



# General Terms and Conditions of Purchasing

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## **1. General**

These General Terms and Conditions of Purchasing (the “Terms and Conditions”) apply to all orders for the supply of goods or services. The performance of an order by the Supplier will be construed as acceptance of these Terms and Conditions, except where and insofar as the Supplier has referred to terms and conditions of business of his own in connection with conclusion of the contract. General terms and conditions of business of the Supplier shall only be legally binding if they have been expressly confirmed as such in writing by the Orderer.

## **2. Conclusion of Contracts/Offers**

2.1 The preparation of offers or the production of cost estimates shall be performed free of charge. Moreover, unless specifically agreed otherwise on a case-by-case basis, the Orderer will not assume any costs or pay any remuneration for visits, planning work or other up-front work or services undertaken by the Supplier for the purpose of submitting offers.

2.2 Orders placed by word of mouth require written confirmation by the Orderer with a specific Hochland order number. The same also applies to any side agreements or amendments or additions made to orders already placed or contracts already concluded.

2.3 Orders and quantity contracts always require an order confirmation (submitted in writing or electronically). This must be issued within five working days from the order date. If no such confirmation is issued, the Orderer has the right, on expiry of the aforesaid period, to place the order with third parties.

2.4 If a Supplier’s confirmation of an order or quantity contract contains amendments or additions, these shall only be incorporated into the contract if they are accepted in writing by the Orderer.

## **3. BSCI Code of Conduct (Business Social Compliance Initiative)**

It is intended that basic social standards should apply throughout the production chain. That means that also in the production steps downstream of or alongside the final production stage, decent working conditions must prevail.

Hochland therefore expects the Supplier and also the latter’s own suppliers and sub-contractors - even where they are not engaged in activities at the final production stage - to comply with the standards of the BSCI Code of Conduct (in the version in force at any time) and if need be to be able to furnish proof of doing so.

## **4. Delivery/Shipment/Packing**

4.1 The Supplier shall ensure that each shipment is accompanied by the necessary accompanying documents/delivery notes in complete form, showing the order number, order date, item number(s) and, for each item, the material number notified by the Orderer, as well as the quantity and unit. Acceptance can be refused if, due to the accompanying documents/delivery notes being incomplete, attribution of the delivery to the Orderer’s order is impossible or is only possible with unreasonable effort.

4.2 The goods to be delivered must be packed in a customary and appropriate manner. Packing costs will be assumed by the Orderer only by express prior agreement. The Supplier will be held liable for any damage resulting from inadequate or faulty packing.

## **5. Delivery Date/Overshipment/Undershipment**

5.1 Agreed delivery dates and delivery periods must be met. Delivery periods shall begin on conclusion of the contract. Authoritative for compliance with a delivery date or delivery period is the time of arrival at the specified delivery address. If an acceptance procedure is specified by law or agreed in the contract, this shall be authoritative for compliance with the agreed date or period. If the Supplier becomes aware that an



agreed date or period cannot be met, he must inform the Orderer accordingly without delay in writing, stating the reasons for and the anticipated duration of the delay.

5.2 If, after expiry of the originally agreed date or time period, the Supplier also fails to supply the goods or services within a reasonable additional period of time allowed by the Orderer, the latter shall have the right to rescind the contract either in whole or part. Regardless of whether the Orderer makes use of this right or not, the Supplier shall be liable for any loss or damage incurred in accordance with the statutory regulations. If, under the statutory regulations, the allowance of reasonable additional time is not necessary, the Orderer may exercise the right to rescind the contract or to claim damages even without first allowing such time. The same shall also apply in the case of any protracted delay if the Orderer is no longer interested in supply of the goods or services as the Supplier is not able to make any reliable promise concerning the time when supply will be effected. The acceptance of goods or services which are supplied late shall not imply any waiver of claims to damages.

5.3 If delivery is effected at an earlier time than that agreed, the Orderer shall have the right to return the shipment at the Supplier's expense if early delivery was not permitted under the terms of the agreement.

5.4 Part-deliveries will only be accepted in exceptional cases and by prior agreement. If in any such case the Supplier is late in delivering the outstanding quantity, the Orderer shall have the right to claim damages in accordance with the statutory provisions on account of the delay and may, if the outstanding quantity is not delivered within a reasonable time, rescind the contract in whole or in part if he is no longer interested in the goods.

5.5 Undershipments or overshipments are not permitted except with the Orderer's prior consent. If an overshipment is made, the Orderer has the right to reject the excess quantity and to return it at the Supplier's expense.

## **6. Passage of Risk**

The risk of loss, damage or destruction of goods, manufactured items or software shall pass to the Orderer on receipt of the same at the delivery address stipulated by the Orderer. If an acceptance procedure by the Orderer has been agreed or is specified by law, the risk shall pass to the Orderer on issue of the declaration of acceptance.

## **7. Pricing/Invoicing**

7.1 The agreed prices are fixed prices and are quoted free delivery address, freight and packing costs included, plus value added tax (VAT) at the statutory rate. Unilateral retrospective price increases are barred. If at the time of an order being placed the firm price is not yet known, the firm price must be notified to the Orderer together with the order confirmation at the latest. In any such case, the Supplier must abide by the customary market prices for the goods or services concerned.

7.2 Invoices must be submitted to the Orderer, separately from the shipment itself, for each supply of goods/services. This shall not apply in the case of the imports referred to in Section 9 below. For each order, a total invoice must be issued after supply of the ordered goods/services in full. The invoice must state all the particulars specified by law, plus also the order number, order date, article and item number of the order.

## **8. Payment**

8.1 Payment will, unless agreed otherwise, be effected net within 60 days, though not earlier than on the Wednesday next following the due date for payment. The period for payment will begin on the date of receipt of the invoice, though not before delivery has been effected in full and in compliance with the order or acceptance has been conducted in cases where an acceptance procedure is specified either in the contract or by law. Payment shall not imply any recognition of goods/services being compliant with contract and free of defects.



8.2 Should a delay occur because an invoice does not contain all the specified particulars and is not verifiable for this or any other reason, the period for payment shall only start to run when the invoice has been duly corrected by the Supplier.

8.3 The Orderer reserves the right to claim the defence of non-fulfilment of contract and withhold all or part of the payment on that ground.

## **9. Customs/Certificates of Origin**

9.1 Unless agreed otherwise, customs clearance shall be handled by the Supplier.

9.2 If in connection with import or export official documents are needed for the intended use of the delivery items, the Supplier has a duty, on request, to procure such documents for or place them at the disposal of the Orderer without delay at his own expense.

In the case of goods originating from non-EU countries, the Supplier has a duty to obtain a certificate of origin if such certificate is required for the imported goods.

- The Orderer must be notified without delay of any change in origin.
- If the Supplier supplies goods which are entitled to preferential customs treatment in the importing country, the Supplier must provide corresponding certificates of origin for such deliveries.

9.3 The Supplier shall compensate the Orderer for all economic detriment caused by delays or additional costs which occur as a result of failure to fulfil the requirements of this Section 9.

9.4 If customs clearance is handled by the Orderer, the Supplier has a duty to assist the Orderer in minimizing the customs payments.

9.5 In the case of all questions arising in connection with customs duties and certificates of origin, the Supplier shall have a duty, as part of his contractual duties of care, to contact and consult with the customs official responsible for the Orderer.

## **10. Force Majeure**

10.1 In cases of force majeure or other hindrances which are beyond the control of either party, such as strikes or lockouts, either party shall have the right to suspend performance of its contractual duties - provided it is the hindrance which is preventing them from being performed - until the hindrance no longer exists.

10.2 The party which pleads a hindrance must, of its own volition, provide the other party with all necessary information concerning the nature and scope of the disruption and its anticipated duration. This shall be without prejudice to the right of the other party to rescind the contract in whole or in full in accordance with statutory regulations.

## **11. Claims for Defects, Warranty**

11.1 The Supplier shall ensure that all supplies of goods and/or services are of the specified nature and quality, are suitable for and compliant with the intended use as agreed and are in compliance with the current state of the technical art and the generally recognized technical and occupational-medical safety regulations of official authorities and professional associations and in conformity with the relevant provisions of law and have all the warranted properties. In the case of supplies that are subject to the provisions of German food and consumer goods law, the provisions of these laws must be fulfilled.

11.2. The Supplier shall ensure that all components used in the production of products supplied by him are in conformity with the REACH Guidelines.

11.3 Where the commercial duty to inspect for and notify of defects pursuant to Section 377 HGB [German Civil Code] applies, the Orderer shall have the right to notify evident defects within five working days from delivery. Hidden defects must be notified within five working days from discovery. Inspection shall be conducted in the scope customary in the trade, depending on the nature and purpose of the intended delivery.



11.4 In the event of defects, the Orderer shall be entitled to the rights and claims provided for by law. Where warranty claims that go beyond the aforesaid exist, they shall remain unaffected. In the case of defects, the Supplier has a duty to effect remedy in accordance with the statutory regulations either through elimination of the defect, supply of a defect-free item or production of a new item. The necessary expenses incurring in connection with remedy, in particular transport, travel, labour and material costs, shall be borne by the Supplier. In urgent cases where a risk exists of the occurrence of higher damage, the Orderer may, if the Supplier himself could not be reached, effect remedy himself or have it effected by a third party. This shall be without prejudice to the right to assert any further rights and claims for defects which are provided for by law, in particular rescission of the contract or claims to a price reduction, damages or compensation in lieu of performance or reimbursement of futile expenses.

11.5 Except where a longer limitation period is provided for by law, the limitation period for claims for defects is 36 months. The period shall begin on delivery or on acceptance, if an acceptance procedure is specified by law or has been contractually agreed.

## **12. Third-Party Intellectual Property Rights**

12.1 The Supplier has a duty to furnish the Orderer with the rights of use necessary to enable the goods or services supplied pursuant to contract to be used for their intended purpose. He shall ensure that by using them for the contractually agreed purpose, the Orderer does not violate any copyright, patent or other intellectual property rights of any third party.

12.2 The Supplier shall indemnify the Orderer and hold him harmless against all claims which are made against the latter for violation of an industrial property right and shall assume the costs for preserving the rights if the claims are based on a culpable breach of duty on the part of the Supplier. The Orderer will inform him without delay in the case of any claims being made against him for infringement of intellectual property rights. The Supplier shall inform the Orderer without delay if any claims for infringement of intellectual property rights are made against him which may relate to the rights of use which he has granted to the Orderer under the contract.

## **13. Product Liability/Insurance**

13.1 The Supplier shall indemnify the Orderer and hold him harmless against all claims made on grounds of product liability if these are based on a fault or defect in goods and/or services supplied by him. He shall, on the same premises, also be liable for loss or damage incurred by the Orderer in such cases through precautionary measures which, in terms of both nature and scope, are reasonable and necessary, e.g. public warnings or product recalls. This shall be without prejudice to the right of the Orderer to assert claims for his own loss or damage against the Supplier.

13.2 The Supplier undertakes to take out insurance cover in reasonable amount for the risks arising from non-contractual product liability and, on the Orderer's request, to furnish proof of the existence of such insurance by presentation of the insurance policy.

## **14. Outsourcing of Orders/Assignment/Reservation of Title**

14.1 The Supplier is not entitled to outsource the performance of orders placed with him - or significant parts thereof - to third parties except with the prior written consent of the Orderer.

14.2 The Supplier may assign his claims against the Orderer to third parties or have them collected by third parties only with the Orderer's prior written consent. This shall not apply to claims which have been finally and absolutely established at law, have been recognized by the Orderer or are undisputed.

14.3 Provisions of the Supplier relating to reservation of title which go beyond the securing of claims by simple reservation of title are rejected. Any such provisions shall require prior written agreement in each individual case. Should it nevertheless happen that sub-suppliers of the Supplier assert property rights or



joint property rights or cause enforcement measures to be undertaken, the Orderer will make claims on the Supplier for all loss or damage sustained by the Orderer as a result.

### **15. Confidentiality/Items Supplied by Orderer**

15.1 The Supplier shall treat all documents made available to him by the Orderer, such as drawings or formulations, but also data, samples/specimens and other items supplied by the Orderer which are furnished to him for the purpose of submitting an offer and/or performing orders, as well as all other know-how which comes to his knowledge in the course of the business cooperation between them as confidential and may not provide it to or bring it to the knowledge of any third party except with the express written consent of the Orderer. The Supplier shall also have a duty to keep secret all knowledge, insights and results obtained through the use of any of the foregoing unless it or they enter(s) the public domain through no doing on the Supplier's part. Property rights of the Orderer to documents and orders made available or furnished by him must be protected. The Supplier shall likewise respect copyright and other industrial property rights. Their use is only permitted for the contractually agreed purposes.

15.2 Products of the Supplier made from documents produced by the Orderer, such as drawings, models and other Orderer-supplied items as well as tools manufactured to the Orderer's specifications may neither be used by the Supplier himself for any other than the contractually agreed purposes nor be offered or supplied to any third parties.

### **16. Performance of Services**

The Supplier shall ensure that, when performing work or services on the Orderer's works premises, he or personnel employed by him for the performance of the contract comply with the provisions of the respective works regulations. These will be communicated to him at the start of contract performance at the latest. In particular, the rules of the works regulations relating to the entering and leaving of production facilities must be complied with. The Orderer will not accept any liability for accidents that occur through non-compliance with the works regulations except where there is any contributory negligence on the Orderer's part. This shall have no effect on the statutory liability of the Supplier for his vicarious agents in the case of personal injury or property damage caused by them.

### **17. Place of Performance/Legal Venue/Applicable Law**

17.1 For all obligations of the Supplier arising from a contract, the place of performance shall be the delivery address. The place of performance for payments is the Orderer's registered place of business.

17.2 The legal venue is the court having jurisdiction for the Orderer's registered place of business. The Orderer may, at his option, also sue at the Supplier's registered place of business.

17.3 German law shall apply. Application of the UN Convention on Contracts for the International Sale of Goods (CISG) is barred.