

# GENERAL CONDITIONS OF PURCHASE HOLCIM (ÖSTERREICH) GMBH

Unless otherwise agreed in writing, these General Conditions of Purchase ("GCP") shall apply to all deliveries and services of any kind made or performed by any contractor or supplier ("Supplier") for Holcim (Österreich) GmbH ("Purchaser") in addition to the terms and conditions separately agreed upon in the purchase order (together with the GCP, "Order" or "Contract"). In relation to any terms or conditions that are missing in the Order and the GCP, the statutory provisions shall apply exclusively. In case of any contradictions between the purchase order and the GCP, the purchase order shall override the GCP. Irrespective of any (oral or written) offer, the Contract shall always be based on the contents of the written purchase order (even if made by e-mail or fax). The Supplier's terms and conditions of sale and delivery shall only apply if this has been expressly agreed in writing.

## 1. PURCHASE ORDER

Purchase orders are made in writing or by electronic data transfer. Any changes of or additions to purchase orders are only legally effective if they are made in writing.

A confirmation of the purchase order by the Supplier is, in principle, encouraged by the Purchaser. Any deviations from the Order shall be marked clearly and are to be communicated to the Purchaser promptly. Any deviations shall be invalid unless expressly acknowledged by the Purchaser in writing. The unconditional receipt of goods shall not count as an acceptance. As soon as the Supplier discerns any circumstances that could endanger the contractual execution of an Order, the Supplier shall immediately inform the Purchaser in writing of these circumstances and the planned measures to ensure contractual performance.

## 2. TIME OF DELIVERY

The time of delivery of the goods or for performance of the services shall begin as of the purchase order date. If no time of delivery is specified in the Contract, delivery or service performance shall be made promptly.

Deliveries or services may only be made or performed before the agreed date in case of the Purchaser's prior consent. In any case, such early delivery or performance shall not entail any disadvantages for the Purchaser. The time of payment, in particular, shall not begin before the agreed date.

## 3. DELIVERY, SHIPMENT, RECEIPT

Delivery, service performance and shipment shall comply with the contractually specified terms of delivery. If no terms of delivery have been specified, delivery shall be made DDP to the agreed place of performance, unloaded pursuant to the Incoterms, as amended. The Supplier shall, at its own cost, properly insure deliveries against damages of all kinds. Deliveries shall include separate delivery and freight documents for each purchase order number.

The goods shall be delivered to the Purchaser's authorised personnel at the delivery address. Sections 377 and 378 of the UGB [Austrian Commercial Code] shall not apply. The Supplier's supply of goods and services must be complete. The Purchaser shall not be obliged to accept or pay for deliveries or services which are not specified in the Order, or which exceed or fall below the agreed quantity. The acceptance of such deliveries shall not entail any obligation for payment.

## 4. DOCUMENTS AND INFORMATION

In case of a delivery of installations, machinery or equipment, the required plans, assembly, maintenance and operating instructions, etc. shall be provided by the Supplier in writing and in electronic form at the time of the purchase order acknowledgement but no later than at the time of delivery. This includes without limitation all data, drawings and other technical information that are required or useful for the examination, use, maintenance, repair and resale. If reasonably possible, and in any event, if legally required, inscriptions, labels, plans, assembly, maintenance and operating instructions shall (also) be issued in German.

## 5. PACKING, LABELLING

Products that are subject to particular product regulations shall be duly classified, packed and labelled. The packaging material used shall comply with the requirements of the Austrian Packaging Ordinance, as amended ("VVO").

Prices shall include packing costs. If, in exceptional cases, the Purchaser pays for packaging, in the Supplier's invoice, these costs shall be stated separately and they shall not exceed the Supplier's own at cost prices. In either case, the Supplier shall bear the risk for the consequences of any faulty packaging.

The Purchaser shall be entitled to return packaging material and demand credit for it, if no preliminary license pursuant to the VVO (as amended) has been issued for it. Without a VVO preliminary license, the tare weight of each packing material shall be stated. The Purchaser does not accept any additional fees or costs, such as disposal costs or deposit charges.

The Supplier shall, at its own risk and cost, hand over any packaging material, transport aids, etc. and all delivery items or residues thereof which are waste after contractual use, to an authorized waste collecting or -handling company (authorized related to the collection or treatment of the waste type) for environmentally compatible recycling or disposal. The Supplier shall fully indemnify and hold harmless the Purchaser in case of any violation. (See sections 15 paragraphs 5a and 5b of AWG 2002 [Austrian Waste Management Act])

## 6. SAFETY, CE-MARKING

The Supplier undertakes that any and all supplies which are subject to legal requirements (the "Requirements") regarding their placing on the market or their further marketing in the European Union (or in other agreed destination countries) meet the Requirements as at the time of transfer of risk (point 9).

CE marks must be duly affixed to all relevant products. The Supplier shall provide the Purchaser with all documents and information, which are required to demonstrate the conformity of the products with the applicable Requirements. All deliveries, which fall within the scope of the EU chemicals regulation (Regulation (EC) No. 1907/2006 of 30 December 2006) as amended („REACH“), must meet the requirements of REACH and the Supplier guarantees that all relevant substances have been registered. The Supplier undertakes to fully indemnify and hold harmless the Purchaser in the event of non-compliance with the provisions of this point 6.

## 7. QUALITY AND STANDARDS

The Supplier guarantees and warrants that the material used by it for the deliveries is suitable for the agreed purpose, new and of the highest quality and that any construction and assembly provided are appropriate and without fault.

All goods and services must comply with the following standards:

- the requirements and specifications set out in the Contract;
- the law applicable in Austria, including the relevant EU directives and all regulations based on them (all in the currently applicable version) relating to (without limitation) quality, safety, employee protection, accident prevention and environmental protection;
- the accepted technical and scientific rules and standards, including, but not limited to, applicable technical Austrian Standards (Ö-Normen), DIN Standards (DIN-Normen) and European Standards (EN) (each as amended).

## 8. DELAYS

If a delivery (performance of a service) is delayed or in breach of the Contract, the Purchaser shall be entitled to arrange for replacement deliveries (services) – without prejudice to the Purchaser's other rights and all further claims.

## 9. TRANSFER OF RISK

Risk passes to the Purchaser when all of the following events have occurred: (i) the Supplier has delivered the goods and services to the Purchaser's authorised personnel; and (ii) the Supplier has properly and fully met all additional obligations (including, without limitation, the provision of all required test certificates, operating and other instructions and manuals, and the completion of the assembly, installation and commissioning).

## **10. TRANSFER OF OWNERSHIP**

Ownership of the goods and services shall pass to Purchaser upon delivery according to the agreed terms of delivery. Any purported retentions of title of the Supplier or its sub-suppliers are rejected.

## **11. WARRANTY, GUARANTEE**

The Supplier guarantees that the goods and services are free from defects during the warranty/guarantee period. The guarantee /warranty period ends 36 months after acceptance of a delivery/service. Upon replacement or repair of individual parts, the warranty and guarantee periods for these parts shall start anew. Any sub-suppliers of the Supplier are deemed as its sub-contractors. If any defects arise during the warranty/guarantee period, the Supplier shall immediately at its own cost and expense, upon the Purchaser's choice, remedy the defects at the Purchaser's place of use or provide a new delivery or service without any defect. In case of a particular urgency, for instance to prevent the Purchaser from being delayed itself, or if the Supplier delays immediate defect remedying, the Purchaser shall be entitled to arrange for replacement deliveries at the Supplier's cost and risk or to perform or have performed the remedying in lieu of the Supplier, at the Supplier's cost and risk. In each case, the Supplier shall fully reimburse all costs and expenses, even if they exceed the costs and expenses that would have accrued had Supplier remedied the deficiency. The statutory warranty provisions complement these contractual provisions to the extent they do not contradict these contractual provisions.

## **12. LIABILITY**

The statutory liability provisions shall apply.

## **13. GENERAL LIABILITY INSURANCE**

The Supplier shall be bound to have available a business- and product liability insurance, for covering its statutory and contractual risk of liability, which is adequate in ratio to the contract volume and to the risks linked to the delivery or service. The minimum limit of liability must be one million Euro per claim ("Single Claim Cover"). For all claims within one policy period, there must be at least five times the amount of the Single Claim Cover available as insurance benefit. The Supplier has to provide evidence of the existing insurance on demand and readily available to the Purchaser, by presentation of corresponding insurance documents (insurance policy, insurance confirmation, payment confirmation). The insurance has to cover damage to persons, damage to property and financial damage. The assessment of sufficiency of the insurance policy to cover the risks related to the Contract, is incumbent upon the Purchaser only.

## **14. FIRE PROTECTION, ENVIRONMENTAL PROTECTION, OCCUPATIONAL SAFETY**

Where the contractual relation requires the Supplier to perform work or make deliveries on the Purchaser's site, the Supplier must keep interferences to a minimum and comply with Purchaser's internal safety and environmental rules. The Supplier shall promptly request these rules if the Supplier has not received them prior to accessing the site.

## **15. INTELLECTUAL PROPERTY RIGHTS, INVENTIONS**

The Supplier may use the documents, data and information (together, "Documents") given to him by the Purchaser (or a third party for the Purchaser) exclusively for the purpose of performing the Contract. All Documents remain the property of the Purchaser and must be returned to the Purchaser on its first request. The Purchaser shall hold the exclusive right to utilise at its convenience the agreed product and all pertinent work results. If work on the agreed product yields a patentable or licensable invention, the Supplier shall be obliged to promptly inform the Purchaser and to transfer the rights of exploitation to the Purchaser. The agreed price shall include the acquisition of all legal industrial property rights, in particular of licenses and patents, to the extent that allows the Purchaser to freely utilise, repair and resell the delivery item.

Supplier shall, at its own cost, acquire any licenses necessary for fulfilling the Order. The Supplier shall indemnify and hold harmless the Purchaser in full if the ordered goods or services are affected by any infringement of third parties' industrial property rights.

## 16. PRICES, TERMS OF PAYMENT

All prices shall be fixed prices including all additional services, expenses and duties and excluding VAT. For invoicing purposes, the weight determined by the Purchaser's calibrated plant scales shall be relevant.

Unless otherwise specified on the Order, the following terms of payment shall apply: 3% discount at payment within 30 days or net payment within 60 days. The periods of payment shall be calculated as of the day of orderly invoice reception and fulfilment of all obligations and subsidiary duties pertinent to delivery or provision of services.

The Purchaser may meet its financial obligation via telebanking, bank transfer, by cheque or bill of exchange. The time limit for payment shall be met if the transfer instruction, cheque or bill of exchange has been sent to the bank by mail or by means of telecommunication within the payment period.

Payment shall not signify acceptance of the adequacy of a delivery/service or a waiving of Purchaser's right of fulfilment, guarantee, warranty, damages, contract penalties, liability, etc.

The Purchaser is entitled to withhold payment at all times, if the Supplier does not meet its obligations or does not remedy deficiencies. Withheld payments shall not entitle the Supplier to interrupt or terminate the fulfilment of an Order.

The Purchaser shall be entitled to offset claims against due payments from other purchase orders.

## 17. CORRESPONDENCE, INVOICING

All documents shall state the Purchaser's purchase order number. Documents and invoices shall be addressed to the invoicing address stated on the purchase order.

The Purchaser shall be entitled to return invoices that do not meet the requirements or agreements without further processing. Payment of such invoices shall not be due before their correction. Payment shall only be due upon receipt of the corrected invoice. Presentation of the final invoice shall signify that the Supplier has put forward all claims arising from the Order concerned and will not put forward further claims.

## 18. SECRECY, DATA PROTECTION

The Supplier shall be bound to secrecy with regard to all information obtained in fulfilling the Order, unless the Purchaser in writing releases the Supplier from this obligation.

The Supplier shall extend this secrecy obligation to all other persons commissioned by the Supplier in the course of performing the Contract ("Commissioned Persons").

The Supplier shall be liable for any damage resulting from a breach of this confidentiality obligation by itself and by any Commissioned Person. The Supplier and the Purchaser agree to comply with the provisions of the data protection law applicable in Austria and to enter into such further agreements and provide such further declarations as may be required by these provisions.

## 19. SUBCONTRACTING

If the Supplier, in the course of Order fulfilment, hires employees or makes contracts for work, the Supplier shall have the role of employer or principal, shall conclude these employment contracts or contracts for work in its own name and on its own account and shall bear the resulting obligations. All subcontracts within the Order, however, shall require the Purchaser's consent. The Supplier shall be liable, in the same scope as for its own faults, for any faults of all persons commissioned by the Supplier for the performance of its contractual duties.

## 20. SUSTAINABLE DEVELOPMENT

The Holcim group has signed the United Nations Global Compact through which it commits itself to respect 10 fundamental principles in the fields of human rights, labor, environment and corruption. The Supplier acknowledges that it and its employees, distributors, and subcontractors comply and undertake to keep complying, in all respects, with these principles.

[http://www.unglobalcompact.org/docs/news\\_events/8.1/GC\\_brochure\\_FINAL.pdf](http://www.unglobalcompact.org/docs/news_events/8.1/GC_brochure_FINAL.pdf)

## 21. CODE OF BUSINESS CONDUCT

The Holcim Code of Business Conduct is a set of standards that applies to all employees and officers of Holcim worldwide. These standards set out basic rules to guide all employees and officers in carrying out their day-to-day business duties. The same is expected of all of Holcim suppliers worldwide. The Supplier warrants that (i) its operations and business strategies are in line with the principles set out in Holcim's [Code of Business Conduct](#), (ii) the Supplier has put in place according policies and procedures and that (iii) the Supplier ensures that all of its employees and officers comply, in all respects, with these principles. The Purchaser reserves the right to terminate an Order or a Contract with a Supplier who violated the Holcim Code of Business Conduct.

## 22. EXPORT, SANCTIONS

For all goods and services, the Supplier must meet the requirements of national and international export, customs and foreign trade law applicable to the Supplier, including the obtaining of the necessary export permits. The Supplier may only engage sub-contractors and employees with the performance the Contract that are not listed in the relevant national, EU and US sanction lists. The Purchaser's obligation to fulfill the Contract is subject to the condition that the fulfilment is not precluded by national or international regulations, embargoes or other sanctions.

## 23. BRIBERY PREVENTION

Following the requirements of the OECD recommendation for the prevention of bribery in connection with government export guarantees, the Supplier must immediately inform the Purchaser in writing in case of an alleged violation of anti-corruption law by the Supplier or members of its management or vicarious agents ("Bribery Offence"):

- a) if they are accused of or charged with a Bribery Offence by a law enforcement authority or national court at the time of submitting the offer up to the fulfillment of the Contract; or
- b) if they have been convicted by a court (or by an arbitral tribunal with a publicly accessible award) within a 5-year period preceding the Supplier's offer.

## 24. EFFECTIVENESS, LANGUAGE

In the event that individual provisions are ineffective, the Supplier and the Purchaser undertake to replace the ineffective provision with an effective provision that comes as close as possible to the ineffective provision; the remaining provisions remain unaffected. These GCP are written in English and German. In case of a discrepancy between the English and German versions, the German version prevails.

## 25. PLACE OF FULFILLMENT, JURISDICTION, GOVERNING LAW

The place of Contract fulfilment shall be the delivery address or the place where the service is to be performed.

Both parties submit to the exclusive jurisdiction of the competent court in Vienna.

Austrian substantive law - with the exception of the CISG and those statutory provisions that refer to the scope of a different legal system – shall exclusively apply to the Order and all legal transactions resulting from it.