

I. GENERAL

§ 1 Scope of application

1. These General Terms and Conditions (GTC) apply to all business relationships of the company Herchenbach Industrial Buildings GmbH, Löhestraße 6, 53773 Hennef (hereinafter also referred to as: „Contractor“ or „Herchenbach“) with its Customers (hereinafter also referred to as „Customer“ or „Client“), in particular for contracts for the sale and/or delivery of movable goods (hereinafter also referred to as „goods“), irrespective of whether Herchenbach has manufactured the goods itself or purchased them from suppliers.
2. Unless otherwise agreed, the most recently agreed General Terms and Conditions of Herchenbach shall apply to future contracts between the parties, without their validity having to be agreed separately in each individual case.
3. The General Terms and Conditions of Herchenbach apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Customer shall only become part of the contract if and to the extent that Herchenbach has expressly agreed to their validity. This approval requirement shall apply in any case, for example, even if the Contractor carries out the delivery to the Client without reservation in the knowledge of the Client's general terms and conditions. The General Terms and Conditions of Herchenbach apply even if the order is placed by the Client based on the Client's business/purchasing conditions. This is substantiated by the explicit order confirmation/scheduling of the construction project based on the Herchenbach conditions.
4. The legal relations between Herchenbach and the Customer shall be governed (in this order) by
 - Individual written agreements made with the Customer in individual cases (including collateral agreements, supplements and amendments), provided that Herchenbach expressly confirms them;
 - the purchase contract concluded in writing;
 - these General Terms and Conditions.
5. The Contractor's employees are not authorised to make verbal subsidiary agreements or to give verbal assurances that go beyond the written contract.

§ 2 Conclusion of contract

1. Offers submitted by Herchenbach are subject to change and non-binding. This shall also apply if Herchenbach provides the Customer with catalogues, technical documentation (e.g. drawings, plans, calculations, calculations, references on DIN standards), other product descriptions or documents – also in electronic form – to which the Contractor reserves ownership and copyright.
2. Acceptance by Herchenbach shall be made in writing by sending an order confirmation to the Customer.
3. The Customer is responsible for obtaining official permits or similar. Their approval or cancellation shall not affect the contract.

§ 3 Delivery periods and delay in delivery

1. The delivery period is regulated in the contract; otherwise it is 6 months. The period does not begin until all necessary official approvals have been obtained.
2. If Herchenbach is unable to meet binding delivery dates (non-availability of performance) for reasons for which Herchenbach is not responsible (e.g. due to an inability to procure supplies), Herchenbach shall notify the Customer thereof without delay and at the same time inform the Customer of the expected new delivery period. If the service is also not available within the new delivery period, the Contractor is entitled to withdraw from the contract for the affected scope of services. Any consideration already paid by the Client will be refunded promptly. The Customer will not be entitled to exercise claims based on this delay in delivery.
3. In all other respects, the occurrence of default of delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder from the Customer is required.

§ 4 Planning process

1. Before placing the order, the Client is responsible for notifying the local building authority of the construction of the hall or for obtaining the country-specific approval for the construction of the hall. The following standards and building regulations apply in Germany, depending on the planned construction period:
 - Permanent erection with a standing time of more than 3 months according to DIN EN 1991: issued release from liability or building permit for permanent erection (see appendix to the offer). The statics shall be provided by the Contractor free of charge, unless otherwise stipulated in the contract.
 - Temporary construction with a service life of up to 3 months according to DIN EN 13782: notification of construction using an inspection journal. The inspection journal is available from the Contractor upon payment of a deposit.

Herchenbach assumes no liability for this information. It is the Customer's responsibility to obtain information from competent authorities (e.g. an architectural or engineering office or the competent building authority). The Contractor expressly points out that the individual state authorities may apply different procedures in the approval process. In particular, the approval of earth stakes must be clarified in advance.

2. Application for the temporary construction or the building permit is the responsibility of the Client. The risk of not obtaining a building permit is borne by the Client. If a building permit is not granted for the erection of this lightweight hall, the Client may withdraw from the contract, unless it has already approved the parts for production. Rejection by the building authority must be submitted in writing. If cancellation is made for another reason, the Client will be charged cancellation costs of EUR 1,500.00 as an administrative fee. An order is only triggered by the Client if it has submitted an approval of the order to the Contractor. All costs incurred (e.g. for parts ordered) shall be borne by the Customer from the time the order is placed.
3. Acceptance and approval fees, the costs of inspecting the statics, the fulfilment of additional requirements imposed by the building authorities, such as concrete foundations, fire protection, impact protection etc., are the responsibility of the Customer. Restoring the site to its original condition after any dismantling (e.g. closing of the earth stake holes; cut-off dowel bolts remain in the subsoil) are also the responsibility of the Customer.
4. The Client must clarify with the competent building authority whether the selected profile thickness and the resulting snow and wind loads on the hall allow permanent construction. Any conditions imposed are not included in the offer.

§ 5 Delivery, transfer of risk, acceptance, default of acceptance

1. If the parties to the contract have agreed on the delivery and transport of the goods or rental objects, delivery shall be ex warehouse, which is also the place of performance. Unless otherwise agreed, the Contractor is entitled to determine the type of shipment (in particular the transport company, route, packaging) at its own discretion. If Herchenbach has used its own means of transport or has accepted installation or assembly, the risk shall pass to the Customer as soon as the goods have been unloaded from the means of transport at the construction site.
2. If the Customer is in default of acceptance, fails to cooperate or if a delivery is delayed for other reasons for which the Customer is responsible, Herchenbach shall be entitled to demand compensation for the resulting damage and/or additional expenses (e.g. internal or external storage costs, internal or external personnel expenses). We may charge a flat-rate compensation of 0.5% of the price of the goods for each month or part thereof by which delivery is delayed at the request of the Customer or due to circumstances for which the Customer is responsible. Both contracting parties are at liberty to prove that the damages were higher or lower. This does not affect the due date for payment of the purchase price or rent.
3. After completion of the hall, an acceptance test is carried out on the construction site. The Customer shall appoint a person authorised to sign the acceptance protocol. If no representative of the Customer is present on site who is able or willing to sign the acceptance protocol, the acceptance of the hall shall be deemed to have been confirmed free of defects even without a signature. If the hall is used before acceptance, it shall be deemed to have been accepted without defects. Partial acceptances are possible by agreement, but require mutual consent.

§ 6 Assembly requirements

1. **Site manager:** The Client ensures that a responsible contact person is appointed on site. This must be done before the start of construction (unless otherwise agreed in the contract, assembly begins at 8:00 a.m. on the day of the agreed delivery). The exact location of the hall must be given unequivocally to the Contractor's technicians at the construction site and it must be ensured that no underground lines, e.g. electricity, gas, water etc. can be damaged in the construction site area (depending on the type of hall, up to at least 1.40 m below and halfway up the floor, as earth stakes up to a maximum length of 1.35 m are used).

If the Client does not comply with this obligation, it shall be liable for all damages, including possible consequential damages. In this respect, it indemnifies the Contractor, automatically and from this time, from claims exercised by third parties. The positioning of the hall must be checked in advance to ensure sensible integration into the Client's operative business as well as with regard to the necessary distances to existing buildings and property boundaries, as well as possible obstructions due to protruding foundations.

2. **Access:** The Client must ensure that the construction site is accessible and cleared. Access for heavy goods vehicles directly to the construction site must be guaranteed. The construction site must be cleared. In addition, an installation clearance of max. 11 m in one gable wall (depending on the hall ridge height) and at least 3 m on the remaining side walls are required. In addition, the construction site must be cleared of snow and ice. Additional expenditure for delays for which the Client is responsible will be invoiced in accordance with § 9b of these General Terms and Conditions.
3. **Lifting gear:** If difficult assembly conditions arise during assembly planning/coordination (e.g. due to machines that are present on the installation surface; unpaved installation surface, other obstacles), the lifting gear specifications must be adapted. Any additional costs that may result from this are to be borne by the Client. The assembly area as well as the hall area must be completely cleared and forklift accessible or suitable for working with a scissor lift. The paved area must be designed in such a way that a scissor lift can bypass the hall. Any additional assembly work, e.g. from necessary internal assembly, shall be borne by the Customer in accordance with the provisions of § 9b of these General Terms and Conditions.
4. **Substrate:** The installation costs are calculated on the assumption of a normally compacted substrate (approx. 50-60 cm, E-module 80-100 MN/sqm for layered compacted construction). If the building site substrate has hidden concrete foundations, mastic asphalt, rock or extremely high compaction (e.g. due to heavy load or rail traffic), the additional anchoring work is at the expense of the Client.

The required ground pressure must be at least 260 kN/sqm. Any necessary level-lining and soil sealing measures are carried out by the Customer. Gaps under fixed wall elements (trapezoidal sheet metal/insulation elements) due to floor gradient will be closed on site if necessary.

The pull-out forces must not be less than 2.6 kN, depending on the existing statics. In individual cases, the pull-out forces can be determined by the Contractor by means of tensile tests to be ordered separately by the Client before the start of construction.

If concrete is used as a substrate, the position of expansion joints or the selected grid and reinforcement (steel) must be agreed with the Contractor in advance in order to be able to determine the position of the hall.

Additional expenses will be charged to the Client in accordance with the provisions of § 9b of these GTC.

5. **Slope:** The terrain intended for the construction of the hall must be level or have a uniform slope of no more than 1.5%. In addition, the terrain must be forklift accessible, compacted and frost-proof. Steeper gradients must be levelled on site before the goods are transported. Alternatively, suitable compensatory measures must be explicitly agreed with the Contractor prior to hall construction. Impairments to the construction caused by steep inclines that do not restrict the function (e.g. inclination of the hall, occurrence of gaps) cannot be claimed as defects by the Client.
6. **Drainage:** Connections of rain gutters to the drainage system are made by the Customer. The duct connections must be adequately dimensioned. The Contractor shall not be liable for water damage due to backwater in undersized channels.

7. **Important notes on condensation water/wall base sealing:** In the area of the aluminium supports and steel anchor plates, damp spots can occur in the halls due to condensation and capillary water, which can drip from the tarpaulin welt grooves, among other things. Even with external waterproofing, e.g. with bitumen membranes, moisture can occur on the inside in the area of the column feet, which may require a circumferential waterproofing around the inner part of the anchor plate. If necessary, this is to be commissioned separately by the Client (so-called wall base sealing). The wall base sealing offered by Herchenbach is a barrier for running off impact water from wall surfaces that is applied to surfaces subsequently. For design reasons, the sealing is always carried out on the inside of the hall wall. In the area of rolling, sliding gates and doors, the wall base sealing is interrupted. On sloping terrain in the direction of the hall, tightness cannot be guaranteed even against impact and surface water. After dismantling this water-proofing, residues may remain on the substrate.
8. **Construction site security:** The construction site must be secured by suitable construction site facilities and, if necessary, a security service, so that intrusion by third parties is not possible. If materials demonstrably delivered by the Contractor are lost on the construction site, the Contractor reserves the right to charge the costs for new procurement and new delivery to the Client.
9. **Disposal:** The disposal of residual and packaging material (e.g. plastic and wood residues) as well as material or waste material resulting from the assembly is carried out by the Customer on site.
10. **Assembly sequence:** The installation costs include a one-off safety briefing of max. 30 minutes or similar at the installation site. In addition, it is assumed that the Client has obtained all work permits specific to the installation site prior to the start of assembly. Delays due to longer briefings, lack of special permits etc. will be charged to the Client separately.

The Customer shall agree a binding installation date with the Contractor. If this date is postponed through the fault of the Client, the Contractor shall be reimbursed the following costs:

- In the case of date adjustments from order confirmation (=scheduling of the assembly date by the Contractor) up to and including 11 working days before the assembly date, 50% of the assembly costs are incurred, but no more than the first 5 assembly days.
- In the case of schedule adjustments within 10 to 6 working days before the installation date, 75% of the installation costs are incurred, but no more than the first 5 assembly days.
- In the case of schedule adjustments from 5 to 1 working day before the assembly date, 100% of the assembly costs are incurred, but no more than the first 5 assembly days.
- In the case of schedule adjustments after the 11th working day before the execution of service appointments, pre-assembly inspections and disassembly, 100% of the assembly costs are incurred.

11. **Force majeure:** The Contractor shall not be liable for events of force majeure which make it considerably more difficult for the Contractor to perform the contract or which temporarily impede or render impossible the proper execution of the contract. Force majeure shall be deemed to be all circumstances independent of the will and influence of the parties to the contract, such as natural disasters, government measures, decisions by authorities, blockades, war and other labour disturbances, confiscation, embargo or other circumstances which are unforeseeable, serious and are not the fault of the parties to the contract and which occur after the conclusion of this contract. In this context especially, strong winds are also considered force majeure for assembly or disassembly, as these can considerably delay or even prevent assembly or disassembly. For the definition of strong winds, the on-site assessment of the Contractor or a third party appointed by the Contractor (e.g. foreman) shall apply.

In cases of force majeure (in particular the occurrence of strong winds), which lead to a delay in assembly or disassembly, the Customer shall bear the additional costs incurred in full. If one of the contracting parties is prevented by force majeure from fulfilling its contractual obligations, this shall not be deemed a breach of contract and the deadlines set out in or pursuant to the contract shall be reasonably extended in accordance with the duration of the impediment. The same shall apply, insofar as the Customer is dependent on the advance performance of third parties and this is delayed.

Each party to the contract will do everything in its power to undertake all that is necessary and reasonable to reduce the extent of the consequences caused by the force majeure. The contractual party affected by the force majeure shall notify the other contractual party of the beginning and end of the hindrance without delay, either verbally or in writing

§ 7 Prices and general terms of payment

1. Unless otherwise specified in individual cases, the prices of Herchenbach applicable at the time of conclusion of the contract shall be the current prices of Herchenbach, ex warehouse, plus the statutory value added tax.
2. The Customer shall bear the costs for the delivery and transport of the goods or the rented items ex warehouse.
3. Any customs duties, fees, taxes and other public charges (in particular any property taxes) shall be borne by the Customer. If the rental property is used by the Client's responsible tax office for the assessment of property tax for buildings on third-party land, the Client shall bear the taxes, and this for the entire period of use.
4. The Customer is only entitled to set-off and retention rights to the extent that its claim is legally established or undisputed. In case of defects in the delivery, § 12 (6) remains unaffected.
5. Unless otherwise agreed, the Client is obliged to pay 100% in advance. Any deviating regulations are to be expressly included in the offer.

If the Contractor becomes aware of circumstances which give rise to justified doubts as to the creditworthiness of the Client (e.g. unpaid claims of the Client against the Client despite reminder, insolvency petition concerning the Client's assets, negative information), the Contractor may – notwithstanding other contractual provisions – also subsequently demand appropriate security, e.g. by means of advances, collateral and/or immediate payment according to construction progress, as a means of avoiding advance payments.

Alternatively, and/or in case of non-fulfilment of justified subsequent security measures imposed by the Contractor, the Contractor is entitled to refuse performance and – if necessary, after setting a deadline – to withdraw from the contract in accordance with the statutory provisions. In the case of contracts for the manufacture of goods that are otherwise unsaleable (custom-made products), Herchenbach may declare its withdrawal from the contract immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

In the event of the Customer's inability to pay, Herchenbach shall be entitled to take back immediately the goods or rented items owned by Herchenbach. The Customer authorises Herchenbach expressly to take back the goods after written notification. The Client is obliged to allow the Contractor access to goods or rental objects owned by the Contractor and to remove them upon first notification. Therefore, the Customer shall allow Herchenbach or an authorised representative to enter the property or the building in order to collect the goods or rented items.

§ 8 Liability

1. The Contractor is liable for damages – regardless of the legal basis – in case of intent and gross negligence. In case of simple negligence, the Contractor shall only be liable
 - a) for damages resulting from injury to life, limb or health,
 - b) for damages resulting from the breach of an essential contractual obligation (obligation whose fulfilment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely). In this case, however, the liability of the Contractor is limited to the compensation of the foreseeable, typically occurring damage.
2. The limitations of liability resulting from paragraph 1 shall not apply if the Contractor has fraudulently concealed a defect or has assumed a guarantee for the quality of the rented items. The same applies to claims of the Customer under the Product Liability Act.
3. Due to a breach of duty which does not consist of a defect, the Customer may only withdraw or terminate the contract if Herchenbach is responsible for the breach of duty. A free right of termination by the Customer (especially according to §§ 651, 649 German Civil Code) is excluded. In all other respects, the legal requirements and legal consequences shall apply.

§ 9 Use of the hall

1. In the event of a storm, the hall (especially doors, windows and gates) must be kept closed and any parts that come loose must be reattached.
2. In case of heavy snowfall, the hall roof must be cleared of snow.
3. Signs with the Herchenbach logo are attached to the gable wall of the hall. The Client declares upon conclusion of the contract that it will tolerate the presence of these signs on a permanent basis.

§ 9a Withdrawal by Customers

If the Customer is entitled to a statutory or contractual right of withdrawal or if the Contractor nevertheless agrees to such a right, the regulations according to § 649 p. 2 and 3 German Civil Code shall apply accordingly. It says there:

„§ 649 Right of termination by the Customer

The Customer may terminate the contract at any time until the work is completed. If the Customer terminates the contract, the Contractor shall be entitled to demand the agreed remuneration; however, the Contractor shall be entitled to offset any expenses saved as a result of the termination of the contract or which it acquires or maliciously omits to acquire through other use of its labour. It is assumed that the Contractor is then entitled to 5 percent of the agreed remuneration for the part of the work not yet performed.“

§ 9b Additional expenditure

Herchenbach will invoice the Customer in full for additional expenditure due to circumstances for which the Client is responsible (e.g. according to § 6 clauses 2-4 of these General Terms and Conditions). Insofar as Herchenbach covers such additional expenses by taking internal action (e.g. storage and/or interim storage of material, work performed by its own employees), these expenses shall be charged to the Customer in the amount that a third party would charge such expenses in accordance with local practice, but less a profit share of 10%. However, an hourly rate of at least €45.00 net is to be taken as a basis for additional expenditure incurred for technicians.

§ 10 Additional terms of payment/subsequent collateral

The Client is obliged to make 100% advance payment. Any deviating regulations are to be expressly stated in the offer. If the Contractor becomes aware of circumstances which give rise to justified doubts about the creditworthiness of the Client, the Contractor may also subsequently demand appropriate advances or securities as a means of avoiding advance payments.

§ 11 Retention of title

1. Herchenbach reserves title to the goods sold until all present and future claims arising from the purchase contract and an ongoing business relationship (secured claims) have been paid in full. In particular, the use of the goods must be agreed with the Contractor in individual cases before full payment is made. If the goods are used without agreement before full payment has been made, the service provided by the Contractor is deemed to have been accepted.
2. The goods subject to retention of title may not be pledged to third parties or transferred by way of security before full payment of the secured claims has been made. The Customer shall immediately inform Herchenbach in writing if and to the extent that third parties seize the goods belonging to Herchenbach.
3. In the event of conduct on the part of the Customer in breach of contract, in particular in the event of non-payment of the due claims, the Contractor shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the retention of title. The demand for return does not constitute a declaration of withdrawal; instead, the Contractor is entitled to demand only the goods and to reserve the right to withdraw from the contract.

If the Customer does not pay the due purchase price, the Contractor may only assert these rights if the Contractor has previously set the Customer a reasonable deadline for payment without success or if such a deadline is dispensable according to the statutory provisions.

§ 12 Liability and claims for defects

1. For the rights of the Customer in case of material defects and defects of title (including wrong and short delivery as well as improper assembly) the legal regulations apply, unless otherwise specified in the following.
2. The basis of Herchenbach's liability for defects is, above all, the agreement made on the quality of the goods. All product descriptions that are the subject of the individual contract are considered to be an agreement on the quality of the goods. It makes no difference whether the product description comes from the Customer, the manufacturer or Herchenbach. Herchenbach reserves the right to minor, customary or technical deviations in quality, dimensions, colour (e.g. of the ISO panels of different batches), weight, traces of assembly (e.g. superficial scratches), traces of the test assembly of the hall (drill holes), or deviations due to design changes, provided that the usability of the goods is not restricted.
3. The Customer's claims for defects, if it is a registered business within the meaning of § 14 German Civil Code, presuppose that it has complied with the statutory obligations to inspect and give notice of defects. If a defect becomes apparent during the inspection or later, Herchenbach must be notified of this promptly and in writing. The notification shall be deemed prompt if it is made within two weeks, whereby the timely dispatch of the notification shall be sufficient to comply with the deadline. Irrespective of this obligation to inspect and give notice of defects, the Customer must inform us in writing of obvious defects (including incorrect and short delivery) within two weeks of delivery, whereby the timely dispatch of the notification shall be sufficient to comply with the deadline in this case as well. If the Customer fails to properly inspect the goods and/or report defects, Herchenbach shall not be liable for the unreported defect.
4. If the delivered item is defective, the Contractor may initially choose whether subsequent performance is to be rendered by eliminating the defect (rectification of defects) or by delivering a defect-free item (replacement delivery). The right of the Contractor to refuse the chosen type of supplementary performance under the legal requirements remains unaffected.
5. The Contractor is entitled to make the subsequent performance owed dependent on payment by the Client of the purchase price as due. The Client is, however, entitled to retain a part of the purchase price which is reasonable in relation to the defect and which is expected to be necessary to remedy the defect.
6. Herchenbach shall bear the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs, if a defect is actually present. If, however, the Customer's request for the removal of defects turns out to be unjustified, Herchenbach may demand reimbursement of the costs incurred due to the actions of the Customer.
7. The Customer bears the risk of the building ground.
8. Claims of the Customer for damages or compensation for futile expenditure shall only exist in accordance with § 8 and shall be excluded in all other respects.

§ 13 Limitation period

1. The claims for defects arising from the purchase contract expire for Customers that are registered businesses (§ 14 German Civil Code) within 1 year from purchase. In all other respects, the statutory warranty period shall remain in force. If acceptance has been agreed, the limitation period shall commence upon acceptance. If an acceptance does not take place for reasons for which the Customer is responsible, the limitation period begins with the request for acceptance. In all other cases it will begin with the start of use.
2. The parties to the contract agree that the goods are movable objects, irrespective of their qualification under public law.
3. The aforementioned limitation periods under the laws of sale also apply to contractual and non-contractual claims for damages by the Customer which are based on a defect in the goods. The limitation periods of the Product Liability Act remain unaffected in any case.

Otherwise, the statutory limitation periods shall apply exclusively to the Customer's claims for damages pursuant to § 12.

II. FINAL PROVISIONS

§ 14 Invalidity

Should one or more of the above conditions be invalid, the remaining conditions shall remain unaffected. In such a case, the parties to the contract are obliged to replace an invalid provision with a valid provision that comes closest to the economic purpose of the invalid provision.

§ 15 Choice of law

The contractual relations between Herchenbach and the Customer shall be governed by the law of the Federal Republic of Germany.

§ 16 Place of jurisdiction

The place of jurisdiction for disputes with Customers who are not consumers, legal persons under public law or special funds under public law is the registered office of the Contractor. This shall also apply to all other Customers for disputes arising out of or in connection with the order if the Customer moves its place of residence or habitual place of abode to a country other than the Federal Republic of Germany after conclusion of the contract, or if the Customer's place of residence or habitual place of abode is unknown in the event of legal action being taken.