

# General Terms of Purchase of Hoesch Spundwand und Projekte GmbH

Version: September 2020

## §1 General

1. These General Terms of Purchase (hereinafter referred to as "GTP") shall exclusively apply to companies, legal entities under public law or special funds under public law and to all Purchase Orders (or shortened "PO") and any purchase of products or other supplies and services from a Supplier by Hoesch Spundwand und Projekte GmbH (hereinafter referred to as „HSP“) and the companies linked to it as members of the same group. However Special Purchase Conditions agreed for certain supplies and/or services shall take precedence, if and to the extent referred to in the Purchase Order ("PO").
2. Your (Suppliers) own terms and conditions which conflict with or deviate from our GTP are exclusively valid if and to the extent confirmed in writing by us. Our silence regarding conflicting or deviating terms and conditions of the Supplier, even if they are contained in an order confirmation, shall not be deemed consent.
3. In any case shall individual agreements made with you for individual cases (including additional agreements, supplements and amendments) prevail over these GTP. Such individual agreements shall only be valid if made in writing. The written form requirement shall also apply to the waiver of such a requirement.

## §2 Offers and Conclusion of Contract

1. Offers shall be made free of charge and binding to you, however without any obligation for us. The offers must be sent on schedule to the address stated in the request/ invitation to tender.
2. Only orders submitted in writing are considered binding and are only valid if they have been executed by two persons with the authority of representation. All orders shall be confirmed in writing. We have the right to cancel an order unless we have received a proper order confirmation from you within two calendar weeks after the date of the Purchase Order, however execution of such cancellation shall be our sole discretion. If your order confirmation contains deviations from our Purchase Order such deviations must be marked clearly; we shall only be bound by such deviations if and to the extent we have expressly agreed to them in writing.
3. In case an order is placed orally (incl. by telephone) in advance of the written Purchase Order, you are obliged upon receipt of the written Purchase Order to check and verify all details of the written Purchase Order and to inform us of any discrepancies without delay. Any details of the written Purchase Order not disputed in writing within 48 hours after receipt of the written Purchase Order are deemed fully accepted.
4. You may sub-contract any part of the Purchase Order if and to the extent he has obtained our prior written consent. You are liable for all acts and omissions of your sub-contractors and shall indemnify us for any loss or damage arising from acts and omissions of your sub-contractors.
5. All correspondence in connection with a Purchase Orders shall be directed to the address indicated on the heading of the Purchase Order and must include all details required for the processing of the Purchase Orders (PO number and date, project number and item/pos. number).

## §3 Prices

All prices are fixed and, except if expressly stated otherwise, including all additional costs and services, such as but not limited to insurance, documentation, packaging, freight, and transportation to the recipient address or point of use stated, as well as all taxes (except VAT or equivalent). If Incoterms clauses are agreed, commercial clauses shall be interpreted in accordance with them.

## §4 Delivery

1. All our requirements regarding mode of transportation, carrier and shipment rules must be strictly adhered to. The shipping has to be announced to us in writing or by email by sending a delivery slip. This must include the following information:
  - PO number and date, project number and item number,
  - nature, quantity, net weight and gross weight of the goods,
  - the shipping address and shipping mark given in the PO
  - the shipping date, as well as
  - additional information requested in our PO.The goods shall be sent with the original delivery slip (detailing the net weight per item and the complete PO number) and a copy thereof.
2. We decline all responsibility for delays in payment due to non-compliance with these instructions. You shall bear any additional costs resulting from non-observance of the correct shipping address. Partial deliveries require our prior consent and are to be designated as such. If by agreement we are to bear the freight charges, you are to choose the lowest possible costs means of dispatch unless we have expressly required a certain means of dispatch. You shall bear any additional costs which accrue due to the choice of a more expensive means of dispatch.
3. Unless otherwise agreed, the goods shall be delivered DDP (Incoterms 2020) to the place of destination named by us in the Purchase Order and unloaded at the construction site or another location stated in the Purchase Order. Irrespective of any special agreements in the Purchase Order or any other contractual agreement, the transfer of title of the goods to us shall take place latest upon delivery of the goods; transfer of risk shall take place in accordance with the Incoterms clause agreed.
4. When providing the goods, you shall comply with all requirements of export, customs and foreign trade legislation and obtain the required export authorization unless not you but we or a third party is obliged to apply for the export authorization under applicable foreign trade legislation.

5. You are required to take back all packing material at your expense. Where prices are quoted without packing, packing shall be charged at cost price and stated separately in the invoices. You are liable for any damage caused by improper packing.
6. Retention of title of whatsoever nature by you is invalid.
7. Unless stated otherwise in the Purchase Order, your deliveries/services shall be accompanied by all technical documentation normally supplied with such goods or as requested by us. Delivery of the documentation shall be considered an essential contractual obligation.

#### **§5 Provision of material**

Material or documentation provided by us may only be used for and in compliance with our Purchase Order. We remain the owner of all materials and documentation. It is to be stored separately and marked as our property. Wherever necessary you are obliged to clarify with third parties that such material is our property. You shall bear the risk of accidental loss with regard to any material provided by us. You are obliged to take out appropriate insurance cover. If the materials or other provisions are processed or manipulated, incorporated or intermingled, you hereby grant us all potential rights of ownership and co-ownership. Copies are to be issued at the end of the contract duration and destroyed at our request.

#### **§6 Payment**

1. Two copies of the invoice are to be submitted after successful delivery with the PO no. and project no., and all associated supporting documents. Invoices shall be worded and structured to facilitate both their comparison with the Purchase Order and their auditing. They must be properly compiled, and - unless the contract stipulates otherwise - at least contain the mandatory information as per §14 para. 4 UmStG. (German VAT act), VAT must be designated separately and always be accompanied by all required documentation.
2. Invoices not complying with the requirements stipulated in §6 No. 1. may be returned unprocessed by us. In such a case, invoices are to be considered as not submitted.
3. Unless otherwise agreed, payment shall be made after complete and proper delivery/performance within 30 days, net, provided that both options require receipt of a proper, auditable invoice including all relevant, contractual documents and supporting documents (such as documentation, verification of hours worked, etc.).
4. Payments will be made by bank transfer. Meeting the payment deadline depends on the day on which the payment is made, or when transfer amounts were commissioned by the bank. You bear all bank charges incurred by the receiving bank.
5. The assignment of any claims against us as well as of the Purchase Order is excluded unless our prior written consent has been obtained. You shall only be entitled to set-off claims you may have against us if your claims are uncontested or legally established. Your right of retention only exists if the pleaded counterclaim is based upon the same contractual relationship as our claim.
6. We are entitled to withhold payment until identified defects are remedied. For the duration of the warranty period, we may withhold up to 10% of the Purchase Order value as guarantee deposit.
7. Payment shall not be considered as an acceptance that the goods and services were provided in accordance with the Purchase Order nor as a waiver of any of our rights.
8. A final invoice that contains all outstanding claims must be drafted for all Purchase Orders. The implicit acceptance of the final payment eliminates additional claims if you do not declare a reservation within 28 calendar days after receipt of the notification of the final payment. This reservation is once more invalid if you do not submit a verifiable invoice for the reserved claims within 28 calendar days or, if this is not possible, you do not thoroughly justify the reservation. You are required to have been properly informed of this exclusive effect.

#### **§7 Deadlines, Delays in Delivery, Force Majeure**

1. All agreed deadlines are binding. Unless agreed otherwise, the period of delivery shall commence on the date the Purchase Order is issued by us. If no delivery period is agreed, you shall deliver the goods without delay. Unless otherwise agreed, the delivery date or delivery period shall refer to the date of complete and proper delivery of the goods including the agreed documentation to us.
2. Should you become aware that - for whatever reason - an agreed deadline cannot be met, you are required to inform us in writing without delay, indicating the reasons for and the duration of the expected delay. In such case, you are obliged to immediately take all necessary actions to prevent such delay on your own costs and risk. If it can be foreseen that you fail to prevent such delay, we are entitled to take all measures necessary to prevent such delay on your costs and risk.
3. You are obligated to compensate us for all direct and indirect damages caused by default. Acceptance of the delayed deliveries/services does not constitute any waiver of our right to claim such damages. In the event of default, and with regard to the agreed deadlines, we are entitled to charge a penalty of 0.2 % of the gross total invoice amounts for each commenced calendar day of delay, however not more than 5 % of the gross total invoice amount. Additional claims are not affected by the assertion of the contractual penalty. We are especially authorised to withdraw from the contract in the event that the maximum contractual penalty is reached. The provision to assert the contractual penalty may be declared until the final payment has been made.
4. Force Majeure partially or completely relieves us of the obligation to accept the deliveries/services performed. To this end we are authorised to withdraw from the Purchase Order if the deliveries/services are no longer usable for us from an economic standpoint. If the effects of Force Majeure last longer than 3 months, either party may terminate the Purchase Order with 14 calendar days' notice. The party claiming Force Majeure shall inform the other party within 5 calendar days in writing after Force Majeure has ceased to exist. Force Majeure in this sense means any events or circumstances which are beyond the control of the parties including but not limited to war, sabotage, terrorism, contamination by radio-activity, rebellion, revolution, insurrection, military or usurped power or civil war; riot, civil commotion or disorder, weather conditions such as floods, volcanic activity, meteorites, tornadoes, typhoons, cyclones, hurricanes, tide (other than normal tides), tidal waves, tsunamis or perils of the seas, blizzards, unexpected ice flows, severe drought or desiccation, tempest or earthquakes or other natural calamities, extreme weather or environmental conditions or acts of God (due exclusively to natural causes), which an experienced and prudent party could not have reasonably foreseen and taken protection against, that in any such case

materially and adversely affects the ability of a party to perform its obligations or to enjoy its rights under the Purchase Order, except where occasioned by the fault or negligence of the Party affected thereby.

5. Should a delivery be carried out earlier than agreed, we reserve the right to return the goods at your expense. Alternatively, the goods shall be stored by us at your expense and risk until the respective delivery date. In the event of an early delivery we are not obliged to make the payment before the payment date based on the originally agreed delivery date.

#### **§8 Guarantees, Warranty**

1. You hereby guarantee and assure that all goods delivered, and all services rendered by you comply at the date of delivery/performance with the state-of-the-art, the applicable legal regulations and standards, and the quality standards stated in our Purchase Order, and that these goods fulfil the intended purpose, are free from defects in design, materials and workmanship as well as free from any security interest, lien, encumbrance or any other third-party-rights and that they lead to the best possible result. Furthermore, you represent and warrant that all goods delivered, and all services rendered by you do not constitute a hazard to health, safety or the environment provided that they are handled, used and stored in accordance with common methods applicable to such goods. You will provide safety data sheets, relevant codes of practice and notes or reports from your factory inspectors, specifying the necessary standard in view of safety and environmental protection for the handling, processing and storing the goods, any by-products and waste.

You are required to consult us should the expected quality and service features not be described unequivocally in the plans, or if it will not be possible to fulfil the guaranteed features required by us on the agreed dates of delivery. Should you have any reservations about the requested method of carrying out our Purchase Order, you are required to inform us in writing immediately.

2. In the event of deliveries carried out on the basis of drawings, the dimensions indicated on these drawings must be checked by you before starting. Should you not, not completely, not promptly, or poorly examine these drawings - or in a manner non-compliant with this contract - then any inaccurate measurements that result in changes in the commencement phase do not justify additional claims of any sort.
3. Acknowledgement of receipt, temporary use or payments made do not constitute a final acceptance by us in the legal sense or a waiver of rights by us. Final acceptance must always be made in writing. The acceptance of partial services is excluded, just like implied acceptance and acceptance by usage.
4. After receipt, the goods will be visually inspected by us to their completeness and any visual defects within reasonable time. We will notify you of any defects detected as soon as possible, however you hereby waive the plea of delayed notification for all other than obvious defects.
5. The warranty period for your deliveries and services is two (2) years and starts with the complete and defective-free delivery and the date of written final acceptance of the goods by us. You are responsible for defects or other failures to meet the requirements of the Purchase Order, regardless of any inspection, approval or acceptance of the goods.
6. We are entitled to require you to remedy all defects in the deliveries/services, identified within the warranty period, immediately upon our request and free of charge either through repair or replacement of the defective parts/new delivery. Such choice is at our sole discretion. All additional expenses, including those costs accrued by the assessment of the defects (such as expenses for US audits, X-rays, advisor fees, additional works or site visits, etc.), as well as costs for installation and dismantling, transportation, routes, works, and materials, are borne by you. Repair is considered unsuccessful after the first failed attempt. In the event you fail to remedy defects or deliver replacement goods within reasonable time, we may be entitled to an equitable reduction in price or, replace or repair the goods at your expense or, at our sole discretion, decide to rescind from the Purchase Order and reject the goods. In such case, the goods rejected must be removed by you at your own costs and risk within 30 calendar days after rejection. Other legal claims remain unaffected.
7. The warranty period starts anew for the goods repaired/ replaced from the date of delivery/repair.
8. You are required to have established and implemented a quality assurance, the scope and methods of which reflect the most modern state-of-the-art, and to provide proof of such on request (at least ISO 9001(2015) or equivalent, depending on the nature of the goods). If we consider this to be necessary, you shall conclude a corresponding quality assurance agreement with us. You will also take out adequate insurance against all risks arising from your deliveries and services, at least product liability and present us with the insurance policies on our request.

We have the right to verify progress and proper performance of the Purchase Order and inspect the goods and to carry out quality controls on your and/or your subcontractors' premises or elsewhere at any time during the duration of the Purchase Order/contract. You shall provide and cause your subcontractors to provide us and our representatives such access as required for such inspection.

However, no inspection/quality control shall release you in any way from your contractual obligations and we shall not assume any additional responsibility. The material costs of the quality control shall be borne by you; we shall bear the personnel costs involved. However, this shall no longer apply if considerable complaints lead to a repetition of the quality control. In this case you shall bear all personnel costs as well as any necessary expenses involved.

9. You hereby assign to us all warranty rights and claims against your subcontractors/upstream suppliers. On our request you will submit to us all documents necessary for the execution of our rights from this assignment.

#### **§9 Confidentiality; Liability**

1. You undertake to keep strictly confidential all information obtained from us including know how, specification procedures, business forecasts and all commercial or technical information and details learned by you in connection with your activities for us and which are not common knowledge, as well as all data and documentation handed over to you by us. You will obligate your employees, affiliates, subcontractors accordingly. This obligation will remain in full force for at least 3 years from the date of delivery.
2. The rights of ownership and the intellectual property rights in any designs, drawings, samples and the documents delivered to you remain with us.

3. The protection of personal data is very important to us. Therefore, we process personal data only in accordance with all applicable data and data security regulations. The details of our data protection policy are available on request.
4. You shall indemnify us and hold us harmless against all disputes, claims, damages and losses or expenses arising from or out of any breach of your contractual obligations including any infringement of a patent, copyright, trademark or registered design of a third party. Without prejudice to any other rights and obligations, you will indemnify and hold us harmless against any product liability claims raised by third parties against us as a result of defects in the goods delivered by you. You undertake to defend or -at least- compensate us for all costs incurred in connection with the defence against any such claim.

#### **§10 Suspension; Termination**

1. We reserve the right to suspend the performance of the Purchase Order at any time. You may claim compensation only for proven additional costs due to such suspension, provide however that you shall not be entitled to claim any costs for the first three months of suspension.
2. We may terminate the Purchase Order at any time, in whole or in part, at our convenience. In such a case, you are entitled to charge us for the services proved to have been properly performed by the date of termination minus all gains and savings arising out or in connection with the termination, provided that we, on our request, shall be granted unrestricted title for and receives all rights relating to the goods.
3. We may terminate the Purchase Order with immediate effect for cause in the following cases:
  - payment difficulties on your side;
  - application to commence insolvency proceedings;
  - commencement of the insolvency proceedings and refusal to commence for lack of assets;
  - voluntary liquidation;
  - violation of major contractual obligations (including but not limited to transfer of services without our consent, patent defects in the goods) and/or repeated violation of contractual obligations.

#### **§11 Miscellaneous**

1. The language of this Purchase Order/ contract and all written communication in connection therewith is, unless otherwise explicitly agreed, English.
2. Without attestation, you shall bear 2 % of the costs of the security services rendered by us. We may attest to higher costs on a case-by-case basis.
3. Publications of any sort regarding the Purchase Order, your delivery/service, and the project to which they pertain, including any mention of us as a reference, require our prior written consent.
4. If not agreed otherwise in our Purchase Order, the place of performance and fulfilment for delivery shall be the point of use or, if the point of use is not indicated, the point of delivery. For payments, the place of performance shall be our seat (Dillingen/Saar, Germany).
5. Place of jurisdiction is Dillingen/Saar, Germany.
6. German law shall apply with the exception of such legal provisions that make reference to the law of other countries. The provisions of the UN Convention on Contracts for the International Sale of Goods from 11.04.1980 (CISG) are excluded.
7. For Work in Germany: Obligation to Adhere to Minimum Wage Law  
If you work in Germany, you are obligated to comply with the legal minimum wage requirements and to pay your employees at least the legally stipulated minimum wage as per § 1 MiLoG (Minimum Wage Act) provided the respectively applicable labour or work contracts have not charged a different amount. In addition, you are obligated to obligate your subcontractors to these same obligations and to ensure adherence to the terms of MiLoG, as well as the verification obligations of your subcontractors and their subcontractors for contract drafting purposes. We are authorised to request current verification (proof of hours, anonymised pay slips, and employee lists) from you and from your subcontractors at any time. In the event of a violation by you or your subcontractors against the obligation to pay minimum wage and/or other terms of MiLoG or the verification obligations, we are authorised to terminate this contract with you without notice and to commission a third party to conduct the part of the service not rendered by you, at your expense. You are obligated to release us entirely from all third-party demands or demands by your employees or your subcontractors due to violation of the terms of the stipulations of the MiLoG. We are authorised to exercise a right of retention against payable claims by you in the amount that we must assume, based on ample evidence, to have been utilised for the non-payment of the minimum wage to your employees or the employees of your subcontractors. This right of retention does not apply if and to the extent that you have submitted an absolute, indefinite suretyship that covers our claims upon non-payment of the minimum wage or a violation against the terms of MiLoG by you or your subcontractors (possibly also alongside other claims for contract fulfilment, e.g. for purposes of a contract fulfilment suretyship).
8. Should one of the terms of these General Terms of Purchase be invalid, this does not affect the validity of the remaining terms. In such an event the parties are obligated to incorporate a permissible regulation that most closely resembles the content and purpose of the invalid portion.