

## General Terms and Conditions for Construction Services

January 2017 - EN

The following General Terms and Conditions for Construction Services (hereinafter called "General Terms") shall apply to all orders by and contracts of the company Holscher Wasserbau GmbH (hereinafter referred to as "Client").

The General Terms are applicable regardless whether the contractor – hereinafter referred to as "Supplier" –, resides in Germany or in 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 must be expressly agreed upon in writing to become valid and binding. Any terms of the Supplier, his General Terms and Conditions of Business or contract confirmations are hereby expressly rejected and excluded. Client's unconditional acceptance of Supplier's contract confirmations or Supplier's deliveries does not constitute recognition of such terms by Client, even in cases Client is aware of terms of the Supplier which are conflicting with or deviating from these General Terms.

### 1. Contract Documents

The following documents are forming the entire agreement in the below order of precedence

- 1.1. the purchase order,
- 1.2. the minutes of negotiations (if any),
- 1.3. the minutes of the technical clarifications (if any),
- 1.4. the scope description,
- 1.5. any other contractual terms and further documents of the Main contract (if any and handed over to the Supplier),
- 1.6. these General Terms of Client
- 1.7. VOB/B General Conditions of Contract for the Performance of Construction Work (hereinafter referred to as "VOB/B") as at the date of the submission of the offer,
- 1.8. all rules and regulations applicable for the respective scope of work and in accordance with the state of the art technical standards as at the time of the conclusion of the contract. All applicable laws and regulations including but not limited to health and safety regulations, construction permits; VDE-, VDI, DIN-Norms and Standards, which are to be followed throughout construction works.

### 2. Payment Terms

- 2.1. In case no express payment plan is agreed upon, Supplier can request for partial payments in accordance with § 16 Abs. 1 and 17 Abs. 6 VOB/B. Otherwise the terms of the payment plan are applicable.

In case partial payments are agreed upon, Client may only pay 90% of the invoiced amount for the partial payment until acceptance of the services.

- 2.2. § 16 Abs. 3 VOB/B is applicable for the final payments.
- 2.3. If the main contractor reduces the scope of work Client is entitled to reduce the scope of work of the Supplier in the same relation. Client is entitled to claim back any amounts not due to the Supplier
- 2.4. All invoices have to be submitted in an auditable form together with the bill of quantity necessary for verification.

The addressee of the invoices is in any case, also if delivery is provided to any of Client's subsidiaries:

Hölscher Wasserbau  
Hauptverwaltung Haren  
Hinterm 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](mailto:hw-fibu-re@holscher-wasserbau.de)

- 2.5. Invoices shall be submitted separately as per Client Order Number.
- 2.6. Invoices which are non-compliant with the required form will be rejected. In such cases claims for rebates and interest are excluded.
- 2.7. The invoices have to comply with the applicable value added tax laws and regulations.
- 2.8. In case of transfer or withdrawal from a bank account of Client, payment deems to be effected on the day the payment application was submitted or sent to the bank, provided the account of Client contains sufficient funds. The same applies for cheque payments.
- 2.9. Client is entitled to offset its claims against the Supplier's dues, regardless whether the claim is confirmed by the court or accepted by the Supplier.

### 3. Final planning documents

- 3.1. The documents provided to the Supplier have to be checked by the Supplier for inconsistencies as far as these technically relate to the services. This is especially valid for inconsistencies or deviations from the intention of Client as well as for violations of the commonly recognised technical rules and standards or any construction regulations as well as contradictions and gaps in the documents. Supplier has to inform Client about any discovered or alleged inconsistencies.
- 3.2. As far as the Supplier, as per the contract, has to provide general and/or detailed plans concerning the execution of the services and the construction or static calculations or formwork work drawings or other documents, it has to provide these to Client in such a time as to enable Client to control the documents and check any interfaces to other related works.
- 3.3. The Supplier has to establish in a timely manner at the commencement of his services, which documentation, acceptance procedures and certificates are to be provided by him to Client or Client customer for the completion of his services. Supplier shall in time, if technically possible, four weeks before the completion of his services, but latest upon acceptance, without further request provide the as built drawings, operation and maintenance manuals, samples, approvals by the authorities, TÜV and other acceptance certificates as well as any other documents to Client.
- 3.4. Any plans and documents provided to the Supplier are only allowed to be used for the execution of the services. Publication or provision to 3<sup>rd</sup> parties, which are not involved in the works, is strictly forbidden.
- 3.5. The Supplier is obliged to make himself familiar with the positions of any surface or sub surface hindrances such as, but not limited to utilities, at or adjacent to the site where the services have to be provided. In so far as the Supplier requires further documents for the establishment of the locations of the subsurface utilities, he has to request these documents in a timely manner from Client. In case the positions of the sub surface utilities still cannot be established after the provision of the documents, the Supplier has to immediately inform Client before the commencement of provision of any

services, in order to enable Client to inform the client. In case damages occur because Supplier is in breach of the above mentioned obligations, the Supplier shall be fully liable for these damages and has to indemnify Client from all claims instituted by the client or third parties resulting from this breach.

### 4. Execution of Services

- 4.1. The Supplier warrants, that he made himself familiar with the site and that the documents and information provided to him were sufficient to establish all circumstances necessary to calculate the price and to execute the works and services satisfactory to be accepted and functioning in accordance with the specification. If the Supplier does not raise concerns in this respect it is deemed that the information was sufficient. Supplier is not entitled to claim for additional cost due to insufficient information.
- 4.2. The Supplier has to keep daily construction records which he has to provide to Client without further request on a daily basis. Upon Client request, an empowered representative of the Supplier has to participate in any site meeting.
- 4.3. The preparation of the site, especially concerning workplaces and storage facilities has to be coordinated with Client beforehand.
- 4.4. The Supplier shall keep the site tidy and clean and has to dispose of any of his waste, garbage, or packing material. In case the Supplier breaches this obligation, Client is entitled to request in writing from the Supplier to dispose of any waste, garbage or any other pollution of the site including any temporary storage of waste within three working days. In case the Supplier does not fulfil this request in time, Client, after another request and breach of this second request by the Supplier for another maximum three working days, Client may act on Suppliers behalf and is entitled to get reimbursed by the Supplier any third party cost or documented own cost plus a 15% mark up.
- 4.5. 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.
- 4.6. The Supplier is obliged to equip his personnel on site with personal protective equipment in sufficient number and free of charge.
- 4.7. The Supplier will only provide working tools and materials to his employees, which are in accordance with the applicable environmental, health and safety regulations.

### 5. Sub Supplier

- 5.1. Supplier has to provide his services by own resources (§ 4 Abs. 8 VOB/B). As far as permitted by Client on a case by case basis to sup supply any scope of services, the Supplier has to inform Client immediately in writing about his intention to do so, as well as about the nature and quantity of the works he wants to sup supply and the identity of the intended subcontractor. In case the Supplier subcontracts any scope of his services without prior approval, Client is entitled to terminate the contract with the Supplier without notice.
- 5.2. In case the Supplier subcontracts any scope of his services, he is responsible that the subcontractor keeps all of his obligations of German labour regulations, like employee assignment law (Arbeitnehmer-Entsendegesetz), residence act (Aufenthaltsgesetz) and the regulations of the social code (Sozialgesetzbuch III) about foreign employment. The information and documents set out under Art. 10.1. und 10.2. also have to be provided by the subcontractor as far as it concerns the subcontractor or any sub subcontractors of him.

### 6. Execution Period

- 6.1. The execution of the services has to be in accordance with the requirements of the project execution and/or the time schedule. Also the sup periods as set out in the time schedule or in the contract are expressly agreed as contractual time periods (§ 5 Abs. 1 S. 2 VOB/B).
- 6.2. The Supplier shall continuously control the contract execution and shall ensure that the agreed time schedule including any agreed sub schedules are kept. The Supplier is obliged to request from Client in a timely manner before the commencement of execution of the services any execution documents which he requires for the control of the contract execution.
- 6.3. Upon Client's request, the Supplier has to inform anticipated work steps, especially about the dates for single work packages or sub- services, particularly if agreed or originally promised deadlines were missed or are feared to be missed by the Supplier or if Client requires the information for his own time scheduling.

### 7. Remuneration

- 7.1. The contract prices consist of unit rates or lump sums for the term of the construction activities. Increases in salaries or material cost occurring after the commencement of the contract will not lead to price adjustments, but are included in the original contract price. The price adjustment as set out in § 2 Abs. 3 VOB/B is waived.
- 7.2. Prices are agreed on a net basis. If applicable value added taxes are to be added at the applicable rates.
- 7.3. 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.
- 7.4. Upon request of Client, the Supplier has to provide his calculation of the contractual scope of work to Client in a sealed envelope. Client is allowed to check the calculation, if it is required for the assessment of claims of the Supplier for additional payments (§ 2 Abs. 6 VOB/B) or for the determination of a new price due to changes in the construction layout or other instructions (§ 2 Abs. 5 VOB/B). Client has the same right, to determine the remuneration for services rendered after termination or partial termination or to calculate a compensation for termination (§ 8 Abs. 1 Nr. 2 VOB/B)
- 7.5. The prices include any cost related to instruction or training of Client's or Client's customer personnel in respect of the operation and maintenance of the products or systems provided by the Supplier.
- 7.6. The Supplier only can claim for additional payment due to variations or additions of his scope, if he had applied for this claim in writing, before executing any of the respective works and if Client had approved the claim in writing. Together with this application, the supplier shall provide an auditable calculation of the required additional cost in the form of a variation offer. In case the Supplier executes and varied or additional works without prior approval of Client or his project manager, the execution is solely on the supplier's risk. In this case Client is not obliged to make any additional payment to the Supplier.

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### 8. Daywork

- 8.1. Daywork has to be invoiced and claimed in accordance with the contractual agreements. In case the contract does not include for any regulation concerning daywork, a subsequent agreement concerning daywork cannot be assumed just because Client did sign any daywork records. The signing off of daywork records provides acceptance about the kind and quantity of services provided. It does not in any way establish any obligation of Client whatsoever to additionally remunerate such daywork.
- 8.2. If it turns out that the services accounted for in the daywork records are already contained in other contractual obligations or are counted as ancillary services which do not entitle to additional payment, the Supplier is not entitled to additional remuneration for such daywork.

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- 8.3. The Supplier has to provide on a work daily basis daywork records two fold. These records have to contain in addition to the requirements set out in § 15 Abs. 3 VOB/B:
- The date
  - The name of the site
  - Consecutive numbering
  - The kind of services provided
  - The name of the employees who effected the services
  - The hours of work per employee, eventually broken down in respect of overtime, work at night, work on Sunday and work on public holidays
- Invoices concerning daywork have to be structured in accordance with the daywork records.
- 9. Quality of Work**
- 9.1. If not agreed otherwise in the contract, the Supplier shall effect his work and services in accordance with the generally acknowledged rules of technology applicable at the acceptance of the works. In case these rules are changing during the execution of the contract and the changes are not contained in the contractual scope of works, the Supplier has to timely inform Client about these changes. As far as permitted by law, Client may waive the application of these changed rules. In respect of any entitlement to additional payment due to changes of the generally acknowledged rules of technology during the execution of the works and services, Clause 7.6. of these General Terms applies.
- 9.2. The Supplier covenants that he is only using materials and applying techniques, which will not in any way harm anybody's health or the environment. In case any damage occurs in respect of any such default caused by the Supplier, it will indemnify Client against any and all third party claims. In addition such defaults entitle Client to terminate the contract with the Supplier without notice.
- 10. Evidences, Certificates, Other Legal Requirements**
- 10.1. The Supplier is obliged to obey the regulations of the employee assignment law (Arbeitnehmerentendegesetz) and its related regulations and guidelines. Client is entitled to request information from the Supplier in respect of his adherence of the obligations of the employee assignment law (Arbeitnehmerentendegesetz), the social code (Sozialgesetzbuch III), the law on temporary employment (Arbeitnehmerüberlassungsgesetz), the law on the fight against illegal employment (Gesetz über die Bekämpfung der Schwarzarbeit) and the legal and governmental regulations concerning occupational safety. The compliance with the aforementioned rules and regulations have to be evidenced by the provision of the respective documentation by the Supplier. Client may request copies, also originals as the case may be, of the following evidences and certificates:
- Certificate of non-objection issued by the employer's liability insurance association (Berufsgenossenschaft),
  - Copy of the entry to the commercial central register (Gewerbezentralregister) (less than 3 years old)
  - Copy of the entry to the commercial register (Handelsregister)
  - Certificate for tax related issues provided by the tax authority in charge of the Supplier,
  - Certificate of non-objection issued by the health insurance in charge of the Supplier,
  - Certificate of non-objection issued by the collecting agency of social security contributions (SO-KA-BAU),
  - Confirmation of the insurer that the Supplier has executed a professional indemnity insurance which covers the contract value and the risk exposure due to the execution of the contract,
  - Evidence of the employment permit of all of the Supplier's foreign employees on site, whereby a name list has to be provided as well as copies of all valid work permits of the employees concerned,
  - Evidence that all requirements concerning statutory minimum wages are fulfilled,
  - Certificate of exemption as per § 48 b Abs. 1 Satz 1 German Income Tax Law (EStG)
  - Certification issued by DVGW in accordance with W 120
  - Evidences in respect of quality management e.g. as per DIN EN ISO 9001 ff
  - Evidences in respect of safety management (e.g. SCC)
  - As far as available, evidence about the required skills and qualifications
  - If Supplier does not have a SCC-Certificate the completed questionnaire FB B 08 „Checklist Subsupplier“ („Einsatzprüfung Nachunternehmer“) including the required evidences
  - Evidence that the recipient of the construction services is owing the tax
- 10.2. For Employees on 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
- 10.3. In case the Supplier does not fulfil his obligation to provide the required information and evidence, Client may withhold 20% of any payment due. The withheld amount will be paid to the supplier, once the required information and evidence is completely provided.
- 10.4. 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 UVV badge.
- 10.5.** If the Supplier breaches his obligations as set out in Clause 10.1., 10.2. or 10.2. 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.
- 10.6.** Notwithstanding any other entitlement, the Supplier has to indemnify Client for any damage due to the breach of any of the obligations set out under Clauses 10.1., 10.2., 10.4. and 5.2. by the Supplier.
- 11. Termination (Professional Indemnity Insurance, Communication with Customer etc.)**
- 11.1. The Supplier is obliged to keep a business liability insurance, sufficient to cover the damages of Client, the Supplier could cause. Client is entitled to request evidence concerning the business liability insurance from the Supplier. In case the Supplier is not able to provide the proof of having taken out a business liability insurance or if the respective coverage is not sufficient and is not adjusted to become sufficient within a reasonable time, Client has the right to terminate the contract without notice. In such case the Supplier does not have any right to be indemnified for being terminated.
- 11.2. The Supplier shall not enter into any negotiations or agreements concerning the contract directly with the customer of Client. In case the Supplier violates this obligation, Client may terminate the contract without notice.
- 11.3. If Client is entitled to terminate the contract due to the reasons mentioned above or set out elsewhere in these General Terms or due to statutory law especially in accordance to § 8 VOB/B with or without notice, upon request of Client, the Supplier is obliged to establish a bill of quantity or a construction status together with Client. In case the Supplier does not take part in this activity, Client is entitled to
- make determinations upon his sole discretion. Client is further entitled to claim for any damages caused by the Supplier before, during and due to this termination.
- 12. Warranty**
- The Supplier is liable for defects in accordance with § 13 VOB/B.
- 13. Security**
- 13.1. Client is entitled to retain 10% of the amount of the final invoice (Schlussrechnung) (if applicable including VAT) to secure his warranty claims. A deposit of such amount by the Supplier is excluded.
- 13.2. The Supplier is entitled to substitute the retained amount by a respective guarantee.
- 13.3. The guarantee, securing the warranty claims of Client shall be unlimited, payable on first demand and shall be issued by a bank or a credit insurer fulfilling the requirements set out in § 17 Abs. 2 VOB/B. The security shall be issued in an amount equal to 10% of the amount of the final invoice (if applicable including VAT). The security for warranty claims shall cover any liability for defects including claims for damages, as well as reimbursements of overpayments including interest. The term of the guarantee is equivalent to the defects liability period. The return of the guarantee will be in accordance with § 17 Abs. 8 Nr. 2 VOB/B under the condition that the return does not take place before the end of the defects liability period. § 17 Abs. 8 Nr. 2 S. 2 VOB/B is applicable.
- 14. Penalty**
- 15.1. A penalty for each work day of delay from the agreed term of contract execution is agreed in the amount of 0,3% of the net contract value. The total amount of the penalty is limited to 5% of the net contract value.
- 15.2. In case milestones are agreed upon, the penalty is also applicable when the Supplier delays any milestone.
- 15.3. Any days which are accounted for in the calculation of the penalty for the delay of any milestone will only be taken into consideration once and will not be accounted for again in case of delays of any following milestones or the total contract term.
- 15.4. The penalty may be claimed until the final payment is effected.
- 15. Provision of Samples**
- In case the provision of samples in accordance with the contract, DIN-norms or other technical rulebooks is owed by the Supplier, samples, proofs of suitability, and certificates of quality have to be provided to Client by the Supplier in such time as to enable Client and also the customer of Client to examine and approve such samples. The Supplier has to take care that any contractually agreed milestones and execution terms are kept. In case samples, proofs of suitability or certificates of quality are not provided with in sufficient time and in sufficient number and quality to enable the examination and approval or if such samples, proofs of suitability or certificates of quality are not in accordance with the contractual requirements, the Supplier is responsible for any delay caused by these above-mentioned deficiencies.
- 16. Acceptance**
- 16.1. A formal acceptance shall take place. § 12 Abs. 5 VOB/B is not applicable.
- 16.2. Client may delay the acceptance by up to 24 working days after the Supplier has completed his works, if Client is executing his contract as a turnkey supplier and if some contract works of another sub supplier of Client are only finalised later and therefore the quality of the works of the Supplier only can be examined and evaluated later or if within this timeframe the acceptance or partial acceptance (§ 12 Abs. 2 VOB/B) of the works of Client by his customer can be expected.
- 16.3. As far as it is contractually agreed, the Supplier shall provide to Client the paperwork, operation manuals, test or other certificates and inventory documents in accordance with the contract, the respective DIN-norms or other technical terms and conditions. All documents shall be submitted in four copies and additionally provided in electronic form on a digital storage device. The cost of it is included in the contract price. In case the Supplier does not provide substantial documents mentioned in the first sentence of this paragraph, Client may refuse the acceptance. Especially documents which are necessary for the operation and maintenance or the issuance of governmental approvals or acceptances are understood as substantial documents in accordance with these terms.
- 17. Confidentiality**
- 17.1. 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.
- 17.2. 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.
- 18. Miscellaneous**
- 18.1. The Supplier shall not assign all or any part of the contract or any benefit or interest in or under the contract without prior written agreement of Client.
- 18.2. The supplier shall inform Client immediately of any transfer of contract or claims and any change of his incorporation and his seat of business enforced by law.
- 18.3. Client reserves his rights to request for information about the Supplier from credit insurance companies or other rating agencies, before during and after the execution of the contract.
- 18.4. The contract shall be solely governed by the laws of Germany.
- 18.5. The place of fulfillment of all contractual rights and obligations is the location of the site.
- 18.6. The place of jurisdiction is agreed as the court in charge for the location of Client (Haren (Ems)).
- 18.7. No verbal agreements about changes and amendments of the contract exist. For the sake of evidence any changes and amendments of the contract shall be effected in writing. This includes the change or amendment of this regulation.
- 18.8. Insofar as these General Terms are silent, statutory law applies, if the parties to the contract did not decide otherwise.
- 19. Severability**

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If any provision of these General Terms is or becomes illegal, invalid or unenforceable under the law, such illegality, invalidity or unenforceability shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement. In such case the Parties shall agree on a valid provision which comes commercially and legally closest to the otherwise illegal, invalid or unenforceable provision.