Terms and conditions of Wintershall Dea GmbH and associated companies\(^1\) for construction and installation work

(hereinafter referred to as Company) – May 2019

1. General Information

These terms and conditions apply to contracts for construction and installation work issued by Company. Any variation to the terms and conditions stipulated by Contractor will not be recognized. Even if the goods, work or services have been supplied and accepted by Company without reservation, Company will not recognize other terms and conditions stipulated by Contractor.

2. Contract Components

The following contract components shall apply:

a) the Company’s purchase order, respectively the call-off letter/order
b) a negotiation protocol duly signed by Company and Contractor or aligned and agreed upon via Email
c) possible descriptions/specifications, tender documents, plans etc. of Company
d) these terms and conditions of Wintershall Dea GmbH and associated companies for construction and installation work

e) “VOB Vergabe- und Vertragsordnung für Bauleistungen Teil C” (German Construction Contract Procedures – Part C) in the version stated in the contract conclusion
f) state-of-the-art technology.

The contract documents listed under sub-section 2 a) to f) are considered to be valid in parallel and to complement one another. In case of contradiction between the contract documents, these shall be valid in the order from sub-section 2 a) to f).

3. Scope of Work

Unless otherwise indicated in the performance description/specification, the following conditions shall apply:

3.1 Contractor is required to appoint and name in writing a site manager for the installation work (hereinafter referred to as Company) – May 2019

3.2 Contractor is required to inspect the site at an early stage when tendering or negotiating the contract. Any obstructions and difficulties must be clarified and notified without delay by the Contractor in case of a change of the site manager. This change has to be mutually agreed upon.

3.3 Furthermore, Contractor has the following duties, which are covered by the agreed prices:

a) Provision of the site facilities for the entire scope of services provided by Contractor. In case Company increases scope of work, additional costs for site facilities Contractor has to include in such price calculation of the contract amendment.

b) Supply of electricity, water and sewage services to the construction segment during construction period and until acceptance, including any connection charges incurred, if not otherwise agreed.

c) Assuming responsibility for traffic safety for the contracted work, as well as traffic safety for the construction works. Any assistants and auxiliaries must be supervised and priced when tendering or during the contract negotiations. If this is not done, any obstacles and difficulties that would have been identifiable on careful inspection to ensure proper performance are covered by the agreed prices.

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c) Assuming responsibility for traffic safety for the contracted work, as well as traffic safety for the construction works. Any assistants and auxiliaries must be supervised and priced when tendering or during the contract negotiations. If this is not done, any obstacles and difficulties that would have been identifiable on careful inspection to ensure proper performance are covered by the agreed prices.

d) Protection of the work already performed against damage and theft until acceptance; in particular protection against weather damages and ground water.

e) Locating and protecting existing pipelines and cables, both underground and in structural units. In case of laid open lines Contractor has to protect such until the appropriate authorities have been informed and consulted.

f) Obtaining of necessary acceptance from local authorities, including all own costs and charges incurred as a result, if not otherwise agreed.

Contractor supports Contractor in this respect if necessary and needed.

g) Carrying out the surveying work required during the construction period, including any costs and charges incurred as a result. Company marks connection charges incurred, if not otherwise agreed.

h) Assuring safety regulations applicable in those areas and to comply with the guidelines issued by Company.

i) Protection of the work already performed against damage and theft until acceptance; in particular protection against weather damages and ground water.

j) Locating and protecting existing pipelines and cables, both underground and in structural units. In case of laid open lines Contractor has to protect such until the appropriate authorities have been informed and consulted.

k) Obtaining of necessary acceptance from local authorities, including all own costs and charges incurred as a result, if not otherwise agreed.

Company supports Contractor in this respect if necessary and needed.

l) Carrying out the surveying work required during the construction period, including any costs and charges incurred as a result. Company marks connection charges incurred, if not otherwise agreed.

m) Assuring safety regulations applicable in those areas and to comply with the guidelines issued by Company.

n) Checking documents provided by Company, and any future documents provided by Company, to ensure that they are complete and technically suitable; Contractor is required to check all information provided; if Contractor believes that a discrepancy has arisen, it is required to point this out to Company without delay and in writing.

o) Observing the accepted engineering standards and codes of practice.

In so far as specific characteristics are stipulated by the written or unwritten rules of construction practice, such characteristics are deemed to be contractually agreed. If there are several technically feasible performance options, the one offering better quality must be chosen.

p) Preservation of evidence concerning adjacent development.

4. Contract Performance

4.1 In case Contractor has any concerns about the intended way in which work is to be carried out, about instructions issued by Company, about the quality of the materials and structural elements supplied by Company or about the performance of other contractors, Contractor is required to inform Company without delay and in writing before carrying out the works.

4.2 Contractor is required to inform Company without delay and in writing of any necessary deviation from the nature and scope of the agreed performance. Company’s prior written approval must be obtained for any such deviation, except in the event of imminent danger.

4.3 If work has to be discontinued on account of unavoidable stoppages or breakdowns at Company’s plants/sites, Contractor is not entitled to make any claims against Company.

5. Conduct during the performance of the contract

Contractor’s employees and agents are required, for reasons of security, to submit to the entry controls to Company’s facilities (if any) when working there, to conform to the normal hours of work and procedures, as well as to observe the safety regulations applicable in those areas and to comply with the Company’s instructions in that regard.

6. Materials, auxiliary resources, machinery and equipment

6.1 Subject to sub-section 6.4, all materials (e.g. general and construction materials, spare parts) as well as auxiliary resources (i.e. tools, equipment, machinery, vehicles, cranes, scaffolding, site huts, energy water etc.) are to be provided by Contractor without Contractor being entitled to additional remuneration. The relevant delivery notes must be submitted to Company for any deliveries to Company’s facilities.

6.2 Contractor is required to remove any material and auxiliary resources no longer required immediately after completion of the contract. Evidence of such material and resources having been previously delivered by Contractor must be provided when such items leave Company’s facilities.

6.3 Contractor shall allow Company, or a third party designated by Company, to share the use of auxiliary resources, particularly scaffolding and cranes during utilization time provided by Contractor. Contractor may charge Company a compensation customary in place for provision of scaffolding in excess of Contractor’s own utilization time. For cession of right to use cranes Contractor may charge Company the incurred machine hours a compensation customary in place.

6.4 If it has been agreed that material and/or auxiliary resources are provided in whole or in part be Company, Contractor is required to collect and immediately inspect such items from the relevant sections in Company’s facilities, quoting the order number and the purpose of those items. Immediately upon handover, all risk shall be transferred to Contractor. Company must be informed without delay and in writing of any complaints. Company will not accept complaints submitted at a later stage, unless Contractor proves that damages existed right upon handover of materials and auxiliary resources.

6.5 Contractor shall be responsible for storing and securing all materials and auxiliary resources. Upon vacating Company’s premises, prior to return of all materials and auxiliary resources needs to be verified. Company does not accept any liabilities for any compensation for the materials and auxiliary resources delivered by Contractor or for any other items belonging to Contractor and located at the construction site. This does not apply in case of Company’s negligence or one of Company’s employees.

7. Liability and insurance

7.1 Contractor is liable for damages according to the legal regulations. If third parties assert claims against Company for which Contractor is liable, Contractor is bound to immediately indemnify Company from such claims, unless Contractor proves that Contractor did not culpably cause the respective damages.

\(^1\) Except for Wintershall Dea Deutschland AG and its affiliated companies.
8. Remuneration, invoicing, payments

8.1 The agreed prices include remuneration for all goods, work and services required for the performance of the contract (in particular personnel, materials, auxiliary resources and the goods and services specified in these conditions); this also applies to partial performance not expressly mentioned in this contract, as well as to all trial runs and commissioning in so far as required for providing the individual goods, works and services.

8.2 All work and services, additional work and services and measures that become necessary to provide protection against damage and the effects of the weather until acceptance are included in the agreed prices. This does not apply to special winter construction measures.

8.3 Contractor is required to prepare the final invoice with all the necessary records, if Contractor – according to sub-section 14.1 of these terms and agreed in writing.

8.4 In accordance with provisions 46 and 48 of the Economic Code (EStG) Company is required – unless the Contractor submits a notice of exemption – to pay 15 % of the contract value to Contractors local tax office. To ensure that Company can satisfy this obligation, Contractor must provide the details of Contractor’s tax office, tax number and tax office’ bank data at the latest on submission of the invoice. Alternatively, the Contractor is allowed to submit the note of exemption together with the invoice to Company. Company expressly advises Contractor that the provision of these details is necessary if Contractor is in a pending or incoming due for settlement.

8.5 Company will not pay for any working hours expended by Contractor’s auxiliary persons. Indemnification coverage on the basis of proven performance records, unless otherwise mentioned in this contract, as well as to all trial runs and commissioning in these conditions); this also applies to partial performance not expressly agreed in writing.

8.6 Payment is only made if they exceed 10 % of the net order value and amounting to at least EUR 10,000.00.

8.7 Company will pay 90 % of the amounts shown on verifiable monthly interim invoices within the agreed credit period on the basis of proven performance records. The remaining 10 % will be paid with the final payment and will be stated as final liability of the partial invoice until final regulation. In case of a net order amount of up to EUR 50,000 Company will pay 100 % of the amounts shown on verifiable monthly interim invoices within the agreed credit period on the basis of proven performance records, unless otherwise agreed in writing.

8.8 Company will pay 100 % of the amounts shown on verifiable monthly interim invoices within the agreed credit period on the basis of proven performance records, if Contractor – according to sub-section 14.1 of these terms and conditions for construction and installation work - deposits a security amounting to 10 % of the net order value plus the rate of statutory value-added tax (VAT) for the duration of contract execution.

8.9 Partial payments are only made if they are not increased by increases in labour costs, the price of materials, social security contributions, tax rates or similar until acceptance.

8.10 An exception to this is any change in the rate of value-added tax (VAT).

8.11 Company will check and pay the final invoice within 30 days of receipt, deducting the amount retained as security as agreed in sub-section 14.3.

8.12 In accordance with this, if the work has not been completed, interim invoices shall be submitted. Only partial payments are made if they exceed 10 % of the net order value and amounting to at least EUR 10,000.00.

9. Amended or additional work

9.1 Contractor is required to carry out amended and/or additional work at Company’s request if such work becomes necessary for the performance of the contractually agreed work. This does not apply if Contractor’s operation is not set up appropriately. Company has the right to modify the construction plan. Contractor’s remuneration is determined on the basis of the price established for the work, hereunder taking the special costs of the work demanded into account.

9.2 If work not foreseen in the contract and/or additional work is demanded by Contractor, Company is only entitled to special remuneration if it immediately and in writing advises Company of such a claim, duly submits a supplementary offer, agrees on costs with Company as well as on the temporal/deadline consequences before commencement of the work. Invoicing by Contractor of such modified/additional work is only possible upon presentation of a written order signed by Company.

9.3 There is no entitlement to additional remuneration if Contractor’s claimed supplement is based on a new work which should have been foreseeable by diligent Contractors from the tender documents (construction plans and specification) in conjunction with the site inspection and where nevertheless no reminding liability on the part of Contractor until the contract was concluded. Such work is then deemed to be additional work that is included in the calculations of the price requested together with the price calculation of other work.

9.4 Orders for amended or additional work are only effective if they are issued by Company in writing. As an exception, Contractor is required to obtain subsequent written confirmation for additional work carried out upon request of authorized personnel of Company on site, as far as such work has not already been included in the contract.

10. Periods of performance

10.1 The contractually agreed dates or periods allowed are binding (contract period). This applies in particular to the agreed completion date, but also to the agreed commencement of work and to all interim dates, in particular the dates stipulated in a construction progress schedule, if they effect coordination of other works.

10.2 Contractor is required to provide sufficient personnel, equipment, scaffolding, materials or structural components on site to allow Contractor to meet the deadlines even under external influence not caused by Company. If this is not the case, Contractor is required to remedy the situation immediately at Company’s request.

10.3 If Contractor believes to be hindered in the proper execution of the work, Contractor is required to notify Company of this without delay and in writing. If Contractor fails to provide such notification, Contractor is required to bear the costs of any resultant shortcomings and damage.

11. Functional tests and trial operation after installation work at plants

11.1 The plant is completed when the installation work has been finished. The functional tests then commence with and without load for the individual plant units, plant groups and the plant as a whole.

11.2 The plant is operational on completion of functional tests. If the plant proves to be ready for operation after commissioning, trial operation must be started immediately to determine the serviceability of the plant, immediately to determine the serviceability of the plant.

11.3 During the trial operation the plant is run in accordance with a program to be stipulated by Company, although it will be running under the supervision of Contractor and at Contractor’s responsibility.

11.4 Damage to the plant/machinery arising during the trial operation is the responsibility of Contractor unless Contractor can demonstrate that Company’s operators acted contrary to the operating instructions made known and explained by Contractor.

11.5 An agreement with the other companies involved as well as Company’s production and maintenance departments must be reached via Company's site office with regard to commencing the trial operation.

11.6 The transfer of risk, acceptance and start of the warranty or limitation period are not associated with the commencement of trial operation or with any other events during the trial operation.

12. Acceptance

12.1 Formal acceptance is effectuated by Company’s signing of the acceptance form. The option of acceptance by putting the plant into operation is excluded. Both parties have the right to invite an acceptance inspection with seven working days’ notice.

12.2 Contractor is required to attend during the acceptance procedure and to provide the necessary labor and measuring equipment.

12.3 Presentation of all necessary documentation is an essential part of acceptance. Acceptance can be denied should required documentation be missing.

12.4 The option of notional acceptance provided for in article 640 paragraph 1 sentence 4 BGB is excluded.

12.5 Acceptance via completion certificate is excluded.
13. Warranty
The warranty period for all work provided by Contractor is regulated by the German Civil Code (BGB).

14. Securities
14.1 Unless otherwise agreed in writing, Contractor shall provide security of 10% of the net contract sum of EUR 50,000 and above plus the statutory rate of value-added tax for the duration of the contract performance. This contract performance security covers the performance of all obligations arising from the contract, in particular the performance of the work stipulated in the contract, excluding invoicing, remedying defects and compensating for possible claims of Company against Contractor in case of non-payment of minimum wages, non-payment of contribution to the "Urlaubskaisse" and non-payment of social insurance contributions as well as the reimbursement for overpayments including interest. Contract performance security is to be provided in the form of an absolute guarantee, unlimited in time, from a major German bank or a German credit insurer. The security bond must include a waiver of the defense of set-off and of avoidance (article 770 BGB), the defense of preliminary proceedings against a principal debtor (article 771 BGB), as well as the right of deposit with a public authority. Contractor shall bear the costs for the guarantee.

Contract performance guarantee must be handed over to Company within 14 days after the contract execution.

14.2 If the guarantee is not handed over before the first interim invoice is due for payment, Company may retain the security payment from this until the guarantee is provided and may, if appropriate, retain amounts from subsequent interim invoices according to sub-section 8.3.

14.3 If it has been agreed in writing, Company will retain 5% of the net billing total amounting to at least EUR 50,000 and above plus the statutory value-added tax from the final account as security. This is paid out to Contractor subject to Contractor providing proof for the warranty for the same amount, with the same requirements applying to the security bond as set out in sub-section 14.1.

Security for warranty extends to settlement of claims of the warranty including compensation as well as to reimbursement of overpayments including interest.

14.4 The working hours guarantee mentioned in sub-section 14.1 is returned on Contractor’s written request after acceptance and presentation of the final accounts as stipulated in the contract, when Contractor has performed the work stipulated in the contract, satisfied any claims (including third party claims) and has provided agreed security for the warranty period.

The warranty guaranteed in sub-section 14.3 is returned by Company on Contractor’s written request when the limitation periods for the warranty have expired and the claims raised until that time have been met.

15. Termination
15.1 Notwithstanding its other rights, Company may terminate the contract for a serious reason if Contractor is seriously in breach of the contract.

15.2 A serious breach of the contract is deemed to have occurred in particular if Contractor does not desist from non-trivial behavior that is contrary to the terms of the contract, despite a warning having been given under threat of termination of the contract.

15.3 Serious breach of contract is deemed to have occurred in case of significant violation of Company’s HSE-regulations.

15.4 A serious breach of contract is also deemed to have occurred if Contractor instructs a sub-contractor without the written approval of Company or delivers a delivery transfer by the sub-contractor. In such a case Contractor is entitled to terminate the contract if Contractor has not removed the sub-contractor acting without written approval from the contract, within a period stipulated by the sub-contractor. In such a case Contractor is entitled to terminate the contract if Contractor has not removed the sub-contractor acting without written approval from the contract, within a period stipulated by the sub-contractor.

15.5 In case of termination, a general joint site measurement must be carried out within seven working days of its being requested by one of the parties to the contract.

15.6 After termination of the contract because of serious reason, Company is entitled to have the part of the performance not yet completed carried out by a third party at Contractor’s expense. Any further claims, in particular for compensation, remain unaffected.

16. Overpayments
In the event of Company claiming recovery from overpayments (articles 812 and further BGB), Contractor may not invoke failure of enrichment (article 818 paragraph 3 BGB).

17. HSE and Sustainability
17.1 Contractor shall ensure in sustainable development and complies with internationally recognized fundamental standards for operational safety, health, environmental, social and corporate governance (hereinafter "ESG- Standards") of the company specified in the ESG-Standard of the "Supplier Code of Conduct" (https://wintershalldea.com/en/procurement). Company expects Contractor to adhere to these ESG-Standards. Furthermore, Company requests Contractor to urge its sub-contractors to also comply with the respective standards. Company is entitled to check itself or via instructed third parties adherence to ESG-Standards.

17.2 During the performance of the contract, Contractor has to observe all regulations and guidelines for health, safety and environment (HSE guideline of Company) as stipulated in the contract order as well as actual local safety instructions of Wintershall Dea accessible under https://wintershalldeia.com/en/procurement. Furthermore, Contractor has to adhere to all legal, governmental and other HSE-requirements as well as Company-specific safety instructions.

18. German Minimum Wages Act (MiLoG)
Where the Contractor and / or its subcontractors and / or employment agencies used by the Contractor or subcontractors come within the scope of the German Minimum Wages Act (MiLoG), the following provisions shall apply.

The Contractor guarantees that it complies with the provisions of the current version of the MiLoG. Moreover, the Contractor undertakes to use only subcontractors or employment agencies that have provided to the Contractor a guarantee to an identical extent in written and, moreover, have undertaken in writing that they will demand such assurance guarantee from other subcontractors or employment agencies as may be engaged.

The Contractor shall indemnify the Company now against claims any employee of the Contractor or of a subcontractor, regardless of level, or an employment agency used, in accordance with section 13 MiLoG in conjunction with section 14 AEntG, may bring forward towards the Company as the guarantor of further transfer minimum wages. The right shall mature as soon as any of the aforementioned claims is brought against the Company.

The Company is entitled to terminate a Contract without notice if and when the Company is made liable as guarantor according to section 13 MiLoG in conjunction with section 14 AEntG due to the installation services hereunder. Moreover, the Contractor shall accept liability vis-à-vis the Company for any damage that may be suffered by the Company through failure to meet the above-mentioned guarantee of the Contractor. Upon request at any time the Contractor shall submit to the Company working hours lists (including previous lists), the wage accounting based thereon and verification of the proper deduction of the employer’s contribution to social insurance.

19. Publicity Ban, Severability Clause, Applicable Law, Place of Jurisdiction
19.1 The Contractor may only refer to or publicly disclose otherwise its business relationship with the Company with the prior written consent of the Company, or where this is unavoidable in order to fulfill the contract.

19.2 The invalidity or unenforceability of any provision or part of a provision of the contract shall not affect the validity of the entire contract.

19.3 The contract shall be interpreted as 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.

19.4 At the Company’s option the place of jurisdiction shall be either the court competent for the Company’s registered office or the court competent according to the applicable law.

20. Data Protection
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 personal data are processed 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 risks of processing 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 use and 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 data breach, in particular of Personal Data and its agents, in case of possible breach of security, no later than 24 hours after having become aware of it. Contractor shall inform Principal in case of a data breach, in particular of Personal Data and its agents, in case of possible breach of security, no 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.