

## General Terms and Conditions of Purchase of Wilhelm Layher GmbH & Co KG, Layher Verwaltungs-GmbH, Layher Steigtechnik GmbH and Layher Bautechnik GmbH

### Section 1 General, Scope

1.1. These Terms and Conditions of Purchase of the Layher companies referred to above (hereinafter called "Layher") apply exclusively; Layher does not recognise any supplier's terms and conditions of purchase or general terms and conditions which conflict with or are contrary to Layher's terms and conditions and such conditions are hereby objected to. Even if they are not explicitly agreed again in specific cases, Layher's Terms and Conditions of Purchase shall also apply to all future business transactions.

These Terms and Conditions of Purchase shall also apply even if Layher unreservedly accepts or pays for deliveries from the supplier in full awareness of the fact that the supplier's terms and conditions contradict or conflict with Layher's Terms and Conditions of Purchase.

1.2. All agreements reached between Layher and the supplier relating to execution of contracts shall be set down in writing in the relevant contracts.

1.3. These Terms and Conditions of Purchase shall only apply to business persons as defined by Section 14 of the German Civil Code (BGB).

### Section 2 Conclusion of contract and contract amendments

2.1. Purchase orders placed by Layher as well as their contents and scope shall be binding on and exclusively authoritative for the supplier. If the supplier does not confirm to Layher the receipt and unchanged contents of the purchase order in writing within 5 days, Layher shall be entitled to withdraw its purchase order. Confirmations of order which deviate from Layher's purchase orders shall be rejected in all cases.

2.2. Purchase orders placed by Layher shall only be legally effective if they have been issued in legally effective written form by the authorised employee in Layher's Purchasing Department. The same shall apply to any additions, alterations or subsidiary agreements.

2.3. Any purchase orders, additions, alterations or subsidiary agreements which diverge from these shall be ineffective. The same shall apply to all such declarations made by Layher employees in other departments. Lack of formal compliance shall not be deemed remedied by acceptance by Layher of the supplier's delivery.

2.4. All divergences in quantity and quality from the stipulations made in Layher's enquiries shall be clearly shown in quotations submitted.

2.5. Regardless of any diverging quotations, all contracts shall be made exclusively on the basis of purchase orders placed by Layher in conjunction with these Terms and Conditions of Purchase.

2.6. Quotations and cost estimates shall be binding for a minimum of 5 weeks following receipt by Layher. Such quotations and cost estimates, as well as any inspection and test records provided, shall be provided at no cost to Layher.

2.7. Layher's technical purchase order and delivery stipulations are integral elements of the contract.

2.8. Layher may still withdraw in whole or part after placing its purchase order. In this case Layher shall compensate the supplier for the costs it has incurred up to this point in time on the basis of the purchase order whereby Layher shall have the right to accept any goods or production output resulting from such costs.

### Section 3 Prices, terms of payment, offsetting and retention rights, payments prior to expiry of the time limit for notification of defects

3.1. The fixed price referred to in the purchase order shall be binding. Unless otherwise agreed in writing, the price stated in the purchase order shall cover delivery duty paid (DDP according to Incoterms 2020) to Layher or to a place designated by Layher as well as the required packaging units, such as pallets or skeleton boxes.

3.2. Layher can only process invoices and delivery documents if they include the order and material numbers stipulated in Layher's purchase order; unless the supplier demonstrates that it is not responsible, the supplier shall be held

responsible for any consequences resulting from noncompliance with this obligation. Layher shall withhold any payments until an invoice which complies with Layher's stipulations is sent with the associated delivery documents; Layher shall not be deemed to have defaulted until this is the case. Delivery documents also include all Layher's technical purchase order and delivery stipulations, including but not limited to factory certification. Payment targets begin at the earliest after receipt of the corresponding delivery with all the required documents or upon receipt of an invoice which complies with Layher's requirements.

3.3. Unless otherwise agreed in writing, Layher shall pay the purchase price within 14 days of delivery and receipt of invoice at 3% cash discount or within 30 days of delivery at no deduction.

3.4. Layher shall be entitled to exercise its statutory offsetting and retention rights.

3.5. Payments shall be made subject to the outcome of inspections of goods and quantities by Layher. If payment is made prior to expiry of the time limits for inspection and notification of defects referred to in Section 6, this shall not mean that Layher has inspected the goods or quantities delivered by the supplier, that it has waived the notification of defects in quality or quantity, or that it has approved the delivery. Excess payments made for quality or quantities determined to be incorrect shall be reimbursed by the supplier.

3.6. The day on which payment is received, regardless of the means of payment used, shall be the day on which such funds are no longer available to Layher.

3.7. If it becomes apparent after the contract has been made that Layher's entitlement to delivery is jeopardised by the supplier's inability to perform, Layher shall be entitled to refuse performance and to set the supplier a reasonable period within which the supplier shall make delivery concurrently with payment. If the supplier refuses concurrent payment, Layher shall be entitled upon expiry of a reasonable period of time to withdraw from the contract and to demand compensation.

### Section 4 Delivery, delivery period, partial call-offs, adjustment of delivery quantities

4.1. Fixed delivery dates stated in a purchase order or in a delivery call-off shall be binding. Compliance with delivery dates shall be determined according to the date on which the goods are received by Layher or are delivered to the place of receipt determined by Layher.

4.2. The supplier shall notify Layher immediately in writing, stating the grounds and expected duration, if circumstances occur or become apparent which prevent compliance with the agreed delivery period. The unconditional acceptance by Layher of late delivery shall not absolve the supplier as regards the rights of Layher arising from late delivery.

4.3. Layher shall be entitled to assert its statutory rights in the event of delivery delays. In particular, if a delivery date has been agreed, Layher shall be entitled to demand compensation in lieu of performance and to withdraw from the contract immediately or upon abortive expiry of a reasonable period. If Layher demands compensation, the supplier shall be entitled to demonstrate that it is not responsible for the breach of obligations.

4.4. Layher shall be entitled for up to 4 weeks prior to a delivery date to call off parts of the ordered quantities for delivery on this delivery date. Layher can specify a later delivery date for the delivery of the remaining delivery quantity not taken as part of a partial call-off on the original delivery date. All partial call-offs must take reasonable account of the supplier's interests.

4.5. If business develops negatively owing to unforeseeable events, so-called force majeure, Layher shall be entitled to adjust ordered delivery quantities in line with Layher's actual requirements up to 4 weeks before the delivery date. Reasonable account must be taken of the supplier's interests. If Layher exercises this right, the supplier shall not acquire any other rights on the basis of this adjustment to quantities.

4.6. If excess deliveries are made or deliveries are made too soon, Layher retains the right to refuse acceptance of the delivery at the supplier's cost or to value the relevant invoice on the basis of the quantities actually required by Layher.

4.7. The weights, quantities and dimensions determined during Layher's incoming inspections shall prevail for the purpose of settlement of invoices.

4.8. If Layher issues call-off orders with planning figures, the stated quantities shall not be binding on Layher and Layher shall not be obliged to accept. The actual quantities called off and confirmed by Layher may deviate from planned quantities.

## Section 5 Passage of risk

The risk shall pass upon delivery to the delivery location stated in Layher's purchase order.

## Section 6 Inspections for defects, warranty, limitation period, guarantee, mandatory standards

6.1. Layher shall inspect the goods delivered by the supplier exclusively with regard to transport damages to the external packaging and for conformance of quantities with the stipulations in the delivery documents at goods receipt. If Layher determines obvious defects, Layher shall give notification of these within 14 working days of receipt of the goods or, in the case of all other concealed defects, within 14 working days of their discovery. To this extent the supplier waives the objection to late notification of defects. Further inspections of incoming goods and obligations to notify defect are excluded.

6.2. The quality and type of packaging or containers in which goods are delivered by the supplier shall comply with the requirements of the contract. In particular, the goods must be suitable for the purpose for which the supplier was informed at the time the contract was made. If the supplier has created an initial sample, the goods must have all the properties of such initial sample. If the purpose of which the supplier is aware cannot be achieved on the basis of the properties of the initial sample, the goods shall be deemed not to comply with the contract. This shall also apply even if the initial sample has been approved by Layher.

6.3. Layher shall be entitled to assert its full statutory claims for defects. In all cases Layher shall be entitled to demand that the supplier rectify or deliver new compliant goods at Layher's discretion. Upon expiry of a one-off period of grace by which subsequent performance has not been successful, Layher shall be entitled to assert further rights, including but not limited to a reduction in price, cancellation and compensation. The right to compensation, in particular to damages in lieu of performance, is explicitly retained.

6.4. Except in cases of deception, the limitation period shall be 36 months. Unless a longer statutory or contractual period applies, the limitation period shall commence upon delivery of the finished product, in which the components delivered by the supplier are assembled, to Layher's customer. The limitation period shall be suspended for the period in which the supplier is obliged under Subsection 6.3. to make subsequent performance. The limitation period for replacement parts, provided to Layher by the supplier as part of subsequent delivery, and for spare parts, provided to Layher by the supplier as part of its subsequent improvement, shall start anew in each case starting from the time at which such parts are provided.

6.5. If the supplier does not immediately begin rectifying defects after Layher's request to remedy the same or if the supplier's first attempt to provide subsequent improvements fails, Layher shall in urgent cases be entitled to undertake such rectification itself or arrange for such rectification to be made by a third party at the cost of the supplier.

6.6. The agreed periods are decisive with regard to warranty agreements.

6.7. The supplier warrants that goods delivered by it comply with all legal requirements, specifications, stipulations and directives, particularly those which apply in the EU.

6.8. If Layher incurs subsequent costs as a result of a defective delivery, such as labour, transport, installation and removal costs, handling costs or general administrative expenses, Layher shall have the right to charge such costs to the supplier.

6.9. If goods are defective, the supplier shall reimburse Layher for all the costs and compensate Layher for all the losses beyond those recited in Subsection 6.8. incurred by Layher in connection with the delivery of the defective goods, unless the supplier is not responsible for the defect. This excludes goodwill costs but includes all costs and losses which result from recalls or other service campaigns, irrespective of whether these are undertaken voluntarily or are ordered by public authorities, provided that the recall or service campaign can be attributed to a defect in the contractual product or to other breach of duty on the part of the supplier.

## Section 7 Product liability, indemnity, product liability insurance

7.1. If the supplier is responsible for a defect or product-related damages, the supplier shall indemnify Layher against claims for damages asserted by third parties on first request if such damages fall within the realm of the supplier's control or

organisational responsibilities, the defect can be attributed to the supplier or the supplier is itself liable to third parties.

7.2. In the framework of the supplier's liability for damages as defined in 7.1. above, the supplier shall also reimburse any costs incurred as a result of or in relation to recall campaigns undertaken by Layher. Layher shall inform the supplier wherever possible and reasonable about the contents and scope of such recall action and shall provide the supplier the opportunity to respond accordingly.

All other legal claims held by Layher remain unaffected.

7.3. The supplier undertakes to obtain extended product-liability insurance cover for a flat-rate amount of 10 million euros per instance of personal injuries/damage to property and to disclose such insurance to Layher on request.

## Section 8 Performance of work

8.1. All persons deployed on Layher's factory premises for the purpose of performing contractual work must comply strictly with the instructions for contractors and forwarders at [www.layher.com](http://www.layher.com), "Deployment of contractors". The supplier must inform carriers commissioned by it accordingly. Except in cases of grossly negligent or wilful breach of duty by Layher or in cases of statutory liability, e.g. arising from product liability or due to injury to life or limb, liability for accidents affecting these persons on Layher's factory premises is disclaimed.

8.2. Only Layher ladders or scaffolding may be used where such ladders or scaffolding are required for work purposes.

## Section 9 Customer-supplied material

Materials, parts, containers and special packaging provided by Layher shall remain the property of Layher. Such components shall be used exclusively for Layher parts and purchase orders. Materials may only be processed or parts assembled exclusively for Layher. Layher is co-proprietor, up to the value of materials and parts supplied by Layher, of the components stored by the supplier which are manufactured from materials and parts provided by Layher.

## Section 10 Tools

10.1. Tools which have been paid for by Layher are the exclusive property of Layher and may only be used by the supplier for Layher purchase orders and parts. Tools which have been paid for by Layher shall be available at all times and in perfect condition to Layher and shall be unmistakably identified by the supplier as Layher's property and stored and marked separately.

10.2. The supplier shall provide and pay for insurance cover for damage to the Layher tools stored by the supplier. The supplier herewith assigns all claims for compensation from such insurance to Layher. Layher hereby accepts such assignment. The supplier undertakes to provide Layher with full support in relation to the insurance company.

10.3. Parts manufactured using tools owned by Layher shall not be offered or supplied to third parties nor shall the relevant know-how be shared.

10.4. Such tools shall be maintained and serviced by and at the cost of the supplier. If Layher tools are damaged by the supplier, they shall be repaired at the supplier's cost in accordance with the tool drawings.

10.5. All changes to tools must be approved in writing by Layher. Samples must be submitted for inspection and approval every time a change is made.

10.6. Tool costs shall only be paid by Layher after inspection and approval of an initial sample.

10.7. The tools will be made available by Layher on loan after payment of the tool costs. Layher remains the exclusive proprietor of the tools.

10.8. The supplier shall surrender the tools owned by Layher on first request to this effect by Layher. When the tools are surrendered Layher shall also be given all available aids required for the new production, modification or repair of the tool, such as templates, models, electrodes, NC programs, a detailed tool drawing (data), current status, as well as the inspection and measuring equipment required for the production of the parts, e.g. gauges and devices, as well as a list of the relevant sub-suppliers of the tool.

10.9. If so requested by Layher, the supplier shall return the tools to their original status as detailed in the Layher written specifications.

10.10. By asking the supplier to surrender the tools, Layher waives all claims to delivery of parts which can only be manufactured by the supplier using the tool which Layher demands the supplier surrender. The supplier accepts this waiver.

10.11. Upon a request for surrender by Layher or its affiliated companies, the supplier shall waive any rights to retention.

10.12. The tools shall, in consultation with Layher, be made available for collection at no charge.

## Section 11 Dangerous goods

The supplier bears sole responsibility for compliance with and application of regulations on dangerous goods, including but not limited to the Dangerous Goods Transportation Act (GGBeFg), the Ordinance on the Transport of Dangerous Goods by Road, Rail and Inland Waterways (GGVSEB) and the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR). The supplier shall inform Layher in good time in writing of potential risks.

## Section 12 Force majeure

Force majeure, disruptions, strikes or government measures for which Layher may not be held responsible or other unavoidable events shall release Layher for the duration of their incidence and impact from the duty to comply with its contractual obligations.

## Section 13 Property rights

13.1. The supplier warrants that no third-party rights are infringed in connection with deliveries made to or performance by Layher.

13.2. If claims are asserted against Layher by third parties, the supplier shall indemnify and hold Layher harmless against such claims on first written request.

13.3. The supplier's duty to indemnify relates to all expenses necessarily incurred by Layher arising from or in relation to claims asserted by third parties.

13.4. The limitation period is ten years commencing with the conclusion of the contract.

13.5. Know-how obtained by the supplier as a result of the cooperation may not be disclosed to third parties without Layher's explicit written approval and may not be used by the supplier or a third party without Layher's permission. Layher's know-how may only be used for the purpose of manufacturing on the basis of the purchase order and must be kept secret; Section 14 applies additionally.

## Section 14 Confidentiality

14.1. The supplier shall without exception treat all commercial and technical data, documents, samples, models and other documentation and information ("confidential information") received from Layher with strict confidentiality and as business secrets within the meaning of Section 2 of the Protection of Business Secrets Act (GeschGehG). "Business secrets" are confidential information explicitly designated by Layher as "business secrets" or as "secret". The supplier may only disclose business secrets within its own operations to those of its employees deployed for the purpose of making delivery to Layher and who are likewise committed to secrecy. Confidential information and business secrets may only be disclosed to third parties with Layher's explicit written permission and provided that such third parties have also been committed to confidentiality.

14.2. The above does not apply to information that

- i) is in or has entered the public domain, or that
- ii) has been disclosed to the supplier by an authorised third party which is not committed to confidentiality, or that
- iii) was verifiably known to the supplier prior to the date of receipt, or
- iv) information which the supplier is required by a court ruling or enforceable public order to disclose, unless the court ruling or official decision is itself based on facts which in turn constitute a violation of this non-disclosure agreement.

14.3. Upon first request by Layher the supplier shall return in full to Layher all physical information and documents (including copies) and samples provided by Layher. A right of retention in this respect only applies in cases and for the period during which the supplier can show that it is subject to a legal requirement to retain

or in cases in which the supplier specifically demonstrates that it requires the embodied information in order to assert its own legitimate rights against Layher.

14.4. The supplier shall erase from data media confidential information that is provided in electronic file form (including copies) upon first request by Layher. Data on backup media must be erased if the media is used to restore data. A corresponding note must be attached to the data media.

14.5. The non-disclosure agreement shall continue in effect for an unlimited period of time following termination of a contract; the non-disclosure agreement shall only cease to apply if the confidential information has entered the public domain without breach of this confidentiality obligation.

14.6. The disclosure of confidential information and the possible transfer of documents, samples or models shall not substantiate any industrial property rights, know-how or copyrights to the benefit of the supplier and does not constitute pre-release or right of prior use for the purposes of patent and utility model legislation. The supplier may only use confidential information for the purpose approved by Layher and only within the framework of the agreed cooperation. The supplier shall not have any rights of its own in this respect. The supplier must agree a written non-disclosure agreement with any third parties before such third parties come into any contact with confidential information through the supplier; the supplier shall provide evidence that such non-disclosure agreement has been made if requested to do so by Layher.

## Section 15 Data protection, security

15.1. The supplier undertakes to obtain legal declarations from all persons who, in its name or on its behalf, communicate with Layher in which such persons declare that they agree to Layher collecting, storing, processing and using their personal data for the purposes of processing and carrying out agreed business transactions and its ongoing business and for the purpose of initiating new contracts or for similar business contacts. In this context, personal data include in particular contact data such as: name, address, company position, telephone number, email address, etc. as well as data on specific expertise, information about the time and place of consultations and similar data.

15.2. The supplier undertakes to obtain legal declarations from all persons who, in its name or on its behalf, communicate with Layher in which such persons declare that they agree to Layher passing on their personal data to third parties for the purposes of processing and carrying out agreed business transactions and its ongoing business and for the purpose of initiating new contracts or for similar business contacts.

15.3. The supplier undertakes to obtain legal declarations from all persons who, in its name or on its behalf, communicate with Layher in which such persons explicitly give their permission allowing Layher only to erase the relevant persons' personal data upon explicit request by the data subject.

15.4. Legal declarations for the purposes of the above provision means that the supplier must independently determine the prerequisites of a legally effective declaration under data protection law and the general law of obligations.

15.5. The supplier shall inform Layher explicitly in writing if the above declarations have not been obtained.

15.6. If the supplier violates the above duty to notify or if it subsequently becomes apparent that the declarations obtained by the supplier are ineffective in whole or part, the supplier shall indemnify Layher against claims asserted by third parties against Layher in connection with these breaches of contract. The claims to compensation to which Layher is entitled in this connection remain unaffected.

15.7. Layher shall treat the supplier's personal data in compliance with the Federal Data Protection Act (BDSG) in all other respects.

## Section 16 Right of Layher to rescind, termination of open-ended contracts

16.1. In the event of an unforeseen event for which Layher cannot be held responsible and which significantly alters the business significance or the content of the performance or which has a significant effect on the operations of Layher and in the event of impossibility which subsequently becomes apparent and for which Layher is not responsible, Layher shall be entitled to rescind the contract in whole or in part, unless the supplier cannot reasonably be expected to accept partial withdrawal. This provision does not affect any more extensive legal rights to rescind.

16.2. The supplier shall not be entitled to compensation for such rescission. If Layher wishes to assert this right of rescission, Layher shall inform the supplier

accordingly even if an initial agreement has been reached with the supplier to prolong the delivery period.

16.3. Layher may serve notice of three months to terminate open-ended contracts.

## Section 17 Place of performance

Unless otherwise specified in the purchase order, the place of performance is Layher's place of business in Güglingen-Eibensbach.

## Section 18 Advertising

The supplier is prohibited from using enquiries, purchase orders or correspondence of any kind from or with Layher for advertising purposes. The business relationship with Layher may only be used for advertising purposes with Layher's explicit prior agreement.

## Section 19 Final provisions

19.1. The exclusive legal venue for parties that are registered traders, legal entities under public law or special funds under public law, including for proceedings relating to bills of exchange, cheques and documents and regardless of the amount in dispute shall be the court with jurisdiction for Layher's place of business; Layher shall, however, also be entitled to bring an action against the supplier at the supplier's place of residence or business. The same shall apply if the supplier does not have a general place of jurisdiction in Germany or if the supplier has relocated its place of residence or business or its habitual abode outside Germany after conclusion of the contract or if its place of residence or business or its habitual abode is unknown at the time the action is brought.

19.2. If one or several of the provisions of these General Terms and Conditions of Purchase are ineffective or infeasible or become ineffective or infeasible after conclusion of the contract, this shall not affect the validity of the remaining provisions of the contract. The ineffective or infeasible provision shall be replaced by the law.

## Section 20 International contractual parties

20.1. If the supplier's branch is situated outside Germany, the following shall apply in addition to and instead of the above:

20.2. German law shall apply exclusively.

20.3. If contractual offers and declarations of acceptance diverge, delivery shall be deemed a new offer in accordance with the terms of the purchaser's last declaration.

20.4. In the event of defective delivery, Layher shall in all cases be entitled to demand rescission of the contract.

20.5. Claims for breach of contract may be asserted at any time during the warranty period after notification of defects has been given.

20.6. Claims for damages are not limited to typically foreseeable losses.

20.7. If any of the provisions in Section 20 above contradicts Layher's other General Terms and Conditions of Purchase, the provision in Section 20 shall prevail.

20.8. The contract language is German. If the contracting parties also make use of another language, the German wording shall take precedence.

**As at November 2020**

### Note:

We store the personal data of our suppliers and comply with statutory regulations. Personal data are stored for the purpose of processing and carrying out the agreed business transactions and ongoing business and for the purpose of initiating new contracts or for similar business contacts.

Within the scope of the statutory provisions, the supplier may request information regarding the personal data stored on it by Layher.

If the supplier believes that the conduct of Layher is in violation of applicable law, the supplier is kindly requested to make direct contact with Wilhelm Layher GmbH & Co KG, Ochsenbacher Straße 56, 74363 Güglingen-Eibensbach, Germany, telephone

+49 (0) 71 35 70-0, fax +49 (0) 71 35 70-2 65, [info@layher.com](mailto:info@layher.com). Layher shall immediately cease from any violations. There is no need for a warning or legal action in such cases. If the supplier issues a warning or takes legal action regarding a violation of applicable law, we point out that the supplier shall bear the costs incurred as a result of a lack of a risk of repeated violation.