

## 1. Scope

(1) The following Terms and Conditions apply to all contractual relationships of Herchenbach Industrial Buildings GmbH, Löhestraße 6, 53773 Hennef ("Herchenbach") with its customers ("Customer") as well as to all deliveries and services resulting therefrom which Herchenbach renders in business transactions with Customer, insofar as such are not transactions with consumers. In addition, the Additional Technical Terms of Contract (ZTV) apply. With regard to Leasing Agreements, the Additional Terms and Conditions (ZVB Miete) apply in addition and supplementary to these GTC.

(2) These Terms and Conditions shall also apply even if they are not mentioned in supplements to the agreement or subsequent agreements.

(3) These Terms and Conditions apply exclusively. Any terms and conditions of Customer to the contrary or conflicting or supplementary terms and conditions of Customer shall not become part of the contractual agreement under any circumstances.

## 2. Dates and deadlines, delay

(1) Dates for the commencement of delivery and installation shall only be deemed to be binding if such are individually agreed in writing. These dates shall be agreed in connection with the setting of the date in stage 1 (conceptualisation and planning) of the commissioned offer. If nothing to the contrary is expressly agreed upon, the period of execution shall be at least 2 months from delivery and commencement of installation. This period shall not commence before all preconditions for delivery and installation have been met, unless Herchenbach is responsible for such.

(2) The following shall apply to any postponements of dates and deadlines:

- *Voluntary postponement:* After a date or deadline has been set, a postponement shall only be possible with the written consent of Herchenbach and there may only be two such postponements in sum total, each time by a maximum of 10 weeks. If the postponement occurs less than 4 weeks before the agreed date for the commencement of delivery and installation, Customer must nevertheless accept components of the hall being delivered and perform formal acceptance and pay for delivered and, if applicable, installed components of the hall unless agreed otherwise by the Parties. Customer shall be obligated to

- pay compensation for any voluntary postponement in accordance with no. 10 GTC.
- *Necessary postponement:* If the agreed date for the commencement of delivery or installation is postponed due to circumstances for which Herchenbach is not responsible (e.g. because its suppliers have failed to perform or non-availability of the service), Herchenbach shall inform Customer of such immediately and notify Customer of a new date for the commencement of delivery and installation. If the service can also not be realised by the new delivery and installation dates, Customer shall be entitled to withdraw from the Agreement for the scope of services concerned.
- *Impediments:* Dates for the commencement of delivery or installation and execution deadlines shall be postponed or extended if Herchenbach is prevented from properly performing the service and such hindrance is caused by a circumstance within Customer's domain of risk, by force majeure (cf. no. 11 GTC) or other circumstances unavoidable for Herchenbach (e.g. strong winds, storms, heat, heavy rain, thunderstorms, frost or snowfall), insofar as such jeopardises the installation or dismantling of the hall or third parties. The decision to cancel or continue installation or dismantling lies with Herchenbach or a person appointed by Herchenbach (e.g. foreman). Customer shall be liable to pay compensation for any hindrance in accordance with no. 10 GTC unless Herchenbach is responsible for the hindering circumstances.

## 3. Legal prerequisites

(1) Customer is obligated to meet all legal prerequisites for the construction of the hall.

(2) The risk of legal prerequisites for the construction of the hall not being met, in particular failure to obtain official authorisations, shall be borne by Customer. In this connection, Customer shall be responsible for the timely notification of the construction in progress prior to delivery and installation or the granting of a building permit in due time.

(3) Contingent upon the planned standing time, Customer shall review and act to ensure the following:

- *Permanent construction* (standing time more than 3 months in accordance with DIN EN 1991): All necessary permits, licenses and approvals required (in particular a building permit) or release from liability granted by Customer listing Herchenbach as beneficiary ("Building Law Release" form). A statics analysis shall be provided by Herchenbach if needed, for which Herchenbach assumes no responsibility or liability, either.
- *Short-term construction* (standing time up to 3 months according to DIN EN 13782): Notification of the intended installation, if necessary using an inspection logbook. If required, Herchenbach will provide an inspection logbook in return for a security deposit; Herchenbach assumes no responsibility or liability in this respect, either.

(4) Customer shall be responsible for obtaining information independently and at its own expense from the authorities in charge (e.g. architectural or engineering office, the building authority having jurisdiction). Herchenbach notes that approval, license and authorisation requirements as well as procedures may vary depending on the location. In particular, Customer must clarify the permissibility of ground nailing or whether the hall statics provided can be applied in the context of dimensioning of snow and wind loads in good time.

(5) Customer shall be responsible for bringing about all the necessary conditions for the installation site in good time and to obtain licenses, permits and authorisations for the intended use of the hall independently and at its own expense. This applies in particular to emission or occupational health and safety requirements such as specific work permits.

(6) Acceptance as well as approval and licensing fees, costs relating to the inspection of statics or the fulfilment of any official government requirements (e.g. requirement that concrete foundations or a floor slab be installed, compliance with clearance areas or fire protection requirements, presence of ram protection) shall be borne and met by Customer.

#### 4. Delivery, transfer of risk

(1) Loading, transport and delivery shall be at Customer's risk.

(2) Herchenbach is entitled to determine the type of dispatch (in particular transport company, dispatch route and packaging) itself. Unless expressly agreed otherwise, Customer shall bear the reasonable costs of delivery and transport from Herchenbach's warehouse, proof of which shall be provided if so requested.

(3) Customer shall inform Herchenbach of any registration procedures of Customer or access requirements to the preparation, staging or

installation areas at least 2 weeks before the date of delivery and commencement of installation.

(4) If Customer is in default of acceptance with regard to service, Herchenbach's claims shall be based on no. 10 GTC.

(5) The transfer of risk with regard to all the hall's components shall take place upon provision at the staging place (before loading) at the respective storage location. This is also deemed to be the place of fulfilment. In case of doubt, the place of passing of risk and fulfilment shall be deemed to be the registered office of Herchenbach (Löhestraße 6, 53773 Hennef).

(6) Herchenbach shall be entitled to deliver lifting equipment a maximum of 5 days before the date for the commencement of delivery and installation. Customer is obligated to accept such and shall keep the staging and/or installation areas free for such purpose.

(7) In the event of premature material deliveries, Customer shall arrange for unloading at its own risk and expense, ensure that parts and components are stored properly and protected from weather influences and ensure that cross-transport from the storage area to the staging area or to the installation site, including unloading, is performed in good time at its own risk and expense.

(8) If components of the hall or other materials delivered or installed by Herchenbach are damaged after the transfer of risk or are lost, for example at the installation site, Customer shall bear the costs for new procurement, new delivery and delay of installation. Please see no. 5 (5) GTC.

#### 5. Installation

(1) The precondition for installation is that Customer be in compliance with technical requirements in accordance with no. 3 (1) Additional Technical Terms and Conditions of Contract (ZTV) and have met legal requirements in accordance with no. 3 GTC and that this continues to be the case. Customer shall be responsible for the quality of the ground in the staging, set-up and installation areas and bear the ground risk for the construction. The suitability of the ground in the installation area shall be determined in accordance with no. 4 Additional Technical Terms and Conditions of Contract (ZTV).

(2) Customer shall bear sole responsibility for the positioning and location of the hall. This applies in particular to compliance with distances to other existing buildings and property boundaries in accordance with building ordinances or law governing neighbours' rights, to the impact of foundations and to the suitability and integration into Customer's operational business. Customer shall indemnify Herchenbach against any and all claims by third parties.

(3) Customer shall receive a safety briefing on installation and its procedure at the installation site of the hall (usually not lasting any longer than 30 minutes), which it shall ensure is respected. If Herchenbach incurs additional expenses due to longer or restated instructions or due to failure to respect safety instructions by Customer, Customer shall be liable to reimburse Herchenbach for such in accordance with no. 10 GTC.

(4) If Customer fails to respect clearances for staging and installation areas (in particular the adjacent installation area) laid down in no. 3 (1) Additional Technical Terms and Conditions of Contract (ZTV), installation by Herchenbach shall only be carried out after an analysis from an occupational health and safety perspective and mutual agreement by the Parties on compensation for additional work.

(5) Security at the installation site must be assured by means of appropriate equipment at the installation site and, if necessary, a security service over the period of installation and if need be the period of dismantling in order to ensure that unauthorised access or entry by third parties is prevented.

(6) Use of access roads, preparation, staging and installation areas, storage and workplaces, water and energy shall be free of charge for Herchenbach. Customer shall indemnify Herchenbach against any and all claims by third parties.

(7) Customer shall be responsible for winter service and clearance of ice and snow. For the period of installation and if need be dismantling, Customer shall clear and keep the staging, set-up and installation areas free of snow and ice.

(8) Herchenbach shall be entitled to reimbursement for additional expenses incurred during installation due to circumstances for which Customer is responsible in accordance with no. 10 GTC. These shall include in particular hindrances in the meaning of no. 2 (2) GTC and force majeure in the meaning of no. 11 (1) GTC. Frost may result in additional expenses when installing the selected anchoring.

(9) If more difficult installation conditions come about due to circumstances for which Customer is responsible (e.g. due to machines installed in the set-up area or due to unpaved staging and hall or installation areas, including the surrounding installation area) and the installation and lifting equipment specifications have to be modified as a result, Customer shall bear any additional costs resulting therefrom. The same shall apply to any internal installation that may be required. No. 10 GTC shall apply accordingly.

(10) If Customer is in default of acceptance with regard to the installation, for example by failing to cooperate, Herchenbach shall be entitled to demand reasonable compensation. The amount of

compensation shall be determined in accordance with Section 642 (2) German Civil Code.

(11) Herchenbach reserves the right to undertake a test installation of the hall (drill holes) or to conduct tests for deltas and changes due to changes in design, provided that such does not restrict the usability of the hall.

(12) Customer shall dispose of residual and packaging materials (e.g. plastic and wood residues) as well as material and waste cuttings that have accumulated up to the point in time of completion of installation under its own responsibility and at its own expense. Customer shall be responsible for cleaning the staging, installation and set-up areas after the completion of installation.

## **6. Acceptance**

(1) If Herchenbach so requests, a formal acceptance shall take place after completion of the installation by Customer signing an acceptance report. Acceptance may not be refused due to minor defects. The hall shall be deemed to have been accepted if Herchenbach sets Customer a reasonable deadline for acceptance following completion and Customer does not refuse acceptance within this period, thereby citing at least one defect. If acceptance is not requested, the hall shall be deemed to have been accepted 14 days after completion or 7 days after the commencement of use by Customer. Reservations due to known defects must be stated by Customer upon signing the acceptance report or by the point when acceptance is deemed to take place in accordance with sentences 3 and 4.

(2) Upon acceptance, risk shall pass to Customer unless Customer already bears such risk in accordance with no. 4 (5) GTC.

## **7 Prices and terms of payment**

(1) Unless expressly agreed otherwise in writing, the agreed prices shall apply as set out in the order, plus transport costs and statutory VAT.

(2) Any customs duties, fees, taxes and other public charges and levies shall be borne by Customer. Should the hall be classified as a building subject to property tax (grundsteuerpflichtig) by a (financial) authority or court decision, the Customer shall be responsible for such property tax (Grundsteuer) in their internal relationship with Herchenbach. The Customer shall reimburse Herchenbach for any property tax (Grundsteuer) paid by Herchenbach. The Customer shall also bear any increases in property tax compared to the property tax levied at the time of handover of the hall.

(3) Customer shall only be entitled to exercise set-off and retention rights insofar as its claim has been legally established by a government authority or court of law or is undisputed. This shall not affect nos. 9 (1) and 13 (6) sentence 2 GTC.

(4) Unless agreed upon otherwise, Customer shall be obligated to effect payment in advance.

## 8 Retention of title, collateral

(1) Herchenbach reserves title to the delivered or installed components of the hall until complete fulfilment of all claims present and future arising from the contractual agreement, including those arising from additional orders or commissioned service offers (hereinafter: secured claims). If the delivered or installed components of the hall are used before complete fulfilment of the secured claims, the delivery and service provided by Herchenbach shall be deemed to have been accepted.

(2) The delivered or installed components of the hall subject to retention of title may neither be pledged to third parties nor assigned as collateral before complete fulfilment of the secured claims. Customer must notify Herchenbach immediately in writing if and to the extent that third parties seize the delivered or installed components of the hall belonging to Herchenbach in order to enable Herchenbach to satisfy and enforce its title. If such third party is not in a position to reimburse Herchenbach for the court-related or out-of-court costs incurred in this connection, Customer shall be liable toward Herchenbach.

(3) Customer is obligated if Herchenbach so requests to provide collateral for all claims, including associated ancillary claims, which shall be set at 10 per cent of the secured claims. Sentence 1 shall also apply in the same scope to claims that take the place of the secured claims. Herchenbach's claim to collateral shall not be excluded by the Customer being able to demand fulfilment or subsequent performance, having accepted the work or having reserved the right of transfer of ownership in accordance with subsection 1. Claims which Customer can offset against Herchenbach's claim shall not be taken into account when calculating secured claims unless such are undisputed or have been established by a court of law or government authority. Collateral may be provided in particular by the provision of an unlimited, directly enforceable guarantee from a credit institute or credit insurer that is licensed in the European Union. In other respects, § 650f BGB shall apply.

(4) If the realisable value of the collateral presented to Herchenbach exceeds the secured claims not only temporarily by more than 10% in sum total or if the estimated value of the collateral presented to Herchenbach exceeds 150% of the value of the secured claims, Herchenbach shall be obligated to

release the collateral in a commensurate amount as Herchenbach sees fit. Herchenbach shall take into account the legitimate interests of Customer when selecting the collateral to be released.

## 9. Right of retention, premature termination of the Agreement

(1) If Customer fails to pay a claim due to Herchenbach, Herchenbach shall be entitled in accordance with contractual and statutory requirements

- to refuse performance, including with regard to Customer's claim for subsequent fulfilment,
- to withdraw from the Agreement and/or
- to have components of the hall that have been delivered or installed handed over to it

unless Customer can demonstrate a case under no. 13 (7) sentence 2 GTC. This shall not affect Section 323 (5) (2) German Civil Code. Any demand for handover of components shall not at the same time be deemed to include a declaration of cancellation; Herchenbach shall instead be entitled to demand the return of only the delivered or installed components of the hall and to reserve the right to cancel the Agreement. In the event of a request for return of components, Herchenbach shall be authorised to take back the components following written notification. Customer shall be obligated to provide Herchenbach access to the delivered or installed components of the hall and their removal upon first notification. Customer shall therefore allow Herchenbach or an authorised representative of Herchenbach to enter the property or building for such purpose.

(2) If Customer fails to provide collateral in accordance with no. 8 (3) GTC and Herchenbach has set Customer a reasonable deadline for the provision of such collateral in vain, Herchenbach may refuse to render its services, including with regard to any claim on the part of Customer for subsequent performance, or terminate the Agreement.

(3) If circumstances constituting force majeure as described in no. 11 (1) GTC last longer than 8 weeks or if an obstruction in the meaning of no. 2 (2) GTC leads to an interruption of installation lasting more than 8 weeks, Herchenbach shall be entitled to terminate the Agreement. Herchenbach shall be entitled to invoice the services performed according to the contractual prices and also to demand payment for costs already incurred and included in the contractual prices for the part of the service that has not been performed. This shall not affect no. 10 (4) sentences 2-4 GTC.

(4) Customer shall be free to terminate the Agreement upon the commencement of installation. In the event of such termination, Section 648 German Civil Code shall apply accordingly.

(5) The aforesaid rights of withdrawal and termination shall not affect the statutory right of either party to terminate the Agreement for good cause.

(6) If Customer is entitled to a statutory or contractual right of withdrawal or other right to terminate the Agreement or if Herchenbach nevertheless agrees to such a right, the provisions of Section 648 (2) and (3) German Civil Code shall apply accordingly.

(7) In the event of premature termination of the Agreement, Herchenbach shall not be obligated to restore the ground to its original condition after dismantling a hall. Customer shall not have any claim to restoration or repair of the ground or to the closure of soil nail holes. Soil nails, severed nails, dowel pins or similar may remain in the ground.

#### 10. Reimbursement for additional expenses

(1) Customer shall bear any additional costs for delivery and installation that arise due to circumstances for which Customer is responsible.

(2) If Customer is in default of acceptance with regard to delivery, for example by failing to cooperate, Herchenbach shall be entitled to demand payment for all additional expenses, in particular for storage and maintenance of the delivery items (e.g. storage costs, personnel expenses). Herchenbach may demand a lump-sum compensation of 0.5% of the net contract value for each month or part thereof relating to delay in acceptance, but not more than a total of 5% of the net contract value. Both contracting Parties shall be free to demonstrate greater or lesser expenses. This shall not affect any additional claims on the part of Herchenbach; the lump-sum compensation laid down in this subsection shall be credited to such additional claims. This shall not affect the due date of the agreed price. Nor shall this affect or change the transfer of risk. The Parties shall agree upon a binding new delivery date by mutual agreement in a timely manner.

(3) If Herchenbach covers additional expenses with internal resources (e.g. storage and/or interim storage of material, labour costs of its own employees), such expenses shall be invoiced to Customer in the amount that a third party would charge for such expenses at the usual local rate, but less a profit share of 10%. An hourly rate of at least EUR 45.00 net per installer or fitter shall be applied as the basis for additional expenses when using installers and fitters.

(4) In the event of a voluntary postponement of delivery and/or installation dates within the

meaning of no. 2 (2) GTC due to hindrance or a voluntary postponement of delivery and/or installation dates, Customer shall be reimbursed, beginning at the set deadline,

- for 50% of the delivery or installation costs up to and including 11 working days before a bindingly agreed delivery or installation date,
- for 75% of the delivery or installation costs within 10 and up to and including 6 working days before a bindingly agreed delivery or installation date, and
- for 100% of the delivery or installation costs if there are less than 6 working days before a bindingly agreed delivery or installation date.

If an obstruction or a voluntary postponement of delivery and/or installation dates in the meaning of no. 2 (2) GTC occurs after the commencement of installation and if Customer is responsible for such, Herchenbach shall be entitled to compensation for the demonstrable damage incurred. A lump sum incurred according to sentence 1 shall be credited to this. This shall not affect any claims under no. 5 (10) GTC.

#### 11. Force majeure

(1) Herchenbach shall not be liable for events of force majeure or any other unavoidable circumstances in the meaning of no. 2 (2) GTC which make rendering of contractual performance considerably more difficult for Herchenbach or temporarily hinder or make proper execution of the Agreement impossible. This shall also apply if such events occur at a time when Herchenbach is in default. Force majeure shall be deemed to be all circumstances independent of the will and influence of the contracting Parties, such as natural disasters, pandemics, government measures, decisions by authorities, blockades, war and other labour unrest, strikes and other industrial action, seizure, embargo or other circumstances which are unforeseeable, serious and beyond the control of the contracting Parties and which occur after the conclusion of this Agreement.

(2) In cases of force majeure that lead to a delay in installation or dismantling, Customer shall bear the resulting additional expenses in full. Insofar as one of the contracting Parties is prevented from fulfilling its contractual obligations due to force majeure, this shall not be deemed to constitute a breach of the Agreement, and the deadlines specified in the Agreement or on the basis of the Agreement shall be extended commensurately with the period of the hindrance. The same shall apply if Herchenbach is dependent on advance performance by third parties and such payment is delayed because the third party is able to invoke an event of force majeure. Each contracting party shall do everything in its power that is necessary and reasonable to minimise the impact of force majeure. The contracting party

affected by force majeure shall notify the other contracting party immediately in writing of the beginning and end of the impediment.

## 12. Liability

(1) Herchenbach shall be liable for damages, irrespective of the legal grounds for such, in the event of wilful intent and gross negligence. In the event of simple negligence, Herchenbach shall only be liable

- for damages resulting from injury to life and limb or health and
- for damages resulting from the breach of an essential contractual obligation (an obligation whose fulfilment is essential for the proper execution of the Agreement and on whose compliance the contractual partner regularly relies and may rely). In such case, however, Herchenbach's liability shall be limited to compensation for foreseeable damage that typically occurs.

(2) Limitations of liability resulting from subsection 1 shall not apply if Herchenbach has fraudulently concealed a defect or has assumed a quality guarantee. The same shall apply to any claims of Customer under the German Product Liability Act (*Produkthaftungsgesetz*).

## 13. Warranty

(1) Statutory provisions shall apply to Customer's rights in the event of material defects and defects of title (including incorrect and short delivery as well as improper installation) unless specified otherwise in the Agreement and in these GTC.

(2) The quality of the hall owed shall be determined by the Agreement and its annexes. No additional features are owed. In particular, no specific suitability or a specific intended use is owed. Customer shall bear the risk of suitability and utilisation.

(3) Customer shall bear the ground risk. In particular, Herchenbach shall not be liable for damage to underground lines (e.g. electricity, gas or water), including any consequential damage caused, for example, by the installation of soil nails, which are usually up to 1.35 metres long. Customer shall indemnify Herchenbach against any and all claims by third parties.

(4) Customer's claims for defects presuppose that it has fulfilled its statutory inspection and complaint obligations. Section 377 German Commercial Code shall apply accordingly. If a defect becomes apparent during inspection or later, Herchenbach must be notified of such in writing without undue delay. Irrespective of this obligation to inspect and give notice of defects, Customer must notify Herchenbach in writing of obvious defects (including incorrect and short deliveries) within two

weeks of acceptance, whereby timely dispatch of such notification shall also be deemed to be sufficient to meet the deadline. If Customer fails to give proper notice of defects, Herchenbach shall not be liable for any defect that is not reported or that is not reported in time.

(5) If Herchenbach has any misgivings about the intended type of execution (including because of protection against the risk of accidents), about the quality of the materials or components supplied or provided by Customer (e.g. the floor slab or the ground) or about the services of other contractors, Herchenbach shall inform Customer of such. If a defect is due to the service description or to instructions of Customer, to the materials or components supplied or prescribed by Customer or to the quality of the preliminary work rendered by another contractor, Herchenbach shall not bear liability.

(6) If the delivered or installed components of the hall are defective, Herchenbach may initially choose whether subsequent fulfilment is to be provided by elimination of the defect (rectification of defects) or by delivering an item that is free of defect (replacement delivery). This shall not affect Herchenbach's right to refuse the chosen type of subsequent fulfilment under contractual or statutory conditions.

(7) Herchenbach is entitled to make the subsequent fulfilment owed contingent on Customer paying the price due. However, Customer shall be entitled to retain a reasonable part of the price in relation to the defect which will probably be necessary to remedy the defect; as a rule, twice the costs necessary to remedy the defect is deemed to be reasonable.

(8) Herchenbach shall bear expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs, if there is actually a defect. However, if a request by Customer to remedy a defect turns out to be unjustified, Herchenbach may demand Customer reimburse the costs resulting therefrom.

(9) Claims on the part of Customer for damages or reimbursement of expenses incurred in vain shall only apply in accordance with no. 14 GTC and are otherwise excluded.

## 14. Time-barring period

(1) The time bar for claims for defects arising from the Agreement is 1 year beginning with acceptance.

(2) The contracting Parties agree that the hall is a movable object irrespective of its qualification under public law.

(3) The above-stated time-barring periods shall also apply to contractual and non-contractual claims for damages by Customer which are based on a defect in the delivered or installed components of the hall. This shall not affect the limitation periods laid down in the German Product Liability Act (*Produkthaftungsgesetz*). Nor shall the limitation periods for claims based on an intentional or grossly negligent breach of duty or on injury to life and limb or health caused by a defect for which Herchenbach or Herchenbach's vicarious agents are responsible or based on fraudulent concealment of a defect by Herchenbach be affected.

## 15. Final provisions

(1) Should one or more of the foregoing Terms and Conditions be invalid, such shall not affect the remaining Terms and Conditions. In such a case, the contracting Parties shall be obligated to replace any ineffective Term and Condition with an effective one that comes closest to the economic purpose of the ineffective one.

(2) Solely German law shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) and conflict-of-law provisions laid down in German private international law.

(3) Insofar as the contracting Parties are merchants, legal entities under public law or special funds under public law (§ 38 German Code of Civil Procedure), the court with jurisdiction for the place of business of Herchenbach (Hennef an der Sieg) shall have exclusive jurisdiction for all disputes arising from or in connection with the concluded contract – including the validity of the contract itself.

(4) The contractual language is German. The German version shall be exclusively authoritative for the interpretation of the contractual provisions, even if translations into other languages are provided.