

## General Terms of Purchase

### § 1 General provisions

- 1.1 All orders of HOCHTIEF Solutions AG (hereinafter referred to as "HOCHTIEF") are subject exclusively to these General Terms of Purchase (AEB) unless expressly otherwise agreed in writing. The terms and conditions of the supplier (hereinafter referred to as "Supplier"), its General Terms of Business or order confirmations are hereby expressly excluded. The acceptance of order confirmations or deliveries without reservation does not constitute acknowledgement of such terms and conditions, even in the knowledge of conflicting terms and conditions of the Supplier or of terms and conditions which deviate from these AEB.
- 1.2 Upon the first delivery/service under these AEB the Supplier acknowledges their exclusive validity for all further orders as well.
- 1.3 Only orders placed in writing shall be binding for HOCHTIEF. Oral agreements and collateral agreements are binding only after written confirmation by HOCHTIEF. The same shall apply to changes and supplements to orders.
- 1.4 The supplier shall promptly notify HOCHTIEF in writing of any changes and additions to the scope of delivery/services, which prove to be necessary during performance. They require written consent of HOCHTIEF.
- 1.5 These General Terms of Purchase are not applicable to consumers.

### § 2 Delivery and shipment

- 2.1 Unless otherwise agreed, deliveries shall be unloaded free of charge at the place of delivery. This is the place of performance.
- 2.2 A delivery note shall be enclosed with each delivery, which states the order number and the project number/cost center of HOCHTIEF as well as a description of the contents of the delivery by type and quantity.
- 2.3 Transport packaging and materials are to be taken back by the Supplier immediately after delivery. If the Supplier does not satisfy this obligation, HOCHTIEF is entitled to dispose of such packaging and materials, giving details of the Interseroh (recycling service) number, at the Supplier's expense.
- 2.4 A technical description and instructions for use in the German language shall be enclosed with equipment, free of charge. For software products the delivery obligation will be deemed satisfied only if the full system technical (user) documentation has been provided. Programs specially created for HOCHTIEF are to be delivered along with the source format.

### § 3 Delivery periods/delivery dates

- 3.1 The delivery periods or dates stated in the orders are binding. Decisive for the observance of the delivery date or the delivery period is the receipt of non-defective goods at the place of performance according to § 2.1 or – insofar as the law governing contracts for work and services applies – the acceptance of the delivery or service.
- 3.2 Should any circumstances prevent the Supplier from observing the agreed delivery period then it must inform HOCHTIEF thereof promptly after it has gained knowledge thereof, stating the reasons and the expected implications. This notification does not release the Supplier from its delivery obligations. Early deliveries, deliveries outside of the goods acceptance times stated by HOCHTIEF as well as partial or excess deliveries require prior consent.
- 3.3 Additional freight costs for partial deliveries are, unless otherwise agreed, included in the agreed remuneration.

#### **§ 4 Transfer of risk, acceptance, property rights**

- 4.1 For deliveries with installation or assembly and for services, the risk shall transfer upon acceptance; for deliveries without installation and assembly, the risk shall transfer upon receipt at the place of delivery stated by HOCHTIEF.
- 4.2 Property in the delivered goods shall pass to HOCHTIEF upon payment. Any prolonged or extended reservation of proprietary rights is excluded.

#### **§ 5 Prices**

- 5.1 The prices listed in the order are fixed prices. The prices include, in particular, costs for freight, packaging and material testing processes. Claims based on additional deliveries and/or services can be asserted only after any such deliveries and/or services have been agreed in writing between the contracting parties and ordered by HOCHTIEF. Otherwise, additional demands in excess of the prices listed in the order are excluded.
- 5.2 No remuneration is granted for presentations and/or for the preparation of offers insofar as not otherwise agreed in writing in advance.

#### **§ 6 Invoicing and terms of payment**

- 6.1 Invoices shall be made out promptly after shipment of the goods, stating the order number and the project number/cost center. Insofar as goods are delivered to construction sites the invoices are to be prepared separately for each construction site. The value added tax shall be shown separately at the applicable rate.
- 6.2 Payments are made subject to the reservation of proper delivery and the correctness of prices and calculations. In the event of a defect which is subject to warranty HOCHTIEF is entitled to withhold payment in the amount of three times the cost of remedying such defect.
- 6.3 After receipt of the delivery/acceptance of the service, receipt of all contractually required documents and a verifiable invoice, HOCHTIEF shall make payment within 30 days of its receipt of the invoice unless otherwise agreed. Should the invoice be returned, for reasons for which HOCHTIEF is not responsible, any time for payment shall not begin before receipt of the invoice corrected by the Supplier.
- 6.4 The date of the Contractor's bank's receipt of the Contractor's transfer order is decisive for the punctuality of payments.
- 6.5 Payments and use/commissioning do not represent any recognition that the deliveries and services are in accordance with the contract.

#### **§ 7 Offsetting and assignment**

- 7.1 The Supplier can only offset the value of undisputed claims for payment or claims for payment which have been declared final and binding by the courts.
- 7.2 Assignments of claims against HOCHTIEF as well as the other transfers of rights and obligations of the Supplier are excluded outside of the scope [of application] of § 354 a HGB [Commercial Code]. Exceptional cases require a written consent in order to be valid.

## **§ 8 Warranty**

- 8.1 Warranty claims shall be determined in strict accordance with the statutory provisions unless otherwise stipulated below.
- 8.2 The Supplier shall provide the object free of defects of quality and title for HOCHTIEF. The Supplier warrants that all deliveries and services provided by it comply with state-of-the-art technology, the relevant legal provisions and the regulations and directives of authorities, trade associations and of specialist associations valid at the time of the delivery/provision of service and it is not aware of any planned changes. This applies in particular with regard to the environmental protection provisions which apply in the EU, in the Federal Republic of Germany and at the registered domicile of the Supplier. The Supplier must promptly notify HOCHTIEF in writing about any planned changes of which it is aware.
- 8.3 If the delivery is defective, HOCHTIEF can either request that the Supplier remedy the defect or deliver a replacement. In this case the Supplier undertakes to bear all expenses which are necessary for the purpose of remedying the defect and those for replacement deliveries. The right is expressly reserved to compensation for damage, in particular to compensation for damage instead of performance.
- 8.4 The warranty period is 36 months beginning from the transfer of risk under § 4.1, insofar as no longer warranty period applies under statutory or separate contractual regulation. The warranty period is interrupted for the period of time which begins with the issue of a written notification of defects by HOCHTIEF and ends with the acceptance of the non-defective delivery or service by HOCHTIEF. In the event of rework on, or the replacement or repeated performance of a part of the delivery or service, the period stated in Sentence 1 shall commence anew with the acceptance of the non-defective delivery or service.
- 8.5 The Supplier shall indemnify HOCHTIEF upon first demand from all claims which are asserted against HOCHTIEF by third parties – for whatever legal reason – owing to a defect of quality or title or any other fault of a product delivered by the Supplier and shall reimburse HOCHTIEF the necessary costs of legal defense in this respect. § 9.2 shall also apply.
- 8.6 The Supplier assigns all warranty claims against its sub-suppliers to HOCHTIEF. The assignment is accepted by HOCHTIEF. The Supplier is obliged to exercise the warranty rights for HOCHTIEF until revocation by HOCHTIEF.
- 8.7 HOCHTIEF reserves the right to inspect the goods for obvious and visible defects immediately after receipt and to accept goods only after such inspection. In the event of a complaint the Supplier can be charged with the costs for the inspection. The period for reporting any type of defect is 14 days after the discovery of the respective defect. During the warranty period, the Supplier waives the objection of delayed notification with regard to hidden defects.

## **§ 9 Liability**

- 9.1 The Supplier shall be liable within the framework of the statutory provisions.
- 9.2 Insofar as a claim is asserted against HOCHTIEF by third parties for product liability or according to other statutory provisions owing to a defect of quality or title or any other fault of a product delivered by the Supplier the Supplier undertakes to indemnify HOCHTIEF at first demand and in full from such claims insofar and to the extent that it is directly liable towards the third party in its external relationship. Insofar as HOCHTIEF carries out a product recall action as a result of such an event the expenses and costs incurred thereby shall be invoiced to the Supplier who undertakes to indemnify HOCHTIEF from this at first demand insofar as it is liable according to §§ 830, 840, 426 BGB [German Civil Code]. This shall in particular also apply to possible recall actions within the framework of the Equipment and Product Safety Law.
- 9.3 The Supplier assures the existence of appropriate product liability insurance. HOCHTIEF is entitled to request from the Supplier corresponding confirmation of coverage by its insurer.

## **§ 10 Property rights of third parties**

The Supplier warrants that the use of the purchased or delivered goods as intended is not affected by any rights of third parties, in particular that no property rights of third parties are infringed. Insofar as a claim is asserted against HOCHTIEF owing to a possible infringement of rights of third parties such as e.g. of copyrights, patent or other property rights the Supplier indemnifies HOCHTIEF from such claims and from all payments thus associated with such claims.

## **§ 11 Use of provided material, ownership relationships**

- 11.1 Drawings, blueprints, samples, production regulations, internal company data, tools, equipment, etc., which HOCHTIEF has handed over to the Supplier for the submission of an offer or for executing an order shall remain the property of HOCHTIEF. They may not be used for other purposes, reproduced or made accessible to third parties without written consent and are to be stored with the due care and attention of an ordinary businessman. After the order has been fully processed they are to be returned to HOCHTIEF including all duplicates made, without prior request or – after written consent – destroyed by the Supplier.
- 11.2 If the Supplier processes provided material or alters it, this activity is carried out on behalf HOCHTIEF. HOCHTIEF shall become the direct owner of the new objects produced hereby. If the provided material only accounts for part of the new objects HOCHTIEF shall be entitled to the co-ownership of the new objects in the proportion which corresponds to the value of the provided material contained therein.

## **§ 12 Confidentiality, data protection**

- 12.1 The Supplier undertakes to maintain confidentiality concerning all diagrams, drawings, calculations and other documents and information received in connection with the order. They may be disclosed to third parties only upon written consent of HOCHTIEF insofar as the Supplier is not obliged to do so under statutory or official regulations. The non-disclosure obligation shall also cover personal data. The non-disclosure obligation shall also apply after the completion or termination of the contract; it shall lapse if and insofar as the production know-how contained in the diagrams, drawings, calculations and other documents which were handed over has become general knowledge. Sub-suppliers are to be bound to confidentiality accordingly.
- 12.2 The conclusion of the contract shall be treated confidentially. Reference may be made to the business transaction with HOCHTIEF in the Supplier's public relations material only after obtaining written consent. HOCHTIEF and the Supplier undertake to treat all commercial or technical details that are not in the public domain, of which they become aware through the business relationship, as trade secrets. Sub-suppliers are to be bound to confidentiality accordingly.

## **§ 13 Severability clause**

- 13.1 Unless otherwise stipulated by these AEB, the statutory provisions shall apply unless the contracting parties have explicitly agreed otherwise in writing.
- 13.2 Should one or several provision(s) of these AEB be invalid or unenforceable this shall have no effect on the legal validity of the other provisions. Instead of the invalid/unenforceable provision a valid provision shall be deemed as agreed which comes closest to the economic intention of the contracting parties. The same applies in the event of any gaps in these AEB.

## **§ 14 Contractual language**

Negotiations and the contract shall be in the German language. This also means that the performance of the contract, including the construction work, shall be conducted orally and in writing in the German language.

### **§ 15 Applicable law**

The laws of the Federal Republic of Germany shall apply under the exclusion of the rules of conflict of international private law and the UN Convention on Contracts for the International Sale of Goods.

### **§ 16 Code of Conduct**

When providing its deliveries and services the Supplier shall comply with the Code of Conduct of HOCHTIEF and require its employees and sub-contractors to do likewise. The Code of Conduct can be viewed at [www.hochtief.de](http://www.hochtief.de) or will be made available by HOCHTIEF upon written request.

### **§ 17 Place of jurisdiction**

Insofar as not in conflict with mandatory statutory provisions the place of jurisdiction for all disputes arising out of the contract is, at the discretion of HOCHTIEF, either Essen or the registered domicile of the responsible branch office.