

General purchase terms of Wintershall Holding AG and affiliated companies pursuant to German stock companies act (hereinafter referred to as Wintershall)

Issued: September 2007



1. Area of application

These terms apply to business transactions with companies.

The legal relationship between the contractor/supplier (hereinafter: "Contractor") and Wintershall is based on these General Purchase Terms (hereinafter "Purchase Terms") unless and in so far as otherwise agreed in writing. These Purchase Terms apply to all goods and services exclusively; Wintershall herewith opposes the inclusion of any conflicting terms and conditions of business by the Contractor unless Wintershall has expressly approved their validity in an individual case. These Purchase Terms also apply if Wintershall, with knowledge of conflicting or divergent terms and conditions of the Contractor, unconditionally accepts or pays for the supply of goods and/or services. They also apply to future purchase orders placed by Wintershall, even if they are not again expressly agreed. Execution of the purchase order constitutes unreserved acceptance of these Purchase Terms by the Contractor.

2. Formal requirements, conclusion of the contract, amendment to the contract

Legal transactions to be concluded between Wintershall and the Contractor, as well as any declarations of intent with the aim of concluding a legal transaction, must be set out in writing or require written confirmation to have legal force. This does not apply to purchase orders, call orders, amendments to purchase orders or call orders by Wintershall and to order confirmations submitted by the Contractor, where these are expressly marked as such. In such cases the transfer of an automatically generated document without a personal signature by post, fax or e-mail or by electronic data transfer shall be sufficient.

If the order value is 500 euros or more, the Contractor shall send an order confirmation within three working days of receiving the purchase order. Failure to do so shall entitle Wintershall to cancel the purchase order prior to receipt of the order confirmation. If the order value is less than 500 euros, the contract shall be closed if the Contractor does not decline the order within three working days of receipt or begins to execute.

The Contractor shall not be reimbursed for the preparation and submission of bids or other cost estimates.

3. Health, Safety and Environmental Protection (HSE)

While performing the contract, the Contractor is obliged to adhere to the HSE policies and the HSE requirements of Wintershall. An up-to-date version of which is available on the Internet on www.wintershall.com. Where applicable the Contractor will be handed out project specific HSE requirements before the contract commences. The Contractor is obliged to adhere to all HSE requirements.

4. Subcontractor, assignment, change of company name

The Contractor is not entitled to have his contractual duties, in whole or in part, carried out by a third party without the written consent of Wintershall. If such consent is given, the Contractor shall continue to be jointly and severally liable to Wintershall.

The Contractor is not entitled to assign his contractual claims, in whole or in part, to a third party, or to allow a third party to collect his contractual claims, in whole or in part, without the written consent of Wintershall. In the event that the Contractor assigns a claim against Wintershall without such consent, Wintershall shall continue to be entitled to make those payments to the existing Contractor with the effect of a discharge.

The Contractor is required to inform Wintershall of any transfer of contract by act of law and of any change of his company name without delay.

Wintershall is entitled to transfer the rights and duties arising from the legal relationship with the Contractor at any time without prior consent to an affiliated company within the meaning of the German stock companies act (Aktiengesetz).

5. Dates of delivery, default, partial or excess delivery of goods or services

The delivery dates and periods specified in the purchase order are binding. Compliance with the date of delivery shall be determined by receipt of the goods, free from defects, during standard hours of business with the required shipping documents at Wintershall or the receiving centre designated by Wintershall. If the Contractor and Wintershall have agreed delivery with assembly/service, the transfer of the goods, free from defects, after proper performance of assembly/service shall determine whether delivery has been effected on time. In cases where acceptance is prescribed by law or has been contractually agreed, the time of acceptance shall determine whether delivery has been effected on time.

The Contractor is required to notify Wintershall in writing of any delay, as soon as this is identifiable to the Contractor, stating the reasons and the anticipated duration of such a delay. Outright acceptance of delayed goods/services does not constitute Wintershall's relinquishment of rights with regard to late delivery of goods/services.

Without the prior consent of Wintershall, the Contractor shall not be entitled to premature delivery, nor to partial or excess delivery of goods/services. In the event of the Contractor's failure to comply, Wintershall shall be entitled to refuse delivery of the goods/services at the Contractor's risk and expense, or Wintershall may store the goods at the Contractor's risk and expense until the agreed date of delivery.

6. Transfer of risk, acceptance and transport

Unless otherwise agreed, delivery has to be made DDP (Incoterms 2000) to Wintershall or to another location specified by Wintershall.

Until the conforming goods, together with the shipping documents and other required documents, are actually handed over at the place of performance, the Contractor shall bear the risk of accidental loss. If delivery with assembly/service has been agreed, the risk will be transferred once the assembly/service has been properly carried out and handed over.

If acceptance is prescribed by law or agreed, the date of acceptance shall be jointly agreed in response to the Contractor's written request. The results of the acceptance procedure shall be recorded in an acceptance report. The risk shall not pass until successful acceptance has been confirmed by Wintershall. Acceptance cannot be carried out in any other way, in particular not by tests, experts' reports, certificates or performance records. The payment of any invoice amounts shall not constitute acceptance.

The Contractor is required to take good care of the interests of Wintershall during shipment. The goods must be packed appropriately to avoid damage in transit. The Contractor is liable for damage resulting from improper packaging.

7. Retention of title, property

Wintershall acknowledges a simple retention of title if requested by the Contractor in writing. In the event of a simple retention of title, Wintershall shall be entitled to resell the supplied goods within the ordinary course of business. Special forms of retention of title by the Contractor or a third party, in particular extended or expanded retention of title or multiple retention, will not be accepted.

Wintershall retends title to parts or materials that it has provided. Any processing or refashioning by the Contractor is carried out on behalf of Wintershall. If the item provided by Wintershall is inseparably mixed with other items that are not the property of Wintershall, Wintershall shall acquire joint ownership of the new product in the proportion of the value of the goods that are subject to retention of title to the other mixed items at the time of mixing. It is understood that, if the items are mixed in such a way that the Contractor's item is deemed to be the principal item, the Contractor shall transfer joint ownership to Wintershall on a pro rata basis; the Contractor shall maintain sole or joint ownership on behalf of Wintershall.

8. Prices, invoicing and payment terms

The agreed prices are fixed prices and apply throughout the term of the contract. The original of each invoice must be sent to Wintershall, quoting the purchase order number and the supplier number. When submitting the invoice, the Contractor shall enclose records relating to hours/quantity/quality, duly completed and signed, in so far as this is envisaged in accordance with the nature of goods/services supplied. The invoice amounts shall be paid in euros within thirty (30) days of receipt of the verifiable invoice. Any payments rendered shall not affect the rights of Wintershall arising from incomplete delivery of goods/services, Wintershall's rights of inspection or invoice verification, or the right to object to the invoice for other reasons.

9. Delay of payment

In the event of a delay of payment by Wintershall, the Contractor shall be entitled to demand the statutory rate of interest for default. The Contractor is not entitled to any further damage claims for default.

10. Offset, right of retention

The Contractor is only entitled to offset against claims that are undisputed or have been finally determined by a court. The Contractor is only entitled to exercise a right of retention if the demand on which the right of retention is based originates from the same contractual relationship.

11. Condition of the goods/services supplied, notice of defects, rights in the event of defects

At the time of risk transfer, all goods and services supplied must be in the agreed condition and they must be unreservedly suitable for the contractually stipulated purpose or, if no such purpose has been determined, for their intended use. The Contractor is required to ensure that all goods and services supplied comply with the generally accepted safety regulations relating to technical aspects and to occupational medicine as issued by official authorities and trade associations, and that these goods and services are in accordance with the relevant requirements, in particular legal and administrative regulations, tax and national insurance provisions, as well as regulations concerning health and safety at work and the environment.

Any machinery, instruments or plants supplied must possess CE marking.

The Contractor guarantees that the contract is not impeded by any third-party rights. In the event of deficiency in title, the Contractor shall indemnify Wintershall from claims for damages brought by third parties if these claims arise from a breach of duty on the part of the Contractor. Furthermore Wintershall shall be entitled to all rights and claims against the Contractor on account of deficiencies in title.

Wintershall shall notify the Contractor of evident defects within fourteen (14) days of delivery of the goods to their destination. Wintershall shall notify the Contractor of defects that are not evident until later within fourteen (14) days of identifying those defects. The Contractor shall, to this extent, waive his right to plead delayed notification of defect.

Wintershall is entitled to claim for the complete statutory rights arising from defects; Wintershall may choose to have the defect remedied (reworking) or to have a new item delivered (replacement). The right to compensation, in particular the right to compensation instead of performance, remains expressly reserved. If the Contractor should fail to meet his warranty obligations within a reasonable period stipulated by Wintershall, Wintershall shall be entitled to take the necessary measures at the Contractor's risk and expense. Wintershall is not required to fix a time limit if the Contractor seriously and finally refuses supplementary performance, if supplementary performance has failed, if loss of use is to be feared or if rectification of the defect does not allow any further delay for other reasons.

The warranty period is 30 months from transfer of risk unless a longer statutory time limit applies. Any waiver by Wintershall of its warranty claims is only effective if it is expressly declared in writing.

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12. Liability, product liability

Wintershall shall be liable in the event of injury to life, limb or health in case of Wintershall's or its agents or statutory representatives default, whereas default covers wilful misconduct and any kind of negligence. Furthermore Wintershall shall be liable for damage caused by breaches of duty arising from the wilful misconduct or gross negligence of Wintershall, its agents and its statutory representatives.

In cases of simple negligence, Wintershall shall only be liable for damage caused by the breach of contractual obligations that jeopardise achievement of the purpose of the contract (cardinal obligations) and that is foreseeable in the industry sector, as well as on conclusion of the contract.

In the event of damage caused by simply negligent breach of other contractual obligations, Wintershall shall be liable in so far as the damage is covered by Wintershall's third-party liability and product liability insurance. In the event of damage that is foreseeable in the industry sector, as well as on conclusion of the contract, and that is not covered by the above-mentioned insurance, Wintershall shall be liable up to the amount of one (1) million euros, unless the damage that is foreseeable in the industry sector, as well as on conclusion of the contract, exceeds this amount.

Claims based on strict liability in tort, especially on product liability, remain unaffected.

The Contractor is responsible for the safekeeping and clear labelling of items he has brought with him. Wintershall is not liable for damage caused by a third party or for accidental damage, theft or other loss of these items.

13. Withdrawal, termination

The contract may be prematurely terminated without notice for an important reason. An important reason applies in particular

- If the Contractor breaches contractual obligations and fails to take suitable measures to remedy the breach of contract within a reasonable period, as stated by Wintershall, of receiving the written complaint, or
- If a petition in bankruptcy is brought against the other party to the contract, if the other party is insolvent, under threat of insolvency or overindebted in accordance with articles 17 to 19 InsO (German insolvency code), or if the other party fails to meet its obligations to pay taxes or social insurance contributions, or
- If the purchase, the use of the item or the performance is or is rendered unlawful, in whole or in part, on account of statutory provisions or official regulations.

If Wintershall terminates a contract for an important reason and if it is unacceptable for Wintershall, for the same important reason, to adhere to further existing contracts with the Contractor, Wintershall may also terminate all other existing and unperformed contracts at the time of termination, subject to pro-rata remuneration. In the above-mentioned case the Contractor shall not be entitled to further claims for compensation or remuneration.

In the event that an order is terminated on account of the Contractor's breach of obligations, the Contractor shall be required to dismantle and take away his plants, tools and equipment within a reasonable period to be stated by Wintershall and at the Contractor's own expense. The Contractor has, at his own expense and within a reasonable period, to remove and properly dispose of any waste and building rubble generated by the Contractor's activities. If the Contractor fails to meet these obligations, Wintershall may carry out the work or instruct a third party to carry out the work and invoice the Contractor for the costs incurred.

In the event of termination, the Contractor has to hand over to Wintershall without delay all documents, papers, plans and drawings obtained within the scope of the contract and/or for the purpose of executing the contract or on account of the contract.

These regulations apply mutatis mutandis in the event of withdrawal from the contract.

14. Safekeeping of documents, right of inspection

The Contractor undertakes to keep all documents associated with performance of the contract safe and protected against deterioration or loss for the period stipulated by law, but for at least three (3) years, starting from acceptance or delivery. During the safekeeping period, Wintershall shall be entitled to inspect these documents during normal business hours and to make copies or transcripts for its own purposes. The Contractor undertakes to assist Wintershall during inspections. Wintershall's right of inspection is excluded in so far as the documents contain confidential data of the Contractor, such as those relating to internal calculations, agreements or confidential information about business partners and/or employees.

15. Rights to documents, usufructuary rights and patent rights

Documents made available by Wintershall to the Contractor shall remain the property of Wintershall. The Contractor is required, as soon as the services have been rendered or the contract period has ended or is prematurely terminated, to surrender to Wintershall all documents, data, information, plans, drawings and results of his work, which the Contractor, within the scope of his activities, has obtained himself, acquired from third parties or accepted from Wintershall. All documents prepared by the Contractor, or which he has had prepared by others, in the course of executing the delivery of goods/services, shall at the same time become the property of Wintershall. The Contractor is required to protect the documents against access by third parties and against external influence.

When acquiring licences and the results of intellectual services, especially studies, general specifications, requirement and target specifications, specific development and the modification of software, Wintershall shall receive an unlimited, exclusive, transferable and irrevocable right to utilise the results of such work within Wintershall and its associated companies within the meaning of the German stock companies act.

Wintershall is exclusively entitled to all rights to data, information, documents, plans, drawings and results from work that are made available or newly produced and developed on account of the Contractor's activities. This applies irrespective of whether there is a possibility of being patentable.

16. Third-party industrial property rights

The Contractor is responsible for ensuring that the goods/services and their utilisation do not infringe the patent rights, copyrights or other industrial property rights of third parties. Without prejudice to legal claims, the Contractor, in so far as he is responsible for the infringement of the industrial property right, shall indemnify Wintershall from all third-party claims. Licence fees, expenses or costs incurred by Wintershall in avoiding or rectifying infringements of industrial property rights shall be met by the Contractor, if he is responsible for the infringement.

17. Confidentiality, data protection

The Contractor undertakes, subject to statutory, judicial or official disclosure requirements, to treat all information, technical and commercial knowledge and experience relating to the manufacture and handling of products and obtained from Wintershall in connection with the goods/services as strictly confidential during and after delivery of the goods/services, and to make use thereof solely for the purpose of the contract unless Wintershall has previously declared its express consent in writing to the specific utilisation and/or forwarding of such information, knowledge and experience.

Notwithstanding the above paragraph, the Contractor is permitted to make such confidential information accessible to those of his employees and subcontractors who are essential for providing the relevant goods/services.

The Contractor may only use employees who have been obliged to comply with the data protection law and data secrecy, taking into account the data protection law or other statutory provisions.

The requirement to safeguard the confidentiality of commercially sensitive information within the meaning of the German power industry act and the requirement to disclose, without discrimination, information that could provide commercial advantages within the meaning of the German power industry act are not affected by the above-mentioned provisions.

18. Insurance

The Contractor is required to carry adequate public liability insurance at his own expense to cover damage for which he, his vicarious agents or subcontractors are responsible. Evidence of the amount of cover for each damaging event must be submitted to Wintershall on demand. The Contractor's contractual or statutory liability remains unaffected by the scope and amount of his insurance cover.

19. Taxes

The agreed prices are net prices. The statutory value added tax (VAT) or any other turnover tax due must be shown separately on the invoice. If Wintershall is required, in accordance with fiscal-law provisions, to withhold and remit tax deducted at source on behalf of the Contractor, Wintershall shall be entitled to subtract the deductible amount from the invoice amount until submission of the certificate from the tax office confirming exemption from the requirement to deduct the relevant amounts. If Wintershall is required to pay license fees to foreign suppliers, the Contractor shall be required to submit a notice of exemption in accordance with article 50 a of the German income tax act.

20. General provisions

German law applies. Laws concerning the international purchase of movable objects, in particular the UN convention on contracts for the international sale of goods (CISG) of 11.04.1980, do not apply.

The exclusive venue for any disputes arising from or in connection with the business relationship is the court of competent jurisdiction, both territorial and in rem, as regards Wintershall. However, Wintershall shall be entitled to exercise the option of resorting to the court of competent jurisdiction in accordance with the applicable, general statutory provisions.

The ineffectiveness or impracticability of any provision or parts of any provision of these Purchase Terms shall not affect the existence and continuation of the relevant contract.

The business relationship between the Contractor and Wintershall, as well as enquiries and purchase orders, may not be used for advertising purposes.