

# General Terms and Conditions of Wilhelm Layher GmbH & Co KG

## I. General Terms and Conditions of Sale, Delivery, and Payment

### 1. Area of validity

These General Terms and Conditions of Sale, Delivery, and Payment apply only to legal transactions with businesses. They shall also apply to all future business relationships, even if they are not expressly agreed upon again. Our General Terms and Conditions of Sale, Delivery and Payment shall apply exclusively. Any conflicting general terms and conditions of business or purchase on your part shall have no validity and are hereby rejected.

### 2. Offer, confirmation of order

Our offers shall be subject to change and non-binding. Declarations of acceptance and orders shall require our confirmation in writing in order to be legally valid. The same shall apply to any additions, alterations or supplementary agreements. Our written confirmation of order shall determine the scope, content and pricing of every delivery.

### 3. Price basis

In the absence of any confirmation to the contrary, our valid prices at the time of conclusion of the contract shall apply, subject to value-added tax at the applicable statutory rate. If more than 3 months elapse between the conclusion of the contract and the delivery and if there are any changes in wage, material and distribution costs, the net list prices or performance prices that are applicable at the time of delivery or completion shall apply, subject to value-added tax at the applicable statutory rate. The prices stated in our price lists shall be deemed to be customary in the location and reasonable.

### 4. Scope of delivery

The scope of the delivery shall be solely as defined in our written confirmation of order. Partial deliveries and performance shall be permissible insofar as they are acceptable for you.

### 5. Payment period, cash discount

Unless there is any agreement to the contrary, our invoices shall be due within 14 days after the invoice date with 2% cash discount or within 30 days after the invoice date without deduction, irrespective of whether the invoice is passed on to any third parties or has been cleared for payment by third parties.

If the delivery is delayed for reasons for which you are responsible, the invoice shall be issued with the notification of our readiness for delivery, but no earlier than the originally agreed delivery date.

Cash discounts shall not be applicable if any due invoices are outstanding at the time when the discounted invoice amount is received. If you are in arrears with the payment of any of our invoices, all other outstanding invoices shall be immediately due for payment.

### 6. Rights of set-off and retention

You shall only be entitled to claim any rights of set-off or retention if your counterclaims have been granted in an enforceable ruling, are undisputed or have been recognised by us. In addition, however, you shall only be entitled to claim these rights insofar as your counterclaim is based on the same contractual relationship.

### 7. Prohibition of assignment

You are not entitled to assign any claims of any kind arising from our business relationship to third parties.

### 8. Allocation of redemption payments

If you have not declared any allocation of the redemption payments, we shall be entitled to allocate the payments; Section 366 of the German Civil Code (BGB) is eliminated by agreement.

### 9. Debt collection authority

Our staff or our commercial agents shall be entitled to collect any debts insofar as they have been authorised to do so. This shall also apply to any sales from stock.

### 10. Transport, packaging, insurance and vehicle costs

Our prices are fundamentally deemed to be ex works without packaging. You will bear the transport, packaging, insurance and vehicle costs.

#### 10.1 Credit for packaging materials

If we have previously charged for reusable transport equipment such as pallets, box pallets etc., we shall credit the corresponding amounts if they are returned to us promptly and for us free of any costs.

#### 10.2 Insured dispatch

On request we shall dispatch the goods insured at your risk and expense.

#### 10.3 Costs of returns

Insofar as we recover any materials as a result of our reserved rights, you shall bear any costs which we incur. In individual cases, these costs may correspond to the net

value of the goods at the time of collection. You shall be entitled to prove to us that these costs have not arisen or were less than the amount claimed.

### 11. Transfer of risks

Insofar as the risk has not already passed to you, the risk shall be transferred to you at the latest as follows:

#### 11.1 Transfer of risk for collection, loading, handover

Either, at the time of collection, loading or handover to the haulage contractor or carrier, irrespective of whether we dispatch the goods, you collect them or whether we or you commission any third parties, and irrespective of whether the dispatch is carriage paid, freight collect or for a fixed charge, even if partial deliveries are made.

#### 11.2 Transfer of risk in the event of a delay in acceptance

In the event of any delay in the above circumstances for which you are responsible, or insofar as you are in default of acceptance for other reasons, the risk shall pass to you with our notification of readiness to deliver.

### 12. Securities

Until all claims or receivables which we have against you now or in the future on any legal grounds have been met, you grant us the following securities:

#### 12.1 Reservation of title

All goods supplied by us shall remain our property until all claims arising from the business relationship have been completely paid and fulfilled. This shall also apply to disputed and/or conditional claims or receivables. You shall be entitled to have disposal of the goods in the normal course of business operations as long as you are not in arrears with payment.

#### 12.2 Extended reservation of title

You fully assign to us in advance by way of security all claims or receivables related to the goods arising from a resale or on any other legal grounds. We herewith accept the assignment. Insofar as we include our claims or receivables in a current account relationship with you, the advance assignment shall also apply to the corresponding claim for payment of the balance.

12.3 Authorisation for collection of accounts, revocation of direct debit authorisation, no other assignment, notification in the event of any third party claims

12.3.1 We herewith grant you a revocable authorisation to collect the assigned claims or receivables for our account in your own name. This authorisation for the collection of accounts may only be revoked if you are in arrears with your payment obligations or if we become aware of any protest against cheques or bills of exchange, any cessation of payments or any negative information about you.

12.3.2 You shall not be entitled to make any assignment to any other parties. You shall be entitled to collect these claims or receivables as long as you meet your payment obligations. You must inform us immediately of any seizure or any other interventions by third parties which affect our property or rights.

#### 12.4 Details of customers

If we so demand, you shall be obliged to provide us with details of your individual claims or receivables to third parties which have been acquired as stipulated in sub-section 12.2, to inform your purchasers of the assignment and to instruct them only to make payments to us. We shall be entitled at any time to notify the purchasers of the assignment and to collect the claims or receivables ourselves.

#### 12.5 No authorisation to collect in the event of insolvency

This authorisation to collect receivables shall be deemed to have been revoked if any application is made for bankruptcy proceedings to be initiated against your assets or for you to make a declaration in lieu of oath.

#### 12.6 Release of securities

You shall be entitled to demand the partial or complete release of securities if their realisable value exceeds the secured claims or receivables by 20%.

#### 12.7 Authority to collect goods

12.7.1 To secure our property rights, including the event of any arrears of payment, you grant to us or to any third parties commissioned by us the right to enter your property or premises at any time in order to collect the ORIGINAL LAYHER products and other goods delivered to you and to recover any ORIGINAL LAYHER products and other goods which are our property. The same shall apply if our ORIGINAL LAYHER products and other goods need to be collected from your customers.

12.7.2 To prevent unnecessary costs, you agree to this process and you explicitly consent to this procedure.

12.7.3 You shall be obliged to reimburse us for all expenses and costs which we incur in connection with the enforcement of our claims for the surrender or collection of our material.

### 13. Warranty

For any defects in the delivery, we shall be liable without prejudice to sub-section 14 as follows, to the exclusion of any further claims:

### 13.1 Requirement to give notice of obvious and apparent defects

Obvious and apparent defects, short deliveries and mistaken deliveries shall be notified promptly in writing on the consignment note, quoting the number of the delivery note; otherwise, any enforcement of warranty claims shall be excluded.

### 13.2 Requirement to give notice of defects that are not obvious

Defects that are not obvious shall be deemed to have been approved if they have not been notified to us in writing, quoting the number of the delivery note, promptly after detection, but at the latest 14 days after the transfer of risk. To comply with this period, it shall be sufficient if the notification is sent in time.

### 13.3 Burden of proof for notices of defect, reimbursement of expenses

You shall bear the full burden of proof for all circumstances which justify any claim. If a defect notice is incorrectly submitted, you shall reimburse all expenses incurred by us.

### 13.4 Remediation, subsequent delivery, late subsequent fulfilment

**13.4.1** In the event of defects, at our own discretion we shall initially either remedy the defects or supply defect-free replacement goods. If the subsequent fulfilment fails, you shall be entitled at your own discretion to demand a price reduction or revoke the contract. In the event of minor defects, the remedies of revocation and refusal of acceptance or receipt shall not apply.

**13.4.2** You shall have a right of revocation if we are unable to meet your claim to subsequent fulfilment by delivering defect-free replacement goods within four weeks. Over and above this right, you shall not be entitled to any further claims, not even for compensation for any damage or loss caused by the delay.

### 13.5 Use according to instructions, compliance with maintenance work and tests

Your claims are also on the assumption that our parts have been used according to the instructions by technically qualified personnel, that any prescribed or necessary maintenance work and tests have been carried out and that the technical regulations for scaffolding have been complied with or adhered to, including, without limitation, for erection, planning and all relevant technical, official or statutory requirements for the specific use.

### 13.6 Representations in sales literature

**13.6.1** Our sales literature does not contain any quality descriptions nor any assured characteristics. Our confirmation of order shall be exclusively applicable. Insofar as we refer to approvals or certification, this means that our ORIGINAL LAYHER products and other goods meet the requirements for the respective approval or certification to the required extent and subject to the requirements stipulated by the approval or certification.

**13.6.2** This does not mean that our ORIGINAL LAYHER products and other goods will meet the requirements of the specific use designated by you simply on the basis of the approval or certification.

**13.6.3** Details provided about a certification or approval shall not release you from your duty as the user to inform yourself about all technical and statutory requirements for the structural design, structural stability, application or use. The applicability of a standard design, a scaffolding design proven by us, structural calculations or a type test shall be checked in each respective case.

**13.6.4** Our ORIGINAL LAYHER products and other goods must always be used by you in compliance with the specific structural requirements, the local circumstances and the specific requirements of public authorities or the law.

**13.6.5** The contents of our sales documents with technical product information refer exclusively to ORIGINAL LAYHER scaffolding components. We have compiled the contents, in particular the information, illustrations, data, calculations, notes and recommendations contained therein, with the greatest possible care. Nevertheless, we disclaim all liability for the correctness, completeness and up-to-dateness of the contents. Except in cases of wilful intent, liability is excluded to the extent permitted by law. This applies in particular to obvious errors, spelling mistakes, miscalculations and printing errors. The contents are used at the user's own risk. Unless otherwise stated in the tables and lists, the load values quoted in the sales documents (e.g. permissible loads, load classes, design resistances) are based on Layher's in-house calculations. They have been prepared to the best of our knowledge and belief by qualified structural engineers. The scaffolding structures, detailed solutions and intended uses shown are only to be understood as non-binding examples. The user of the scaffolding components must make and document his own structural calculations for each scaffolding structure, taking into account the design, local conditions and local requirements.

### 13.7 Defective instructions for assembly and use

Any defective instructions for assembly and use shall be deemed to be only a minor and slight violation of our obligations. Here, you shall only be entitled to the delivery of defect-free operating instructions if the proper use of our parts would otherwise not be possible.

### 13.8 Legal consequences of a grossly negligent or wilful violation of obligations

You shall only be entitled to further claims if we have violated any obligation deliberately or by gross negligence. Any compensation claims for the violation of cardinal contractual obligations, if caused by slight negligence, shall be limited to the

foreseeable damage that is typical in contracts of this type. We shall not be liable for slightly negligent violations of minor contractual obligations.

### 13.9 Expiry by limitation

Claims for material defects which are not based on a purchase of consumer goods shall expire by limitation one year after the collection, delivery, hand-over or notification of readiness for forwarding at the latest, unless we are open to allegations of fraud.

### 13.10 Limitations of liability and expiry by limitation

The above limitations of liability and expiry by limitation shall not apply to claims arising from product liability, the loss of life, physical injury or damage to health. This shall be without prejudice to the statutory limitations of liability.

### 13.11 Rights of recourse under Section 478 of the German Civil Code

Any rights of recourse of you as the purchaser against us at the supplier pursuant to Section 478 of the German Civil Code (BGB) shall only exist insofar as you have not made any agreements with your customer which go beyond the statutory claims for defects.

### 13.12 Used products

The contractually agreed condition of any used goods shall be the condition at the time of purchase. Any wear and tear in keeping with the duration of the use of such goods shall not constitute any violation of major contractual obligations. Otherwise, any warranty for material defects is excluded.

### 14. Binding written information

Any information provided by our staff by word of mouth shall be deemed to be voluntary services. Any statements made by our staff by word of mouth shall only be legally binding with our written confirmation.

### 15. Binding delivery periods, delivery dates

Our delivery periods and dates shall only be binding if we have confirmed them as binding in writing. We object to any fixed period or deadlines which you may stipulate.

### 15.1 Statement of delivery periods, delivery dates, scope of delivery

Our written confirmation of order shall be solely binding for the delivery periods, delivery dates and scope of delivery. Delivery periods or delivery dates stated by us shall otherwise be non-binding and shall represent the provisional date of dispatch or collection of the goods from our factory in Güglingen-Eibensbach.

### 15.2 Compliance with delivery periods, delivery dates

A delivery period or delivery date that has been confirmed in writing shall be deemed to have been complied with if we have notified you of the availability, completion or readiness for dispatch of the goods by the delivery date or the end of the delivery period, if the goods have left our factory or been handed over to the carrier, haulage contractor or any other party designated to carry out the dispatch in such a way that under normal circumstances the delivery can be expected to be in time.

### 15.3 Requirement for compliance with any periods or dates

Compliance with any periods or dates shall be subject to the following cumulative conditions: that you have provided all documents, any necessary approvals and releases and any plans in good time that you have made the agreed payments in time and in full and that you are not in arrears with any payments. If this is not the case, the periods or dates shall be extended in accordance with the delay for which you are responsible.

### 15.4 Extension of any periods in the event of force majeure

If we are unable to comply with any periods or dates because of force majeure, e.g. strike or lockout, the contractual periods or dates shall be appropriately extended.

### 16. Right of revocation in the event of any protest against cheques or bills of exchange, cessation of payments, negative information

We shall be entitled to revoke the contract if we learn of any protest against cheques or bills of exchange, any cessation of payments or any negative information about you.

### 16.1 Lump sum compensation claim

If we revoke the contract for these reasons, we shall be entitled to a lump sum compensation of 20% of the net order value. You shall be entitled to prove to us that we have not incurred any such loss, or that any loss incurred was less than this amount. You shall not be entitled to claim any other rights.

### 16.2 Options in the event of technical or material procurement difficulties for which we are not responsible

In the event of unforeseeable technical or material procurement difficulties for which we are not responsible, we shall be entitled to revoke the contract. In this case, there shall be no other unilateral or mutual claims.

### 17. Copyright, rights of disposal and exploitation, transmission of documents and data to third parties

**17.1** We reserve without limitation all rights to all documents and all information which we have given to you, including, without limitation, offers, cost estimates, technical drawings, all illustrations and plans, especially our rights of disposal and exploitation under property and copyright law.

**17.2** All documents and data belonging to us may only be made accessible or handed over to third parties, copied, duplicated or transferred to a data medium in whole, in part or in extracts with our prior written consent.

## **18. Significance of illustrative or drawn representations, details of the structural design, structural stability, designated use or purpose**

**18.1** Any illustrative or drawn representations of the possible or actual use of our parts are only by way of example and serve only to illustrate the possible applications. They shall not constitute any legally binding assurance in relation to their type or their possible or permissible application or use.

**18.2** Any details or representations of the structural design, erection, planning, securing, structural stability, designated use or application shall only be regarded as examples, and are therefore non-binding. Any such details or representations shall not release you from your duty as the user to inform yourself about all technical and statutory requirements for the structural design, erection, planning, securing, structural stability or the designated application or use.

**18.3** Our ORIGINAL LAYHER products and other goods must always be used by you in compliance with the specific structural requirements, the local circumstances and the specific requirements of public authorities or the law.

**18.4** You shall be obliged to comply with and adhere to all relevant technical, public authority or statutory requirements for the specific application.

**18.5** We explicitly point out that you alone, as the user of our ORIGINAL LAYHER products and other goods, are responsible for the safe erection, modification, dismantling and stability of the products, the type, selection, implementation and testing of the fixing materials, compliance with the relevant DIN or EN standards, the technical regulations for scaffolding, the generally accepted engineering principles for the planning, erection and implementation of scaffolding, and for compliance with all public authority regulations and statutory provisions, including without limitation all provisions imposed by the building inspectorate or under building law, the regulations for safety in the workplace, giving special attention to the accident prevention regulations.

**18.6** In addition, you as the user of the ORIGINAL LAYHER products and other goods shall be responsible for using them for the designated purpose and ensuring the operational safety of the scaffolding, proper marking and identification and for testing.

**18.7** If any scaffolding is erected in deviation from the normal configuration, you shall be responsible for ensuring that structural stability is documented or certified according to the necessary extent, e.g. by providing execution plans for the individual case, supplemented by your assessment according to professional experience.

**18.8** This shall also be supplemented by the details provided in our instructions for assembly and use.

## **19. Mixed use of ORIGINAL LAYHER products**

**19.1** All details or representations in our product brochures shall only apply to the exclusive use of ORIGINAL LAYHER products. Our products are designed, produced and configured in their functions exclusively for use with other Layher products. ORIGINAL LAYHER products differ in their structural design, material and production processes from the products of other manufacturers or imitation products.

**19.2** We are unable to make any statement concerning any use of LAYHER products in other systems or mixed with other products. This shall also apply to any use of copies of ORIGINAL LAYHER products.

**19.3** We therefore accept no liability if our ORIGINAL LAYHER products are used mixed with other products. In this respect, you shall indemnify us against all claims by any third parties.

**19.4** Insofar as we make any statements with regard to product features, possible applications, structural design details, erection variants, anchoring options, application techniques, technical data or compliance with statutory regulations or standards, in each case these statements shall only apply to ORIGINAL LAYHER products or their exclusive use.

## **20. Technical modifications**

Changes due to technical progress may be made at any time.

## **21. Place of performance**

The place of performance shall be either our registered place of business in Güglingen-Eibensbach or one of our delivery warehouses, at our discretion.

## **22. Sole place of jurisdiction**

If the parties are registered business enterprises, legal entities under public law or special funds under public law, the sole place of jurisdiction, including any court action related to bills of exchange, cheques and summary proceedings and irrespective of the dispute value, shall be the Local Court (Amtsgericht) of Brackenheim, which is responsible as the factual and local court of first instance for our registered place of business. The same shall also apply if you do not have a general place of jurisdiction

within Germany or if you have moved your place of residence or customary place of abode out of Germany after the conclusion of the contract, or if your place of residence or customary place of abode is not known at the time when court action is filed.

## **23. No UN commercial law**

The laws of the Federal Republic of Germany shall apply exclusively, or shall take priority. UN commercial law shall not apply.

## **24. Privacy, security**

**24.1** We record your personal data only for the purpose which you specify when you make them available. Your personal data will be used only within the Layher Group.

**24.2** You agree and authorise us to process, store and analyse the data which we receive in connection with the business relationship in compliance with the relevant data protection regulations.

**24.3** You can find our privacy policy and additional information on privacy on our Web site at <http://privacypolicy.layher.com>

## **II. General Rental Terms**

The provisions of the preceding Section I. General Terms and Conditions of Sale, Delivery, and Payment apply mutatis mutandis to the rental of ORIGINAL LAYHER products and other goods, unless otherwise specified in this Section II. General Terms and Conditions of Hire.

### **1. Subject of the contract, offer, rental period, rental prices, costs**

#### **1.1 Subject of the contract**

This rental contract grants you the right to use ORIGINAL LAYHER products and other goods for the agreed duration and for the designated purpose in Germany.

#### **1.2 Rental offer subject to change**

Rental offers are non-binding and subject to change. They are subject to the proviso that corresponding rental material is available when the rental period begins.

#### **1.3 Rental period**

**1.3.1** The rental period shall be agreed in the contract. It shall begin on the day of hand-over to you or to the transport carrier.

**1.3.2** Unless there is any agreement or confirmation to the contrary, rental contracts are concluded for a minimum rental period of 20 weeks. Our rental prices refer to a rental period of 4 weeks unless there is any agreement or confirmation to the contrary. Any 4-week period or part of such a period shall be charged in full.

#### **1.4 Rental price**

**1.4.1** The rental prices shall be calculated from the date of delivery or collection. All subsequent rental periods shall be invoiced in advance for a period of 4 weeks. Rental invoices shall be payable within 10 days from the invoice date.

**1.4.2** Our rental prices that are valid for the respective rental period shall apply and shall be subject to value-added tax at the applicable statutory rate. In the event of an increase in the rental prices, you shall be entitled to an extraordinary right of termination if you have objected to the price increase in writing without delay. The prices stated in our price lists shall be deemed to be customary in the location and reasonable.

#### **1.5 Costs of transport, packaging, insurance**

You shall bear the costs of transport, packaging and insurance of the ORIGINAL LAYHER products and other goods to the place of deployment.

#### **1.6 Arrears of payment, authority to collect goods**

**1.6.1** If you are more than 14 days in arrears with your payment obligations, we shall be entitled to revoke all rental contracts with you immediately without notice and to enforce the immediate handover of all rented items to us. In this case you shall not be entitled to any right of retention.

**1.6.2** In the event of a notice of termination, we shall be entitled to take immediate possession of and collect the ORIGINAL LAYHER products and other goods rented by you either in whole or in part at our discretion. In addition to that in this case, either we or any third parties commissioned by us shall be entitled to enter your property or your business premises in order to collect the ORIGINAL LAYHER products and other goods rented by you. The same shall apply if our ORIGINAL LAYHER products and other goods need to be collected from your customers.

**1.6.3** To prevent unnecessary costs, you are in agreement with this process and you explicitly consent to this procedure.

## **2. Your duties as the renting party**

### **2.1 Acceptance**

You shall be obliged to carry out acceptance of the rented goods. You shall confirm to us at our discretion in writing that you have taken over the rented goods properly and that they are fully functional without restriction, e.g. on a delivery note, consignment note or confirmation of receipt. The rented goods shall be inspected by you promptly after receipt to ensure that they are complete and free from defects. Any defects or

short deliveries shall be notified promptly; otherwise the enforcement of any claims shall be excluded.

## 2.2 Use of the rented goods, instructions for assembly and use

You shall be obliged to comply with all requirements for the use of the ORIGINAL LAYHER products and other goods rented from us and to carry out any necessary registration or obtain any approvals for the use of the rented goods. You shall take out the necessary insurance at your own expense. The provisions of the above Section I., General Terms and Conditions of Sale, Delivery, and Payment, No. 18 and 19, shall apply accordingly.

## 2.3 No mixing

**2.3.1** You shall use the rented goods exclusively with other ORIGINAL LAYHER products and other goods. We explicitly point out that any mixing of ORIGINAL LAYHER products and other goods with products from other manufacturers or copies of our products is not covered by the purpose of the rent.

**2.3.2** You indemnify us against any liability which results from any mixed use of ORIGINAL LAYHER products and other goods.

**2.3.3** The provisions of the above Section I., General Terms and Conditions of Sale, Delivery, and Payment, No. 18 and 19, shall apply accordingly.

## 2.4 Use for the designated purpose, costs of maintenance and repairs

You undertake to use the rented goods exclusively for the designated purpose. You must maintain the rented goods in a contractual condition and carry out any repairs at your own expense. This shall not release you from your obligations of the rental contract, especially the obligation to pay the rental price.

## 3. Transfer of risk

In relation to the transfer of risk, e.g. if the goods are accidentally lost by loss or theft or if they deteriorate accidentally by damage, the provisions in the above Section I. General Terms and Conditions of Sale, Delivery, and Payment, No. 11, 11.1 and 11.2 shall apply accordingly, and collection shall be deemed to be the same as handover.

## 4. Place of deployment

The places of deployment shall be notified to us on demand. If we are not informed of a place of deployment in spite of a warning of termination, this shall entitle us to terminate the rental contract without notice and to claim compensation.

## 5. Warranty

**5.1** In the event of any defects in the rented goods at the time of handover, we shall provide warranty for material deficiencies by either repairing the defects or supplying defect-free replacement goods. You shall be entitled to reduce the rental price if two attempts at repairing the defects or supplying replacement goods fail. We shall be entitled to supply a technically and economically equivalent ORIGINAL LAYHER product instead of the rented product.

**5.2** The provisions of the above Section I., General Terms and Conditions of Sale, Delivery, and Payment, No. 13 shall apply accordingly.

## 6. Liability

You shall be liable for all damage which arises during the use of the rented goods.

## 7. Rights to return goods, remediation of defects

### 7.1 Return of goods

After the end of the contract, the renting party shall be obliged to return the rented goods to our registered place of business in Güglingen in full, free from any contamination, insured and at its own cost and risk.

### 7.2 Return delivery note, manner of return

You undertake to return all rented ORIGINAL LAYHER products and other goods with a delivery note quoting our delivery data. You shall return the rented goods in such a way that they can be unloaded by us with a fork-lift truck without any extra work and expense and transported on the company premises. If this is not done, you shall reimburse us for the extra work and expense. You shall be entitled to prove to us that we have not incurred any such extra expense, or that any extra expense was less than the amount charged by us.

### 7.3 Deterioration, deviations from the condition when delivered

Any deterioration of the rented goods at the end of the rental period, or any deviation from the condition when delivered, shall be at your expense unless they are due to the designated use or would have occurred through the designated use. You shall bear any costs of cleaning or repair. Insofar as we consider that parts cannot be repaired or the repair cost exceeds the net list price, we shall be entitled to refuse to accept the return of damaged rented goods, and instead to demand compensation for the amount of the net list price. You shall be entitled to prove to us that we have not incurred any such loss, or that any loss was less than the amount charged. This shall also apply if you have made technical changes to the rented goods.

### 7.4 Rented goods which no longer exist or are defective

If any rented goods no longer exist at the time when they are to be returned or taken back, or if they are defective as defined in No. 7.3, we shall invoice you for these goods

at the respective net list price. You shall be entitled to prove to us that we have not incurred any such loss, or that any loss was less than the amount charged.

## 7.5 Cleaning or repair costs

Any necessary cleaning or repair costs shall be charged to you at reasonable and customary costs.

## 7.6 Extent to which goods are taken back

We shall only take back the ORIGINAL LAYHER products and other goods which we provided to you under the respective rental contract.

## 7.7 Late return of goods

**7.7.1** If you, as the renting party, do not return the goods which are the subject of the contract after the expiry or termination of the rental period, or if you do so late, we shall be entitled to demand a usage charge equivalent to the agreed rental price as compensation for the time for which we are deprived of the goods. The right to claim compensation for further damage or loss is reserved.

**7.7.2** Any continued use of the rented goods shall not lead to an extension of the rental contract. We herewith object in advance to any implicit extension of the rental contract. For the duration of any continued use, the valid rental price shall be charged as compensation for use. This stipulation of compensation for use is customary in the location and reasonable.

## 8. Premature termination

If you fail to comply with major obligations or do not do so in time or in full, we shall be entitled to terminate the contract without notice. Without prejudice to any further claims, you shall remain obliged to pay the rental price for the remaining term of the rental contract or until the next possible termination date.

## 9. Purchase

If you decide to purchase the rented goods when the rental contract ends, you shall be granted a discount on the purchase price in keeping with customary market practices. The obligations arising from the rental contract shall remain in force until the amount due to take over the goods has been paid in full.

## III. General Terms and Conditions of Repair

The provisions of the preceding Section I. General Terms and Conditions of Sale, Delivery and Payment shall apply mutatis mutandis to the repair of ORIGINAL LAYHER products, unless otherwise stipulated in this Section III. General Terms and Conditions of Repair.

### 1. Repair order

**1.1** A repair order only becomes binding when it is confirmed by us in writing by means of an order confirmation or when we carry out the order. An order confirmation created with the aid of automatic equipment, which does not include a signature and name, shall be deemed to be in writing. In the event that an order confirmation contains obvious mistakes, typing or calculation errors, it is not binding for us.

**1.2** You must check the order confirmation for completeness and correctness. You must inform us immediately in writing of any change requests.

**1.3** Unless otherwise agreed in writing in the order confirmation, deviations customary in the industry are permitted with regard to the repair of the products.

**1.4** Additional services ordered by you that are not part of our order confirmation will be invoiced separately at cost.

**1.5** Our silence in response to offers, repair orders, requests or other declarations from you shall only be deemed to constitute consent if this has been agreed in writing in advance.

### 2. Delivery and collection, passage of risk, default of acceptance

**2.1** You shall deliver the products to be repaired or have them delivered to the address specified in the order confirmation in good time at your own expense and risk and collect them immediately after completion of the repair work following our notification of readiness for collection. The risk shall pass to you upon notification of readiness for collection.

**2.2** If you have instructed us in writing to collect and return the products to be repaired, you are obliged to make the products to be repaired available for collection at the address specified by you on the agreed date and to accept the repaired products on the agreed date. In this case, we are entitled to charge you for the costs of collection and return in addition to the repair costs. The products to be repaired shall be collected and returned at your own risk.

**2.3** If you are in default of acceptance, we may demand compensation for the damage incurred, including any additional expenses. The same applies if you breach other duties to co-operate, unless you are not responsible for the breach of these duties to co-operate. The risk of accidental loss or accidental deterioration of the products to be repaired shall pass to you at the latest at the point in time at which you are in default of acceptance.

### 3. Cost estimate

**3.1** We will only provide cost estimates for repair orders if you have ordered this separately in writing. The estimated repair costs are not binding. We will carry out the repair order if you accept our repair offer submitted in the cost estimate in writing (also by e-mail or fax) within five working days.

**3.2** The preparation of the cost estimate is subject to a charge and will be invoiced to you at 10% of the net price stated in the cost estimate, payable within 10 days of the invoice date. If you accept the repair offer submitted with the cost estimate, the costs for preparing the cost estimate will be offset against the repair costs.

**3.3** If you do not accept the repair offer submitted in the cost estimate in writing (including by e-mail or fax) within five working days or if you reject the repair offer, you must collect the affected products immediately after our notification that they are ready for collection or we will return the affected products to you at your expense and risk to the delivery address you have specified following a written request. Otherwise, we will store the affected products for a period of 30 days from the date of the cost estimate. After expiry of this period, we are authorised to dispose of the affected products.

### 4. Rejection of repair, exchange of non-repairable products

**4.1** We are authorised to refuse to repair individual products. We alone are responsible for deciding whether a product is repairable. In particular, a product is not repairable if the damage makes repair impossible, the repair is uneconomical, i.e. the costs of the repair exceed the value of the product, no spare parts are available for the repair or the products have not been manufactured by Layher. We will inform you if individual products cannot be repaired.

**4.2** You must collect the non-repairable products immediately after our notification of readiness for collection or we will return the affected products to you at your expense and risk to the delivery address specified by you following a written request. Otherwise, we will store the affected products for a period of 30 days from the date of notification to you that products are not repairable. After expiry of this period, we are authorised to dispose of the affected products.

**4.3** You can exchange the non-repairable products for new products and collect the new products with the repaired goods after placing the appropriate order in good time. The prices for new products and the offsetting of the value of non-repairable products are set out in points 5.1 and 5.2. The new products may differ from the non-repairable products in terms of dimensions, design, functionality and properties.

### 5. Prices, contractor's lien

**5.1** The prices for repair services and new products are determined according to our price lists valid at the time the order is placed. Prices are "ex works", excluding packaging, transport and insurance. All prices are subject to VAT at the statutory rate applicable at the time of invoicing.

**5.2** When exchanging non-repairable products for new products, we offset the value of the non-repairable products against the price of the new products. We alone are responsible for determining the value of non-repairable products. If the non-repairable products are worthless, we will bear the costs of their disposal.

**5.3** If it transpires during the repair of the products that the actual repair costs exceed the prices for new products in the applicable price list, you shall also bear these costs.

**5.4** Until the repaired products are collected or returned, we shall be entitled to a contractor's lien on these products to secure our claims for remuneration.

### 6. Acceptance

**6.1** You are obliged to accept the repair services immediately upon collection of the repaired products or, in the event that we return the repaired products, immediately upon delivery of the repaired products. We are entitled to demand written acceptance.

**6.2** You must check the repaired products on collection or delivery, in particular for completeness. Quantity deviations or missing products must be reported immediately in writing.

**6.3** If you do not properly accept the repair services immediately upon collection or delivery, acceptance shall be deemed to have taken place upon collection or delivery. The same applies if you put the repaired products to use or utilize them in any way.

**6.4** If acceptance is delayed through no fault of our own, acceptance shall be deemed to have taken place two weeks after notification of readiness for collection or return of the products to be repaired.

**6.5** Acceptance may not be refused on the grounds of insignificant defects.

**6.6** Our liability for recognisable defects shall lapse upon acceptance, unless you have reserved the right to assert such claims in writing at the time of acceptance.

**6.7** Upon acceptance, the risk passes to you and we accept no liability for any further changes made to the repaired product by yourself or third parties.

### 7. Claim for defects

**7.1** In the event of defects in the repair services, we shall be entitled, at our own discretion, to subsequent fulfilment by remedying the defect or producing a new item.

**7.2** If we are not willing or able to provide subsequent fulfilment, you may, at your discretion, withdraw from the contract or reduce the remuneration, without prejudice to any claims for damages or reimbursement of expenses. The same applies if the subsequent fulfilment fails, is unreasonable for you or is delayed beyond a reasonable period for reasons for which we are responsible.

**7.3** Defects due to natural wear and tear, in particular wear and tear, improper handling, use or storage of the products by you or third parties shall not give rise to any claims for defects. The same applies to defects which are attributable to you or which are due to a cause other than the original defect.

**7.4** Claims for reimbursement of expenses instead of compensation in lieu of performance are excluded unless the expenses would also have been incurred by a reasonable third party.

**7.5** We do not assume any guarantees, in particular no quality or durability guarantees, unless otherwise agreed in writing in individual cases.

**7.6** The limitation period for claims for defects is one year. It also applies to claims arising from tortious acts based on a defect in the repair. The limitation period shall commence upon acceptance of the products. The shortening of the limitation period shall not apply to our unlimited liability for damages arising from the breach of a guarantee or from injury to life, body or health, for intent and gross negligence and for product defects or insofar as we have assumed a procurement risk. Our statement on a claim for defects asserted by you shall not be deemed to constitute entry into negotiations on the claim or the circumstances giving rise to the claim if the claim for defects is rejected by us in its entirety.

## IV. General Terms and Conditions for Planning, Consulting and Engineering Services

The following provisions shall apply in addition to the preceding sections to planning, consulting and engineering services provided by us.

### 1. Scope of services

**1.1** The scope of our planning, consulting and engineering services may include, in particular, technical consulting, determining the basics, the collection of existing data using 3D laser scanning, feasibility studies, preliminary and conceptual planning, implementation planning, technical project drawings, 3D modelling, the determination of materials and bills of quantities, structural strength calculations, site-specific technical consultancy, technical support on site, product and system consulting, technical support services in connection with RFPs and offer processes, as well as other engineering services. The specific service scope is determined exclusively by our written order confirmation.

**1.2** Our services are provided on the basis of the information, documents, drawings, models, design loads, existing data, survey data, scan data, details of the intended purpose and planned use of the structure, details of installation areas and anchoring options, and other project-related information provided by you. We are entitled to treat this information as complete and accurate. A check for completeness, accuracy or suitability shall only be carried out if this has been expressly agreed in writing.

**1.3** Unless otherwise agreed in writing, our planning, consulting and engineering services shall be provided in accordance with the statutory, regulatory, standardised and other relevant technical regulations applicable in Germany at the time the services are rendered. Unless otherwise agreed in writing, all documents, calculations, verifications, drawings and other documentation will be produced in German.

### 2. Scope and limits of services

**2.1** We provide planning, consulting and engineering services in accordance with recognised rules of good engineering practice and on the basis of the requirements and framework conditions agreed between the parties. We are under no obligation to obtain official permits or to secure a contract, to adhere to specific construction or installation times, to ensure the cost-effectiveness of a project or to guarantee the actual availability of materials. Furthermore, our services do not include planning services in the fields of lightning protection, earthing or fire protection, nor any other specialist planning. Insofar as we prepare verifiable structural strength calculations, our service comprises exclusively their verifiable preparation. The verification or approval of the structural strength calculations by an independent inspecting engineer, structural engineer or any other verifying body, as well as the obtaining of such verification or approval, are not part of our service.

**2.2** We are entitled to have planning, consulting and engineering services performed, in whole or in part, by qualified staff, affiliated companies, engineering firms, structural engineers or other suitable third parties, whilst we remain directly liable at all times.

### 3. Your obligations to cooperate

**3.1** A prerequisite for the provision of services in accordance with the contract is that you provide all information, documents, drawings, models, design loads, existing data, existing documentation, survey data, scan data, details of the intended purpose and planned use of the structure, details of installation areas and anchoring options, geometrical constraints, tender documents, regulatory requirements, project-specific specifications, approvals, permits and other project documentation in a timely and complete manner.

**3.2** You remain solely responsible for the completeness, accuracy, consistency and up-to-date nature of the information you provide. Information supplied by you will only be checked for plausibility. This applies in particular to details regarding existing structures, existing constructions, materials, design loads, construction flows and other project-relevant constraints.

**3.3** You are obliged to carry out any necessary checks, make decisions, grant approvals and provide feedback without delay. Delays in fulfilling these obligations to cooperate will result in a corresponding extension of processing times and postponement of deadlines.

**3.4** Where we provide you with technical documents, calculations, drawings or other documentation for review or approval, you must check these without delay to ensure they comply with the project-specific requirements, local conditions and the project specifications provided by you.

**3.5** Requests for changes must be communicated to us in writing without delay. If no written notification of objections or requests for changes is received within seven calendar days of receipt of the deliverables, the relevant deliverables shall be deemed to have been reviewed and approved.

### 4. Inspection and use of our deliverables

**4.1** Responsibility for the use of the documents we have produced, as well as their suitability for the intended purpose, remains with you.

**4.2** The use of preliminary plans, conceptual plans, offer drawings or other documents not expressly designated as implementation plans as the basis for the execution of the works is at your own risk.

**4.3** The documents we have produced do not replace the statutory inspections nor the responsibilities of those involved in the project. In particular, they do not relieve you of your obligation to verify, on your own responsibility, the suitability of the relevant structure, planning or execution for the intended purpose, as well as compliance with all relevant regulations, standards and codes.

### 5. Changes to the scope of services and additional costs

**5.1** If, after the order has been placed, the task, project objectives, design loads, structural geometries, technical constraints, deadline requirements or other fundamentals of the service provision change, or if you request additional services, revisions, variant analyses or adjustments to documents already produced, we are entitled to adjust the remuneration, processing times and deadlines accordingly. Any additional work arising from this shall be invoiced separately.

**5.2** Where services have to be provided again or additionally due to incomplete, belatedly provided or subsequently amended information, you shall reimburse us for the expenses incurred as a result.

### 6. Special provisions for existing materials and third-party materials

**6.1** Where planning, consulting and engineering services are based on your information regarding existing material stocks, components or structures, we accept no liability for their completeness, availability, operational suitability, technical condition or actual usability.

**6.2** Our planning, consulting and engineering services apply exclusively to the use of ORIGINAL LAYHER products. If the designs based on our planning, consulting and engineering services are implemented, in whole or in part, using products from other manufacturers or through the mixed use of ORIGINAL LAYHER products and products from other manufacturers, the implementation will deviate from the assumptions underlying our deliverables. In such cases, our planning, consulting and engineering services cannot form the basis for the deviating implementation. We accept no liability in this regard. In all other respects, the provisions set out in Section I, Clause 19 apply accordingly.

**6.3** An inspection, inventory or stock-taking of the materials you have on site is not part of our planning, consulting and engineering services, unless this has been expressly agreed in writing.

### 7. Site supervision and on-site technical support

**7.1** Site supervision, site visits, technical meetings, briefings, plan reviews or other on-site support services constitute exclusively technical support services for professional supervision on the construction site. They are intended to provide technical advice and support.

**7.2** Our employees do not assume the role of a site manager, installation manager, health and safety coordinator, responsible scaffolding manager, a qualified person or

any other person in charge within the meaning of statutory, regulatory or professional association regulations. Nor do our employees assume any site management, supervision or other statutory responsibilities.

**7.3** We do not assume any supervisory duties with regard to the assembly, use, modification, dismantling, traffic safety, health and safety at work or operational safety of scaffolding structures or other installations.

**7.4** Our employees have no authority whatsoever to issue instructions to your employees or to third parties.

**7.5** Responsibility for the actual execution, assembly, use, testing and approval of structures remains exclusively with you.

**7.6** Before the start of a site visit, you must take all necessary measures relating to occupational safety and accident prevention in good time. In particular, you must inform our employees of local hazards, safety regulations, escape routes, emergency procedures and any special safety regulations.

**7.7** Upon request, you shall provide us in writing with the names of the contact persons responsible for the project, in particular the site manager, installation manager, health and safety coordinators and any other persons responsible for the execution of the works.

### 8. Assessments of existing structures and site inspections

**8.1** Assessments, verifications, calculations or opinions regarding structures that have already been erected shall be based exclusively on the circumstances apparent at the time of the assessment and on the information provided by you.

**8.2** No inspection shall be carried out of concealed, inaccessible, damaged, dismantled or subsequently modified structural parts. We accept no liability for any resulting discrepancies or circumstances that come to light at a later date.

**8.3** Site visits, construction site inspections or other on-site appointments are intended solely for the purpose of providing the respective commissioned planning, consulting or engineering services. In particular, they do not constitute a comprehensive technical inspection of the existing structures, the site conditions or compliance with statutory, technical or health and safety requirements.

**8.4** We are under no obligation to search for, investigate or assess existing defects, sources of danger or other deviations unless this is expressly included within the scope of services we have undertaken to provide.

**8.5** Responsibility for ensuring that an existing structure actually complies with the documents, specifications, models or drawings provided remains with you.

### 9. Deadlines and processing times

**9.1** Unless expressly confirmed in writing as binding, processing times, completion dates and delivery dates for planning, consulting and engineering services are non-binding. We do not accept any deadlines or dates set by you. Exceeding non-binding processing times and dates does not constitute a delay.

**9.2** Processing times shall only commence once all information, documents, approvals and acts of cooperation required for the provision of the services have been received.

**9.3** Delays resulting from a lack of or delayed cooperation, subsequent requests for changes, regulatory requirements or other circumstances for which we are not responsible shall extend processing times and deadlines accordingly.

### 10. Remuneration

**10.1** Planning, consulting and engineering services shall be invoiced on a time-spent basis or in accordance with the agreed prices, flat rates or remuneration rates.

**10.2** Additional services, modifications, revisions, variant studies, additional meetings, site visits, emergency call-outs and any additional costs incurred due to a lack of cooperation shall be invoiced separately.

**10.3** Travel time, travel costs, accommodation costs, expenses and other outlays incurred in connection with the provision of services shall be invoiced separately, unless otherwise agreed in writing.

**10.4** Working hours and travel time may be documented by means of timesheets or service reports. You must confirm these upon request.

### 11. Copyright and rights of use

**11.1** All drawings, calculations, models, plans, parts lists, technical concepts, documentation, data models and other documents produced by us remain our intellectual property.

**11.2** You are granted a simple, non-exclusive and non-transferable right of use exclusively for the specific project commissioned.

**11.3** Any disclosure, reproduction, publication, adaptation or use for other projects requires our prior written consent.

**12. Responsibility for the implementation of our planning, consulting and engineering services**

**12.1** Responsibility for the actual execution, assembly, use, testing, approval, maintenance and safe operation of structures remains exclusively with you.

**12.2** You remain responsible for compliance with all relevant statutory, regulatory, health and safety, industrial accident insurance and other public law requirements at the site of use.

**12.3** The use of the technical documentation produced by us does not relieve you of your obligation to verify, on your own responsibility, the suitability of the respective structure for its intended purpose and compliance with all relevant regulations and standards.

**13. Acceptance and limitation period**

**13.1** Insofar as planning, consulting and engineering services are, by their nature, subject to acceptance, you must accept the service in writing without delay upon provision of the deliverables or notification of completion.

**13.2** Acceptance of the services covered by the contract shall be deemed to have taken place if you do not give written notice of any material defects within two weeks of receiving the deliverables, or if you use, further process or make the deliverables available to third parties.

**13.3** Acceptance may not be refused on the grounds of insignificant defects.

**13.4** Claims for defects in connection with planning, consulting and engineering services shall, to the extent permitted by law, become time-barred within twelve months of acceptance, but no later than twelve months after the delivery of the deliverables.

**13.5** The above reduction in the limitation period shall not apply to claims arising from wilful misconduct, gross negligence, injury to life, limb or health, or in cases of mandatory statutory liability.

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