

Wieland-Werke AG

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Germany

Section A – General

Part 1: General Contractual Conditions for Projects

Table of contents

- 1. Contractual agreements 2
- 2. Specified and provided components and assemblies 2
- 3. Delivery processing..... 2
 - 3.1 Scope of supply 2
 - 3.2 Deadlines 2
 - 3.3 Contractual penalty 2
 - 3.4 Increases and reductions 3
- 4. Payment, partial payments and payment terms 3
- 5. Liability for defects 3
 - 5.1 Warranty period 3
 - 5.2 Subsequent performance 3
 - 5.3 Warranty bond 3
- 6. Property rights and confidentiality 4
 - 6.1 Third-party property rights 4
 - 6.2 Intellectual property 4
 - 6.3 Confidentiality, photos and videos 4
- 7. Statutory provisions and regulations..... 4
- 8. Customs clearance 5
- 9. Documentation 5
- 10. Project sequence in the final phase 5
 - 10.1 Delivery release 6
 - 10.2 Delivery 6
 - 10.3 Transfer of title 6
 - 10.4 Assembly and commissioning 6
 - 10.5 Training 6
 - 10.6 Trial operation 7
 - 10.7 Acceptance 7
 - 10.8 Passing of risk 7
- 11. Down payments 7
- 12. Insurance/liability 8
- 13. Termination 8
- 14. Assignments 8
- 15. Written form 8
- 16. Place of performance, place of jurisdiction 8
- 17. Applicable law 8

Section A – General**Part 1: General Contractual Conditions for Projects**

Preamble

Wieland's intention is to have plants, plant components and/or machines manufactured by the contractor (hereinafter collectively referred to as "**plant**"). The contractor has special knowledge in this field and maintains a staff of specially qualified employees such as engineers and machine builders for this purpose. This having been said, Wieland and the contractor (hereinafter individually referred to as "**party**" and jointly referred to as "**parties**") agree on the following:

1. Contractual agreements

In addition to these General Contractual Conditions for Projects, the documents indicated in the list of "Contractual Agreements and Delivery Specifications" form an integral part of the contract. Deviations from these shall only become part of the contract with the express written consent of Wieland. Any general terms and conditions of the supplier do not apply.

2. Specified and provided components and assemblies

If components and/or assemblies are mentioned in the order and/or specification which are to be used in manufacturing the plant, the contractor shall check that they are suitable. If the contractor has a) doubts about their suitability, b) knowledge of better suited components and/or assemblies or c) knowledge of equally suitable but cheaper components and/or assemblies, he shall immediately inform Wieland of this and name the corresponding components and/or assemblies.

The same applies to components and/or assemblies provided by Wieland. The contractor must inspect these too immediately upon delivery for transport damage and material defects, and check their identity and quantity, and inform us immediately of any complaints.

3. Delivery processing**3.1 Scope of supply**

The scope of supply is determined by Wieland's written order and specification, and includes in particular transportation, transportation insurance, packaging, customs clearance, unloading, assembly, commissioning, trial operation until handover as well as acceptance including acceptance tests.

3.2 Deadlines

The contractor shall agree a schedule with Wieland, which shows the course of the project from design to manufacture, delivery, assembly, commissioning, and trial operation up to acceptance, and contains the planned start and end dates of the individual activities. The agreed deadlines shall be binding.

3.3 Contractual penalty

If the contractor exceeds the agreed delivery date or completion date for reasons for which he is responsible, he shall be obliged to pay the client a contractual penalty of 1.0% per calendar week or part thereof, but not more than 5% of the agreed total payment. Notwithstanding the above, the contractor shall be liable in accordance with the statutory provisions.

The right to demand the contractual penalty can still be taken into consideration in the final invoice.

Section A – General**Part 1: General Contractual Conditions for Projects**

3.4 Increases and reductions

If the contractor performs services which are not covered by the contract and which Wieland has not agreed to in writing in advance, he is not entitled to payment for them.

If an amendment to the contract results in additional costs (“increases”), these shall be borne by the party that caused the reason for the amendment. If the amendment to the contract results in cost savings (“reductions”), these shall be set off against the contractor’s remuneration in favour of Wieland.

The parties shall draw up a list of “Increases – Reductions” and keep it up to date.

4. Payment, partial payments and payment terms

Wieland shall pay the agreed remuneration to the contractor.

If partial payments have been agreed, they will only be paid by Wieland when the services to which they relate, such as the delivery of schedules, electrical plans, functional descriptions, parts of the plant, etc. have been completed and are free of defects. Partial payments do not constitute partial acceptances. There shall be no partial payments other than the agreed partial payments.

Unless agreed otherwise in writing, payments by Wieland will be made within 90 days of the provision of the services to which they relate and the receipt of a proper invoice.

5. Liability for defects**5.1 Warranty period**

The warranty period shall be based on the statutory provisions, but shall in any case amount to at least 48 months without shift limitation from the signing of the acceptance report by Wieland and the contractor. In the case of replacement deliveries and deliveries of spare parts, the warranty periods for the replacement deliveries or for the replaced parts start anew.

If the application of VOB/B has been agreed, the warranty periods specified therein shall apply.

5.2 Subsequent performance

If the function of the plant is substantially impaired by a defect, the contractor is obliged, in agreement with Wieland, to provide substitute solutions at his own expense in order to maintain production or the operation of the plant until the plant meets the agreed requirements. Adjustments and alterations which are necessary for this purpose must also be carried out. The contractor shall ensure that the plant meets the agreed requirements as quickly as possible.

In addition, Wieland is entitled to all other statutory rights.

5.3 Warranty bond

For the settlement of warranty claims, 5% shall be retained from the final invoice amount for the duration of the warranty period plus a 6-month settlement period. This amount can be replaced by a warranty bond a) from a German bank with the content of Annex 1 or b) from a foreign bank with a content corresponding to Annex 1, which must be received by Wieland before the due date of the last part-payment. The costs of the warranty bond shall be borne by the contractor.

Section A – General**Part 1: General Contractual Conditions for Projects**

6. Property rights and confidentiality**6.1 Third-party property rights**

The contractor is required to provide Wieland with the plant at the time of delivery free from third-party rights, in particular from claims of third parties relating to the plant, materials used therein or applied processes on the basis of ownership rights or patent rights, utility rights, design rights or copyrights, trademarks or similar rights (hereinafter collectively referred to as “property rights”).

If claims are asserted against Wieland, the contractor shall indemnify Wieland against such claims, i.e. in particular against claims based on an infringement of third-party ownership and property rights.

The contractor shall inform Wieland immediately if the plant is subject to his own property rights or third-party property rights. If the contractor’s property rights are involved, Wieland is entitled to use these property rights without limitation on a non-exclusive basis. Insofar as the property right also relates to products manufactured by the plant, Wieland’s customers are also entitled to use the property right on a non-exclusive basis.

6.2 Intellectual property

If know-how or any other type of intellectual property (e.g. patents, drawings, inventions, plans, software, source codes, processes, techniques) (“IP”) arises in connection with this contract, such IP shall pass to Wieland insofar as the IP did not already exist with the contractor at the time of contract formation or was created by the contractor outside of this contract and without using any information arising in connection with this contract (“new rights”). Wieland is entitled, but not obliged, to apply for protection of new rights. The contractor shall refrain from doing anything that could be detrimental to the granting or maintenance of such property rights.

6.3 Confidentiality, photos and videos

The contractual partners undertake to treat the contract, its annexes and all documents and results created or arising in connection with the performance of the contract as confidential and ensure confidential treatment by their employees. Disclosure to third parties or publication is only permitted with the prior written consent of Wieland. Documents describing or depicting the plant are to be submitted to Wieland for approval before they are published or passed on to third parties.

All documents handed over by Wieland to the contractor, in particular process and functional descriptions, calculations, drawings and production documents remain the property of Wieland and may only be used for the purpose of performing the contract.

If Wieland and the contractor have signed a non-disclosure agreement, its provisions shall apply accordingly to this contract.

Without prior written consent, the contractor is not entitled to make photo and video recordings within Wieland’s plant areas. Photo and video recordings of the plant may be made by the contractor exclusively for the purpose of performing the contract and are also subject to confidentiality.

7. Statutory provisions and regulations

In the performance of his services, the contractor shall observe all statutory provisions and regulations of the place of destination, in particular with regard to environmental protection, dangerous goods and occupational safety.

The contractor is required to perform the contract in such a way that the applicable accident prevention regulations, occupational health and safety regulations, and generally recognised safety and occupational health rules are observed.

Section A – General

Part 1: General Contractual Conditions for Projects

8. Customs clearance

The contractor is responsible for the correct customs clearance for all goods (goods, software, documentation). He must ensure that all goods from non-EU countries have been cleared through customs (duty paid) before they arrive on the premises of Wieland. The contractor is responsible for all consequences resulting from failure to observe this requirement and is fully liable to Wieland for any resulting damages, costs or expenses incurred by Wieland.

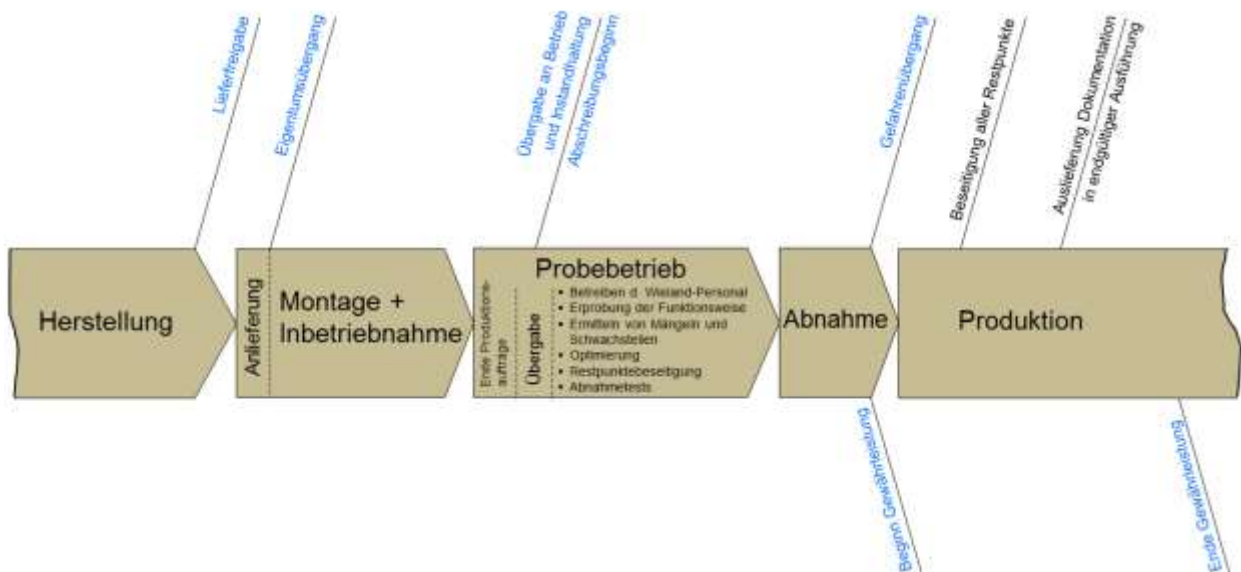
9. Documentation

Documentation shall be supplied in accordance with the content and times specified in the order and/or specification. The documentation is to be delivered in the German language, unless otherwise agreed in the order/specification.

If the contractor is required to produce documentation, this always constitutes an essential part of his services, without which Wieland is in particular entitled to withhold further part-payments.

10. Project sequence in the final phase

Schematic diagram:



Section A – General**Part 1: General Contractual Conditions for Projects**

Legend:

DE	EN
Herstellung	Production
Anlieferung	Delivery
Montage + Inbetriebnahme	Assembly + commissioning
Erste Produktionsaufträge	First production orders
Übergabe	Handover
Probetrieb	Trial operation
Betreiben d. Wieland-Personal	Operation by Wieland personnel
Erprobung der Funktionsweise	Testing of functionality
Ermitteln von Mängeln und Schwachstellen	Identification of defects and weak points
Optimierung	Optimisation
Restpunktebeseitigung	Rectification of remaining points
Abnahmetests	Acceptance tests
Abnahme	Acceptance
Produktion	Production
Lieferfreigabe	Delivery release
Eigentumsübergang	Transfer of title
Übergabe an Betrieb und Instandhaltung	Handover to operation and maintenance
Abschreibungsbeginn	Start of depreciation
Gefahrenübergang	Passage of risk
Beseitigung aller Restpunkte	Clearing up all remaining points
Auslieferung Dokumentation	Delivery of documentation
in endgültiger Ausführung	in final implementation
Beginn Gewährleistung	Start of warranty
Ende Gewährleistung	End of warranty

10.1 Delivery release

Unless otherwise agreed in writing, the plant shall be inspected on the supplier's premises prior to delivery. A written delivery release report shall be drawn up regarding the inspection, which shall contain in particular any agreements and observations made in this regard.

10.2 Delivery

The conditions for the delivery and the packaging conditions result from the order. Unloading of the plant shall take place at the expense, under the supervision and under the responsibility of the contractor.

10.3 Transfer of title

The unrestricted transfer of title to Wieland takes place upon delivery at the place of destination, and shall be confirmed in writing by the contractor on a document provided by Wieland. Until this time, the contractor must keep the plant free from all rights of third parties.

10.4 Assembly and commissioning

Unless agreed otherwise in writing, assembly and commissioning of the plant at Wieland shall be carried out by the contractor with reasonable assistance from Wieland.

10.5 Training

The contractor shall instruct a number (to be agreed) of Wieland employees in the functions and modes of operation of the plant as well as in its servicing, care and maintenance. The training included in the scope of delivery and in the remuneration shall take place before the handover of the plant in coordination with the person in charge of the project and the direct plant operator, and shall be documented.

Section A – General**Part 1: General Contractual Conditions for Projects**

10.6 Trial operation

Trial operation begins after the completion of commissioning. Trial operation means regular operation of the plant, during which particular attention is paid to identifying defects and weak points as well as possibilities for optimising the plant and the process sequence. From the beginning of the trial operation until its handover to Wieland, the plant will be operated by Wieland personnel in the presence of the contractor's personnel.

Requirements for the handover:

- Contractually agreed functionalities are available
- Documentation according to the contract is available
 - Handwritten entries and additions are permitted
 - No other copies or invalid plans in the plant area
- Protective equipment completely installed and functional, CE marking applied, declaration of incorporation provided
- Training of operating and maintenance personnel has been carried out.

The handover is to be documented on a form provided by Wieland. The exact conditions are to be agreed in a handover meeting between the contractor and Wieland. Any remaining defects shall be recorded in a list stating the rectification deadline and the responsibility. Troubleshooting shall be carried out by Wieland as far as possible.

After handover, the plant will continue to be operated by Wieland personnel, with any remaining defects being rectified and optimisations carried out.

Trial operation ends with the acceptance of the plant.

10.7 Acceptance

Acceptance takes place when the plant permanently fulfils all contractually agreed requirements and performances, all functions are available without restriction, and there are no defects that impair the operation of the plant. As part of a functional test of the plant, a test programme agreed in advance shall be run through. The course of the tests and the results shall be recorded and signed off. The positive completion of the tests is a precondition for acceptance. All costs and expenses associated with the acceptance tests are included in the scope of delivery.

There shall be no partial acceptances.

Acceptance must be in writing in order to be effective. An acceptance report will be drawn up for this purpose and signed by both parties. Agreed residual work is to be noted in the acceptance report; the contractor is to list this work in a work and time schedule and carry it out forthwith.

10.8 Passing of risk

The risk passes to Wieland with the acceptance of the plant.

11. Down payments

Insofar as Wieland is obliged to make down payments, the contractor shall provide a down payment guarantee a) from a German bank with the content of Annex 2 or b) from a foreign bank with a content corresponding to Annex 2. Wieland is only obliged to make the down payment when Wieland has received the corresponding down payment guarantee. The costs of the down payment guarantee shall be borne by the contractor.

Section A – General**Part 1: General Contractual Conditions for Projects**

12. Insurance/liability

The contractor shall maintain an assembly, product and public liability insurance policy with an insured sum of at least EUR 5 million, which also includes damages under the German Water Resources Act (*Wasserhaushaltsgesetz*) and German Federal Immission Control Act (*Bundesimmissionsschutzgesetz*) and shall demonstrate this to the purchaser before conclusion of the contract by submitting a declaration from the insurer, without being asked to do so.

The contractor shall be liable in accordance with the statutory provisions.

13. Termination

The parties shall only be entitled to the statutory rights of termination. In the case of ordinary termination by Wieland, it is presumed that the contractor is entitled to 1 per cent of the agreed remuneration attributable to the part of his performance not yet rendered.

14. Assignments

Wieland is entitled to transfer the contract in whole or in part within the Wieland Group and to assign individual rights under the contract within the Wieland Group and to third parties. Apart from that, neither party is entitled to transfer the contract to third parties or to assign individual rights from it to third parties without the prior written consent of the respective other party.

15. Written form

All amendments and additions to this contract, including the written form clause, must be in writing and signed by both parties in order to be effective.

16. Place of performance, place of jurisdiction

The place of performance for all obligations under the contract shall be the place of destination specified by Wieland.

For disputes arising from or in connection with this contract, the court in Ulm (Danube) shall have exclusive competence. However, Wieland shall be entitled, at its discretion, to bring an action at the contractor's ordinary place of jurisdiction.

17. Applicable law

The contract and its performance shall be subject exclusively to German law, excluding the conflict of laws provisions and the UN Convention on Contracts for the International Sale of Goods dated 11 April 1980.

**Annex 1:
Specimen warranty bond**

Guarantee

Wieland-Werke AG, Graf-Arco-Straße 36, 89079 Ulm, Deutschland (“Principal”) and [●] (“Contractor”) have entered into a contract [●] dated [●] under which Principal is entitled to retain an amount of EUR [●] (in words: [●], the “guaranteed amount”), being the [●] percent from the total value of this contract, to secure the proper fulfillment of warranty claims of Principal under this contract. Contractor is entitled to replace this amount with a warranty guarantee of a bank.

Therefore, in order to secure the fulfillment of warranty claims of Principal, [●] (“Bank”) absolutely, irrevocably and unconditionally commits to pay any amount up to the guaranteed amount to Principal upon its first demand.

The Bank waives its defenses of surety, voidability, set-off and unexhausted remedies (§§ 768, 770, 771 of the German Civil Code) and cannot release itself from its obligations under this guarantee by depositing the guaranteed amount with a public authority intended for this purpose.

Any payment effected under this guarantee will reduce the guaranteed amount accordingly.

This guarantee shall become effective when the original guarantee document signed by the Bank is received by the Principal and expires when the Principal returns this original to the Bank.

Gewährleistungsbürgschaft

Wieland-Werke AG, Graf-Arco-Straße 36, 89079 Ulm, Deutschland (“Gläubiger”) und [●] (“Hauptschuldner”) haben am [●] einen Vertrag über [●] geschlossen, aus dem der Gläubiger berechtigt ist, einen Betrag in Höhe von EUR [●] (in Worten: [●], der „Bürgschaftsbetrag“) einzubehalten, der [●] Prozent des Auftragswerts dieses Vertrags entspricht, um die ordnungsgemäße Erfüllung der Gewährleistungsansprüche des Gläubigers unter diesem Vertrag sicherzustellen.

Zur Sicherung der ordnungsgemäßen Erfüllung der Gewährleistungsansprüche des Gläubigers verpflichtet sich daher die [●] (“Bank”) selbstschuldnerisch, unwiderruflich und auf erstes Anfordern, jeden Betrag bis zur Höhe Bürgschaftsbetrags an den Gläubiger zu bezahlen.

Der Bürge bürgt unter Verzicht auf die Einrede der Anfechtbarkeit, Aufrechenbarkeit, Vorklage und die Einreden des Bürgen (§§ 768, 770, 771 BGB). Der Bürge kann sich nicht durch die Hinterlegung des Bürgschaftsbetrags bei einer dazu bestimmten öffentlichen Stelle von seinen Pflichten aus dieser Bürgschaft befreien.

Diese Bürgschaft kann einmal oder mehrfach bis zur Höhe des Bürgschaftsbetrags in Anspruch genommen werden.

Diese Bürgschaft wird wirksam, wenn dem Gläubiger das vom Bürgen unterzeichnete Original der Bürgschaftsurkunde zugeht und erlischt, wenn der Gläubiger dieses Original an den Bürgen zurückgibt.

**Annex 2:
Specimen down payment guarantee**

Guarantee

Wieland-Werke AG, Graf-Arco-Straße 36, 89079 Ulm, Deutschland (“Principal”) and [●] (“Contractor”) have entered into a contract [●] dated [●] under which Principal is obliged to pay a deposit of EUR [●] (in words: [●]), being the [●] percent from the total value of this contract.

In Order to secure the refund of this deposit, [●] (“Bank”) absolutely, irrevocably and unconditionally commits to pay any amount up to this deposit (“guaranteed amount”) to Principal upon its first demand.

The Bank waives its defenses of surety, voidability, set-off and unexhausted remedies (§§ 768, 770, 771 of the German Civil Code) and cannot release itself from its obligations under this guarantee by depositing the guaranteed amount with a public authority intended for this purpose.

Any payment effected under this guarantee will reduce the guaranteed amount accordingly.

This guarantee shall become effective when the original guarantee document signed by the Bank is received by the Principal and expires when the Principal returns this original to the Bank.

Anzahlungsbürgschaft

Wieland-Werke AG, Graf-Arco-Straße 36, 89079 Ulm, Deutschland (“Gläubiger”) und [●] (“Hauptschuldner”) haben am [●] einen Vertrag über [●] geschlossen, aus dem der Gläubiger verpflichtet ist, an den Hauptschuldner eine Anzahlung in Höhe von EUR [●] (in Worten: [●]) zu bezahlen, die [●] Prozent des Auftragswerts dieses Vertrags entspricht.

Um die Rückzahlung dieser Anzahlung zu sichern, verpflichtet sich die [●] (“Bürge”) selbstschuldnerisch, unwiderruflich und auf erstes Anfordern jeden Betrag bis zur Höhe der Anzahlung (“Bürgschaftsbetrag”) an den Gläubiger zu bezahlen.

Der Bürge bürgt unter Verzicht auf die Einrede der Anfechtbarkeit, Aufrechenbarkeit, Vorausklage und die Einreden des Bürgen (§§ 768, 770, 771 BGB). Der Bürge kann sich nicht durch die Hinterlegung des Bürgschaftsbetrags bei einer dazu bestimmten öffentlichen Stelle von seinen Pflichten aus dieser Bürgschaft befreien.

Diese Bürgschaft kann einmal oder mehrfach bis zur Höhe des Bürgschaftsbetrags in Anspruch genommen werden.

Diese Bürgschaft wird wirksam, wenn dem Gläubiger das vom Bürgen unterzeichnete Original der Bürgschaftsurkunde zugeht und erlischt, wenn der Gläubiger dieses Original an den Bürgen zurückgibt.