

Wintershall Dea Specific Subsurface Services Terms & Conditions

May 2019
(Governed by German law)



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1. General

1.1 These Specific Subsurface Service Terms & Conditions of Wintershall Dea GmbH (hereinafter referred to as "Specific Subsurface Terms") form an integral part of the contract for the performance of Subsurface Services by Contractor to Company, and shall apply to the extent the purchase order stipulates they shall apply. These Specific Subsurface Terms are supplemental to and should be read and construed in conjunction with the "General Conditions of Purchase of Wintershall Dea GmbH and its Affiliated Companies Located in Germany" (hereinafter referred to as "General Conditions of Purchase"). To the extent of any conflict or inconsistency between these Specific Subsurface Terms and the General Conditions of Purchase in relation to Subsurface Services, these Specific Subsurface Terms shall prevail over the General Conditions of Purchase.

1.2 In these Specific Subsurface Terms the definitions contained in the General Conditions of Purchase shall apply together with the following additional definitions:

- (i) **Abnormal Damage** in relation to Contractor's equipment shall mean damage exceeding the normal everyday 'fair wear and tear' damage or deterioration such equipment may reasonably be expected to suffer through performing the Subsurface Services under the purchase order;
- (ii) **Company Group** shall mean:
 - (a) Company;
 - (b) each Coventurer;
 - (c) each affiliate of Company;
 - (d) any joint venture or disclosed principal on whose behalf Company is entering into the contract as agent;
 - (e) any operating company in which Company or any affiliate of Company is a participant and on whose behalf Company is entering into the contract as agent;
 - (f) any agent, consultant or contractor of Company (other than Contractor) performing work for Company in connection with the Subsurface Services; and
 - (g) the respective directors, officers, employees and consultants of all of the above persons and/or entities (which for the purposes of this definition shall include all personnel engaged directly by Company Group or engaged by Company Group through a personnel services agreement or similar arrangement for casual or ad hoc labour).
- (iii) **Contractor Group** shall mean:
 - (a) Contractor;
 - (b) each subcontractor (of every tier) of Contractor and its affiliates;
 - (c) each affiliate of Contractor;
 - (d) each affiliate of each subcontractor (of every tier) of Contractor and its affiliates;
 - (e) where Contractor is a joint venture, each of its participants and each of such participants' affiliates; and
 - (f) the respective directors, officers, employees and consultants of all of the above persons and/or entities (which for the purposes of this definition shall include all personnel engaged directly by the Contractor Group or engaged by the Contractor Group through a personnel services agreement or similar arrangement for casual or ad hoc labour).
- (iv) **Excluded Cause** means:
 - (a) Gross Negligence or Wilful Misconduct of any member of Contractor Group;
 - (b) failure by any member of Contractor Group to operate equipment in accordance with the contract or Company's work program without the prior written consent of Company;
 - (c) non-compliance by any member of Contractor Group with applicable laws and HSE regulations;
 - (d) operation by any member of Contractor Group of equipment or tools outside the parameters of their published specifications or manufacturer's recommended procedures or guidelines, or Contractor's own procedures, guidelines and management systems; or
 - (e) in case of any Contractor Group's equipment which is damaged or lost in hole: such damage or loss was caused by failure, defect or malfunction of the equipment, or such equipment was in contravention of the contract or not approved by Company prior to such operation.
- (v) **Gross Negligence** ["*grobe Fahrlässigkeit*"] shall have the meaning attributed thereto under the Governing Law.
- (vi) **Subsurface Services** means the services to be provided by Contractor under the contract which require Contractor to access any Company well or require Contractor Group equipment or materials to be used in any Company well and/or below the rotary table and/or at the wellhead or provide services on the rig floor with respect to the equipment and tools to be run in hole; and
- (vii) **Wilful Misconduct** ["*Vorsatz*"] shall have the meaning attributed thereto under the Governing Law

2. Liabilities and Indemnities

2.1 Company shall perform and pay for all fishing to recover Contractor Group's equipment that becomes stuck downhole while performing the Subsurface Services and which requires fishing operations for retrieval, provided that Contractor, upon Company's request and without undue delay and without assuming any liability, renders any and all assistance in an advisory capacity for the recovery of the said equipment. However Contractor shall reimburse Company for all expenses incurred by Company in connection with such fishing operations, if such fishing operations were required due to an Excluded Cause specified in clause 1.2 (ii).

2.2 Contractor Group Equipment Lost, Abnormal Damage or Damaged Beyond Repair

2.2.1 Company shall reimburse Contractor in respect of any equipment of any member of Contractor Group that is lost downhole below the rotary table, is damaged beyond repair or has incurred Abnormal Damage downhole while performing the Subsurface Services, unless such loss or Abnormal Damage is caused by any Excluded Cause, provided:

- (i) Contractor has advised Company by written notice within seven (7) days of the occurrence of such loss or damage and has provided full particulars thereof;
- (ii) Contractor has provided Company with the specifications for the equipment prior to its Delivery;
- (iii) Contractor has demonstrated that the lost or damaged equipment was properly maintained and inspected and has provided Company with copies of the pre-delivery preparation and inspection checklists/reports, as well as other relevant records;
- (iv) in case of Abnormal Damage:
 - (a) where Contractor claims that such damage occurred as a result of equipment not having been operated in accordance with the agreed Company work program and/or outside of the parameters of its published specifications with the prior written consent of Company to that effect, Contractor must demonstrate that it had received such written consent from Company, and provide full history records of equipment operation conditions after the last full inspection;

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- (b) Contractor must make the damaged equipment accessible for inspection by Company for at least twenty (20) working days after written notification issued by Contractor as per (i) above; and
 - (c) an Abnormal Damage report must be provided to Company within fourteen (14) days after the occurrence of such damage, which shall at least include details of the damaged equipment, the damaged parts (including all serial numbers and photographs of damaged items), the cause of damage and recommendations to prevent reoccurrence.
- 2.2.2.** Unless otherwise specified in the purchase order, Company's liability for
- (i) equipment lost downhole or equipment damaged beyond repair, as the case maybe, shall be either:
 - a) at the explicitly agreed replacement value, if agreed as an absolute figure in writing between the parties in the contract, depreciated by a depreciation factor of two percent (2%) per month calculated as from the first date of commercial utilisation of such equipment,or, if no explicitly agreed absolute replacement value has been agreed,
 - b) at the original cost substantiated by original invoice or other original document, and depreciated by the depreciation factor of two percent (2%) per month calculated from the date of first commercial utilization of such equipment in operations (whether for Company or otherwise) following its purchase by a member of Contractor Group.
 - (ii) repair of retrievable equipment subject to Abnormal Damage shall be the lessor of:
 - a) documented cost of replacement parts (except for consumables) plus a ten percent (10%) service charge which shall be deemed to cover all Contractor's costs for the repair work (other than the cost of replacement parts), including but not limited to shipping, customs, inventory and labour; or
 - b) either
 - aa) at the original cost substantiated by original invoice or other original document and depreciated by the depreciation factor of two percent (2%) per month calculated from the date of first commercial utilization of such equipment in operations (whether for Company or otherwise) following its purchase by a member of Contractor Group, or
 - bb) if a replacement value has been explicitly agreed as an absolute figure in writing between the parties in the contract, at the agreed replacement value depreciated by a depreciation factor of two percent (2%) per month calculated as from the first date of commercial utilisation of such equipment.
- 2.3.** Notwithstanding clauses 2.1 and 2.2, Contractor shall be liable for and indemnify Company Group from and against any damage to or loss of Company Group's down-hole equipment caused as a result of any Excluded Cause.
- 2.4.** Company shall be liable for and indemnify Contractor Group from and against any claim arising out of damage to the subsurface including, without limitation damage to the reservoir, the geological formation and the underground strata, and any loss of oil and gas therefrom and damage to the well, except where such damage to the subsurface is caused by an Excluded Cause.
- 2.5.** Recovery or abandonment of any radioactive source lost down-hole below the rotary table shall be performed by Company at Company's sole cost and risk, except where such recovery or abandonment is necessary due to an Excluded Cause.
- 2.6.** Notwithstanding clauses 2.1 to 2.5 inclusive, in the event that any loss or damage is due to an Excluded Cause:
- (i) Company shall have no liability to reimburse or indemnify Contractor in respect of any such loss or damage or claim, and instead Contractor shall reimburse and indemnify Company and/or any member of Company Group for and against all claims resulting from any such Excluded Cause; and
 - (ii) if, as a result, the Subsurface Services or parts thereof are abortive, Contractor shall re-perform the abortive Subsurface Services at no cost to Company, irrespective of whether or not such re-performed Subsurface Services are carried out in connection with the same or a substitute well.
- 2.7.** Company shall be entitled to deduct
- (i) the value Contractor, or a member of Contractor Group, receive from selling the scrap metal from equipment damaged beyond repair or
 - (ii) if Contractor, or a member of Contractor Group, does not sell such equipment, the notional residual value of such equipment from any claim submitted by Contractor to Company in accordance with clause 2.2.2 (i).
- In the event of clause 2.7. (i) Contractor shall submit original documentation demonstrating the value at which the equipment was sold to the scrap metal dealer or other third person when making its claim to Company under clause 2.2.2. (i). In the event of clause 2.7 (ii) Contractor shall submit the notional residual value determined by an expert at the expense of Contractor when making its claim to Company in accordance with clause 2.2.2 (i).

From the date on which equipment factually becomes loss in-hole or damaged beyond repair causing operations to be discontinued, all operating and rental charges for the affected equipment shall cease to apply, and Contractor shall not be compensated for the same.

2.2.3. Company shall have no obligation to reimburse or compensate Contractor for claims in respect of any Contractor Group's equipment that is lost downhole below the rotary table, is damaged beyond repair, or has incurred Abnormal Damage downhole while performing the Subsurface Services, if Contractor has failed to comply with the requirements set out in this clause 2.2.