



wintershall dea

Terms and conditions of Wintershall Dea GmbH and associated companies¹ 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 applicable at 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 whole construction period until the time of acceptance. Company has to be notified without delay by the Contractor in case of a change of the site manager. This change has to be mutually agreed upon.
- 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 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.
- 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 such in the 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 the compliance with the accident-prevention measures stipulated by the employers' liability insurance association as well as the HSE guidelines issued by Company.
 - 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. Company 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 main axes of the physical structure and provides vertical control.
 - h) Preparing all as-completed documents and revision plans as well as submission of the operating documents, operating instructions and maintenance instructions, if not agreed otherwise before acceptance of the works.
 - i) Provision and maintenance of all necessary access routes to the construction segment and affixing a construction sign in consultation with Company, if not agreed otherwise.
 - j) Daily cleaning of the site to remove waste, packaging material etc. relating to this contract; disposal of such waste.
 - k) Cleaning, maintenance and securing of paths and roads.
 - l) Participation in all construction meetings relating to this contract.
 - m) Continuous employment of at least one German-speaking employee on site, in all key positions from foreman upwards.

- 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 by 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 liability, nor will Company provide 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 Contractor'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.

- 7.2 During execution of order Contractor is required to take all necessary measures and safety precautions at its own costs in order to avoid damage to personal, health, environment, property and fortune.
- 7.3 Contractor is required to maintain an adequate indemnity insurance of industrially accepted standard at its own costs with a lump-sum coverage of minimum EUR 5,000,000 for damages to personal, property and fortune and a maximum annual indemnification of EUR 10,000,000 for such damages caused by Contractor and Contractor's auxiliary persons. Indemnification coverage has to be proven by Contractor to Company upon request. Contractor's contractual and legal liability remains unaffected through range and amount of its insurance coverage. In so far as Contractor is liable and third parties assert claims against Company, Contractor indemnifies Company from such third party claims.
- 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, work 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
- The agreed prices are not affected by increases in labour costs, the price of materials, social security contributions, tax rates or similar until acceptance. An exception to this is any change in the rate of value-added tax (VAT). 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 remaining 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.
- 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.
- Partial payments are only made if they exceed 10 % of the net order value and amount to at least EUR 10,000.
- 8.3 Contractor is required to prepare the final invoice with all the necessary original documents, as recognized by Company per signature, in a verifiable form, and to send these to Company within four weeks of acceptance. 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.
- 8.4 In accordance with articles 48 and further German Income Tax Law (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 a prerequisite for the payment becoming due for settlement.
- 8.5 Company will not pay for any working hours expended by Contractor's supervisory staff on paper work carried out in the interests of Contractor, which also includes writing out the daily time sheets, as well as for the expenditure of time and materials on fulfilling the obligations set out in sections 3, 4 and 5.
- 8.6 In so far as billing and remuneration have been agreed by site measurements, the following applies in addition to sub-sections 8.1. to 8.5:
- a) If standard rates have been arranged on the basis of a mutually agreed assumption of a particular total contract scope, then adjustment of the agreed standard rates may be claimed if the scope of work actually provided is more than 25 % above or below the assumed total scope. Contractor shall inform Company without delay if it becomes evident that the level of 25 % above or below the scope of the contract will be exceeded.
- b) Only such services/performances shall be deemed billable in partial or final invoices that are based on a site measurements document to be prepared jointly on site, in which all billable items are verifiably documented, and which must be signed by Contractor and Company. If Company does not fulfil its obligation of setting up such joint measurements and signing the jointly agreed billable positions within 14 days after notification of Contractor about billable services/performances, Contractor may submit partial or final account together with verifiable documentation (photo documentation, plans etc.).
- c) Upon Company's request, Contractor shall provide evidence quantity surveys, site measurement lists, original receipts and certificates of material consumption. Quantities must be ascertained on the basis of mathematical formulae (not by using an approximation method).
- 8.7 In so far as billing and remuneration have been agreed by site measurements, the following applies in addition to sub-sections 8.1. to 8.5: Wage hours shall be entered daily and completely, in time sheets provided by Company, including the exact time of arrival and exit from premises. Time sheets need to be submitted to Company on a weekly basis, for inspection and approval. When entering actual working hours, legally required break periods shall be calculated as a minimum.
- a) Company will reimburse Contractor or the agent for the documented costs incurred as severance pay, commuting and travelling expenses paid to the deployed employees in so far as such payments have been included in the respective individual contracts.
- b) Accommodation costs (generally excluding breakfast) shall only be reimbursed upon submission of receipts, and if such reimbursement has been included in the respective individual contract.
- c) In the absence of any agreements on cost rates, Company shall remunerate only verified actual working hours (breaks not included), by an appropriate hourly rate, for each employee deployed by Contractor, respectively Contractor's agent. This rate shall not exceed the standard wage to be paid by Contractor / Contractor's agent, plus an appropriate company margin.
- 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 amended work is demanded by Company, Contractor 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 circumstances 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 indication of this was given with details of the additional costs before 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 specification.
- 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 continuation of other lots.
- 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.
- 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 effected 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 assist 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 as stipulated in the contract, including invoicing, remedying of defects and compensation, possible claims of Company against Contractor in case of non-payment of minimum wages, non-payment of contribution to the "Urlaubskasse" and non-payment of social insurance contribution 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 being executed.

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 security 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 contract performance 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 guarantee mentioned 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 permits and/or tolerates the further transfer by the sub-contractor. In such a case Company is entitled to terminate the contract if Contractor has not removed the sub-contractor acting without written approval from the construction site within a period stipulated by Company.

15.5 In case of termination, a joint general 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 for 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 Company strives for sustainable development and complies with internationally recognized fundamental standards for operational safety, health, environmental, social and corporate governance (hereinafter „ESG-Standards“). Company specified its understanding of ESG-Standards in its „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 contract performance Contractor's employees and its agents have 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://wintershalldea.com/en/procurement>. Furthermore, Contractor has to adhere to all legal, governmental and other HSE-requirements as well as Company-specific or construction site-specific regulations that have to be

handed over to Contractor by Company's site supervisor and/or plant manager before beginning work.

17.3 Contractor furthermore guarantees that its employees and agents are informed about and adhere to plant and/or construction site-specific safety instructions set up by the responsible supervisor and/or plant manager and to the site rules and regulations during contract performance.

17.4 Contractors disposing of a SCC/SGU certification or a comparable certification regarding security organization, will be particularly considered when offering equivalent HSE services. Contractors without certification must prove quality of their security organization within the scope of project requirements by individual agreement. Contractor provides proof of security concepts of possible sub-contractors on whichever level.

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 writing 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 payment of the minimum wage. The right of indemnity 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 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.

19.4 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 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.