



**Terms and conditions of WINGAS GmbH / WIEH GmbH and associated companies for construction and installation work**  
(hereinafter referred to as Company) – issued: November 2016

**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 Company shall not be part of the contract. Even if the goods, work or services have been supplied and accepted by Company without reservation, other terms and conditions stipulated by Contractor shall not be part of the contract.

**2. Contractual basis**

The following parts of the contract shall apply as contractual basis:

- a) the order confirmation or contract release order from Company.
- b) any minutes of the negotiation signed by Company and Contractor or agreed by e-mail and accepted in writing (also by e-mail) by both parties.
- c) any specifications, tender documents from Company, plans, etc.
- d) the general terms and conditions of construction and installation work of WINGAS GmbH / WIEH GmbH and associated companies
- e) part C of the German regulation governing construction work contracts in the version applicable at the time when the contract is concluded and
- f) accepted engineering standards.

These parts of the contract listed under section 2 a) to f) are listed together and complement each other. In the event of contradictions between the individual parts of the contract, these shall apply in the order set out above in section 2 a) to f).

**3. Scope of work**

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

- 3.1 Contractor is required to appoint in writing a site manager for the whole construction period until the time of acceptance. No change of such appointment is permissible without notification of and consent by Company.
- 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. If Company increases the scope of services, the additional costs for the site facilities shall be included in the price calculations of the addendum by Contractor.

- b) Assuming supply of electricity, water and sewage services to the construction segment during the 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 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) While conducting its work, Contractor shall watch out for any existing cables in the ground and in structural elements and protect any exposed cables until the authorities responsible have been informed and called in.
- f) Obtaining the necessary acceptance from local authorities, including all own costs and charges incurred as a result, if not otherwise agreed. Company supports Contractor with this if and where necessary.
- g) Carrying out the surveying work required during the construction period, including any costs and charges incurred as a result; Company marks out the main axes of the physical structure and specifies the necessary datum lines.
- 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 until final acceptance of the works 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) Taking part in all construction meetings that relate to this contract.
- m) continuous employment of at least one German-speaking employee on site, in all key positions.
- 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 Contractor is required to inform the Company without delay before commencement of the work and in writing if it has any concerns about the intended way in which the 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.
- 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, which do not fall within the Company's area of risk or responsibility, 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 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. Material, auxiliary resources**

- 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, in particular scaffolding and cranes provided by Contractor. , Contractor shall be entitled to charge Company the customary local fee for providing scaffolding beyond Contractor's own period of use. When granting permission to use cranes, Contractor shall be entitled to charge Company the customary local fee for the machine hours accrued.
- 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 upon handover and in writing of any complaints. Company will not accept complaints submitted at a later stage, unless Contractor proves that damage to the material and/or auxiliary resources handed over already existed at the time of the handover.
- 6.5 Contractor shall be responsible for storing and securing all materials and auxiliary resources. Upon vacating Company's premises, prior 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 the case of wrongful conduct on the part of Company or an employee of Company.

## **7. Liability and insurance**

- 7.1 The liability of Contractor in respect of damage shall be subject to the statutory provisions. If a third party lays claim to Company because of damage that falls within the responsibility of Contractor, Contractor is obligated to exempt Company from these claims immediately, unless Contractor proves that it did not culpably cause the damage concerned.
- 7.2 While carrying out its work Contractor shall, at its own expense, take all the precautions and safety measures necessary to prevent any damage to people, health, the environment and property.
- 7.3 Contractor shall, at its own expense, maintain sufficient liability insurance in line with customary industrial standards for damage that it and those contracted for the fulfillment of contractual obligations are responsible for, with coverage per claim for damage at a flat rate of at least EUR 5,000,000 for personal, property and financial losses and an annual maximum indemnification of at least EUR 10,000,000. The level of coverage shall be proved to Company upon demand. The contractual and legal liability of Contractor remains unaffected by the scope and level of its insurance protection. Insofar as Contractor is liable and third parties make claims upon Company because of an instance of damage, Contractor shall exempt Company from these 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, work 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 services required for Winter construction work.

For the whole contractually agreed construction period, 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).

In so far as part payments have been agreed, Company will only pay 90 % of the amounts shown on verifiable 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. With a net contract sum of up to 50,000 € (inclusive), Company shall, unless otherwise agreed in writing, pay 100% of the amounts shown on verifiable interim invoices within the agreed term of payment for monthly interim invoices on the basis of proven performance records.

In so far as part payments have been agreed, Company will pay 100 % of the amounts shown on verifiable interim invoices within the agreed credit period on the basis of proven performance records, when Contractor provides a security of 10% of the net contract

sum plus VAT at the statutory rate for the duration of the performance of the contract in accordance with sub-section 14.1 of these conditions for construction and installation work.

Partial payments are only made if they exceed 10 % of the estimated total remuneration and amount to at least € 10,000. The interim invoices should be in line with the sample "interim invoices" found at <https://www.wingas.com/en/service/market-partners.html>.

- 8.3 Contractor is required to prepare the final invoice with all the necessary original documents, 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 of the German Income Tax Law (EStG) Company is required – unless the Contractor submits a notice of exemption – to pay 15 % of the contract value to Contractor's local tax office. To ensure that Company can satisfy this obligation, Contractor must provide the details of Contractor's tax office 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 8.7.:
  - a) If standard rates have been arranged on the basis of a mutually agreed assumption of a particular quantity calculation for a service item, 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 quantity calculation. 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, which must be signed by Contractor and Company and in which all billable items are verifiably documented..If Company does not fulfill its obligation to prepare the joint site measurements document and sign the jointly acknowledged billable items within 14 days following notification by the Contractor of billable deliveries/services, Contractor can submit the partial or final invoice including the measurements document with verifiable documentation (photo documentation, plans etc.).
  - c) Quantity surveys, site measurement lists, original receipts and certificates of material consumption must be made available by contractor to Company upon Company's request. 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 time required, the following applies in additions to sub-sections 8.1. to 8.7.:
  - a) 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. When entering

- actual working hours, legally required break periods shall be calculated as a minimum.
- b) 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.
  - c) 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.
  - d) 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 reserves the right to make changes to the construction design. 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 and agrees on costs with Company, before commencement of the work. Invoicing by Contractor of such amended and/or 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. Contractor must ensure that services ordered on the building site by way of exception by an authorized representative of Company are subsequently confirmed in writing, insofar as these were not already in the contractually agreed services.

## **10. Periods of performance**

- 10.1 The contractually agreed dates or periods allowed are binding. This applies in particular to the agreed completion date, but also to the agreed commencement of work. All the intermediate dates set out in the construction timetable are also binding if they are crucial for the continuation of other trades.
- 10.2 Contractor is required to provide sufficient personnel, equipment, scaffolding, materials or structural components on site to allow Contractor to meet the deadlines. 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 Once the plant has been completed, it must be commissioned and trial operations must be started immediately to determine the serviceability of the plant. After the successful conclusion of the plant's trial operations, it is deemed operative.

11.3 During the trial operation the plant is run in accordance with a programme 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 period are not associated with the commencement of trial operation.

## **12. Acceptance**

12.1 Formal acceptance is effected by Company's and Contractor'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 labour and measuring equipment.

12.3 The existence of the required documentation is an essential part of the acceptance procedure. Formal acceptance can be refused if this documentation is not available.

12.4 The option of notional acceptance provided for in article 640 paragraph 1 sentence 3 BGB is excluded.

12.5 The option of acceptance by certificate of completion is excluded.

## **13. Warranty**

The warranty period for the services of Contractor is based on the provisions of the German Civil Code (Bürgerliches Gesetzbuch).

## **14. Securities**

14.1 If net contract sum amounts to € 50,000 or more, Contractor shall provide security of 10 % of the net contract sum plus the statutory rate of value-added tax for the duration of the

contract performance; unless otherwise agreed in writing. 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, any claims by Company against Contractor for non-payment of the minimum remuneration, non-payment of contributions to the paid-leave fund and withholding 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.

The contract performance guarantee must be handed over to Company within 14 days of the contract being executed.

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

14.3 If net contract sum amounts to € 50,000 or more, Company will retain 5 % of the net billing total plus the statutory value-added tax from the final account as security, unless otherwise agreed in writing. 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.

The security for the warranty covers the fulfillment of warranty claims including damages compensation and the reimbursement for overpayments including interest.

14.4 The contract performance guarantee set out in sub-section 14.3 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 set out 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 behaviour 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 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 for a 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. Overpayment**

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 conforms with the principle of sustainable development and respects internationally recognized fundamental standards for safety at work, health and environmental protection, labor rights and human rights as well as responsible corporate governance (hereinafter "ESG standards"). Company has described its understanding of ESG standards in the code of conduct for suppliers (<https://www.wingas.com/en/service/market-partners.html>). Company expects Contractor to comply with the ESG standards. In addition, Company calls on Contractor to urge its subcontractors to comply with equivalent standards. Company is entitled to check, either itself or by a third party commissioned by Company, that ESG standards are being complied with.
- 17.2 For performance of the contract the employees of and those commissioned by Contractor shall fulfill the provisions and guidelines for health, safety at work and environmental protection specified in the order (HSE policy of Company) as well as the local safety instructions of WINGAS, the current version of which is available at <https://www.wingas.com/en/service/market-partners.html>. In addition, all relevant legal, official and other HSE regulations, as well as the plant-specific and/or installation site-specific safety instructions to be issued by the plant and/or installation management responsible at Company to Contractor before beginning the installation work, must be observed.
- 17.3 Contractor also guarantees that its employees and those commissioned by Contractor are informed about plant-specific and/or installation site-specific safety instructions and Company's site rules – drawn up by the plant and/or installation management responsible at Company – and oblige them to conform with them for the performance of the contract.
- 17.4 With HSE performance being equal, contractors that present SCC/ SGU certification or comparable certification of the safety organization will be given special consideration. Contractors without this certification must still prove the quality of their safety organization within the framework of the project requirements on the basis of individual agreement. Contractor provides proof of the integration of subcontractors, regardless of which grade, into the safety concept.

## **18. German Minimum Wage Act (MiLoG)**

Insofar as Contractor and/or sub-contractors commissioned by Contractor and/or recruitment agencies used by Contractor or by sub-contractors fall within the scope of

the German Minimum Wage Act (MiLoG) the following applies: Contractor ensures that it complies with the provisions of MiLoG in its current version. Contractor also ensures that it will only use sub-contractors or recruitment agencies that have given it written assurances of this and who have also assured in writing that they will demand this assurance from other subcontractors or personnel recruitment agencies to be commissioned.

In the event that an employee of Contractor or an employee of a subcontractor used, regardless of which grade, or of a personnel recruitment agency as guarantor, makes a claim to Company for payment of the minimum wage in accordance with § 13 MiLoG in combination with § 14 of the German Law on the Posting of Workers (AEntG), Contractor shall release Company from such claims forthwith.

The exemption from liability must be granted as soon as one of these claims is asserted against Company. Company is entitled to terminate a contract without observing any period of notice if a claim is made against Company within the framework of the construction work to be undertaken in this contract from its liability as guarantor in accordance with § 13 MiLoG in combination with § 14 AEntG.

In addition, Contractor is liable to Company for any damage that is caused to Company from the non-compliance with the above-mentioned assurance on the part of Contractor. Contractor must present Company with lists of working hours (also retroactively), the wage accounting based on this and proof of the proper deduction of employer contributions to social security to the social security providers at any time and upon demand.