

# Conditions of Purchase of WINGAS GmbH, WIEH GmbH and its affiliated Companies Located in Germany for Consulting and Training Services

Status: November 2016

## 1. General

**1.1** These conditions of purchase form an integral part of all (future) contracts on the provision of consulting and training services between the supplier of goods or the service provider, respectively, (hereinafter "Contractor") and WINGAS GmbH or its affiliated companies located in Germany, respectively, (hereinafter "Company"). They shall apply if and to the extent that no other terms have been agreed upon and stipulated in the individual contract. Any terms of business of the Contractor are only valid if and to the extent the written agreement of the Company is received by the Contractor expressly confirming the Company's acceptance of the Contractor's terms of business. In particular, any references of the Company to correspondence from the Contractor containing or referring to the Contractor's terms of business shall not constitute the Company's acceptance of the applicability to this contract of such terms of business.

**1.2** These conditions of purchase shall remain valid and shall prevail over any terms of business of the Contractor even if the Company should accept any goods / services in the knowledge that the Contractor has purported to deliver them on terms of business of the Contractor that deviate from or are in conflict with these conditions of purchase.

## 2. Bid

**2.1** Bids and price quotes shall not be remunerated and shall not create any obligations on the part of the Company.

**2.2** In its offer the Contractor shall explicitly expose any discrepancies between its offer and the Company's inquiry. If the Contractor has an alternative solution for an inquiry which is technologically or economically superior it shall additionally present this offer to the Company. These deviating or additional positions are to be disclosed with separate prices. The conditions of the offer shall apply to the location as specified in the inquiry and shall be based on the assumption that Contractor's employees or agents from the nearest headquarters (local team composition) are used. If another team composition is deemed necessary by the Contractor the additional costs incurred shall be borne by the Contractor.

**2.3** Insofar as not explicitly agreed otherwise in a framework order the Company shall have no purchase obligation with regard to possible total quantities / contingents defined in the framework order.

## 3. Obligations to Provide Assistance and Materials; Independence

**3.1** The Contractor shall specify expressly and finally in its offer any necessary of the Company to provide assistance and materials. Apart from the obligations to provide assistance and materials, explicitly stipulated in individual contracts, the Contractor can only request further obligations to provided assistance or materials from the Company insofar as these are necessary for the proper provision of the contractual service and are deemed reasonable for the Company in particular by taking into consideration the interests of the company as well as the required time and financial expenses. The Company can satisfy the obligations to provide assistance and materials, for which it is responsible, itself or by third parties. The Contractor shall

inform the Company in time about the type, scope, time and other details of the assistance and material provision service, which was to be provided by the Company, unless the respective details can be derived from the order. The Contractor can only refer to a non-fulfillment of an obligation to provide assistance and materials by the Company if it has set the Company a reasonable final deadline in writing and informed it about the legal and actual consequences of the non-fulfillment.

**3.2** The Contractor will act solely as an independent service provider and nothing contained in the contract will at any time be construed to create the relationship of employer and employee, Company and agent, partners or joint ventures between Company and the Contractor or Company and the Contractor's representatives, employees, personnel, partners or agents.

## 4. Deadlines and Partial Provision of Services

**4.1** The Contractor must comply with the agreed dates of provision of services, respectively. Advance provision of services or partial provision of services require the Company's prior agreement.

**4.2** If the Contractor recognizes that it will not be able to fulfill its contractual obligations either in full or in part, or not within the stipulated timeframe, it must notify this to the Company in writing forthwith. The notice must state both the reason(s) for the delay and the predicted delay in delivery time. Any acceptance by the Company of a delayed or partial provision of services shall by no means constitute a waiver of any rights of the Company related to late or partial provision of services.

**4.3** If any documents are being prepared by the Company to enable the Contractor to carry out the order, it is the responsibility of the Contractor to request these documents in due time.

## 5. Sustainability, Business Ethics

**5.1** The Company conducts its business in accordance with the principle of sustainable development and adheres to internationally recognized fundamental standards for occupational health and safety, environmental protection, labor and human rights as well as responsible corporate governance (hereinafter "ESG Standards"). The Company has described its understanding of the ESG Standards in the Supplier Code of Conduct (<http://www.wingas.de>). The Company expects the Contractor to adhere to the ESG Standards. Furthermore the Company calls upon the Contractor to ensure that all its subcontractors of any tier adhere to the ESG Standards likewise. The Company shall have the right to check adherence to the ESG Standards, either itself or through third parties commissioned by the Company.

**5.2** The Contractor undertakes not to use any illegal or unethical methods in order to gather or to obtain any information or data for the purpose of the services. In particular, the Contractor agrees to fully comply with all applicable laws, regulations and administrative orders as well as the SCIP (Strategic and Competitive Intelligence Professionals) Code of Ethics for CI Professionals (available at <http://www.scip.org>). If it is explicitly agreed and understood that the Contractor shall for the specific purpose of the respective purchase order refrain from conducting any interview (either directly or indirectly) with active or formerly

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active employees, officers, directors or members of the management of any direct or indirect competitor of Company as well as customers, suppliers or service providers of any of the competitors in order to obtain or gather information or data that can be construed as a trade secret (e.g. within the meaning of § 17 UWG). For the avoidance of doubt, the foregoing provision shall not ban the Contractor from speaking, interviewing and communicating with active or formerly active employees, officers, directors or members of the management of any direct or indirect competitor of Company and third parties about general topics relating to or in connection with the Project (e.g. general market trends). In addition, the Contractor shall be free to use for the purpose of the Project information and data that have been disclosed by third parties or directly or indirectly competitors to the Contractor unrelated to any part of the Project provided that such third party or competitor is not, to the best knowledge of Contractor, bound by any confidentiality obligation or any other obligation of secrecy with respect to such information.

**5.3** While performing the contract, the Contractor must adhere to the occupational health and safety and environmental protection requirements as specified in the Company's purchase order.

### 6. Performance of Services and Quality

**6.1** The Contractor shall provide the services in accordance with the contract and with utmost care.

The Contractor warrants that employees and agents deployed by it meet the requirements and qualifications necessary to perform the services. Upon Company's request the Contractor shall prove that such employees and agents fulfill the requirements set forth in the respective contract by submitting the relevant qualifications to Contractor. The Company reserves the right to make the deployment of the employees or agents dependent on the results of a qualifying examination to be conducted by the Company. The occupational promotion of employees during the term of the contract, shall not entitle Contractor to increase in the daily rates.

**6.2** The Contractor shall carry out and maintain effective quality assurance and, if requested, demonstrate this to the Company. The Contractor shall adhere to a quality management system as per ISO 9000 ff. or to a similar system of equivalent standard upon the Company's request. The Company shall have the right to inspect this quality assurance system, either itself or through third parties commissioned by the Company.

**6.3** Any changes to the services to be provided require the prior written consent of the Company.

### 7. Testing and Inspection before and in the Course of Contract Fulfillment, Working Hours

**7.1** The Company shall be entitled to carry out any inspections at any time during the performance of the contract by the Contractor. Such inspections shall not constitute a waiver of any contractual or legal rights of the Company.

**7.2** With regard to the working hours, statutory provisions apply. The application of a daily rate always assumes the Contractor's employee will work a minimum of eight (8) hours. Any overtime is included in the daily rate.

### 8. Use of Subcontractors

Third parties (in particular any subcontractors) may only be employed or replaced by the Contractor with the Company's prior written consent. If the Contractor intends to use subcontractors to perform the contract from the outset, the Contractor must inform the Company of this when submitting its offer.

### 9. 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 Principal now against claims any employee of the Contractor or of a subcontractor, regardless of level, or a employment agency used, in accordance with section 13 MiLoG in conjunction with section 14 AEntG, may bring forward towards the Principal 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 Principal.

The Principal is entitled to terminate a Contract without notice if and when the Principal 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 Principal for any damage that may be suffered by the Principal through failure to meet the above-mentioned guarantee of the Contractor. Upon request at any time the Contractor shall submit to the Principal 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.

### 10. Travel costs, travel time

**10.1** Travel to anywhere other than the individual location (project or venue) mentioned in the contract (purchase order or call-off) requires the prior written consent of the Company. The Contractor shall select the most economical solution considering time and cost and provide evidence of this upon request by the Company. Travel expenses shall be shown separately in all bills. Upon request by the Company, the Contractor shall submit relevant documents as proof.

**10.2** Reimbursable travel expenses of the Contractor to locations of the Company include:

– Transportation costs:

Own vehicle of the Contractor: a flat rate according to R 9.5 LStR German Wage Tax Policies (e.g. car EUR 0.30)

Public transportation: Second class: effective costs according to receipt

Rental car, taxi: effective costs according to receipt

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- Airplane: (Economy) except intercontinental (business): effective costs according to receipt
- Overnight accommodation costs on site: maximum of EUR 150 plus VAT per night (purely lodging): effective costs according to receipt
  - Ancillary travel expenses: Luggage storage, parking fees: effective costs according to receipt

**10.3** The above travel expenses provided in clause 10.2 shall not apply if

- Company and Contractor have made different arrangements in writing (e.g. travel expenses included in the hourly rate) or
- The distance between the Contractor's company headquarters (postal address) and the defined place of activity is less than fifty-one (51) km. For longer distances, no reimbursement is made for transportation costs pertaining to the first fifty (50) kilometers, provided the Contractor's own vehicles are used.

No refund shall be made for

- Costs for meals or job-related telephone calls
- Costs for third-party reports (e.g. multi-client studies), translation services or supplies and materials (if these are required, there should be listed separately in the offer)

**10.4** Travel times to a specific place of activity and within each continent are not remunerated separately as working time. Intercontinental travel with an effective travel time of more than four (4) hours may be remunerated and invoiced as working time, if this has been previously expressly agreed between Company and Contractor, up to fifty percent (50 %) of the agreed daily rate per category (e.g. seniority level).

### 11. Infringing Property Rights

It is the Contractor's responsibility to ensure that the provision of the services and the use thereof by the Company pursuant to the contract will not infringe any patent laws, copyright or other proprietary rights of third parties.

Notwithstanding legal claims, the Contractor shall indemnify the Company from any third party claims for which the Company may be held liable as a result of the infringement of any of the aforementioned property rights. The Contractor shall bear the cost of any licensing fees, expenses and fees incurred by the Company in preventing and / or rectifying any infringements of property rights.

### 12. Contract Penalty

If a contract penalty has been agreed upon, the Company is entitled to claim such penalty until the final payment is due without requiring a reservation pursuant to section 341 paragraph 3 of the German Civil Code ("BGB").

### 13. Insurance

**13.1** The Contractor shall maintain sufficient liability insurance at its own expense for damage for which it or its subcontractors or agents for which it is vicariously liable are responsible. Evidence of the amount of insurance coverage for each occurrence of damage shall be provided to the Company upon request. The Contractor's contractual and legal liability remains unaffected by the extent and amount of its insurance coverage.

**13.2** Any outstanding insurance requirement when traveling rests upon the Contractor.

### 14. Invoicing, Payment

**14.1** The agreed prices are net of any applicable value added tax. Invoices are to be issued for deliveries made and services provided. These invoices shall comply with the relevant statutory invoicing requirements according to the national value-added tax legislations to which the services being invoiced are subject. When using self-billing (evaluated receipt settlement), the Contractor must transfer to the Company all data required as per the applicable value-added tax legislation specified in advance.

**14.2** The Contractor must provide a separate invoice for each purchase order. The invoice must include the Company's full order number and, if applicable, the Contractor's delivery note number. Certificates of work completed and any other records are to be submitted with the invoice. Invoices must correspond to the information in the purchase order in respect of the goods described, price, quantity, the order of the items and item numbers. Invoices are to be sent to the billing address specified by the Company in the purchase order.

**14.3** Unless agreed otherwise the payment period shall commence as soon as an invoice, which meets the applicable value-added tax requirements, has been received at the billing address. In the case of self-billing, the payment period commences the day the credit memo is issued. Payment will be made subject to verification of the service provided.

**14.4** Payment by the Company shall not be an indication of acceptance of conditions or prices, and shall not constitute a waiver of the Company's with regard to services provided that differed from those as agreed upon, the Company's rights to inspection, and the right to find fault with an invoice due to other reasons.

**14.5** If the Company pays license fees to foreign Contractors, the Company is obliged to withhold taxes pursuant to section 50a German Income Tax Law. The Company can only abstain from deducting or reduce the withholding tax if the Contractor provides the Company with a valid exemption certificate pursuant to section 50d German Income Tax Law.

### 15. Assignment of Contract, Transfer, Change of Company Name, Offsetting, Retention

**15.1** The Contractor may assign the rights and obligations under the contract with the Company to third parties only with the prior written consent of the Company.

**15.2** The Contractor is required to notify the Company forthwith in writing of any assignment of the contract by virtue of law and of any change of its trade name.

**15.3** The Company may assign the rights and obligations under the contract with the Contractor to WINGAS GmbH, Kassel, or to any affiliated company pursuant to section 15 of the German Stock Corporation Act at any time without the Contractor's prior agreement.

**15.4** The Contractor is only permitted to offset claims that are undisputed or substantiated by court judgment. The Contractor is only entitled to a right of retention if the claim, due to which the

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right of retention shall be deemed valid, has its origins in the same contractual relationship.

### 16. Termination, Rescission, Postponements

**16.1** Unless the contrary has been agreed upon between the parties, the Company may terminate the contract in whole or in part with a notice period of one (1) month to the end of the month without giving any reason. Company may terminate contracts (order call-off) concerning the provision of training services at any time up to the completion of the relevant training.

**16.2** The Contract may be terminated without notice for good cause. Grounds for good cause shall, in particular but without limitation, include:

- A serious breach of duty by the Contractor which is not remedied within a reasonable period of time stipulated by the Company after the written complaint is received; or
- a considerable deterioration of a party's financial situation which threatens to impact such party's ability to perform its obligations under the contract and / or to discharge of its tax and / or social liabilities; or
- the service is or will be either entirely or partly impermissible due to legal or official regulations.

If the Company terminates the contract for good cause and if other existing contracts between the Company and the Contractor cannot be maintained for the same grounds for good cause, the Company shall also be entitled to terminate such other contracts existing at the time of termination and contracts which have not yet been fulfilled.

**16.3** In case the contract is terminated, the Contractor shall immediately furnish the Company forthwith the models, samples, drawings, data, materials and other documents prepared for the Company in executing the contract and grant to him the rights of use thereto as stated in paragraph 17.

These requirements apply likewise in the event of rescission.

**16.4** In case the contract is terminated, the Company will inform the Contractor if and to what extent services not yet completed shall be completed by Contractor. The terms and conditions of the respective contract shall apply to the completion of such outstanding services.

**16.5** In case the contract is terminated, the Company shall compensate Contractor equitably the pro rated remuneration for the part of the services actually performed up to the date of termination and documented and proven by Contractor to be in accordance with the contract.

In case the contract is terminated due to a significant breach of the Contractor's duty, the Contractor shall be entitled to payment only in respect of the actual value of that proportion of the service performed by Contractor up to termination of the contract and to the extent that such proportion is of benefit to the Company.

For the termination of contracts for the provision of training services, the following special terms shall apply:

- in case of termination up to five (5) working days prior to the beginning of the training, ten percent (10%) of the agreed remuneration will be paid
- in case of termination until the day before the planned beginning of the training, thirty percent (30%) of the remuneration will be paid

– in case of termination on the day of the planned training, forty percent (40%) of the remuneration will be paid.

In the event the contract is terminated in accordance with this Section 16, Contractor shall not be entitled to any other payment, compensation for damages or reimbursement of expenses.

**16.6** Each party shall immediately inform the other party about any necessary expected postponements of training services. If the Company is responsible for the postponement and if a new date is agreed for the training performance, the special terms for the termination of contracts for the provision of training services defined in Section 16.5, Paragraphs 2 and 3 shall apply.

**16.7** The cancellation or other termination of the contract shall not affect the rights of the Company according to Section 11 (IPR infringement), Section 17 (Rights of Use), Section 18 (Documents, Confidentiality) and Sections 20.3 and 20.4.

### 17. Rights of Use

#### 17.1 Rights to Use Work Results

The Contractor shall grant to Company the royalty-free, perpetual, freely transferable, irrevocable and sub-licensable right unrestricted in terms of territory, quantity and time, to use all studies, training materials, concepts, operations and system descriptions, data files, software, graphics, calculations and other documents related to the contract in all known media formats including electronic media, Internet and online media saved to all imaging, audio and data storage devices. This information may have either been prepared by the Contractor itself or by third parties (hereinafter "Work Results").

In particular, the Company shall have the right to exploit, duplicate and distribute such Work Results in whole or in part as well as to modify them, revise them, or have the aforementioned activities carried out by third parties. The Company shall also have the right to grant third parties the same complete rights to use such Work Results in whole or in part inclusive of any intermediate changes and/or revisions. The Contractor shall grant the Company the right of use for Work Results of the aforementioned scope including for all types of use whatsoever whether or not known at the time of Contract award; the applicable legal regulations shall apply in this regard.

#### 17.2 Rights to Use Individual Work Results

For work results, which have been prepared either by the Contractor itself or by third parties for the exclusive use of the Company (hereinafter "Individual Work Results"), Contractor shall grant to Company the rights set forth in Section 17.1 on an exclusive basis.

#### 17.3 Rights to Use Contractor's Standard Material

For the methods, tools and other programs that the Contractor customarily uses (hereinafter "Standard Material") and which are integrated into the Work Results or Individual Work Results, the Contractor shall grant to the Company a non-exclusive right of use to the extent described in Section 17.1. An independent, isolated transfer of Standard Material is not allowed.

Contractor shall be entitled to continue to use such Standard Material at its own discretion. Contractor shall be entitled to use and modify the Standard Material for all purposes, in particular for other customers, unless such use constitutes a breach of the

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confidentiality obligation stipulated in Section 18 or in the contract.

The Contractor may apply or integrate the Standard Material in the Individual Work Results only with the prior written consent of the Company. In case of a violation of this provision, the Company shall be granted a right of use in accordance with Section 17.2 also with regard to the Standard Material.

### 18. Documents, Confidentiality

**18.1** The Contractor must submit to the Company the agreed quantity of any plans, calculations or other documents in order not to exceed the contractual deadline for execution.

**18.2** The review of any documents by the Company shall not relieve the Contractor of any of its responsibilities under the contract.

**18.3** Any models, samples, drawings, data, materials and other documents provided to the Contractor by the Company (hereinafter "Company Documentation") shall remain the property of the Company and must be returned to the Company forthwith upon its request at any point in time. The Contractor shall have no rights to retain any Company Documentation. The Contractor must observe the proprietary rights of the Company in and to all Company Documentation.

**18.4** The Contractor is obliged to keep confidential all technical, scientific, commercial and other information obtained either directly or indirectly within the scope of the contract, in particular the information given in Company documentation, Work Results and Individual Work Results (hereinafter "Confidential Information"). The Contractor may not exploit Confidential Information for commercial purposes, make it the object of industrial property rights, pass it on or make it accessible to third parties in any way, or use it for any purpose other than fulfilling the contract. This obligation shall be subject to any disclosure requirements of a legal, judicial or official nature. The Contractor shall make Confidential Information available only to those of its representatives, employees and personnel who need to know Confidential Information within the scope of the Project and who have either by means of their employment contract or by a separate secrecy undertaking accepted to be subject to obligations similar to those set forth in this clause, which shall be, as far as legally possible, effective during as well as after the time of their employment by the Contractor. The provisions set forth in this Section 18.4 apply accordingly if the Contractor involves subcontractors with the Company's prior written consent.

The Contractor shall specifically undertake all required, appropriate precautions and measures to effectively protect the Confidential Information obtained at all times against loss or against unauthorized access. This includes in particular the creation and maintenance of appropriate, required access and entry precautions for facilities, repositories, IT systems, data storage devices and other information storage devices, especially those which contain Confidential Information. This also includes informing and instructing those people who are granted access to Confidential Information pursuant to this clause. The Contractor is required to promptly notify the Company in writing in the event that Confidential Information is lost and / or accessed by unauthorized parties.

This confidentiality obligation shall not include any information that the Contractor lawfully possessed prior to the Company's disclosure of such information, or is lawfully known to the public, or has been lawfully obtained from a third party. Also excluded from this confidentiality obligation shall be information that is disclosed to persons subject to a legal obligation to confidentiality, whereas the Contractor shall not release such a person from his / her obligation to confidentiality. The burden of proof for such an exception lies with the Contractor. The confidentiality obligation set forth in this Section 18.4 shall continue to apply for a period of ten (10) years after the contract has ended.

**18.5** Contractor shall have the right to store, use and disclose to third parties information received from or Confidential Information of Company for statistical, analytical and benchmarking purposes in connection with Contractor's services, provided that such information or Confidential Information when used as outlined herein: (i) is only in the form of aggregated data that includes similar information from other sources and customers of Contractor; and (ii) is anonymized in a way that any third party is unable to identify Company or Company's Confidential Information. In the event Company's information or Confidential Information is pooled with data and / or information from other customers of Contractor to create reference groups for the purpose of benchmarking, Company shall not be identified as a member of such reference group.

Upon request, Contractor shall demonstrate compliance with the obligations set forth in this Section 18.5 to the Company in writing.

**18.6** In case the contract is terminated, for whatever legal reason, the Contractor shall return immediately to the Company all Confidential Information, including all copies made thereof as well as any records that reflect the contents of the Confidential Information. If, insofar and only for so long as required by law or applicable mandatory professional regulations, Contractor is entitled to keep one set of copies of Confidential Information, provided that Contractor undertakes all necessary measures to keep such copy confidential. Upon the expiry of such a requirement, Contractor shall return such documents automatically to Company.

**18.7** Any obligations to preserve the confidentiality of commercially sensitive information pursuant to the Energy Industry Act and the duty to disclose non-discriminating information that may be commercially advantageous pursuant to the Energy Industry Act shall not be affected by the aforementioned requirements.

### 19. Storage of Documents and Support during Reviews

The Company has the right to view and make copies or duplicate for its own purposes all documents in connection with the delivery of goods or provision of services during usual business hours. This right remains valid for the statutory safekeeping period – at least three (3) years calculated from the completion of the respective service. The Contractor is obliged to provide assistance with reviews. To the extent to which these documents contain confidential information about the Contractor such as Contractor's internal calculations, agreements or confidential



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information about business partners and / or employees, the Company's viewing rights shall be barred.

### **20. Publicity Ban, Severability Clause, Applicable Law, Place of Jurisdiction**

**20.1** The Contractor may only refer to or publicly disclose otherwise its business relationship with the Company with the prior written consent of the Company.

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

**20.3** The contract shall be construed and be subject to the substantive laws of the Federal Republic of Germany with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods ("CISG") dated 11 April 1980 and the German law rules on the conflict-of-laws.

**20.4** 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.