

# General Terms and Conditions of Purchasing

Version: July 2019

<b>1. GENERAL .....</b>	<b>2</b>
<b>2. CONCLUSION OF CONTRACTS/ OFFERS.....</b>	<b>2</b>
<b>3. DELIVERY CONDITIONS/SHIPMENT/PACKING .....</b>	<b>2</b>
<b>4. DATES AND PERIODS/ OVERSHIPMENT/ UNDERSHIPMENT .....</b>	<b>3</b>
<b>5. PASSAGE OF RISK.....</b>	<b>3</b>
<b>6. PRICING/ INVOICING .....</b>	<b>4</b>
<b>7. PAYMENT .....</b>	<b>4</b>
<b>8. CUSTOMS/ ORIGIN OF GOODS/ ROHS DIRECTIVE .....</b>	<b>4</b>
<b>9. FORCE MAJEURE.....</b>	<b>5</b>
<b>10. CLAIMS FOR DEFECTS, WARRANTY .....</b>	<b>5</b>
<b>11. SECURITY OF THE SUPPLY CHAIN.....</b>	<b>6</b>
<b>12. THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS .....</b>	<b>6</b>
<b>13. OTHER LIABILITIES, NON-CONTRACTUAL PRODUCT LIABILITY/ INSURANCE .....</b>	<b>6</b>
<b>14. OUTSOURCING OF ORDERS/ ASSIGNMENT/ RESERVATION OF TITLE .....</b>	<b>7</b>
<b>15. CONFIDENTIALITY/ ITEMS SUPPLIED BY ORDERER/ DATA PROTECTION.....</b>	<b>7</b>
<b>16. PERFORMANCE OF SERVICES/ STATUTORY MINIMUM WAGE (MILOG), GERMAN POSTED WORKERS ACT (AENTG)/ PROHIBITION OF ILLEGAL EMPLOYMENT .....</b>	<b>8</b>
<b>17. SUSTAINABILITY .....</b>	<b>8</b>
17.1 SOCIAL STANDARDS.....	8
17.2 ENVIRONMENTAL MANAGEMENT.....	9
17.3 ENERGY MANAGEMENT .....	9
<b>18. PLACE OF PERFORMANCE/ LEGAL VENUE/ APPLICABLE LAW .....</b>	<b>10</b>

## 1. General

These General Terms and Conditions of Purchasing (the “Terms and Conditions”) apply to all orders for the supply of goods or services and are the basis of contracts closed with the supplier. The performance of an order or closed contracts by the supplier will be construed as acceptance of these Terms and Conditions, except where and insofar as the supplier has referred to general terms and conditions of business of his own in connection with the conclusion of the contract. General terms and conditions of business of the supplier shall only be component of the contract if they have been expressly confirmed as such in writing (also telefax, or electronically sent by e-mail) by the orderer. The receipt of deliveries or acceptance of services does not imply the approval of his general terms and conditions of business.

## 2. Conclusion of Contracts/ Offers

2.1 The preparation of offers or the production of cost estimates for the orderer 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 order number. The same also applies to any oral side agreements or amendments or additions made to orders already placed or contracts already concluded.

2.3 Orders and further issued requests to close a contract by the orderer, as for example quantity contracts, always require an order confirmation by the supplier (submitted in writing or electronically). This must be issued as a rule (for catalogue parts, merchandise) within three working days from the date of creation. 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, quantity contract or further requests of the orderer contains amendments or additions, these shall only be incorporated into the contract if these amendments and additions are accepted in writing by the orderer.

## 3. Delivery conditions/ Shipment/ Packing

3.1 Deliveries shall be effected, unless agreed otherwise, “DDP place of destination, Incoterms® 2010”. All proofs and documents, which the supplier has to present simultaneously with the delivery, have to be attached to the delivery.

3.2 Notwithstanding the above, the supplier shall ensure that each shipment is accompanied by the necessary accompanying documents/ delivery notes in complete form, showing the suppliers and manufacturer addresses, 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, the attribution of the delivery to the orderer’s order is impossible or is only possible with unreasonable effort.

3.3 The goods to be delivered must be packed in a customary and appropriate manner, unless agreed otherwise. Packing costs will be assumed by the orderer only by express written agreement. The supplier will be held liable for any damage resulting from inadequate or faulty packing. Exchangeable pallets are exchanged one-for-one. If the acceptance of the

exchangeable pallets in an 1:1-exchange is being refused, the supplier does not have any rights opposite the orderer in this regard.

3.4 In addition to the obligations from “DDP” Incoterms® 2010 the supplier has to conclude a transport insurance at his own expense, unless agreed otherwise.

#### **4. Dates and periods/ Overshipment/ Undershipment**

4.1 Agreed dates and periods must be met. Authoritative for compliance with a delivery date or delivery period is the time of arrival at the place of destination. 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 he cannot meet an agreed date or period, he must inform the orderer accordingly without delay in writing, stating the reasons for and the anticipated duration of the delay. This does not discharge him from the responsibility in the case of default.

4.2 If, after expiry of the originally agreed date or time period, the supplier 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 the 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.

4.3 If the 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 the early delivery was not permitted under the terms of the agreement.

4.4 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.

4.5 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.

#### **5. Passage of Risk**

The risk of loss, damage or destruction of deliveries shall pass to the orderer on receipt of the same at the place of destination. If an acceptance procedure for deliveries and services 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.

## **6. Pricing/ Invoicing**

6.1 The agreed prices are fixed prices and are quoted according to the terms of delivery free place of destination, including freight and packing costs, plus value added tax (VAT) at the statutory rate. Unilateral retrospective price increases are barred. If at the time of order 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. Otherwise, the approval for the price has to be obtained from the orderer.

6.2 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 8 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.

## **7. Payment**

7.1 Payment will, unless agreed otherwise, be effected net within 30 days. The respective amount will be instructed for payment the earliest on the respective Wednesday (weekday) following the due date. 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.

7.2 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.

7.3 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, if the legal preconditions are obtained.

## **8. Customs/ Origin of Goods/ RoHS Directive**

8.1 Unless agreed otherwise, customs clearance shall be handled by the supplier.

8.2 If rules of origin according to the EU preferential agreements have to be met for the delivery, the supplier will bring forward the respective proofs of preferential status, as for example a declaration of origin or movement certificate. Otherwise he will state the non-preferential origin of the delivered good. If there is a delivery of the goods, which falls under the bi- or multilateral preferential agreements or unilateral origin requirements of the general preferential system have to be kept, as for example the REX-System, a respective registration is enough.

8.3 If the supplier has to provide a declaration about the origin of the goods acc. to section 8.2, he is obligated to enable its review by the customs authority, to provide information and procure necessary verifications.

8.4 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 8.

8.5 In cases, in which in agreement customs clearance is handled by the orderer, the supplier has a duty to assist the orderer in minimizing the customs payments.

8.6 The supplier has the obligation to check the goods for the compliance with the respective current EU RoHS directive about the usage/the prohibition or the restriction of the usage of certain hazardous materials and provide a declaration of conformity at request of the orderer.

8.7 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.

## **9. Force Majeure**

9.1 In cases of force majeure or other hindrances either party is not responsible for, such as strikes, which are not caused operationally, either party, which is affected by such an obstacle, shall have the right to suspend the performance of their contractual duties - provided it is the hindrance which is preventing them from being performed - until the hindrance no longer exists.

9.2 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.

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

10.1 The supplier owes deliveries and services free of defect. For this, he shall ensure that they are of the contractual 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. They shall be in conformity with the relevant provisions of law, especially environmental protection, dangerous goods and accident prevention regulations, 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. Qualified staff has to be instated for the services, for which the necessary professional qualifications are available to the supplier, especially if they are required from official side for the performance of the owed services.

10.2 The supplier shall ensure that all components used in the production of products supplied by him are chosen in conformity with the REACH guidelines and correspond to the consequent requirements.

10.3 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 up to five days from delivery. Hidden defects must be notified up to five days from discovery. Inspection shall be conducted in the scope customary in the trade, depending on the nature and purpose of the intended delivery.

10.4 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, investigation, labour and material costs, with regard to the place of performance or the final place of destination known to him, shall be borne by the supplier. As well, the supplier shall replace necessary expenses to the orderer, which result after the installing or the assembly of an

item, which has been found defective, for the removal of the defective part and the installing or the assembly of a repaired or delivered defect-free item.

10.5 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.

10.6 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.

## **11. Security of the Supply Chain**

The supplier, who produces, stores, transports, delivers or takes over goods for the orderer, on behalf of the orderer, is obligated to:

- produce, store, handle or process and or load the goods at secured establishments and secured transshipment locations.
- protect the goods during the production, storage, handling or processing, loading, transportation from unauthorized access.
- ensure, that the appointed staff is permitted for the production, storage, handling or processing, loading, transportation and taking over of such goods.
- instruct business partners, which are known to him, who act on behalf of suppliers, freight forwarders and customers of the orderer, that they also shall take measures, to secure the above mentioned supply chain.

## **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. Other Liabilities, Non-Contractual Product Liability/ Insurance**

13.1 Other liabilities of the supplier for other reasons than recorded in these general terms and conditions of purchasing go by legal provisions.

13.2 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 the supplier as “manufacturer” or legal as a supplier equal to a “manufacturer”, but the orderer

is justifiably claimed for these. He shall, on the same premises, also be liable for loss or damage incurred by the orderer in such cases through precautionary measures or through official arranged 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.

13.3 The supplier undertakes to take out insurance cover in reasonable amount for the risks arising from contractual liability and 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/ Data Protection**

15.1 The supplier shall treat all documents made available to him by the orderer, such as drawings or formulations, 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 his 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.

15.3 The supplier is obligated to comply with the respective valid regulations of the EU-GDPR (General Data Protection Regulation) and the German data protection law, especially concerning the processing of personal data. If the transfer of the personal data provided to him by the orderer to third parties is necessary for the performance of the contract, he shall oblige them to keep the data protection regulations. The orderer is entitled to process all data, which is transferred by the supplier, in order to maintain the business relation considering the respective valid data protection regulations, including personal data.

## **16. Performance of Services/ Statutory Minimum Wage (MiLoG), German Posted Workers Act (AentG)/ Prohibition of Illegal Employment**

16.1 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.

16.2 For the performance of the contracts, the supplier is obligated to ensure, that his or his subcontractors staff receive the statutory minimum wage or, if the required performances fall under the scope of an European posting of workers directive and/ or the German Posted workers Act (AentG), especially for a sending from or to a foreign country, receive the respectively required working conditions, depending on their service time. Also, he shall comply with further tariff as well as legal obligations to pay contributions to the social insurance agencies, trade associations and further institutions and he shall make sure by verifications from used subcontractors, that the respective current requirements are kept by them.

16.3 If justified claims are enforced against the orderer due to non-compliance of obligations of the supplier according to section 16.2, the supplier shall discharge the orderer from these demands or rather replace thereby caused damages or as compensation compensable costs.

16.4 Illegal employment or the commissioning of illegal employment of any kind through the supplier has to be refrained from. He shall also take this into account for the selection of his subcontractors and to obligate them accordingly.

## **17. Sustainability**

### **17.1 Social Standards**

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 Natec as the orderer 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 International Labour Organization (ILO; [www.ilo.org](http://www.ilo.org)) and 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.

Hereinafter, the standards which shall be met are outlined; their extensive and valid basis form the official ILO and BSCI:

The supplier and the companies within the supply chain

- shall conduct their business in compliance with the international human rights. Forced labour and precarious employment are not allowed.
- do not allow child labour, either directly or indirectly, and shall undertake that protection formulas for young workers are enforced.



- must respect the labour law. They shall ensure that the working hours are not excessive, that breaks are taken and that wages are enough to meet at least the basic needs and paid on time.
- shall ensure that their employees have the right of association and collective bargaining.
- shall not apply any type of discrimination.
- shall provide a safe and healthy workplace for all their employees.
- shall ensure, that at every stage of the production, environmental protection is guaranteed sufficiently and extensively and all required measures to avoid environmental damage are taken.
- are encouraged, to provide correct information about the compliance with the abovementioned standards to the orderer, which have to be kept during the duration of the business relation with the orderer Hochland Natec and shall behave integer and ethical perfect.

## 17.2 Environmental Management

For the purpose of a joint environmental responsibility the supplier will maintain an environmental management system according to EMAS or ISO 14001. The verification of these elements can be part of an audit at the supplier.

Suppliers without the above mentioned certification are prompted:

- to strive for a certification
- to maintain a program for environmental protection
- to know the environmental laws and relevant regulations and provisions and to comply with these
- to be informed about legal changes
- to document and measure environmental aspects and effects and to derive appropriate improvement programs from that
- to train the staff about environmental relevant topics

It is an obligation for every supplier to work with certified waste management facilities.

## 17.3 Energy Management

To conserve resources and therewith meeting the requirements of handling them in a sustainable way, energy efficiency is an important element.

A systematic energy management according to ISO 50001 or an energy audit according to DIN EN 16247-1 is an appropriate instrument to continuously improve energy efficiency in the company.

For that, the supplier is held to strive for a certification acc. to ISO 50001 or DIN EN 16247-1 or rather to plan activities to improve the energy efficiency and reduced consumption.

All non-SME's (small and medium-sized enterprises) are already obligated for that by the energy service law (Energiedienstleistungsgesetz).

It is obligatory for every supplier to perform an internal evaluation about the energy use in the procurement of energy services, products, facilities and energy, and to include this in the general decision.

For the acquisition of new products, services and facilities, which use energy, criteria for energy use, energy consumption and energy efficiency shall be determined.

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

18.1 For all obligations of the supplier arising from a contract, the place of performance shall be the place of destination.

18.2 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.

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

