



## **General**

### **1. Definitions**

"Affiliate" means any company directly or indirectly through one or more intermediary companies controlling, controlled by or under common control with either Wintershall or the Other Party, as appropriate.

"Commencement Date" means the date when the Other Party's personnel and equipment arrive at the Site and are accepted by Wintershall's Focal Point as being complete and operationally capable of undertaking the Service.

"Contract" means the agreement between Wintershall and the Other Party consisting of these Terms and Conditions together with the Order Form and the attachments (if any).

"Day" means one calendar day.

"Goods" means the design materials or equipment and all related activities to be performed by the other Party as specified in the Contract.

"Month" means one calendar month.

"Order Form" means the (standard) document used by Wintershall to identify the specifics of the purchase of Goods or the ordering of services, as the case may be.

"the Other Party" means the addressee on the Order Form.

"the Other Party Group" means the Other Party, the Other Party's Affiliates, participating companies in a joint venture established for the performance of the Service, Subcontractors of any tier and their respective employees, staff, officers and agents.

"Service" means the service and all related activities to be performed by the Other Party as specified in the Contract.

"Site" means the location(s) being used for the work, where the Service will be performed.

"Subcontractor" means any person or company to whom the performance of any part of the Service has been delegated by the Other Party in accordance with Clause 37 hereof.

"Wintershall" means Wintershall Nederland B.V. or any of its applicable Affiliates.

"Wintershall Focal Point" is the person or persons from time to time appointed as such by Wintershall.

"Wintershall Group" means Wintershall, Wintershall's Affiliates, consortium partners, co-venturers, Wintershall's vendors, suppliers, contractors (other than the Other Party and its subcontractors of any tier) who are engaged to perform work or provide Goods or services via the Other Party for Wintershall, and their respective employees, staff, officers and agents.

### **2. Applicability**

**2.1** In the event the Order Form concerns the purchase of Goods, the articles 3 through 22 and article 42 and 43 apply to the Contract.

**2.2** In the event the Order Form concerns the delivery of Services by the Other Party Group, the articles 3, 4 and 23 through 43 apply to the Contract.

### **3. Acknowledgement**

The Contract shall be acknowledged by return of post, confirmation of price and delivery by signing a copy of the Order Form. Failure or omission to acknowledge this Contract shall not imply non-acceptance of the Contract or these general terms and conditions.

### **4. Force Majeure**

"Force Majeure" means fire, explosion, action of the elements, any government measure, strike, terrorist acts or other similar cause beyond the reasonable control of the party affected and which are not for his risk, provided that no such cause shall be treated as Force Majeure, unless the party affected shall have notified the other party within 5 days of the beginning of operation of said cause, and shall thereafter exert all possible diligence to overcome any resulting delay and resume performance. Neither Wintershall nor the Other Party shall be liable or deemed to be in default for any failure or delay of performance of the agreement under the Contract which is caused by Force Majeure on the condition precedent, however, that due notification was provided.

## **Purchase of Goods**

### **5. The Contract**

The Contract entered into between Wintershall and the Other Party is for the purchase and delivery of the Goods described in the Order Form and in any specifications and drawings referred to therein, including all protection, painting, packing and marking. Unless otherwise stated in the Order Form, installation or erection of any plant or other Goods on site is excluded.

### **6. Assignment and Sub-Contracting**

**6.1** The Other Party shall not assign any rights or obligations under the Contract without the prior consent in writing of Wintershall.

**6.2** No part of the obligations of the Other Party under the Contract is to be sub-contracted without prior written consent of Wintershall. Permitted sub-contracting shall not in anyway relieve the Other Party from its obligations under the Contract.

### **7. Drawings and Technical Data**

**7.1** Any deviation from or modification of specifications or drawings is subject to Wintershall's prior written approval. If the Other Party considers there is any omission, inconsistency or inaccuracy in any such specifications or drawings, or that any modification should be made, the Other Party shall notify Wintershall in writing forthwith. Drawings and technical data supplied by Wintershall in connection with the Contract shall remain Wintershall's (intellectual) property and be kept confidential by the Other Party at all times. These drawings and technical data shall not without Wintershall's prior written consent, be either disclosed to any third party or used by the Other Party except in implementing the obligations under the Contract.

**7.2** The Other Party shall, when requested by Wintershall, provide drawings and technical data to Wintershall for approval and/or record purposes. Any such approval shall not imply that Wintershall is responsible for the accuracy of any drawings or technical data other than its own ones.

### **8. Intellectual Property Rights**

The Other Party warrants it is entitled to supply the Goods to be supplied under the Contract and shall fully indemnify Wintershall against all claims, liabilities, damages, losses, costs and expenses (including legal fees and fines) concerning infringement or alleged infringement of any patent, registered mark, service mark, trade mark, copyright or similar protection which may arise from anything done by, for and/or on behalf of the Other Party in relation to the Goods to be supplied under the Contract or by any use or resale by Wintershall of such Goods.

### **9. Progress checks, inspections and tests**

Wintershall shall be entitled at its discretion and on giving reasonable notice to check the progress of the execution of the Contract, to inspect the Goods and any work thereon, and to make such tests as are prescribed in the Contract, during manufacture and before delivery. The Other Party shall afford Wintershall's representative every facility for such purposes, including access to the Other Party's (or sub-contractor's) works at all reasonable times. Any such inspection or tests shall not in anyway relieve the Other Party from any of its obligations under the Contract. Additionally, the Other Party shall give Wintershall reasonable notice when the Goods are ready for inspection.

### **10. Delivery**

Delivery, including delivery date and conditions, shall be in accordance with the requirements of Wintershall. Strict compliance with these is the essence of the Contract. Delays in the delivery of the Goods as specified in the Order Form shall constitute non-observance by the Other Party to deliver. In the event of the Other Party's failure to deliver to timely observe the exact terms and conditions of the Contract, than Wintershall shall have the right to cancel or reject any part or all of the Contract without any liability towards the Other Party.



### **11. Safety Regulations**

In effecting delivery to Wintershall's premises or where the Contract requires installation or erection of any plant or other good at Wintershall's premises, the Other Party shall comply with Wintershall's safety regulations and instructions.

### **12. Packing and Marking**

**12.1** The Goods shall be carefully packed and protected or bundled in a manner suitable for the manner of transport to be used, or in accordance with any special requirements stated in the Contract.

**12.2** Corrodable parts of the Goods must be protected before packing, bright parts being coated with suitable protective varnish, soluble in kerosene or petrol and others in grease where required.

**12.3** To facilitate identification, Goods such as spare parts are to be labelled with the order number, item number, maker's part number and Wintershall stock number.

**12.4** All packages are to be marked externally with the order number.

### **13. Advice Note**

The Goods are to be delivered to the address shown on the Order Form and under cover of an advice note quoting the order number and details of the Goods supplied. An additional copy of the advice note is to be despatched by post to the delivery address.

### **14. Invoices**

Invoices must quote the order number, itemised prices and discount terms and be according to the Order Form. Invoices, which do not quote these particular items or deviate from the order form, will be deemed not received and returned to the Other Party for completion.

### **15. Payment**

**15.1** No claim for payment arising from the execution of the Contract will be accepted by Wintershall after six months of the date of completion of the Contract.

**15.2** Wintershall reserves the right to withhold payment for any Goods supplied or work done which is not in accordance with specification and/or does not meet Wintershall's other reasonable requirements.

**15.3** Unless otherwise agreed payment will be made within 30 days of receipt of invoice. Payments will be made only against proper documentation (invoice and documentary proof that the Goods from the hands of the Other Party to Wintershall or its duly authorised representatives).

**15.4** Cash payment or payment within eight (8) Days shall carry a reasonable discount of not less than two percent (2%).

### **16. Liabilities and Indemnities**

**16.1** The Other Party shall be liable to, indemnify Wintershall against and hold Wintershall harmless from:

a) All loss of or damage to any property whatsoever whether belonging to Wintershall, the Other Party, or any third party resulting from the execution of the Contract and

b) Any liability for the sickness, injury or death of any person (including both Wintershall's and the Other Party's Personnel and those of third parties) resulting from the execution of the Contract and

c) All related costs, claims, damages and expenses (including legal fees and fines) resulting from the execution of the Contract unless any such loss or damage can be ascribed to gross negligence solely on the part of Wintershall.

**16.2** Apart from any claim Wintershall may have against the Other Party in case of termination hereunder, Wintershall shall be entitled to claim damages against the Other Party in case of a delay or malperformance in the execution of the Contract caused by the Other Party.

**16.3** Neither Wintershall nor the Other Party shall be liable towards the other for indirect, special and/or consequential damages, losses or costs (unless specifically set forth here above) and they will mutually hold harmless and indemnify each other against such damages or claims therefor originated by third parties.

### **17. Safety**

To enable Wintershall to comply with its statutory obligations, inter alia under the relevant safety legislation and regulations, the Other Party shall provide Wintershall with full information on the use of all Goods to be supplied and to be tested and of any conditions necessary to ensure such Goods will be safe and without risk to health and environment when handled, stored, transported and used. This information shall be provided by the Other Party in writing, marked with the order number and relevant item number and addressed to the safety officer at Wintershall's Rijswijk office.

### **18. Imported Goods - Ultimate Destination**

(Only applicable when referred to in the body of the Order Form)

**18.1** The Goods to be supplied under the Contract are destined for use outside Dutch Territorial Waters and may, on delivery to Wintershall's authorised warehouse be eligible for refund/relief of duty under the Inward Processing Relief (IPR) Regulations. It is essential that imported Goods for which refund/relief of duty has or is to be claimed under these regulations must be delivered in accordance with the following conditions:

a) Delivery must be made under cover of documentation which declares the good to be under Customs Control (IPR) and

b) Each package to be clearly marked "Under Customs Control, IPR Goods".

**18.2** Failure to comply with the above at time of delivery may invalidate claims for refund/relief of duty and may render Wintershall liable for payment of duty. Wintershall will hold the Other Party liable for any payments incurred as a result of non-compliance with the foregoing requirements.

### **19. Guarantee**

The Other Party warrants that the Goods are in conformity with the Contract and shall be new and fit and will satisfactorily perform the operations for which they are intended. During a period of twelve (12) months from date of putting the Goods into operation, however not exceeding a period of eighteen (18) months from the date of delivery, the Other Party shall, with all possible speed and without cost to Wintershall, replace or repair the Goods, or any part thereof found to be defective due to faulty good, workmanship or design (other than design specified in detail by Wintershall) or to any act or omission of the Other Party. In particular the Other Party shall reimburse any transportation- and other charges incurred by Wintershall as a consequence of such replacement or repair, including the cost of building out the defective Good(s) and of the building in of the replacing or repaired Good(s).

### **20. Transfer of ownership of the good(s)**

Ownership of the Good(s) shall pass to Wintershall as soon as the first contractual instalment has been paid by Wintershall to the Other Party. Any Good(s) of Wintershall on the premises of Other Party or any other premises shall be clearly marked as owned by Wintershall.

### **21. Software**

The Other Party shall ensure that software delivered under the Contract contains the required functionality and is fit for the purposes of Wintershall, shall be free of viruses and likewise errors and take all required steps to correct such within reasonable time upon having been given notice of any deficiencies. For all equipment containing software whether incorporated (embedded) within the equipment or provided separately AND all software purchased or licensed on this order the Other Party shall guarantee that source codes and information critical to the maintenance of such software is demonstrable stored safely and available to Wintershall in the event the Other Party can no longer meet its obligations under the Contract and/or is declared bankrupt or ceases trading for whatsoever reason.



## **22. Termination**

**22.1** Wintershall may terminate the agreement under the Contract forthwith in the following cases:

- A bankruptcy petition has been filed against the Other Party.
- the Other Party is unable or unwilling to remove a lien on the Good(s).
- the Other Party's assets are or will be legally seized.
- the Other Party has suspended or has ceased paying its debts to its Other Party's and/or its contractors or is in any other respect in default in adhering to its commitments under the Contract such as but not limited to non-performance or delayed performance.

**22.2** A termination of the agreement under the Contract shall become effective in the manner specified in the notice of termination. On receipt of such notice, the Other Party shall, unless the notice of termination directs otherwise, immediately discontinue the execution of its obligations under the Contract, including the placing of orders in connection therewith.

**22.3** Since the good(s) are owned by Wintershall as from the moment the first contractual instalment has been paid by Wintershall, the Other Party shall hand over the Good(s) so owned by Wintershall together with any pertaining drawings in case the agreement under Contract has been terminated hereunder.

**22.4** In case of termination hereunder, the Other Party shall not receive any money due to him, unless, after all costs and additional investments caused by the termination have been taken into account by Wintershall, a positive balance would result. Any negative balance so resulting shall be deemed a debt due by the Other Party to Wintershall and shall be recoverable accordingly.

## **Services**

### **23. Duration of the Service**

Wintershall shall advise the Commencement Date for the Service. From the Commencement Date the Service shall be provided as and when required by Wintershall during the period of time necessary to complete the Service to the satisfaction of Wintershall.

### **24. Scope of the Service**

The Service shall consist of the provision of services in accordance with Wintershall's requirements as agreed prior to services commencing.

The Other Party shall provide as required the services of its personnel and equipment specified by Wintershall and the services of such other personnel, equipment, materials, supplies and services which may be required for the full performance and completion of the Service.

The actual performance of the Service shall be undertaken by the Other Party. Wintershall's Focal Point, however, shall at all times have access to the Site and the works or activities relating to the Service in order to check and verify that the Service meets the standards required by Wintershall.

### **25. Health and safety at work**

**25.1** The Other Party is to provide the Service to the standards detailed herein which are Wintershall's minimum requirements:

- a) All applicable statutory safety regulations and procedures including the Mining Act, Mining Decree and Mining Regulations and the safety rules issued by the State Supervision of the Mines (Staatstoezicht op de Mijnen).
- b) Wintershall's safety regulations which may be viewed or obtained from the safety and environmental Manager at Wintershall's office in Rijswijk.
- c) Current industry standards.
- d) All applicable statutory environmental regulations and procedures.

#### **25.2. Loss control reporting**

In order to monitor and manage loss control the Other Party is to report all accidents and near misses/incidents to personnel, property or process, whether required under legislation or not. Reports are to be in writing and made to Wintershall's Focal Point within 24 hours.

### **26. Assistance to be provided by Wintershall**

**26.1** Wintershall shall provide the following assistance to the Other Party in connection with the Service at no charge to the Other Party, unless stated hereunder to the contrary:

In the event the Service is provided offshore the Netherlands:

- a) Emergency medical evacuation to the nearest suitable hospital.
- b) Transportation for the Other Party's personnel, equipment and materials necessary for the performance of the Service between Wintershall's heliport and/or marine base and the offshore Site. Such transportation may be either by sea or air at Wintershall's discretion. Wintershall's decision as to the availability of transportation at any particular time shall be final.
- c) Emergency accommodation in the event that a normally unmanned offshore site cannot be vacated.
- d) Installed site services required to perform the Service including light, water and power.
- e) On Wintershall owned or hired facilities: accommodation, messing and meals, unless agreed otherwise in writing.

In the event the Service is provided onshore the Netherlands:

- f) Installed site services required to perform the Service including light, water and power.

**26.2** In the event that Wintershall provides the Other Party with any materials or other supplies, Wintershall shall charge the Other Party the cost thereof, including carriage, insurance and freight.

### **27. The Other Party's equipment**

**27.1** All equipment provided by the Other Party for the satisfactory execution of the Service shall be supplied fit for purpose, be of first class condition and be in such condition while employed on the Service so as to fully meet the requirements of the Service.

**27.2** The Other Party shall provide at its own cost all onshore transportation for the delivery of the Other Party's equipment or materials to the Site, heliport and/or marine base for transportation offshore and the subsequent return thereof to the Other Party's onshore base from Wintershall's heliport and/or marine base.

**27.3** For offshore services all the Other Party's equipment and materials shall be pre-slung, banded, packaged or containerised, and protected where necessary, for shipment by open deck supply boat in accordance with Wintershall's requirements and the applicable statutory regulations.

### **28. The Other Party's personnel**

**28.1** The Other Party shall employ on the Service only such personnel as are properly skilled and experienced in their respective callings. Wintershall shall have the right to object to and require the Other Party to remove forthwith from employment on the Service any person who in the opinion of Wintershall misconducts himself or is incompetent or negligent in the proper performance of his duties or whose employment is otherwise considered by Wintershall to be undesirable. Any persons so removed shall be replaced without delay at the Other Party's expense by a competent substitute approved by Wintershall.

**28.2** All personnel employed by the Other Party in accordance with Sub-Clause 28.1, shall at all times be the servants of the Other Party and the Other Party shall be solely responsible for payment of salaries to such personnel.

**28.3** The Other Party shall provide its personnel with protective clothing and safety equipment identifying them as the Other Party's personnel to designs approved by Wintershall and the relevant authorities for working conditions in The Netherlands, including its continental shelf.

**28.4** The Other Party shall provide at its own cost all onshore transportation of the Other Party's personnel to the Site, heliport and/or marine base for transportation offshore and the subsequent return to the Other Party's onshore base from Wintershall's heliport and/or marine base.

### **29. Performance**

**29.1** The Other Party shall undertake the Service diligently and in a workmanlike manner in accordance with the current first class standards and practices of the industry.



**29.2** In the event that Wintershall is dissatisfied with the performance of the Other Party hereunder on account of a deficiency or deficiencies in Service including unreasonably slow progress, incompetence, poor quality control or other like reason as a result of causes reasonably within the control of the Other Party, Wintershall reserves the right not to pay service charges for that affected part of the Service until the deficiency or deficiencies have been rectified to Wintershall's satisfaction.

### **30. Invoicing and Payment**

**30.1** Within the first ten (10) days of each month the Other Party shall submit an invoice to Wintershall in respect of the Service carried out during the preceding Month. Invoices must quote the order number, itemised prices and discount terms. Invoices which do not quote these particular items or deviate from the order form will be deemed not received and returned to the Other Party for completion.

**30.2** All invoices shall be expressed in the currency defined by the order form, in which payment is to be made and supported by all relevant documents as Wintershall may reasonably require. All prices are exclusive of VAT (BTW) but VAT shall be added to all invoices where applicable.

**30.3** Wintershall shall pay all approved invoices within thirty (30) days of receipt thereof in Euro.

**30.4** If Wintershall disputes an item invoiced, Wintershall shall, within twenty (20) days of receipt of the invoice, notify the Other Party of the item disputed specifying the reason therefore, and payment of the disputed item may be withheld until settlement of the dispute.

**30.5** Payment by Wintershall of the Other Party's invoices shall be without prejudice to Wintershall's rights subsequently to challenge the correctness thereof.

### **31. Liabilities and indemnities and insurance**

#### **31.1 Liability and indemnity by the Other Party**

The Other Party shall, save as is otherwise herein specifically provided, indemnify and hold Wintershall Group harmless from and against any and all claims, liabilities, costs, damages and expenses of every kind and nature with respect to sickness, injury or death of any employee, agent or invitee of the Other Party Group and damage to or destruction of the Other Party's equipment and any other property or equipment used by the Other Party Group, arising directly or indirectly during and as a result of the performance of the Service by the Other Party Group from any cause whatsoever including but not limited to the negligence of Wintershall Group.

#### **31.2 Third Party liability**

The Other Party shall be liable for all injury, including death, loss or damage, and any consequential loss or damage, to third parties, resulting from or contributed to by the Service, irrespective whether or not such loss or damage has resulted from or was contributed to by the implementation of any act or omission of Wintershall Group. The Other Party shall accordingly hold harmless and indemnify Wintershall Group from and against any claim in that respect.

#### **31.3 Consequential loss or damage**

Except as expressly stated otherwise in this Contract, neither the Other Party and/or the Other Party Group nor Wintershall and/or Wintershall Group shall be liable to the other for any indirect or consequential loss or damage which may be suffered by the other in connection with the performance of the Service, including but not limited to loss of use, loss of profits, loss of production, loss of revenue or business interruption, unless and to the extent such loss or damage was caused by gross negligence or wilful conduct.

#### **31.4 Pollution or contamination**

The Other Party shall be solely liable for and defend, indemnify, release and hold Wintershall Group free and harmless from and against loss or damage or expense (including all court costs, fines, penalties and legal counsel fees) arising from pollution or contamination which emanates from equipment, materials or vessels under the Other Party Group's direct or indirect control, including but not limited to fuels, lubricants, motor oils, pipe dope, drilling fluids, paints

and garbage, and the Other Party shall immediately control and remove such pollution or contamination.

In the event of the Other Party's failure to remove such pollution and contamination then any and all costs or expense reasonably incurred by Wintershall in controlling or removing such pollution or contamination shall be charged to the Other Party.

#### **31.5 The Other Party Group Insurance**

The Other Party shall obtain and maintain throughout the duration of the Contract a General Public Liability Insurance, Employers Liability and/or Workmen's Compensation Insurance and Automobile Insurance as required by Wintershall and as necessary to comply with all applicable Netherlands legislation having regard to the nature of the Service performed hereunder. Any deductibles shall be for the Other Party's account and the Other Party shall supply prior to commencement of the Service Insurance certificates to Wintershall. It is the Other Party's responsibility to ensure that each member of the Other Party Group maintains such necessary insurance to support the indemnities made herein, together with such other insurance as the Other Party may deem necessary. The insurance policies the Other Party Group are required to have in connection with the Service shall name Wintershall Group as co-insured and shall contain a waiver of the right of subrogation of claims against Wintershall Group.

### **32. Compliance with Laws and Regulations / Safety**

#### **32.1 The Other Party shall comply and familiarise itself with:**

a) All laws, rules and regulations of government and other bodies, which are now or may in future become applicable to the Other Party's business, equipment, and personnel engaged in the Service hereunder.

b) All permits, licences, or clearances which may be granted to either Wintershall or the Other Party in connection with the Service.

**32.2** The Other Party shall indemnify Wintershall Group against all liability, damages, claims, fines, penalties and expenses (including court costs, fines, penalties and legal counsel fees) whether incurred by, levied or imposed upon the Other Party or Wintershall arising out of any breach by the Other Party of any such laws, rules, regulations, permits, licenses or clearances.

### **33. Records and reports**

The Other Party shall maintain complete and adequate records of all its operations hereunder and shall at all times supply such information as will keep Wintershall's Focal Point fully informed of the progress of the Service and of all results currently obtained and the Other Party shall deliver its records and interpretations directly to Wintershall and all such records and interpretations shall belong exclusively to Wintershall.

### **34. Tax information and indemnity**

#### **34.1 Tax payment**

a) The Other Party shall duly pay any tax, and shall ensure the due payment by its Subcontractors and its or their employees under the Contract of any tax, which may be properly and lawfully assessed upon the Other Party or any such Subcontractor and its or their employees by any appropriate government authority in connection with the activities of the Other Party or any such Subcontractor under the Contract.

b) In the event of Wintershall being accountable to the said government authority for any such tax which may be assessed upon the Other Party or such Subcontractor and its or their employees under the Contract, the Other Party shall pay to Wintershall any such tax that may be assessed by the said government authority within thirty (30) days of the Other Party receiving notification from Wintershall of such assessment.

#### **34.2 Indemnity**

The Other Party shall indemnify and keep indemnified Wintershall Group against any and all payments required to be made and losses, costs or expenses of whatsoever nature incurred by Wintershall Group as a result of or in connection with any failure by the Other Party or any of its Subcontractors to comply with the provisions of Sub-Clauses 34.1.a and 34.1.b hereof.

**34.3** Notwithstanding the above stipulations, Wintershall hereby reserves the right to make direct payments to a dedicated bank account of such part of the fee payable by Company hereunder, as shall become due by Contractor and its subcontractors, if any, pursuant to the relevant Dutch laws on wage tax and social security premiums, in relation to the Work to be rendered hereunder. In the event Company decides to make such direct payments to a dedicated bank account, Contractor shall commit itself to a so called "Payment into a Blocked Account Agreement" as named in the "*Uitvoeringsregeling inleners-, keten- en opdrachtgevers-aansprakelijkheid 2004*".

#### **35. Independent contractor**

The Other Party shall act as an independent contractor, and all personnel assigned to the Service by the Other Party shall in no sense be deemed to be agents, representatives or employees of Wintershall.

#### **36. Assignment and sub-letting**

The Other Party shall not assign, sub-let or sub-contract all or any part of its rights, liabilities or obligations hereunder or the Service to be performed hereunder without Wintershall's prior written consent. Such consent to sub-let or sub-contract, shall not relieve the Other Party of any liability or obligation under the Contract.

#### **37. Co-operation with other contractors**

The Other Party shall co-operate with Wintershall Group in scheduling the Service and in its methods of carrying out the Service, so as to suit the overall needs of Wintershall.

#### **38. Confidential information**

Any and all information obtained by the Other Party in the course of the implementation of the Service shall be considered confidential and shall not be divulged by the Other Party to any third party.

#### **39. Intellectual Property rights and information carriers**

**39.1** If and as far as necessary, the Other Party hereby grants to Wintershall an exclusive irrevocable license to use all works and materials, which are created or designed by the Other Party with regard to the Service. The Other Party warrants that it is entitled to grant this license. All information carriers and materials, which contain works and materials, created or designed by the Other Party with regard to the Service shall become the exclusive property of Wintershall upon completion of the Service.

**39.2** All information carriers and materials provided by Wintershall to the Other Party during the course of the Service remain the exclusive property of Wintershall and shall be returned to Wintershall at the request of Wintershall or after the Contract has been terminated. The Other Party is not entitled to publish, copy or adapt any work or design provided to the Other Party by Wintershall, without the prior written consent of Wintershall.

#### **40. Termination**

**40.1** Wintershall reserves the right to terminate the Contract forthwith in the event of the Other Party's or the Other Party Group's commencement of liquidation proceedings, insolvency, receivership, default or negligence, and no payment shall be payable by Wintershall to the Other Party except for Services satisfactorily performed up to the date of termination.

**40.2** Wintershall further reserves the right to terminate the Contract at any time by giving the Other Party seven (7) days notice in writing. Wintershall shall pay the Other Party for Services satisfactorily performed up to the date of termination, taking into account any direct and reasonable cost the Other Party may have to incur in terminating any Subcontract pertaining to the Service.

#### **41. Audit**

Wintershall or its duly authorised representative shall have unrestricted access at all reasonable times to all documents deemed to be relevant to the Contract for the purpose of

reviewing that the Service is carried out in accordance with the Contract, that fees or tariffs are charged in compliance with the Contract and for the purpose of verification to the Other Party's quality and health, safety and environment systems.

#### **Applicable law, Forum, Rejection of other general conditions**

#### **42. Law and Arbitration**

**42.1** The construction, validity and performance of the Contract shall be governed by Dutch Law. The United Nations Convention on Contracts for the International Sale of Material(s) (CISG) of Vienna of 11 April 1980 shall not apply to the Contract.

**42.2** Any dispute arising out of or in connection with the agreement under the Contract shall be exclusively referred to arbitration (under the rules of The Netherlands Arbitration instituut at Rotterdam) by one arbitrator appointed in accordance with said rules. The place of arbitration shall be The Hague.

#### **43. Battle of Forms**

These General Conditions form part of the Contract. They shall not be varied and no conditions contained in quotations, letters, advice note, invoices or other communications issued by the Other Party shall annul or vary these or any instructions contained in the Order Form unless expressly agreed by Wintershall in writing. The applicability of the Other Party's general terms and conditions is hereby rejected explicitly.