall only assign individuals as part of the Personnel that are expressly named in writing with their full names in a Purchase Order valid for the relevant assignment period.
- 6.4.6 With regard to the liability of Company for the social security contributions and the wage tax of the Personnel pursuant to § 28e (2) Sozialgesetzbuch IV ("SGB IV") [Social Security Code No. 4] and § 42d Einkommensteuergesetz ("EStG") [Income Tax Act], Contractor undertakes to provide Company at its request with certificates on the proper payment of the social security contributions and the wage tax to the competent collection agencies or tax offices. At the request of Company, Contractor is also obliged to provide Company with a directly enforceable guarantee or a guarantee declaration from a major European bank for an amount of at least 15% of the Purchase Order value in order to secure Company against the liability risks arising from § 28e (2) SGB IV and § 42d EStG and § 13 MiLoG. If a claim is made against Company pursuant to § 28e (2) SGB IV, § 42d EStG and/or § 13 MiLoG, until Contractor has proven that the amounts have been properly paid, Company shall be entitled to withhold 35 % of the remuneration owed to Contractor and Company shall be further entitled, but not obliged, to pay said share to the collection agencies with debt-discharging effect. If Company pays the remuneration without deduction, although the certificates have not been provided for the relevant period, Company shall be entitled to deduct an amount equal to 35 % of the paid remuneration from subsequent invoices and may pay (but without being obliged to do so) such share directly to the collection agencies or to Contractor upon presentation of the relevant certificates. Should Company realize or Contractor prove that retentions exceed the claims already made and still threatened according to § 28e (2) SGB IV, § 42d EStG and/or § 13 MiLoG, Company shall pay the difference to Contractor. All Personnel shall be approved by Company prior to mobilisation and Contractor shall not replace or remove any Personnel without Company's prior written approval. Any replacement Personnel shall work with the person to be transferred or replaced for a reasonable handover period to the satisfaction of Company at Contractor's own cost but not before Contractor and Company have signed an amendment to the relevant Purchase Order that specifies the full name of the replacement.
- 6.4.7 Before any Personnel are assigned to Company, Contractor shall inform Company of any relevant periods of leave to which such Personnel are entitled and which fall within the period during which the individual will be assigned to Company. No further leave shall be granted by Contractor during the term of the assignment without the prior approval of Company. In the event of any leave in accordance with the above, or in case of any absence due to illness or other absence, Contractor shall provide, unless Company instructs otherwise, a qualified replacement but not before Contractor and Company have signed an amendment to the relevant Purchase Order that specifies the full name of the replacement.

- 6.4.8 If any Personnel conduct themselves or perform the relevant work in an unsatisfactory manner or in the reasonable opinion of Company are otherwise unfit for the work they are to perform, Contractor shall upon Company's request, replace said Personnel at Contractor's own cost within a reasonable period of time but not before Contractor and Company have signed an amendment to the relevant Purchase Order that specifies the full name of the replacement.
- 6.4.9 Company shall be entitled, in its sole discretion and without cause, to cancel the hire of any individual Personnel on 14 days' notice to Contractor.
- 6.4.10 In the event that cause exists, Company shall have the right to cancel the hire of any individual Personnel without prior notice. Such cause shall relate to a reason in terms of which Contractor would be entitled to terminate the employment relationship with notice (extraordinary or otherwise) or summary dismissal, or as otherwise provided for in terms of prevailing law as may be applicable. This entitlement shall always apply where the individual is absent from the Worksite without a valid excuse.
- 6.4.11 Contractor shall ensure that all Personnel comply with applicable laws including immigration laws and, where required, are in possession of a valid work permit to work as temporary personnel and for the period they are to work under the Contract and in possession of a valid health certificate where required for the relevant Worksite. Details of any and all such work permits shall be submitted to Company prior to the employee being engaged in the Work.
- 6.4.12 Personnel shall be required to regularly submit to Company, for countersigning and approval, records of his/her hours worked.
- 6.4.13 All Personnel will be required, prior to their commencement of Work, to sign a confidentiality agreement, in a form required by Company.
- 6.4.14 Contractor shall ensure that the Personnel comply with Company's procedures and instructions, observe any rules in force at the Worksites where the Personnel are to carry out their work, including but not limited to rules relating to health, safety and environment, working conditions and working hours, and that the Personnel comply with the obligations which follow from the Contract.
- 6.4.15 In periods where Personnel are working full time for Company in terms of the applicable local legislation, Personnel may not perform work for any company other than Company. For Personnel who are not working full time for Company, Contractor shall ensure that Company is informed before any work is performed by Personnel for other companies. Any such work for other companies shall be performed at a place other than Company's Worksite, shall not be performed utilising any resources, assets or services made available to Personnel at the Worksite and no work may be performed for other companies if such work concerns areas where the other company may have a conflict of interests with Company, including but not limited to work relating to assets in which Company has participating interests and/or procurement processes in which Company is involved in.
- 6.4.16 Subject to Article 13.2, Contractor shall ensure that all its Personnel engaged in the Work are granted terms and conditions of employment in accordance with mandatory local labour law and the principle of equal treatment, at minimum



in terms of such legislation applicable to the Contract or as otherwise stipulated in the Contract. Company shall, upon Contractor's request, in connection with each Purchase Order, provide Contractor with all such information as is necessary for Contractor to comply with the said principle of equal treatment and shall also provide documentation concerning Company's relevant terms and conditions of employment on request from Contractor.

- 6.4.17 Contractor represents and warrants that each individual it assigns as Personnel has not been assigned to Company Group during the last three months prior to the assignment nor been employed by to Company Group during the last six months prior to the assignment.

## **7 QUALITY ASSURANCE AND HEALTH, ENVIRONMENT AND SAFETY**

- 7.1 Contractor shall comply with all applicable recognised safety regulations and relevant legal provisions concerning accident prevention, environmental protection and health and safety at work (HSE), including, when applicable, the international standards of the oil and gas industry (hereunder Life Saving Rules), ISO standards for use in the oil and gas industry, or comparable standards. Contractor undertakes to perform the Work in a safety-oriented manner taking account of Company's safety guidelines which can be viewed on the Wintershall Dea website at [www.wintershalldea.com/en/supply-chain](http://www.wintershalldea.com/en/supply-chain), including but not limited to the HSE Regulations for Contractors and any other documents relevant to the Work or otherwise referenced in the Purchase Order.
- 7.2 Contractor shall have an implemented and documented system for health, safety and quality assurance in accordance with requirements stated at [www.wintershalldea.com/en/supply-chain](http://www.wintershalldea.com/en/supply-chain). Contractor shall use a quality assurance system with elements as per ISO 9000 ff or a similar system of equivalent standard.
- 7.3 Company has the right to audit the HSE and quality assurance systems of Contractor Group and to require corrective measures at Contractor's expense if Contractor's system deviated from the requirements in the Contract. Company shall notify Contractor of such audit. The audit can include any part of the Work or the Worksite. Contractor shall give the necessary assistance during such audit.

## **8 VARIATIONS**

- 8.1 Company has the right to order in writing variations to the Work within the scope of what the parties could reasonably have expected at the time the Contract was entered. Variations to the Work may include an increase or decrease in the quantity, or a change in character, quality, kind, location or execution of the Work or any part thereof, as well as changes to the agreed duration of the period(s) of hire of the Personnel.
- 8.2 Contractor shall not implement a variation that may result in changes to the price or the time of delivery without Company's prior written agreement in respect of such changes. If Contractor implements the variation without Company's prior agreement, then he loses the right to claim adjustment in the price or time of delivery as a result of the variation.

## **9 DURATION**

- 9.1 The individual Personnel will be hired in to Company for the durations as specified in the Purchase Order.
- 9.2 Contractor shall ensure that no individual Personnel will be hired in to Company for a period longer than eighteen (18) consecutive months. Such Personnel shall be replaced by Contractor in accordance with Article 6.4 above within the time limit of eighteen (18) months from date of the individual Personnel being hired in to Company.

## **10 CANCELLATION FOR CONVENIENCE**

### **10.1 Company's right to cancel**

- 10.1.1 Company shall have the right to cancel the Contract, or any parts thereof, at its sole discretion and for whatever reason with immediate effect by giving written notice to Contractor. The notice shall state the requested effective date of the cancellation.

### **10.2 Effects of cancellation**

- 10.2.1 In the event of cancellation Contractor shall demobilise the affected Personnel as of the effective date of the cancellation stated in the notice from Company.
- 10.2.2 Contractor shall forthwith take all necessary steps in order to avoid unnecessary additional costs after the notice of cancellation has been received.
- 10.2.3 In the event of cancellation Contractor shall be entitled to compensation for that part of the Work performed in accordance with the Contract up to the effective date for the cancellation. All payments shall be made in accordance with the provisions of Article 11.

## **11 INVOICING, PAYMENTS AND AUDIT**

### **11.1 Compensation**

- 11.1.1 Company shall compensate Contractor in accordance with the provisions stated in the Purchase Order, which shall state the agreed day or hourly rate, based on qualification, level, grading or similar, as well as a calculation based on the agreed number of hours per day/per week such individuals are assigned for.
- 11.1.2 Unless otherwise explicitly agreed, the rates of hire are all-inclusive rates and apply to actual work performed during ordinary working hours, pay supplements, allowances, travel expenses, incidental expenses, out-of-pocket expenses, overtime, weekends and public holidays. Hourly rates of hire are not payable for meal breaks. Rates of hire shall be exclusive of value added tax.
- 11.1.3 Should extra hours of work be contemplated (i.e. overtime, weekends and public holidays) such shall be explicitly identified as a separate hire rate per hour in the Purchase Order, specifying the pay supplements to paid on top of the basic hire rate for each scenario, being, working late, night work, weekend work and public holiday work. Any additional costs not explicitly provided for in the Purchase Order shall be reported to the Company Representative before they



are incurred and prices shall be agreed upon accordingly.

## 11.2 Invoicing

- 11.2.1 Unless otherwise explicitly agreed in the Contract, Contractor shall submit to Company an invoice on a monthly basis, covering the Work under the Contract for the preceding month. The invoice shall be submitted to the Company's invoicing address and shall specify the Contract number and Purchase Order number, details of Work carried out and Personnel performing work during the month and shall be accompanied by all relevant documentation, including approved records of hours worked by Personnel. The invoice shall comply with the relevant statutory invoicing requirements according to the national tax legislations to which the Work being invoiced is subject.
- 11.2.2 All amounts due to Contractor for Work performed shall be invoiced at the latest within 6 months after the Work is finalised according to the Contract. If Contractor fails to do so, Company will not be obliged to remunerate the invoice.

## 11.3 Payments

- 11.3.1 Company shall within 30 Days after receipt of a correct invoice, pay the amount due to Contractor.
- 11.3.2 Company is entitled to return invoices that do not meet the requirements set out in Article 11 or elsewhere in the Contract.
- 11.3.3 The following deductions may be made from any payments:
- a) Any previous payment on account to Contractor, which relates to the Work, covered by the invoice.
  - b) Such parts of the invoiced amounts as are insufficiently documented or otherwise disputed, provided Company, as soon as reasonably possible specifies what documentation is considered insufficient and/or what the dispute concerns.
  - c) All amounts due to Company from Contractor, provided that Company is entitled to make such deductions according to applicable law. If it is later established that Company had an obligation to pay the withheld amount, then Company shall pay interest in accordance with the provisions laid down in the applicable national law governing the Contract calculated from the due date for payment of the invoice up to the date of actual payment. If the applicable national law does not contain such provisions, the interest payable shall be determined according to the rate applied by the European Central Bank for its main refinancing operations in Euros, plus three and a half percent.
  - d) Company shall deduct from any payment due to Contractor under this Contract all amounts, if any, so required by any governmental authority.
- 11.3.4 Company's payment of an invoice shall not be construed as an acceptance of the Work delivered under the Contract, nor shall it be construed as a waiver of Company's rights under the Contract.
- 11.3.5 If it has been agreed that Contractor shall provide a guarantee, Company shall not be obliged to make any payments until Contractor has provided such guarantee in accordance with Company's requirement set out in the Purchase

Order.

#### 11.4 Audits

Company is entitled to audit at Contractor's premises within normal office hours, all books, records and documents of every kind relating to: invoiced charges made by Contractor to Company or Contractors compliance with the requirements of the Contract, including but not limited to compliance with applicable minimum wage provisions.

### 12 TAXES AND TAX REPORTING

#### 12.1 General Requirements

12.1.1 The Contractor shall, except as may be otherwise provided in the Purchase Order, be responsible for and save, defend, hold harmless and indemnify Company against:

- a) the payment of all taxes, duties, levies, charges and contributions (and any interest or penalties thereon) for which the Contractor is liable as imposed by any appropriate government authority, whether or not they are calculated by reference to the wages, salaries, benefits or expenses and other remuneration paid directly or indirectly to persons engaged or employed by the Contractor; and
- b) the payments of all taxes, duties, levies, charges and contributions (and any interest or penalties thereon) including but not limited to income, profits, corporation taxes and taxes on capital gains, turnover and added value taxes for which the Contractor is liable, now or hereafter levied or imposed by any appropriate government authority, arising from, relating to or in connection with this Contract; and
- c) compliance with all statutory obligations to make deductions on account of and remit the required amounts to any appropriate government authority, including, but not limited to income tax, national insurance, employee taxes, charges, social security costs, levies and contributions whether or not they are measure by the wages, salaries or other remuneration or benefits paid to persons employed by the Contractor, or persons providing services in connection with the Contract to the Contractor.

12.1.2 Contractor shall supply to Company all such information, in connection with activities under the Contractor, as is necessary to enable the Company to comply with the lawful demands for such information by any appropriate government authority. This shall include proof of payment of due social insurance contribution and wage taxes for the individuals hired in to Company, including clearance certificates where required.

12.1.3 Contractor warrants that it is familiar with and shall comply with all reporting requirements to the authorities under applicable law relating to the Work.

12.1.4 Contractor shall be responsible for and shall save, defend, hold harmless and indemnify Company from any and all losses due to Contractor not fulfilling his reporting obligation under applicable law.

12.1.5 Contactor shall save, defend, hold harmless and indemnify Company against all levies, charges, contributions and taxes of the type referred to in this Article

12 and any interest or penalty thereon which may be assessed, by any appropriate government authority, on Contractor in connection with the Contract and from all reasonable costs incurred in connection therewith.

- 12.1.6 If Company receives a notice requiring it to pay any levies, charges, contributions or taxes of the types referred to in this Article 12 and/or any interest or penalty thereon whether with respect to Contractor or any other person employed by them or providing any services to them on or in connection with the Contract, Company shall forthwith notify Contractor who shall work with Company to make all reasonable endeavours to make any valid appeal against such payment. In the event that Company is ultimately required to make such payment, Company may recover from Contractor any such sums and all reasonable costs incurred in connection therewith and Contractor shall within fourteen (14) days of receiving written notice from Company pay to Company any such sum or Company shall be entitled to deduct such sums from any monies due, or which may become due, to Contractor.

### **13 OPERATION AND LICENCING AS A STAFFING ENTERPRISE**

#### **13.1 General**

- 13.1.1 Contractor represents and warrants that, in compliance with any applicable legislation, it is in possession of a valid, open-ended licence to commercially provide temporary personnel ("Erlaubnis zur Arbeitnehmerüberlassung", § 1 para. 1 sentence 1 Arbeitnehmerüberlassungsgesetz ("AÜG") [Act on the Provision of Temporary Workers]) and shall ensure that such licence remains valid for the duration of this Contract. Contractor provides a copy of the licence to Company. The copy of the licence shall be attached to the Purchase Order as an attachment.

Contractor is obliged to inform Company immediately of any changes to the licence.

- 13.1.2 Contractor shall indemnify Company from and against any claim from any of Contractor's Personnel based on breach of the obligations of Contractor to provide terms and conditions of employment in accordance with the principle of "equal treatment", or such equivalent or similar principles applicable in the jurisdiction in which the Personnel is supplied, and from and against any and all other costs or claim resulting from Contractor not complying with any other applicable legislation related to the hiring-out of personnel. Contractor's liability shall include but not be limited to, all salary, additional economic benefits, applicable bonus payments, holiday pay, penalties, sanctions, actions and measures claimed, alleged, asserted or imposed against Company, costs incurred by Company based on statutory joint liability as well as any and all other or cost incurred by Company.

#### **13.2 Act on the Provision of Temporary Workers**

- 13.2.1 Contractor represents and warrants that the employment of each individual assigned as Personnel is subject to the applicable collective bargaining agreement, as defined by the AÜG, and that it shall pay to every individual assigned as part of the Personnel under this Contract, for the duration of his/her assignment at Company at least remuneration equal to the collectively agreed pay rate, and shall, where applicable, additionally grant in accordance

with statutory provisions the key conditions of employment, including the wage applicable to a comparable employee of Company at the Company's Worksite.

- 13.2.2 Company is a member of the trade association Erdöl- und Erdgasgewinnung e.V. and uses a company-wide collective bargaining agreement based on the agreements made with the industrial unit BCE. The IGZ sector-specific pay supplement for the chemical industry does not apply to Company.
- 13.2.3 For long term assignment of Personnel, the Contractor shall grant the individual equal pay from the 10<sup>th</sup> month of assignment at the Company. To this end, Company shall inform Contractor of the applicable wage, within the meaning of the AÜG, to a comparable employee of the Company. The prices resulting therefrom shall, depending upon the qualifications concerned, be calculated on the basis of the equal-pay remuneration of the Personnel assigned, plus a "contractor supplement, which shall be specified in the Purchase Order as a percentage. If no such "contractor supplement" has previously been agreed, such a reasonable supplement shall be negotiated and added to the equal-pay remuneration.
- 13.2.4 Company warrants to inform the Personnel about jobs that are to be filled.

## **14 COMPANY WARRANTS TO INFORM THE PERSONNEL ABOUT JOBS THAT ARE TO BE FILLED. BREACH OF CONTRACT**

### **14.1 Contractor's Default**

- 14.1.1 If Contractor fails to provide Personnel in accordance with the agreed time limits, or if Contractor's Personnel stay away from their assigned Worksite without lawful absence, Contractor shall pay liquidated damages to Company.
- 14.1.2 Unless otherwise stipulated in the Purchase Order, Contractor shall pay liquidated damages amounting to 7,5 times the hourly rate, alternatively 1 times the daily rate, per person per commenced working day by which Contractor is delayed or Personnel are absent. Liquidated damages under the Contract shall however not exceed 5% of the total Contract value.
- 14.1.3 If the delay or absence is caused by gross negligence or wilful misconduct on the part of Contractor or someone for whom Contractor is responsible, Company may, instead of the liquidated damages claim compensation for the losses suffered due to the delay or absence. Contractor is not liable for any indirect losses suffered by Company, cf. Article 14.8
- 14.1.4 If Personnel are not qualified or competent to perform their work, work unethically or fail to comply with applicable laws and regulations, , then. Contractor shall upon Company's request, at his own expense, immediately replace the Personnel and Company shall not be under any obligation to compensate Contractor for the hire of the rejected Personnel. Company shall be entitled to claim damages for losses suffered as a result of circumstances stipulated above.

### **14.2 Termination due to Contractor's Default**

- 14.2.1 Company is entitled to terminate the Contract or any part thereof with immediate effect, if Contractor is in substantial breach of its obligations under the Contract, or if Company is entitled to be paid the maximum liquidated

damages allowed by the Contract.

- 14.2.2 The Company shall similarly be entitled to terminate the Contract if Contractor becomes insolvent, files for bankruptcy, makes an arrangement with its creditors, commences proceedings for winding up, or stops payments of its debts generally as they become due.

#### **14.3 Effects of termination due to breach of Contract**

- 14.3.1 If the Contract or parts thereof are terminated according to Article 14.2, Company will only reimburse Contractor for those portions of the Work actually performed, less any amounts Company is entitled to withhold in accordance with this Contract.
- 14.3.2 When the Contract or a part thereof is terminated, Company shall also be entitled to present claims and claim damages according to law for other breaches of Contract.

#### **14.4 Company's Breach of Contract**

- 14.4.1 If Company is late in making payments in accordance with Article 11, then Company shall pay interest according to the provisions laid down in the applicable national law governing the Contract related to late payment interest, or if no such provision exists, in accordance with the rate applied by the European Central Bank for its main refinancing operations in Euros, plus three and a half percent, unless the delay is caused by insufficient invoice documentation from Contractor, and Company has notified Contractor of this without undue delay.

### **15 FORCE MAJEURE**

#### **15.1 Effects of Force Majeure**

- 15.1.1 Neither of the parties shall be considered in breach of an obligation under the Contract to the extent the party can establish that fulfilment of the obligation has been prevented by Force Majeure. Each party shall cover its own costs resulting from Force Majeure.
- 15.1.2 Payment for the Work, including payment for the hire of Personnel, will be suspended if performance of the Work or Company's utilisation of the Personnel is hindered due to Force Majeure.
- 15.1.3 A party so affected by Force Majeure shall use every reasonable effort to minimize the effect of Force Majeure upon the performance of this Contract and shall promptly resume performance as soon as reasonably possible after removal of the circumstances of Force Majeure.

#### **15.2 Notification**

- 15.2.1 The party invoking Force Majeure shall as soon as possible notify the other party of the Force Majeure situation. Such notice shall also include the cause of the delay and the presumed duration thereof.

## **16 LIABILITY AND INSURANCE**

### **16.1 Third Party liability**

16.1.1 Contractor shall save, defend, hold harmless and indemnify Company Group from and against any claim arising out of loss or damage suffered by a Third Party in connection with the Contract, to the extent that any such loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of Contractor Group.

16.1.2 Company shall save, defend, hold harmless and indemnify Contractor Group from and against any claim arising out of loss or damage suffered by a Third Party in connection with the Work, to the extent that any such loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of Company Group.

### **16.2 Notice of received claims**

16.2.1 The parties shall immediately notify each other of claims, which involve the other party. The party being liable for settlement of a claim, shall, if possible, handle the claim.

16.2.2 The parties shall give each other information and other assistance needed for handling the claim.

### **16.3 Insurance**

16.3.1 Company shall provide and maintain the insurances Company is obliged to take out according to applicable laws and regulations.

16.3.2 Contractor shall at its own expense procure and maintain insurance to cover its liabilities under this Contract.

16.3.3 Contractor's insurance policies shall be taken out with first class insurers and according to the best insurance terms available on the market.

16.3.4 The insurances shall be in force upon commencement of the Work and shall remain in force during the term of the Contract.

16.3.5 Contractor shall ensure that all insurance policies include a clause requiring the insurer to notify Company in writing at least 30 – thirty - Days prior to variations, cancellation or expiry of the insurance policies.

16.3.6 Contractor shall cause its insurers to waive all rights of subrogation against Company Group to the extent of liabilities assumed hereunder by Contractor.

16.3.7 Contractor shall on Company's request, submit to Company evidence that all insurance required have been duly effected.

16.3.8 Contractor shall, upon Company's request, verify that all policy terms and insured amounts are meeting said requirements.

16.3.9 If Contractor fails to take out insurance according to its obligations under this Article 16.3.2, Company is entitled to take out such insurance and claim a refund of the costs from Contractor.



## **17 PROPRIETARY RIGHTS, CONFIDENTIALITY AND DATA PROTECTION**

### **17.1 Rights to information, technology and Inventions**

- 17.1.1 Commercial and technical information, including drawings, documents and computer programs and any other intellectual property rights, regardless of method of storage, and copies thereof, developed by Personnel for Company or during the course and scope of their duties at Company's Worksite, shall be the property of Company. The same applies to information provided by Company to Contractor.
- 17.1.2 Inventions made by Personnel in connection with or during the performance of the Work, or mainly based on information owned by or provided by Company shall also be the property of Company, to the extent permissible pursuant to applicable law.
- 17.1.3 Contractor shall notify Company of such inventions, which shall be Company's property. Contractor shall provide the necessary assistance to enable Company to acquire the patents to the inventions. Company shall pay Contractor for all reasonable costs in connection with such assistance, including compensation for Contractor's employees or others in accordance with applicable law or general agreements concerning compensation for inventions.
- 17.1.4 Such information as stated in the first paragraph and inventions as stated in the second paragraph shall not be used by Contractor or the Personnel other than for the purpose of the Work. All documentation, all computer programs and copies shall be returned to Company at the expiry of the Contract, unless otherwise agreed.
- 17.1.5 Contractor shall ensure that the employment contracts with Personnel contains provisions to allow for transfer of all intellectual property rights to Company in accordance with this clause as soon as they come into existence and that such Personnel, upon request, will confirm such transfer by a written statement and/or do all other acts necessary to give effect to this clause.

### **17.2 Confidentiality**

- 17.2.1 All information exchanged between the parties shall be treated as confidential and shall not be disclosed to anyone other than Contractor or Company without the other party's written permission, unless such information:
- a) may be disclosed to anyone other than Contractor or Company in accordance with Article 17.1
  - b) is already known to the party in question at the time the information was received, other than through fault of the Personnel, or
  - c) is or becomes part of the public domain other than through a fault of Company Group or Contractor Group, or
  - d) is rightfully received from anyone other than Contractor or Company without an obligation of confidentiality.
- 17.2.2 Each of the parties may, however, use or disclose confidential information to anyone other than Contractor or Company to the extent necessary for the performance of and control of the Work and the hiring of Personnel.

- 17.2.3 In such cases the parties shall ensure that the party in question signs a written confidentiality agreement in accordance with this Article 17.2
- 17.2.4 Contractor shall not publish information concerning the Work or the Contract without Company's written approval, which shall not be unreasonably withheld.
- 17.2.5 The provisions of this Article 17.2 shall not prevent a party from disclosing confidential information as may be required by a government or similarly empowered authority in terms of applicable law or which is required by a court with applicable jurisdiction or to anyone other than Contractor or Company to the extent necessary, according to applicable law, provided always that the disclosing party to the extent possible will notify the other party before such disclosure is made, nor shall they prevent Company from disclosing confidential information to its Affiliated Companies.
- 17.2.6 Confidential information shall be treated in a secure manner, documentation shall be kept in locked files and electronically stored information shall be inaccessible to unauthorized personnel.
- 17.2.7 The obligation of confidentiality also applies after the Contract expires or is terminated.

### **17.3 Data Protection**

- 17.3.1 The parties may provide each other with information related to an identified or identifiable individual (In this clause: "Personal Data") as part of the performance hereunder. Both parties undertake that such processing and transfer will be done in accordance with all applicable data protection laws. The parties shall take such technical and organizational measures as required to ensure a level of security appropriate to avoid the risk of misuse and loss of Personal Data. Further no Personal Data as defined in any applicable data protection laws shall be processed by the parties or disclosed to any third party for any other purpose than performance of this Contract, nor analysed for its own purposes and/or form a profile. The parties are obliged, according to such applicable laws, to rectify, erase and/or restrict the processing of the Personal Data once the purpose for which the Personal Data was required has been fulfilled.

## **18 OTHER PROVISIONS**

### **18.1 Assignment of the Contract**

- 18.1.1 Company is entitled to assign its rights and obligations under the Contract, fully or partly, provided that Company can demonstrate that the assignee has the financial strength required to fulfil Company's obligations under the Contract.
- 18.1.2 Contractor may not assign or mortgage the Contract, a part of or interest in it, without Company's written approval. Such approval shall not be unreasonably withheld.

### **18.2 Amendments**

- 18.2.1 Any amendments of the Contract shall only be effective if recorded in writing, duly signed and mutually agreed by the parties. This also applies to the waiver of the written form requirement.

### 18.3 Notices and claims

- 18.3.1 All notices and claims to be given in accordance with the provisions of the Contract shall be submitted in the English language in writing to the relevant party's Representative under Article 5 with such address as given in the Contract or as otherwise notified in writing from time to time.
- 18.3.2 Notices can be communicated by direct delivery, by pre-paid first class post or by electronic communication and shall be deemed received at time of delivery if received by hand, at the time at which confirmation of successful delivery is received if sent by electronic communication and on the fifth working day following the day of sending if sent by pre-paid first class post.
- 18.3.3 The use of electronic communication for the transfer of documents shall at all times be in accordance with internationally recognised standards. The chosen standard shall enable the use of digital signatures or similar electronic safety device, encryption as well as filing and retrieving.

### 18.4 Business ethics

- 18.4.1 Company 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, labour and human rights as well as responsible corporate governance. Company has described its understanding of these standards ("Sustainability Standards") and its expectations to suppliers in the Supplier Code of Conduct, which can be viewed on the Wintershall Dea website at [www.wintershalldea.com/en/supply-chain](http://www.wintershalldea.com/en/supply-chain).
- 18.4.2 Contractor shall comply with the Sustainability Standards and shall conduct an appropriate due diligence in accordance with the Sustainability Standards.
- 18.4.3 Contractor shall oblige its subcontractors and other business partners to comply with the Sustainability Standards when performing its obligations under this Contract.
- 18.4.4 Company shall have the right to check, verify and audit Contractor's compliance with its obligation in Article 18.4.2 and 18.4.3 either itself or through third parties, with prior notice. Contractor shall at its own cost give the necessary assistance during such audit including without limitations provision of information to verify such compliance.
- 18.4.5 If Contractor is in breach of any obligation in this Article **Error! Reference source not found.**, or any breach of the Sustainability Standards has occurred, or it is likely that such breach will occur, Company is entitled to require corrective measures at Contractor's expense, or suspend the Contract. If such breach has not been remedied without undue delay, or if repeated breaches have occurred, this shall be deemed to constitute substantial breach of Contract and Company is entitled to terminate Contract in accordance with Articles 14.214.2 and **Error! Reference source not found.**

## 19 GOVERNING LAW AND DISPUTES

- 19.1.1 This Contract shall be governed by and interpreted in accordance with German law.

- 19.1.2 Disputes arising in connection with or as a result of the Contract, and which are not resolved by mutual agreement, shall be settled by court proceedings unless the parties agree otherwise. Any court proceeding shall be brought before the courts of Hamburg, Germany.
- 19.1.3 Pending the resolution of a dispute, Contractor shall continue the Work in accordance with the provisions of the Contract.