

Terms of Contract

Special contract conditions regarding minimum hourly rates of pay and observation of collective wage agreements (Part A) [Wirt-214, Apr 2024]

Annex: Wage brochure(s) on remuneration subject to collective wage agreements (see index of annexes)

1. Undertaking to pay specific minimum hourly rates of pay and certain collectively agreed wages

1.1 The contractor undertakes to pay staff deployed for the performance of the contract the following minimum hourly rates of pay for work and/or collectively agreed wages undertaken throughout the performance of the contract:

1.1.1 As a minimum requirement, such remuneration provisions, including the minimum hourly rate, as are made binding for the service in question under the Minimum Wages Act, a collective agreement declared generally binding under the Collective Bargaining Act with the effects of the Posting of Workers Act, or a statutory ordinance issued under Section 7, Section 7a, or Section 11 of the Posting of Workers Act, or a statutory ordinance issued under Section 3a of the Temporary Employment Act;

1.1.2 Irrespective of the location of the company and the place of performance of the work, at least the remuneration (including overtime rates) in accordance with the provisions of the collective wage agreement applicable to the relevant trade in the state of Berlin; in detail, the remuneration provisions of the attached "Wage brochure(s) on remuneration subject to collective wage agreements" listed in the annex of these contract conditions shall be agreed;

1.1.3 Staff (excluding trainees) shall be paid at least the minimum gross hourly rate of EUR 13.69.

1.2 If more than one undertaking under 1.1.1, 1.1.2, and 1.1.3 apply to the contractor, then the most favorable arrangement for staff shall apply.

1.3 These undertakings do not apply for work performed abroad.

2. Transfer of undertaking to the subcontractor chain

2.1 The contractor undertakes to conclude an agreement with its subcontractors and/or agencies providing staff to ensure their compliance with the undertaking stated in point 1 above.

2.2 The contractor undertakes to oblige its subcontractors and/or agencies supplying staff to conclude an agreement as per 2.1 with any further subcontractors so as to ensure

compliance with the undertaking in point 1 throughout the entire subcontracting chain.

- 2.3 A subcontractor and/or agency supplying staff is not obliged to comply with these agreements if
 - 2.3.1 the subcontractor in question is exempt from public procurement law for the purposes defined in Sections 107, 109, 116, 117, 137, 140 as well as Section 145 of the Act Against Restraints of Competition;
 - 2.3.2 the contractor or subcontracting subcontractor is required to accept the contract conditions of a subcontractor in order to perform the contract;
 - 2.3.3 the value of the subcontract for a deliverable or service is less than EUR 10,000 (excluding VAT) or in the case of construction work EUR 50,000 (excluding VAT).
- 2.4 Upon request, the contractor is required to provide proof of the transfer of undertaking as per 2.1 and 2.2, or to provide proof of right of exemption as per 2.3.
- 2.5 Any infringements by a subcontractor or agency supplying staff of the agreed undertakings pursuant to 2.1 and 2.2 regarding the contractor's undertaking under point 1 shall be attributed to the contractor.

Index of annexes

Wage brochure(s) on remuneration subject to collective wage agreements pursuant to point

1.1.2

Special contract conditions
regarding compliance with ILO core labor standards
(Part A) [Wirt-2140, Oct 2023]

The contractor undertakes to meet the requirements for compliance with ILO core labor standards as stipulated in the specification of goods and services and to comply with its obligations regarding the provision of proof as set out in the annex to the specification of goods and services regarding proof of ILO compliance (“Anlage zur Leistungsbeschreibung: Nachweis ILO-Konformität”).

Please note:

The contractual conditions concerning the inspection of these undertakings and possible sanctions in case of infringement are set out in Part B (Wirt-2144).

**Special contract conditions regarding
the advancement of women
(Part A) [Wirt-2141, May 2020]**

The contractor undertakes

- to comply with the applicable General Act on Equal Treatment;
- to ensure that subcontractors deployed in the performance of the contract agree, depending on the size of the company pursuant to Section 3 of the Advancement of Women Act (*Frauenförderungsverordnung* - FFV), to carry out measures in accordance with Section 2 FFV and to comply with the undertakings under Section 4 FFV. Any breach of this obligation by the subcontractor will be attributed to the contractor.
- To implement one or more of the measures for the advancement of women and/or the advancement of the compatibility of family and work in Section 2 FFV, depending on the size of the business pursuant to Section 3 FFV.

**Special contract conditions regarding
the prevention of disadvantages
(Part A) [Wirt-2143, May 2020]**

1. Undertaking to prevent disadvantages

The contractor undertakes

- 1.1 to comply with the federal and state legal provisions regarding general non-discrimination, particularly the General Act on Equal Treatment;
- 1.2 to pay male and female staff the same rate for the same or equivalent work. This is without prejudice to the provisions of collective agreements.

2. Transfer of undertaking to the subcontractor chain

- 2.1 The contractor undertakes to conclude an agreement with its subcontractors and/or agencies providing staff to ensure their compliance with the undertaking stated in point 1 above.
- 2.2 The contractor undertakes to oblige its subcontractors and/or agencies supplying staff to conclude an agreement as per 2.1 with any further subcontractors so as to ensure compliance with the undertaking in point 1 throughout the entire subcontracting chain.
- 2.3 A subcontractor and/or agency supplying staff is not obliged to comply with these agreements if
 - 2.3.1 the subcontractor in question is not subject to public procurement law pursuant to Sections 107, 109, 116, 177, 137, 140 as well as Section 145 of the Competition Act (GWB),
 - 2.3.2 the contractor or subcontractor is required to accept the contractual conditions of a subcontractor in order to perform the contract,
 - 2.3.3 the value of the subcontract for a deliverable or service is less than EUR 10,000 (excluding VAT) or in the case of construction work

EUR 50,000 (excluding VAT).

2.4 Upon request, the contractor is required to provide proof of the transfer of the undertaking as per 2.1 and 2.2, or to provide proof of right of exemption in accordance with 2.3.

2.5 Any infringements by a subcontractor or agency supplying staff of the agreed undertakings pursuant to 2.1 and 2.2 regarding the contractor's undertaking under point 1 shall be attributed to the contractor.

**Special contract conditions regarding
environmental protection requirements
(Part A) [Wirt-2145, Dec 2021]**

The contractor undertakes to comply with the environmental protection regulations as stipulated in the specification of goods and services or in the terms of execution.

1. Criteria for goods and services

Environmental protection regulations in the form of criteria for goods and services are standards regarding the quality of goods and services that become part of the contract.

These include: Requirements regarding materials, packaging (provided this is not an ancillary service), guarantees, and user friendliness, as well as technical descriptions and product information for users.

2. Terms of execution

Environmental protection regulations in the form of terms of execution are special conditions regarding the execution of a contract that relate to the subject matter of the contract but do not describe the quality of goods and services.

The contracting parties agree on the terms of execution listed in the annexes.

3. Transfer of undertaking to the subcontractor chain

3.1 The contractor undertakes to conclude an agreement with its subcontractors to ensure their compliance with the undertaking stated in **point 2** above.

3.2 The contractor undertakes to oblige its subcontractors to conclude an agreement as per **3.1** with any further subcontractors so as to ensure compliance with the undertaking in point 2 throughout the entire subcontracting chain.

3.3 A subcontractor is not obliged to comply with these agreements if

3.3.1 the subcontract in question is not subject to public procurement law pursuant to Sections 107, 109, 116, 117, 137, 140 and 145 of the Competition Act (GWB),

3.3.2 the contractor or subcontractor is required to accept the contractual conditions of a subcontractor in order to perform the contract,

3.3.3 the value of the subcontract for a deliverable or service is less than EUR 10,000 (excluding VAT) or in the case of construction work EUR 50,000 (excluding VAT).

3.4 Upon request, the contractor is required to provide proof of the transfer of the undertaking as per **3.1** and **3.2**, or to provide proof of right of exemption in accordance with **3.3**.

3.5 Any infringements by a subcontractor of the agreed undertakings pursuant to **3.1** and **3.2** regarding the contractor's undertaking under **point 2** shall be attributed to the contractor.

**Special contract conditions
regarding inspections and sanctions
pursuant to the Berlin public tender and procurement act
(*Berliner Ausschreibungs- und Vergabegesetz – BerlAVG*)**

Part B of the special contract conditions [Wirt-2144, Aug 2024]

regarding minimum hourly rates of pay and observation of collective wage agreements
regarding compliance with ILO core labor standards
regarding the advancement of women
regarding the prevention of disadvantages
regarding environmental protection requirements

I. Transfer of these special contract conditions to the subcontractor chain

The contractor undertakes to transfer the obligations required by Part B of the special contract conditions to all subcontractors and/or agencies providing staff. They, in turn, shall be required to enter into an appropriate agreement with any subcontractors and/or agencies providing staff.¹

II. Inspections and sanctions

1. Inspections

1.1 Scope of inspections

The contracting authority and the contractor agree that compliance with the following contractual conditions, if agreed, may be inspected by the public contracting authority or the central inspection body of the state of Berlin:

- 1.1.1** Payment of remuneration to staff deployed for the performance of the contract according to those remuneration regulations, including minimum remuneration, which are specified as binding for the service in question under the Minimum Wages Act, a collective agreement declared to be generally binding under the Collective Agreement Act with the effects of the Law on the Posting of Workers, (or) a statutory ordinance issued in accordance with Section 7, Section 7a or Section 11 of the Law on the Posting of Workers or a statutory ordinance issued in accordance with Section 3a of the Law on the Provision of Temporary Workers (see Wirt-214, point 1.1.1);
- 1.1.2** Payment of remuneration to staff deployed for the performance of the contract according to the regulations of the collective wage agreement which applies to the respective trade or profession in the state of Berlin (see Wirt-214, point 1.1.2);
- 1.1.3** Payment of a minimum hourly rate to staff deployed for the performance of the contract (excluding trainees) at the agreed rate of pay (see Wirt-214, number 1.1.3);
- 1.1.4** Compliance with ILO core labor standards as per the undertakings assumed in the specification of goods and services and the annex to the specification of goods and services regarding proof of ILO compliance ("Anlage zur Leistungsbeschreibung: Nachweis ILO-Konformität") (see Wirt-2140).
- 1.1.5** Measures for the advancement of women and/or the advancement of the compatibility of family and work;

¹ Vergabeservice Berlin provides a template for this purpose:

<https://www.berlin.de/vergabeservice/vergabeleitfaden/hinweise-fuer-bieter/artikel.1259454.php>

- 1.1.6** Environmental protection regulations (criteria for goods and services/terms of execution) (see Wirt-2145);
- 1.1.7** Transfer of the assumed undertakings to subcontractors and/or agencies supplying staff and throughout the subcontracting chain (Wirt-214, point 2 regarding payment of specific minimum hourly rates of pay and certain collectively agreed wages; Wirt-2141 regarding measures for the advancement of women; Wirt-2145 point 3 regarding environmental requirements per the terms of execution; Wirt-2144, I, regarding transfer of the agreements listed in this document to subcontractors and/or agencies supplying staff and throughout the subcontracting chain.

1.2 Inspection process

- 1.2.1** The contracting authority or the central inspection body of the state of Berlin carries out an inspection of compliance with the contract conditions listed under II.1.1. by requesting the requisite documents for inspection or by inspecting the documents on the contractor's premises or on the premises of the sub-contractor and/or agency providing staff.
- 1.2.2** The contractor or sub-contractor and/or agency providing staff is obliged to cooperate in this process by presenting the documents required in full and in inspectable condition for the purposes of ascertaining if the agreed contract conditions listed under II.1.1 are complied with.
- 1.2.3** Inspections are conducted with the cooperation of the contractor or subcontractor. The contracting authority or the central inspection body shall provide reasonable periods of notice regarding the submission or provision of the necessary documents, taking account of the work involved for the contractor or subcontractor. The period of notice for the submission or provision of the documents shall not be less than 21 days.

1.3 Documents required for inspection

The complete and inspectable documentation required for inspecting compliance with the various undertakings is usually as follows:

- 1.3.1** Payment of the statutory minimum wage or the minimum hourly wage under public procurement law:
- Employment contracts
 - Payroll slips
 - Time sheets
- 1.3.2** Payment according to a binding collective wage agreement - in addition to the documents required under II.1.3.1, the following documents are to be provided:
- Documents proving salary scale/remuneration group
 - Relevant collective agreements;
- 1.3.3** Further compliance of the entire subcontracting chain:
- Contractual undertaking under public procurement law by the subcontractor or agency supplying staff and the entire subcontracting chain regarding the undertakings to be inspected;
 - If applicable, sub-contractor agreements, order forms or invoices.
- 1.3.4** ILO labor standards:
- Quality seals or equivalent proof (as per the annex to the specification of goods and services regarding proof of ILO compliance);
 - Qualified certificates of origin (as per the annex to the specification of goods and services regarding proof of ILO compliance);
 - If applicable, other documents required for a conclusive inspection, such as delivery notes, documents showing quantities delivered, production quantities;

- 1.3.5** Measures for the advancement of women/the advancement of the compatibility of family and work:
- Documents providing proof of each of the respective specific measures for the advancement of women and/or the advancement of the compatibility of family and work
 - Employment contracts;
 - If applicable, proof of the number of staff employed by the company.
- 1.3.6** Environmental protection regulations:
- Certificates/quality seals
 - Delivery notes or other agreed equivalent proof
 - If applicable, other documents for conclusive inspection, such as contracts concluded between the executing companies, documents showing quantities delivered, confirmations of services, etc.

In addition to the documents mentioned in points II. 1.3.1 to II.1.3.6, further documents may be required for conclusive inspection, depending on the individual case.

1.4 Protection of personal data and business secrets

During the inspection and documentation process, any possible business secrets are protected. Similarly, personal data will be only be processed for the purposes of inspection and will only be made available to the staff of the public awarding authority or the central inspection body directly responsible for the inspection. The principles of data economy and data security shall be observed throughout.

1.5 Cooperation in the inspection of the contractor or subcontractor and/or agency providing staff; transfer of this obligation to the subcontracting chain

The contractor or subcontractor and/or agency is obliged to cooperate throughout the inspection (see also II.1.2). In addition to preparing and transmitting the documents stated under II.1.3, this includes the compliance of the contractor, subcontractor and/or agency with all data protection requirements regarding the processing of the personal data of employees deployed for the performance of the contract for the purpose of inspection. In particular, the contractor, subcontractor and/or agency has to inform and instruct its employees regarding the possibility of inspections. The contractor is further obliged to transfer this obligation to all subcontractors working on the contract throughout the entire subcontracting chain for the purposes of assisting the contracting authority and the central inspection body in their work. The contractor undertakes to pay all costs that arise on their part as a result of the inspection.

2. Sanctions

2.1 Scope of sanctions

The contracting authority and contractor agree that the contracting authority may impose sanctions on the contractor in the case of a culpable infringement on the part of the latter of the contractual conditions referred to in points II.1.1.1. to II.1.1.7, assuming these have been agreed.

This also applies to an infringement of special contract conditions regarding the prevention of disadvantages (Wirt-2143) as well as any infringement of the obligation to cooperate in the inspection process pursuant to point II.1.2. Possible sanctions include penalties for breach of contract, termination of contract or withdrawal from the contract, as well as compensation or price reduction in accordance with the following provisions.

2.2 Penalty for breach of contract

2.2.1 The contracting authority and contractor agree a penalty for breach of contract of 1 percent of the remuneration payable to the Contractor (excluding VAT) for each culpable breach of the obligations under the Special Terms and Conditions listed in II.2.2.2. Exempted here are infringements of the agreements regarding payment pursuant to II.2.1 read in conjunction with Wirt-214 point 1.1.1 as well as infringements of special contract conditions regarding the prevention of disadvantages pursuant to Wirt-2143 point 2.1.

2.2.2

An infringement also occurs

2.2.2.1 if the pay in accordance with a collective agreement has not been paid in the agreed amount to staff deployed for the performance of the contract (Wirt-214 point 1.1.2). This applies to all staff for each contractual period;

2.2.2.2 if the minimum hourly rate of pay in accordance with procurement law has not been paid in the agreed amount to staff deployed for the performance of the contract (Wirt-214 point 1.1.3). This applies to all staff for each contractual period;

2.2.2.3 if the proof of ILO compliance of a certain sensitive product (Wirt-2140) agreed in the respective annex to the specification of goods and services cannot be presented upon delivery at the latest. This applies per sensitive product per partial delivery;

2.2.2.4 if, contrary to the agreed special contract condition regarding the advancement of women (Wirt-2141), the requisite measure(s) for the advancement of women and/or the advancement of the compatibility of family and work have not been demonstrably implemented or initiated. This applies for each measure for each contractual period;

2.2.2.5 if, contrary to the agreed special contract condition regarding environmental protection regulations (Wirt-2145), the requirements agreed in the specification of goods and services are not met or the measures agreed not carried out;

2.2.2.6 in the event of an infringement of the undertaking to transfer the assumed obligations to subcontractors and/or agencies supplying staff and throughout the subcontracting chain (Wirt-214, point 2 regarding payment of specific minimum hourly rates of pay and certain collectively agreed wages; Wirt-2141 regarding measures for the advancement of women; Wirt-2145 point 3 regarding environmental requirements per the terms of execution; Wirt-2144, I, regarding transfer of the agreements listed in this part (Part B) of the special contract conditions to subcontractors and/or agencies supplying staff and throughout the subcontracting chain.

2.2.2.7 if, contrary to the obligation pursuant to point II.1.2., the contractor or subcontractor fails to cooperate with the inspections to ascertain compliance with the contractual conditions in point II.1.1 by not submitting in full the documents required for inspection, despite at least two reminders to do so with appropriate deadlines, or failing to provide access to the documents for inspection on the premises of the contractor or subcontractor.

2.2.3 The contractor is also obliged to pay a penalty if a culpable infringement is committed by one of its subcontractors or agencies providing staff or by any subcontractor in its subcontracting chain.

2.2.4 If the forfeited contractual penalty for an infringement is disproportionately high, it shall be reduced by the contracting authority to an appropriate amount.

- 2.2.5** A contractual penalty may not exceed a total of 5 percent of the remuneration payable to the Contractor (excluding VAT). A contractual penalty forfeited on the basis of further contractual conditions shall be set off against this maximum contractual penalty of 5 percent; unless otherwise agreed, contractual penalties forfeited here shall also be set off against the maximum amount of contractual penalties forfeited on the basis of further contractual conditions.
- 2.2.6** In addition, Sections 339 ff BGB apply.
- 2.3 Termination; withdrawal**
- 2.3.1** In the event of an infringement of the agreed contract conditions listed in point II.2.1, the contracting authority may, either at its own discretion or on the basis of the underlying contract, terminate or withdraw from this contract.
- 2.3.2** The infringements listed under II.2.2.2 regarding contractual penalties are examples of reasons entitling the exercise of claims under II.2.3.1.
- 2.4 Reduction of price; compensation**
- 2.4.1** In the event of an infringement of the agreed contractual conditions listed under II.2.1, the contracting authority may, either at its own discretion or on the basis of the underlying contract, demand a reduction in price or compensation. Excluded from these claims are infringements of remuneration agreements pursuant to point II.2.1 read in conjunction with point Wirt-214 point 1.1.1 as well as measures for preventing disadvantages pursuant to Wirt-214 point 2.1.
- 2.4.2** The infringements listed under II.2.2.2 regarding contractual penalties are examples of reasons entitling the exercise of claims under II.2.4.1.

Please note:

If the contractor or one of its subcontractors or agencies supplying staff infringes the contract conditions in points II.1.1 and II.2.1, the public contracting authority or the central inspection body shall without delay inform the Official Company and Supplier Directory of the Berlin Senate Administration for Urban Development (Section 16 (5) BerlAVG). In addition, the financial inspection unit of the German Federal Customs Administration will also be informed if there is evidence of an infringement on the part of the contractor, one of its subcontractors or one of the agencies providing staff of the minimum work conditions pursuant to Section 128 (1) of the Competition Act (GWB) (Section 16 (6) BerlAVG).