

# Bayer Contract Terms for Construction Services

## 1 General provisions

1.1 These terms and conditions become part of the content of the relevant contract. Terms and conditions that conflict with or deviate from these provisions or other restrictions imposed by the Contractor will not be recognized unless the Principal has expressly agreed in writing thereto in the individual case.

1.2. Other agreements, amendments, and side agreements apply only if the Principal declares its agreement therewith in writing.

## 2 Quote

2.1 The Contractor's quote must abide specifically by the inquiry; where there are any deviations, the quote must expressly point these out.

2.2 The quote must be provided free of charge with no obligation for the Principal; no remuneration will be paid for cost estimates except by prior special agreement.

## 3 Order

3.1 Orders are made exclusively in writing. Changes may be made in writing or in text form. In case of doubt, the content of oral and telephone discussions is not binding unless it has been confirmed in writing.

3.2 The Contractor shall check any order and all accompanying documents immediately for discernible errors, ambiguities, omissions and unsuitability of the specifications selected by the buyer for the intended purpose and shall notify the Principal immediately of any changes or further details that may be needed for the order.

3.3 Each order and order change must be confirmed by the Contractor in writing and handled separately throughout all correspondence.

3.4 The following must be stated in all written documents: purchasing department, complete purchase order number, date of purchase order and buyer's reference.

## 4 Order of precedence, rules of interpretation

To the exclusion of the general terms and conditions of business of the Contractor ("**Contractor**"), the parts of the contract shall apply as set forth in the order of precedence below:

- the Principal's ("**Principal**") order,
- the record of negotiations and the annexes thereto,
- the appendices mentioned in the Principal's order, particularly the service specifications and these Contract Terms for Construction Services, and
- the German Construction Contract Procedures, Parts B and C (VOB/B and VOB/C), in the version thereof applicable at the time of the Parties' entry into the agreement.

## 5 Services of the Contractor

### 5.1 Contractual fulfillment, completeness

If the service specifications include general stipulations, the services to be performed by the Contractor include all those required for proper contractual performance and those necessary to establish the contractual fulfillment owed under the contract to produce a work. The performance obligation must be interpreted such that a functional service that is suitable for formal acceptance and is in keeping with the object of the contract is owed. If the service specifications contains detailed stipulations, these shall take priority.

### 5.2 General provisions for contract execution

#### 5.2. 1 Generally accepted engineering practices, laws and technical standards

The Contractor must comply with the generally accepted engineering practices. The Contractor shall comply with all relevant laws and other legal standards and the generally accepted current technical standards and guidelines.

#### 5.2. 2 Verification and notification obligations, duty to inform

The Contractor must notify the Principal in writing immediately if data, information and/or documents as well as technical instructions of the Principal are incorrect, incomplete and/or contradictory.

#### 5.2.3 Notice of concerns

If the Contractor has technical concerns, it must notify the Principal thereof immediately in writing with a detailed explanation. The above requirement applies in particular if the Contractor has concerns about a technical instruction from the Principal or about the Principal's intended method of execution.

#### 5.2. 4 Monitoring rights of the Principal

The Principal has the right to check the Contractor's performance at any time and, if needed, to issue technical instructions within the scope of the service specifications. The Contractor shall ensure that the Principal is given all

necessary information at all times in order to evaluate the services. The Principal is entitled to visit all sites where work is being performed to conduct its own tests and preserve evidence.

### 5.2.5 Approvals by the Principal

The Principal is entitled at all times to request that the Contractor submit the plans, drawings, concepts, other records and/or documents (hereinafter referred to as "Documents" in this section) prepared in connection with the performance of the services for approval and/or information. There is no obligation of approval on the Principal's part.

At the Principal's request, the Contractor shall immediately submit Documents and be available to provide explanations. The Contractor must provide Documents—including any explanations—to the Principal with sufficient lead time that the Principal has adequate time to review the Documents and decide whether to approve them.

Approval does not release the Contractor from its responsibility for the accuracy and/or completeness of the Documents created and/or verified by it. Approval does not constitute formal acceptance or partial acceptance.

### 5.2.6 Coordination, interfaces

Both Parties shall agree on an interface list that specifies the delineation of services between the Principal and the Contractor. If the Contractor's own scope of services is affected, the Contractor must itself integrate and coordinate the services of other specialists involved. This is a key fundamental service. Coordination includes, but is not limited to, forecast planning for involvement and commissioning of other parties, providing them with timely information and ordering/reviewing their services in a timely manner if this affects the Contractor's own scope of services.

The Contractor must handle all coordination services and coordination activities with regard to the services it must perform and the subcontractors it has commissioned along with those of the Principal and third-party contractors.

As part of the coordination services, the Contractor shall in particular also plan for the Principal's cooperation in terms of content and schedule. The Contractor will request any necessary collaboration from the Principal with appropriate advance notice.

### 5.2.7 Commissioning of subcontractors by the Contractor

Any transfer of partial services to subcontractors not already designated by name in the quote is permissible only with the Principal's prior written consent. To this end, the Contractor must submit to the Principal a written request for approval of the subcontractor. The Principal can render this approval dependent on the presentation of documents relevant to the order, such as the business or trade registration, within the bounds of Sec. 315 of the German Civil Code (BGB).

The Contractor agrees to commission only capable and financially solvent subcontractors. The subcontractor must have sufficient liability insurance coverage and must provide evidence of this by presenting an insurance certificate. When engaging the subcontractor, the Contractor must comply with all relevant legal regulations under the Posted Workers Act (AEntG), Temporary Employment Act (AÜG) and all social insurance and collective bargaining regulations and occupational safety laws. The Contractor must ensure that the subcontractor meets its obligations as an employer to all employees who are assigned to work within the scope of this contract.

In the event of the authorized assignment of services to subcontractors by the Contractor, the Contractor must ensure in particular, taking account of the BAYER principles for the use of external skilled workers, that, with regard to any other employees used by the subcontractor and any other subcontractors as well, they are not integrated into the Principal's operational organization and that they do not take any instructions from employees of the Principal.

### 5.3 Daily construction reports

The Contractor is obligated to prepare daily construction reports and provide the Principal's representative with a copy thereof at least weekly. The daily construction reports must contain all information that could be significant to the execution of the work or invoicing, for example regarding the weather, temperature, number and nature of the workers employed on the construction site, number and nature of the heavy equipment in use, the key aspects of the progress of construction (start and end of larger-scale services, concreting times, or the like), interruption of the execution of work, including shorter interruptions of working time, with a statement of the reasons, accidents, hindrances, and other incidents and occurrences.

### 5.4 Safety and occupational health and safety

The Contractor is responsible for ensuring that all work performed by the Contractor within the scope of the contract is performed in such a way that the statutory provisions, the conditions imposed by government agencies, and the Principal's rules on safety and order are complied with.

If the German Construction Site Ordinance (BaustellV) requires the preparation of a safety and health plan, the Contractor must participate therein with regard to the rules concerning the Contractor's trade. The Contractor must ensure that its employees comply with all of the foregoing rules. Safety and health-related instructions given by the safety and health coordinator must be followed.

The Contractor is responsible for designating the coordinator pursuant to German Social Accident Insurance (DGUV) Regulation 1: Principles of Prevention and pursuant to the German Construction Site Ordinance.

## **5.5 Construction products, construction materials, waste**

Construction products and types used must be in accordance with the provisions of the respective state building code. The Contractor must ensure that the construction products are in accordance with the technical rules. The certifications required under construction law must be present at the time of execution of the work and must be provided, in full and sorted, upon formal acceptance.

Unless otherwise agreed, for example in CHEMPARK guidelines, construction waste, packaging materials and other waste materials located on the construction site shall be regularly transported away in compliance with the construction approval and the provisions of public law and properly disposed of by the Contractor, insofar as the Contractor caused the waste material.

## **6 Changes to the scope of services**

### **6.1 Supplementary agreements**

If the Principal requests the performance of changed or additional services (hereinafter "Changes"), the Contractor must provide the Principal, immediately and prior to executing the service, and in any event within 14 calendar days after receiving the change request from the Principal, with a written, verifiable supplementary quote that states the consequences of the Changes in terms of remuneration and timeline, along with any possibilities of savings that may arise, in detail and on a conclusive basis.

The Parties agree to negotiate on this supplementary quote and to enter into supplementary contracts that provide for the consequences of the Changes in terms of remuneration and timeline on a conclusive basis as soon as possible. The quote must be explained at the Principal's request; receipts must be submitted at the Principal's request.

If the Parties cannot reach an agreement within 21 days after the Contractor's receipt of the change request from the Principal, the Principal can order that the Changes be performed in writing or in text form.

Such an order is possible even if there is dispute between the Principal and the Contractor regarding whether a service is part of the scope of services owed. The provisions of this Sec. 6 apply accordingly.

The following also applies in the interest of ensuring that the construction project is executed without disruption: In urgent cases in which there is a pressing need for execution of the work, the Principal can order in writing or in text form, even before the expiration of the 21-day time limit (urgent order), that the Contractor perform a Change even if no agreement has yet been reached regarding the consequences in terms of remuneration and timeline. An urgent case is deemed to exist in particular if the Principal would sustain greater harm by waiting for the end of the time limit for the Parties to reach an agreement than the harm sustained by the Contractor by shortening this period. In this case as well, the Contractor shall present the consequences of Changes in terms of remuneration and timeline immediately.

The Contractor agrees to perform Changes immediately if so ordered by the Principal, even if there is dispute about the contractual scope of services, verifiability and/or the amount of the supplementary quote submitted.

### **6.2 Invoicing for changed or additional services**

When defining a modified price for changed or additional services (hereinafter "Changes"), the following requirements apply:

If a uniform price list is agreed, this list shall be used first to determine any modified price.

Insofar as no uniform prices are agreed, the consequences in terms of remuneration must be calculated based on the actual costs required with reasonable surcharges for general business expenses, risk and profit. As a surcharge for general business expenses, risk and profit, a surcharge rate of 7% is agreed.

The Contractor moreover agrees to submit to the Principal a contract costing calculation in a sealed envelope within two weeks after the Parties' entry into the contract. The Principal is permitted to waive this requirement. The contract costing calculation must contain a transparent and understandable itemization of the individual costs of the partial service, construction site overhead, subcontractor costs, general business expenses, risk and profit as well as the average wage. The Contractor must state all surcharges imposed by it in the case of services performed by subcontractors. If the costing calculation has been itemized with sufficient transparency and clarity and placed on file in line with the above requirements, the Contractor is permitted to use the formula in this costing to draw up the costing for an addendum as well.

In the event of a dispute, the Principal is permitted to open the calculation that has been held on file. The Contractor must be given the opportunity to be present during the review. The calculation shall then be sealed and, after unconditional acceptance of the final payment, returned.

Any agreed discount shall also apply to all Changes.

The Contractor is also entitled to an installment payment for the Changes that have been provided free from defects; this installment payment shall be in the amount of the value of the services provided, as substantiated by the Contractor. The Contractor is not entitled to additional installment payments for services that were already owed as part of the original services.

In the event of an order in writing from the Principal – after failure to reach an agreement within 21 calendar days after receipt of the change request or in urgent cases – the Contractor is entitled to an installment payment of 80% of the additional remuneration quoted in the complete, understandable and verifiable supplementary quote for the Changes provided free from defects.

### **6.3 Remuneration based on expenditure**

Remuneration on an hourly rate basis requires an express prior agreement with the Principal to perform certain services and invoice them in line with the agreed hourly rates. Remuneration for travel time will be provided only if this is explicitly agreed.

The hourly/daily logs must include the Principal's order number, the date of service provision, the designation of the place where the work was performed, the type of service, and the names of employees, including qualifications and hours worked (itemized in detail) and must be presented to the Principal on the working day following the next working day thereafter.

Acknowledgment by the Principal shall be made in the form of written confirmation, but does not constitute acknowledgment of a payment obligation. The confirmation merely documents the times that the Contractor's personnel were present on the construction site. In particular, the right is reserved to investigate whether the work performed constitutes additional services. All hourly/daily logs must be attached to the invoice.

Notional acknowledgment of hourly wage documentation pursuant to VOB/B is not permitted.

## **7 Participation of the Principal**

The Contractor is responsible itself for planning the dates and content of all cooperation and approvals by the Principal. The Contractor shall independently obtain the required data, information and/or documents from the Principal and/or the third parties involved. If needed, the Contractor will involve the Principal with sufficient advance notice.

## **8 Project execution**

### **8.1 Employees with key functions**

At the Principal's request, the Contractor must submit an organizational chart with the names of the Contractor's project manager and other employees with key functions along with their addresses, telephone and cell phone numbers, fax numbers and e-mail addresses.

The Contractor must designate a person who is authorized to make all decisions on its behalf concerning the performance of this contract, especially in project meetings, and to submit and receive corresponding declarations with effect for the Contractor. If a deputy participates in the project meetings on behalf of the Contractor's project manager, the deputy has the authority to make all the above decisions for the Contractor.

The Contractor's project manager must be authorized to issue instructions to the Contractor's other employees.

The Contractor must ensure that its employees are not de facto integrated into the Principal's operational organization at any time (meaning in particular that they do not participate in any collaborative activities with employees of the Principal, do not take typical employer instructions from employees of the Principal, do not directly coordinate their vacations with the Principal, do not report illness to the Principal, etc.). If they are nonetheless integrated into the Principal's operational organization contrary to the express provisions of this contract, the Contractor must release the Principal from all resulting disadvantages insofar as these are based on a breach of the obligation set out in sentence 1 above.

### **8.2 Other personnel deployed by the Contractor**

The Contractor must ensure that the employees deployed by it or its subcontractors report only to their respective employer.

### **8.3 Language**

Contract execution and oral/written communications shall be conducted in German and, upon agreement with the Principal, also in English. Required documents shall be prepared in German and, upon agreement with the Principal, also in English.

## **9 Scheduling**

The Contractor shall perform the services in accordance with the general schedule and the latest detailed schedule.

At the Principal's request, the Contractor shall submit a detailed schedule taking account of the specifications contained in the general schedule. The Contractor must show the critical path in the case of each update to the schedule. Updates must always include the specific description of any deviations from the originally stipulated target dates (expected vs. actual).

The Contractor shall immediately notify the Principal in writing if there are indications that deadlines will be exceeded, including the reasons and the expected duration.

If the critical path is affected, the Contractor must remedy the situation immediately at the Principal's request. If the Contractor is in default such that it cannot be expected to meet the contractually agreed deadlines, the Principal is entitled, after the expiration of a reasonable grace period and after terminating or partially terminating the affected portion of the services, to perform the services itself at the Contractor's expense.

If the Contractor does not perform its services within the agreed delivery time, it shall be liable in accordance with the statutory provisions. Nothing herein shall affect any contractual penalty that has been agreed in the event of late delivery within the scope of Sec. 340 (2) BGB. If a contractual penalty has been agreed, it may be claimed up until the final payment is due, without there being any need for a reservation pursuant to Sec. 341 (3) BGB and/or Sec. 11 (4) VOB/B.

The supplier's warranty also extends to the parts produced by subcontractors.

## **10 Hindrances**

The Contractor must notify the Principal immediately in writing, with this notice being expressly designated as a notice of hindrance, if the Contractor believes itself to be hindered in the performance of its services; this notice must state the reasons for the hindrance and the expected consequences thereof with regard to scheduling and costs. The Contractor must also provide notice of obvious hindrances.

The hindrances must be noted in the construction log, but entry thereof in the construction log is not a substitute for the separate written notice required pursuant to this provision.

The Contractor must moreover notify the Principal immediately if and when a hindrance that has been reported no longer applies.

With an eye to orderly project management, the consequences on the personnel deployed and on the other resources of the Contractor and its subcontractors due to individual circumstances posing hindrances must be stated in detail in the hindrance notice. In particular, the notice must state in detail whether, and if so to what extent, it is or has been possible to employ or use personnel and other resources elsewhere and what measures are or have been possible to mitigate any damage and/or losses that may arise or may have arisen. The Contractor must allocate its personnel, equipment, and materials in such a way as to mitigate damage and/or losses.

## **11 Formal acceptance, transfer of risk**

Once the services have been performed in an essentially defect-free manner, all services by the Contractor shall be formally accepted by the Principal in an overall formal acceptance process by signing an acceptance report.

If a warranty bond has been agreed, it must be turned over to the Principal in the course of the formal acceptance. The Contractor is not entitled to partial acceptance. Nothing herein shall affect the Principal's obligation to declare formal acceptance in a timely manner. The risk passes to the Principal upon formal acceptance.

## **12 Warranty claims**

Unless otherwise agreed, the nature and scope of warranty claims against the Contractor shall be governed by the VOB/B. The limitation period for warranty claims is five years from overall formal acceptance unless other time limits are agreed.

## **13 Title to documents, rights of use, IP rights**

### **13.1 Title to documents**

All documents provided by the Principal, i.e., data, information, calculations, software, drawings, manuals, models and other documents of a technical nature, whether in paper or other form and on data media (hereinafter referred to in this section as "Documents"), remain the property of the Principal. These Documents must be returned by the Contractor at any time upon the Principal's

request. The assertion of a right of retention in this regard is ruled out, unless the Contractor asserts rights of retention or rights to refuse to perform with regard to counterclaims that are undisputed or have been established with final, binding legal force.

The Documents created by the Contractor or its subcontractors for the performance of the contract and provided to the Principal shall become the property of the Principal.

### **13.2 Utilization of Documents of the Principal by the Contractor**

The Contractor shall use the Documents of the Principal that are provided to the Contractor only to perform the contractually owed services and is not permitted to use them otherwise for itself or third parties; in particular, it must not exploit them for itself or third parties.

Documents of the Principal must not be duplicated, made accessible to third parties and/or otherwise used without the prior express written consent of the Principal. The Contractor is permitted to share these with subcontractors of the Contractor if the Principal has agreed to the commissioning of the subcontractor and the subcontractor has undertaken vis-à-vis the Principal and the Contractor to comply with the provisions of this Sec. 10.

### **13.3 Rights of use, usage**

The Principal is granted a global, unrestricted, transferable, perpetual right of use at no charge to all Documents that are protected under copyright or related IP rights and to other deliverables of the Contractor that are subject to these rights. The Principal is entitled to complete the project, or to have it completed by a third party, even without the cooperation of the Contractor on the basis of the Documents and services provided by the Contractor and to use the project deliverables. The right of use includes the right to process the deliverables, to further develop, duplicate, and manipulate them and to make them publicly accessible.

The Contractor shall require its subcontractors to grant the Principal rights of use to the same extent. Exceptions thereto require the consent of the Principal.

If work on the project results in technical inventions, the Contractor must secure the rights to these inventions from its employees and subcontractors. The Principal is entitled to use the inventions and any registered or granted IP rights permanently at no charge and to transfer the right of use. If the invention relates to the Contractor's confidential know-how that is eligible for protection and the know-how in question is sold or otherwise transferred to a third party, the Contractor must ensure that the Principal's right of use is not affected by the sale or transfer.

Insofar as use of the deliverables requires rights of use to preexisting rights of the Contractor, the Contractor must permanently grant the Principal the relevant rights at no charge. The Principal is entitled to transfer this right of use along with the rights of use to deliverables. If a subcontractor holds these rights, the Contractor must obligate its subcontractor to grant the Principal rights of use to the same extent.

### **13.4 Remuneration**

The remuneration owed under this agreement represents full and final settlement of claims to remuneration regarding all transfers, grants of rights and uses. The Parties agree that in defining the remuneration, they have already accounted for the fact that during the work assignment the Contractor might create work products subject to copyrights that will be used by the company. Thus, part of the remuneration represents full and final settlement – subject to Sec. 31a (4), Sec. 32 (3), Sec. 32a (3) and Sec. 32c (3) of the German Copyright Act (UrhG) – for the transfer, licensing and use of work products that are subject to copyrights, including after completion of the project.

## **14 Liability and exemption from liability**

Notwithstanding the provisions of Sec. 10 and 13 VOB/B, liability is governed by the statutory provisions.

If a third party files a claim against the Principal due to breach of a legal or contractual provision within the Contractor's responsibility, the Contractor shall hold the Principal harmless against all claims.

## **15 Insurance policies**

The Contractor must prove that it has professional liability insurance with coverage of at least 5 million euros for personal injury and 5 million euros for other damage (property damage and financial loss), limited to full utilization two times per calendar year, and must keep this coverage in force at least until the end of the warranty period. The Contractor grants the Principal the right to contact the insurance company directly to clarify specific questions.

If the Contractor performs planning services, the Contractor must take out or maintain professional design liability insurance appropriate to the risk with

minimum coverage of 500,000 euros, limited to full utilization two times per calendar year, and must prove this to the Principal upon request.

The Contractor must provide the Principal with proof that it has taken out the aforementioned insurance by sending confirmation of insurance to the Principal immediately upon request.

Transportation insurance shall be taken out exclusively by the Principal.

Taking out special erection/installation insurance coverage in addition to the liability coverage stipulated in Sec. 7.2 must be coordinated between the Principal and Contractor in the individual case.

Machines, equipment, etc. that are loaned to the Contractor must be insured by the Contractor against the customary risks. The Principal shall have no further liability for loss of or damage to the machines, equipment, etc. on loan except in cases of intent or gross negligence.

## 16 Origin of goods

The goods supplied must meet the origin requirements of the preferential arrangements applicable to the EEA except where expressly stipulated otherwise in the order confirmation.

## 17 Remuneration and terms of payment; guarantees

Each agreed remuneration is a fixed price. Changes to remuneration shall be made only under the conditions set forth in this contract. The price applies to the entire term of the contract. Price adjustments for wages or materials are not an element of this contract. All prices are net and do not include VAT at the statutory rate.

The Principal has the right to withhold from remuneration pursuant to Sec. 48 et seqq. of the German Income Tax Act (EStG) a deduction in the amount of 15 percent of the gross pay for work that is to be disbursed, remitting this amount to the relevant tax authorities. If the Contractor presents an exemption certificate from the relevant tax office, the Principal is permitted to choose whether to perform the tax withholding procedure; the Principal shall take the Contractor's interests into account when making this decision.

The Contractor is obligated to prepare the final invoice immediately and to present the final invoice to the Principal within not more than six weeks after formal acceptance in a verifiable form and with the inclusion of all documentation; nothing herein shall affect the provisions of Sec. 14 (3) VOB/B.

If a payment schedule has been agreed, an installment invoice will be due only if the status of services provided for in the payment schedule has been achieved.

If the Contractor intends to discontinue work pursuant to Sec. 16 (5) VOB/B, the Contractor must provide express notice thereof, setting a grace period.

Unless otherwise agreed in the contract, all invoices are due for payment within 30 calendar days after receipt of a verifiable invoice; the provisions of law apply in addition thereto.

Invoices must be sent to the address indicated in the order, stating the order date, the order number and the tax number. The invoice items must correspond to the purchase order items.

The Contractor shall be charged, for employees assigned to provide services who possess or receive an "external company badge," the Currenta flat service fee per employee, per month, for services provided by Currenta GmbH & Co. OHG. Different rules may apply in locations of the Principal that are not operated by Currenta GmbH & Co. OHG; the Contractor is obliged to observe these rules.

The Principal is entitled to retain five percent of the net final invoice total for any warranty claims. The Contractor is authorized to replace this amount withheld as security after formal acceptance by providing a guarantee for warranty claims from a bank, Sparkasse savings institution or credit insurer licensed in the European Community. The place of jurisdiction must be Cologne. The provisions of the VOB/B must be observed. Amounts withheld and/or warranty bonds are to be repaid or returned, respectively, only after the warranty period has expired. Nothing herein shall affect any statutory rights of retention.

## 18 Confidentiality, advertising

The Contractor undertakes to treat all project specifics and internal company information of the Principal of which it becomes aware as confidential and not to pass such information on to third parties.

The Contractor's obligation to retain significant contractual documents expires after ten years with respect to the Principal's claims against the Contractor. If

the Contractor wishes to destroy original documents, it must first offer them to the Principal.

The Contractor shall refer to the existing business relationship with the Principal in advertising or other media only with the prior written consent of the Principal. The use of the Principal's trademarks (in particular the "BAYER Cross") by the Contractor is not permitted in any case, unless the Principal expressly consents to this in writing.

## 19 Termination

Termination is governed by the provisions of the VOB/B or, where these do not contain a provision, the statutory provisions.

After termination, the Contractor is obligated to vacate the construction site and immediately surrender to the Principal all project documents that are relevant for continuing the work.

## 9 Compliance with employment, tax and social insurance regulations

The Contractor represents and warrants that it will meet its obligations as an employer toward all employees assigned within the scope of this contract. The Contractor undertakes to hire the employees it employs for the performance of this contract in compliance with the applicable laws, in particular the applicable employment and social insurance regulations. The Contractor further undertakes to comply with all applicable laws, ordinances and official regulations, especially regarding tax laws, employment laws (including the AÜG (Temporary Employment Act) and AEntG (Posted Workers Act)), social insurance laws, occupational health and safety laws, accident prevention laws and the accident prevention provisions of the employers' accident liability insurance associations (Berufsgenossenschaften).

The Parties agree that this contract does not constitute subcontracted labor. They shall do everything in their power to prevent any integration of the Contractor's employees into the Principal's operational organization. The Contractor is responsible for checking to ensure that such integration does not occur and that employees of the Contractor do not take instructions from employees of the Principal. In particular, the Contractor must ensure compliance at all times with the BAYER principles for the use of external skilled workers. At the Principal's request, the Contractor must regularly confirm in writing that it has conducted the required monitoring. Insofar as the Contractor does not comply with this obligation and the contract is held to constitute subcontracted labor, the Contractor must indemnify and hold harmless the Principal from and against all resulting material and immaterial damages. If there are indications that performance of this contract may constitute subcontracted labor, the Principal must be notified immediately.

## 10 Compliance with the German Minimum Wage Act

The Contractor represents and warrants that in the performance of orders from the Principal it will comply with the provisions of the German Minimum Wage Act (MiLoG). The Contractor further warrants that it will impose the same obligation on its subcontractors and the parties providing it with temporary workers.

The Contractor shall indemnify and hold harmless the Principal from and against all third-party claims that result from the execution of the Principal's orders by the Contractor, particularly claims in connection with the provisions of the Minimum Wage Act by the Contractor's own employees or subcontractors and by employees of the subcontractor or a supplier of temporary labor hired by the Contractor or by a subcontractor.

The hold harmless obligation also applies with respect to claims from social insurance carriers, tax authorities and in particular also with respect to claims from the Federal Employment Agency for the payment of unemployment insurance for employees of bankrupt companies.

## 11 Payment of legally prescribed social insurance contributions and taxes

The Contractor warrants that it will pay the statutory social insurance contributions and taxes in respect of all employees employed within the scope of this contract and that no additional claims will arise.

## 12 Final provisions

### 12.1 Transfer of the contract, assignment

The Contractor is not permitted to transfer the contract in whole or in part to third parties without the consent of the Principal. The above stipulation also applies to individual rights and obligations under this contract.

The Principal is entitled to transfer its rights and obligations under this contract within the BAYER Group (i.e., to an affiliated company of Bayer AG as defined by Sec. 15 et seqq. of the German Stock Corporation Act (AktG)) without the Contractor's consent. The Principal reserves the right to assign rights in whole or in part.

#### **12.2 Applicable law**

The law of the Federal Republic of Germany shall apply exclusively to all legal relationships arising for the Parties and their legal successors from this contract, to the exclusion of the CISG.

#### **12.3 Place of jurisdiction**

The exclusive place of jurisdiction for all disputes arising from or in connection with this contract shall be Cologne.

#### **12.4 Written form provision, amendments to the contract**

Amendments, addenda or the mutual termination of this contract, including its annexes, must be in writing and signed by both Parties on one and the same document in order to be valid, unless they are based on an express, individually agreed contractual provision.

Notices of termination and any other declarations needed in order for the Parties to establish, defend or exercise their rights must also be in writing in order to be valid, but require only the declaring Party's signature.

The written form requirement can be waived only by a declaration signed by both Parties, unless the waiver is based on an express, individually agreed contractual provision.

The acceptance or acknowledgment of orders, shipping documents, order confirmations or any other kind of document (including general terms and conditions of business) containing provisions that differ from those agreed to in this contract shall not result in an amendment and/or addendum to this contract unless the written form requirement pursuant to the above paragraphs of this section is complied with.

#### **12.5 Set-off**

The Contractor is not permitted to set off any amounts unless the underlying claim is undisputed or has been established with final, binding legal force by a court of law.

The Principal may set off and/or withhold amounts as permitted by law.

#### **19.6 General points**

The rules on safety and order, the applicable QM instructions for companies that execute orders on BAYER grounds and/or the relevant provisions of affiliates of BAYER and the BAYER Supplier Code of Conduct, as well as the BAYER principles for the use of external skilled workers, are elements of the terms of the individual contracts/orders. The relevant rules on safety and order (Sicherungs- und Ordnungsvorschriften; SOV) are available on the Internet at [www.procurement.bayer.com](http://www.procurement.bayer.com).

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