

General Terms and Conditions of Purchase

January 2017 - EN

The following General Terms and Conditions of Purchase shall apply to all orders and purchase contracts of the company Holscher Wasserbau GmbH – hereinafter referred to as Client. The General Terms and Conditions of Purchase are applicable regardless whether the contractor – hereinafter referred to as Supplier –, resides in or delivers from Germany or any other country and regardless whether the place of delivery as named by Client is within Germany or in any other country. Any changes and amendments to the General Terms and Conditions of Purchase must be expressly agreed upon in writing to be binding. Any terms of the Supplier, his General Terms and Conditions of Business or contract confirmations are hereby expressly rejected. The unconditional acceptance of contract confirmations or deliveries does not constitute recognition of such terms, even where the Client is aware of terms of the Supplier conflicting with or deviating from these General Terms and Conditions of Purchase.

1. Supply contract, call-offs

- 1.1. Supply contracts, orders and call-offs as well as any modifications and amendments to these must be in writing. Call-offs may also be made verbally, by data transmission or machine readable data carrier.
- 1.2. If the Supplier does not accept an order within two working days of receipt, the Client shall be entitled to withdraw the order. As long as no total order quantities are agreed upon, call-offs shall be binding unless the Supplier objects within one working day.
- 1.3. The Client is entitled to demand modifications to the construction and design of the delivery item, within the bounds of what is reasonable for the Supplier. Any effects these modifications may have, in particular those regarding an increase or decrease in costs or delivery dates, are to be given due consideration.

2. Payment

- 2.1. Payment shall be made upon receipt of the goods in accordance with the contract and upon receipt of a proper invoice as set out under 2.2. at the Client's head office at Hintern Busch 23 in 49733 Haren, Germany within 14 days of the receipt of invoice less a discount of 3%, or within 30 days after receipt of invoice net, unless agreed otherwise. The payment is determined by the quantities or weights determined by the Client, or any other units on which this determination is based. If the invoice is not issued in the form as requested or the required documentation is lacking, the invoice will not be processed and will be returned in original. Rebate claims by or interest charges of the Supplier will not be accepted by the Client. The period for payment does not begin unless and until Client has received an invoice including all required information.
- 2.2. All invoices have to be submitted in an auditable form together with the delivery notes and proof of labor and material as accepted by the Client. The addressee of the invoices is in any case, also if delivery is provided to any of Client's subsidiaries:

Hölscher Wasserbau
Hauptverwaltung Haren
Hintern Busch 23
49733 Haren (Ems)

The compulsory minimum content of each invoice consists of:

- Complete Client Order Number
- Name of the project

It is sufficient to submit the invoices solely in electronic form to the electronic invoices account of Client:

hw-fibu-re@holscher-wasserbau.de

- 2.3. The invoices have to comply with the applicable value added tax laws and regulations.
 - 2.4. Where early deliveries are accepted, the due date shall be based on the agreed delivery date.
 - 2.5. In the event of any delivery discrepancies or errors, the Client shall be entitled to withhold an appropriate proportion of the payment until proper execution.
 - 2.6. Minimum quantity surcharges shall not be paid, unless agreed otherwise.
 - 2.7. The Supplier shall not be entitled to assign his receivables or have his receivables collected by a third party, without prior written consent from the Client. Such consent shall not be unreasonably withheld.
 - 2.8. If claims against the Supplier from other business transactions exist, the Client shall be entitled to exercise a right of retention or to offset claims, regardless of if the claim against the Supplier has been decided or recognised by a court of law.
 - 2.9. In the event of advance payments, the Supplier shall furnish an appropriate security, such as a bank guarantee, upon request.
 - 2.10. No remuneration shall be paid for visits or the preparation of quotations, projects etc.
- ### 3. Delivery dates and deadlines, default and force majeure
- 3.1. Agreed dates and deadlines are binding. Adherence with the delivery date or delivery deadline shall be determined by the receipt of the goods at the place of use named by the Client. Unless "ex works" delivery has been agreed, the Supplier shall make the goods available on time, taking account of the time usually necessary for loading and shipment.
 - 3.2. If the Supplier becomes aware of circumstances which may result in delayed delivery, he shall inform the Client in writing immediately, stating the reasons for and the duration of the delay. In such cases, the Client shall be entitled to withdraw from the contract. The Supplier must be informed of this withdrawal immediately in writing. If withdrawal is not declared, the Supplier shall pay the Client compensation for the damage caused by the delay. Acceptance of the delayed delivery or service does not constitute a waiver of claims for damages.
 - 3.3. Only force majeure, industrial disputes, unrest, official measures and other unavoidable events shall release the contractual partners from fulfilling their contractual obligations for the duration of the disruption and to the extent of its effect. This shall also apply if these events occur at a time when the contractual partner concerned is in default. The contractual partners shall, to the extent which is reasonable, immediately provide the required information, and adapt their obligations to the changed circumstances in good faith.
- ### 4. Prices, packaging and shipping, Supplier statement
- 4.1. The prices agreed upon are fixed prices and exclude additional claims of any kind. Prices include the costs for packaging, freight and transportation up to the delivery address or place of use stated by the Client, as well as costs for customs formalities and customs duties. If no prices are agreed upon, the Supplier's list prices shall apply.
 - 4.2. Prices are agreed on a net basis. If applicable value added taxes are to be added at the applicable rates.

- 4.3. Client is entitled to deduct applicable withholding taxes from the price and submit such deductions on behalf of the Supplier to the tax authorities, as long as no valid withholding tax exemption is provided to the Client.
 - 4.4. The Supplier shall notify the Client of each delivery immediately after execution by means of a dispatch note, broken down according to type, quantity and weight. Dispatch notes, way bills, invoices and all correspondence must include the Client's order number.
 - 4.5. Regularly the Client shall only accept the quantities ordered by him. In such cases, over- or under-deliveries are only permitted if the Client's consent has been obtained beforehand.
 - 4.6. Shipping shall be at the Supplier's risk. Any risk of deterioration, including the risk of accidental destruction, shall remain with the Supplier until delivery has been made to the Client's required delivery address or place of use.
 - 4.7. Unless agreed otherwise, the goods to be delivered shall be packaged properly in the manner which is customary in the trade. Packaging materials are only to be used to the extent necessary for this purpose. Only environmentally friendly packaging materials shall be used.
 - 4.8. The Supplier is obligated to take back the packaging free of charge for the Client and shall bear the transportation costs. If packaging is invoiced separately to the Client by way of exception, the Client shall be entitled to return to the Supplier freight paid the packaging which is in a good condition against payment of 2/3 of the value resulting from the invoice.
 - 4.9. The Client reserves the right to name the shipping company or freight forwarder.
 - 4.10. If the Supplier delivers products having preferential origin status, the Supplier is obliged to provide the Client with a respective declaration in accordance with Regulation (EC) No 1207/2001.
 - 4.11. The Supplier has to instruct his employees about the possible risks and hazards on site, based on the risk and hazards assessment, a copy of which is to be submitted to the overall site or project manager.
 - 4.12. The Supplier is obliged to equip his personnel on site with personal protective equipment in sufficient number and free of charge.
 - 4.13. The Supplier will only provide working tools and materials to his employees, which are in accordance with the applicable environmental, health and safety regulations.
 - 4.14. In case any employees of the supplier or employees of sub-suppliers engaged by the Supplier (e.g. freight forwarder) are fulfilling their obligations on a construction site, the following documents have to be available and must be provided on site upon request:
 - Employment medical examinations in respect of the possible deployments of the employees
 - Evidence of qualifications for the respective activities undertaken by the employees
 - Written assignment as operator of machinery and equipment
 - Security card (if available)
 - ID, Passport or substitute for ID or passport
 - Health insurance card
 - Social security passport
 - Evidence of SCC – training in accordance with document 016, 017 or 018, or reference to FB B 08
 - Evidence about first aid training or refresher course
 - 4.15. The Supplier solely will use machinery and tools, which are in compliance with the EU security regulations and which have the required CE or GS label. He will further provide a declaration of conformity concerning the CE labelling in accordance with ISO/IEC 17050. Machinery and tools must be furnished with a valid UUV badge.
 - 4.16. If the Supplier breaches his obligations as set out in Clauses 4.10. - 4.15. above, and if the Supplier does not remedy his breach within such time as reasonably determined by Client, Client is entitled to terminate the contract without notice. Client may immediately terminate without notice, without setting any time to remedy the default, if the termination is necessary to adhere to legal requirements or to defend regulatory measures or if Client cannot be expected to further be bound by the contract for other reasons.
- ### 5. Notice of defect
- 5.1. The Client shall inform the Supplier immediately in writing of any discrepancies or defects with the delivery as soon as such are determined in accordance with the circumstances of the ordinary course of business.
 - 5.2. The Supplier shall investigate any complaints regarding discrepancies or defects within three working days. If no investigation is carried out and notified to the Client within this period, the discrepancy shall be taken as implicitly acknowledged.
- ### 6. Quality
- 6.1. In his deliveries, the Supplier shall observe the acknowledged rule of technology, safety regulations and technical data agreed upon.
 - 6.2. The Supplier shall constantly monitor the quality of the delivery items and inform the Client of any possible improvements.
 - 6.3. For parts relevant to safety, the necessary certificates/inspection certificates are to be sent to the Client unrequested and free of charge with the delivery.
- ### 7. Claims for defects, warranty
- 7.1. If defective articles are delivered, the Supplier shall be given the opportunity to cure the defect as per § 439 of the German Civil Code (BGB), unless this is not reasonable to the Client. Where the Supplier is unable to do so, or should he fail to do so immediately, the Client shall be entitled to withdraw from the contract and return the goods at the Supplier's risk. In urgent cases, the Client may remedy the defects himself or have this carried out by a third party. The costs incurred shall be borne by the Supplier.
 - 7.2. If the same goods are repeatedly delivered in a defective state, the Client shall be entitled after a written warning and upon receipt of yet another defective delivery to withdraw from the contract concerning the goods not yet delivered.
 - 7.3. Notwithstanding the statutory liability for defects, the Supplier warrants for the delivery of goods free from defects in accordance with § 443 of the German Civil Code.
 - 7.4. The warranty period is 12 months, unless expressly agreed otherwise. The warranty period shall begin with the handover of the delivery item to the Client. In the case of appliances, machinery and systems, the warranty period begins when the equipment is deemed to function perfectly, as confirmed in an acceptance certificate to be prepared.
 - 7.5. The warranty period for spare parts is 12 months after initial operation and ends no later than 24 months after delivery.
 - 7.6. Unless regulated otherwise above, the statutory regulations shall apply.

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8. Liability

- 8.1. The Supplier shall be liable for any damage directly or indirectly caused to the Client as a result of a defective delivery, for any violation of official safety regulations or on the basis of domestic or foreign product liability regulations.
- 8.2. The Client shall immediately inform and consult with the Supplier should he wish to make any claim. The Client shall give the Supplier the opportunity to examine the claim within two weeks. In case the Supplier does not execute the examination within the given time, the damage is deemed to be accepted by the Supplier.

9. Third Party Property rights

- 9.1. The Supplier shall be liable for any claims concerning the infringement of third party property rights including intellectual and industrial property rights resulting from the contractual use of the delivery items. The Supplier indemnifies and hold harmless the Client and his customers from any and all claims arising from the use of such property rights. The contractual partners shall inform one another immediately of any infringement risks that become known and alleged infringements and give one another the opportunity to counter claims together.
- 9.2. In the event that there are discrepancies between samples and drawings or in the information of the Client, the Supplier shall notify the Client immediately and clarify the issue before commencement of production.

10. Right of ownership

- 10.1. The Client acquires unrestricted ownership upon complete payment and/or the processing, blending or mixing of the delivered goods. Unless otherwise agreed, no ownership rights of the Supplier or third parties shall be recognised.
- 10.2. Any extended or expanded retention of title on the part of the Supplier to delivered goods is excluded.

11. Models and tools

- 11.1. All models and tools produced for the purpose of the contract shall become the property of the Client, with no reimbursement of costs.
- 11.2. Any drawings, designs, models, templates, samples, manufacturing instructions, internal data, tools, equipment etc. supplied by the Client to the Supplier for the purpose of submitting a quotation or executing a contract remain the property of the Client. They may not be used for any other purpose, duplicated or made available to third parties, without written consent, and are to be stored with the due care and diligence of a conscientious professional. After completion of the order, these are to be returned to the Client, without request, including all duplicates made or – upon written consent – destroyed by the Supplier.
- 11.3. Any processing or conversion of the provided material by the Supplier shall be done on behalf of the Client. The Client immediately becomes the owner of the new items thus produced. If the material provided only constitutes a portion of the new items, the Client shall be entitled to co-ownership of the new items in the proportion corresponding to the value of the supplied material.

12. Confidentiality

- 12.1. The Supplier shall treat in confidence all drawings, designs, models, templates, samples, manufacturing instructions, internal data, tools, equipment, calculations and other documents and information obtained within the context of the order. These may only be made accessible to third parties with written consent from the Client, unless the Supplier is obligated to do so on the grounds of legal or official regulations. The obligation to maintain confidentiality includes human resources information. The obligation to maintain confidentiality also applies after completion or failure of the contract. The Supplier's sub-suppliers must also adhere to such obligation.
- 12.2. The conclusion of the contract is to be treated confidentially. The business transaction with the Client may only be referred to in the Supplier's promotional materials with prior written consent. The Client and Supplier undertake to treat all business and technical information learned in the course of the business relationship which is not general knowledge as a trade secret. The Supplier's sub-suppliers must also adhere to such obligation.

13. General provisions

- 13.1. In the event that one contractual partner suspends his payments or an application is made for the institution of insolvency proceedings against his assets, the other contractual partner shall be entitled to withdraw from the contract with respect to the part which has not been fulfilled.
- 13.2. Unless otherwise agreed, the laws and only the laws of the Federal Republic of Germany shall apply. The UN Convention on Contracts for the International Sale of Goods or any conflict rules of international private law shall not apply.
- 13.3. The application and legal effects of retention of title as provided for in Clause 10 shall be based on the law applicable at the respective location of the goods insofar as the choice of German law is prohibited or invalid.
- 13.4. As long as the Client does not determine otherwise, the place of performance for the delivery obligation is the Client's head office at Hinterm Busch 23 in 49733 Haren, Germany
- 13.5. The place of jurisdiction is the court in charge for the location of the Client (Haren (Ems)), insofar as the Supplier is a registered trader or does not have a place of general jurisdiction in Germany.

14. Language of the contract

This English language version of the General Terms and Conditions of Purchase of the Client serves exclusively for the purposes of information and translation. In the event of any discrepancies between the terms of the German and the English language version, the German language version shall prevail in all cases. In the event of disagreement or litigation, the German language version shall also be the decisive version for the interpretation of individual provisions of the General Terms and Conditions of Purchase of the Client.

15. Severability clause

- 15.1. Insofar as these General Terms and Conditions of Purchase contain no provision, the legal regulations shall apply, unless the contractual partners have expressly agreed otherwise.
- 15.2. Should any of the provisions in these General Terms and Conditions of Purchase be ineffective or otherwise unenforceable, the validity of the remaining provisions shall remain unaffected. In place of the ineffective / unenforceable provision, a valid provision shall be deemed agreed upon which is as close as possible to the economic result desired by the contractual partners. The same shall apply in the event of any omissions.