

## 1. Validity

- 1.1. These General Terms and Conditions are a contract component of all purchase, work supply and work contracts of PohlCon with enterprises, persons who act at the time of the conclusion of the contract in exercise of their commercial or independent professional activity (entrepreneur), legal entities of the public right or a public-legal special property (in the following contracting party). This is also valid for all future business of the mentioned kind and also if no explicit inclusion is agreed in a future business.
- 1.2. Any general terms and conditions of the contract partner or third parties do not become part of the contract, unless PohlCon has not expressly agreed to them in writing in individual cases.
- 1.3. Deviations from these general terms and conditions are only effective if they are agreed upon in writing with the contract partner in an individual contract. This applies in particular to an agreement that cancels the written form requirement.

## 2. Offers and Documents

- 2.1. Offers, catalogue details or transmitted plans, illustrations, cost estimates or samples of the PohlCon are not binding. It is only once a job is confirmed by PohlCon that a contract comes into effect.
- 2.2. Verbal promises of the PohlCon before conclusion of the contract are non-binding. Oral agreements are replaced by the written contract, unless it is not expressly evident from them that they continue to apply bindingly.
- 2.3. Guaranteed qualities are only those which are expressly designated as such in the order confirmation or in the specifications. In all other respects, illustrations, drawings, weights or dimensions are approximate. Unless expressly designated as binding, any deviations as are customary in the trade are permissible. We reserve the right to make changes.
- 2.4. At cost estimates, drawings, samples and other documents PohlCon reserves itself property rights and copyrights. They may not be made accessible to third parties without explicit approval. This is valid in particular also for plannings or calculations provided by PohlCon. These are intended exclusively for the use with PohlCon products.

## 3. Prices

- 3.1. Quoted prices for materials are net prices ex distribution warehouse, including standard packaging and loading, but plus separate packaging to be borne by the contractual partner (e.g. overseas or separate transport security at the customer's request), transport insurance, taxes, duties, fees, customs duties, permits and other costs caused by the delivery and unloading of the goods. PohlCon delivers orders with a net order value in excess of EUR 2,500 carriage paid to addresses in Germany. Deliveries to addresses located outside of Germany are subject to consultation/agreement.
- 3.2. In the absence of a special agreement, the list prices valid at the time of conclusion of the contract are considered to be agreed.
- 3.3. In the absence of any express agreements to the contrary, PohlCon reserves the right to make reasonable price adjustments in line with any changes in the costs of wages, materials and distribution for goods that are delivered later than 4 months after the contract was concluded at the request/initiation of the customer.
- 3.4. Orders under EUR 150 are calculated with EUR 25 minimum quantity surcharge plus shipping costs.

- 3.5. Prices which are not settled with the prices and are to be paid according to time spent are for orders including assembly:
- ordered additional work;
  - additional installation work due to deviation of the actual conditions on the construction site from the basis of the offer;
  - transport of materials on the construction site over 100 m distance between storage place or unloading point and place of use;
  - Material transport to other heights such as floors, platforms, etc. without freight elevator or crane for use free of charge and at any time;
  - Dismantling and reassembly of already properly assembled material;
  - alteration of the catalogue material during assembly;
  - additional expenditure due to subsequent assembly work with change of workplace in a construction phase in which the work has already been completed;
  - Exposure of slots on existing hollow rails;
  - waiting times caused by the customer and not caused by PohlCon;
  - Participation in construction meetings and preparation of material extracts, because no binding assembly drawings are available at the start of assembly or the route is determined in meetings;
  - Departure and return journey of the fitters and reinstallation of the construction site in the event of an interruption in assembly caused by the customer.

## 4. Dates

- 4.1. Fixed delivery periods and delivery dates require express written agreement. In the doubt the date of the order confirmation of PohlCon is decisive for the beginning of a delivery period.
- 4.2. Agreed delivery dates only apply if all necessary details of the order are clarified in good time and all obligations of the contract partner are fulfilled in good time (e.g. provision of necessary official certificates or payment of a deposit). Any delays in delivery for which PohlCon is responsible are not taken into account.
- 4.3. As a day of the delivery is valid the day on which the product leaves the distribution warehouse of the PohlCon.
- 4.4. PohlCon is entitled to carry out partial deliveries and to invoice these.
- 4.5. Provided that PohlCon cannot keep appointments for reasons which she does not have to represent (e.g., operational, traffic or dispatch disturbances, war, acts of terrorism, fire damages, unforeseeable lack of workers, energy, raw materials or auxiliary material, strikes, lockouts, orders of authorities), or other force majeure events, the term extends by the duration of the impediment and by an adequate approach time. As a case of the non-availability of the achievement in this sense also the not timely self-supply by a supplier is valid if a congruent covering transaction was concluded and neither PohlCon nor her suppliers are to blame. PohlCon will inform the contracting partner about this immediately and inform at the same time the prospective new date.
- 4.6. A withdrawal because of the non-observance of dates extends in principle only to the not yet fulfilled part of the contract, as far as the already performed services are usable.
- 4.7. If the execution extends or is postponed for reasons which PohlCon does not have to represent and which do not originate from its achievement area, it has claim to substitute of the additional costs caused thereby.

## 5. Transfer of Risk/Return of Materials

- 5.1. Place of fulfillment for delivery performances is the delivery warehouse of the PohlCon. In the case of the collection by the contracting partner with the provision, in the case of the dispatch with handing over to the forwarding agent or carrier, at the latest however with leaving the warehouse, the danger turns into on the contracting partner. If the dispatch is delayed for reasons which PohlCon does not have to represent, the danger goes over with announcement of the dispatch readiness on the contracting partner.
- 5.2. Storage costs after passing of risk are borne by the contract partner. With storage by PohlCon the storage costs amount to 0.25% of the invoice amount of the delivery objects to be stored per elapsed week. The assertion and proof of further or lower storage costs are reserved.
- 5.3. PohlCon is not required to accept the return of materials that are not required. Current standard catalogue goods may be taken back in resalable, faultless condition after prior consultation and notification within three months of delivery in the case of carriage paid delivery ex works or branch. The purchase price will be refunded once the goods have been examined, with the deduction of a flat rate fee to cover administrative and distribution costs amounting to 25% of the net purchase price, which must exceed EUR 25 in any case. Any costs required for repairing or repackaging the goods shall be deducted additionally on a cost basis. Return deliveries of custom design materials and opened packaging units are not accepted.

## 6. Payment

- 6.1. Subject to individual agreement, the following payments are due for deliveries:
  - one third upon conclusion of the contract,
  - one third when ready for dispatch,
  - one third on delivery.
- 6.2. The payment of the respective invoice amount has to occur 14 days after receipt of invoice to PohlCon. Decisive for the timeliness of a payment is the receipt of payment at PohlCon.
- 6.3. The contract partner agrees to a transmission of the invoice in electronic form (by e-mail).
- 6.4. The contract partner must check all invoices immediately for their correctness and completeness. Objections against an invoice must be raised in writing within the payment period. Otherwise, formal objections to the invoice by the contractual partner are excluded after this period.
- 6.5. If VAT is payable, payments must be made plus the statutory VAT applicable at the time of delivery.
- 6.6. In case of non-observance of payment periods, PohlCon is entitled to demand immediate cash payment for all deliveries. The same applies in the case of circumstances which question the creditworthiness of the contractual partner.
- 6.7. If the contractual partner decides to pay by SEPA company direct debit, he must provide PohlCon with the current SEPA forms filled out and signed. The collection takes place on the date stated for this on the invoice. This notification of the date on the invoice is sufficient as notification of the planned debit (prenotification). The Contractual Partner is obliged to ensure that there are sufficient funds in the designated account.
- 6.8. Offsetting against counterclaims is only permitted in the case of undisputed or legally established counterclaims.

## 7. Retention of Title

- 7.1. PohlCon shall retain the title to the delivered goods until such time as all of the claims it is entitled to from the business relationship, irrespective of the legal basis therefor, have been settled in full.
- 7.2. The contracting partner is entitled to the processing or connection of the products of PohlCon with other products within the scope of his proper business concern. In the objects originating from processing or connection PohlCon acquires co-ownership to the protection of her remuneration claims according to the value relation which the contracting partner transfers already now to PohlCon.
- 7.3. The contracting partner is entitled to the resale in the proper business concern against cash payment or under retention of title. The contract partner already now assigns to PohlCon all claims with subsidiary rights to which he is entitled from the resale. If products belonging to PohlCon are resold together with other goods, the purchase price claim in the amount of the price of the products of PohlCon is assigned. The assigned receivables serve to secure all claims from the business relationship. The contract partner is entitled to collect the assigned claims.
- 7.4. At PohlCon's request, the contract partner must immediately inform PohlCon in writing to whom he has sold the goods that are in PohlCon's ownership or co-ownership and which claims he is entitled to from the resale, and also issue PohlCon with publicly certified documents on the assignment of the claims at his own expense. The contracting partner has to inform PohlCon immediately about distraints or other legal impairments of the objects or demands belonging to PohlCon completely or partly.
- 7.5. PohlCon is entitled to revoke the rights from this section in case of default of payment or any other culpable violation of the contract duties of the contractual partner and to demand the surrender of the goods that are in PohlCon's reservation of title or co-ownership.
- 7.6. If the value of the securities existing for PohlCon exceeds their claims in total by more than 10%, PohlCon will release securities of its choice to this extent at the contract partner's request.
- 7.7. If the retention of title is not effective according to the law in whose area the goods are located, a security corresponding to the retention of title in this area is considered as agreed. If the cooperation of the contractual partner is necessary for the creation of such rights, the contractual partner shall take all measures necessary to create and maintain such rights.

## 8. Complaints/Claims for Defects/Liability

- 8.1. If PohlCon does not take over also the assembly, the contracting partner has to examine the product immediately after their reception for their contract conformity, in particular sorts, quantity and weight divergences as well as recognizable material defects. Recognizable defects must be indicated to PohlCon immediately after discovery in writing under immediate cessation of any processing. If this does not happen, the product is valid as approved.
- 8.2. In the case of a defective performance PohlCon carries out guarantee with priority by the fact that she eliminates the lack after her choice or delivers a faultless thing (subsequent performance). The contracting partner can only refer to a failure of the subsequent performance if two subsequent performance attempts have also failed or if a reasonable period has elapsed since the notice of defect without subsequent performance attempt. In case of doubt, a period of time which corresponds to the contractual period of performance is reasonable.
- 8.3. Rejected goods are to be handed over for inspection purposes. The expenses necessary for the purpose of the examination bear PohlCon in case of the defectiveness. PohlCon can require the

costs arisen from an unjustified defect removal demand replaced. This does not apply if the lack of justification for a notice of defect was not recognizable for the contracting partner.

- 8.4. In the event of a defective item being delivered, the contract partner's claims for reimbursement of the necessary expenses for the removal of the defective and the installation or attachment of the repaired or delivered defect-free item (reimbursement of expenses) are excluded if the contract partner was aware of the defect when the defective item was installed or attached. If a lack has remained unknown to the contracting partner due to coarse negligence, he can assert rights because of this lack only if PohlCon has concealed the lack maliciously or has taken over a guarantee for the state of the thing.
- 8.5. If the achievement is not intended for a building, the limitation period for contractual warranty claims amounts to one year. The same applies to claims for reimbursement of expenses of the contractual partner according to § 445 a BGB (German Civil Code), as far as the last contract in the supply chain is not a purchase of consumer goods.

## 9. Liability for Damages

- 9.1. The liability of the PohlCon on compensation is, as far as it depends on a fault, according to regulation of this Section (9), limited.
- 9.2. PohlCon does not stick in case of simple carelessness of her organs, legal representatives, employees or other fulfilment assistants, as far as it does not concern a violation of contract-essential duties. Essential to the contract are the obligation to the timely performance, their freedom from defects, which impair their functionality or usability more than only insignificantly, as well as consultation, protection and care duties, which are supposed to make the contractual use of the performance possible for the contracting partner or which aim at the protection of body or life of personnel or the protection of the property of the contracting partner from considerable damages.
- 9.3. As far as PohlCon gives technical information or becomes active in an advisory capacity and this information or advice does not belong to the contractually agreed scope of performance owed by it, this happens free of charge and under exclusion of any liability.
- 9.4. As far as PohlCon is liable on the reason for compensation, this liability is limited to damages which PohlCon has foreseen at the time of contract conclusion as a possible consequence of a breach of contract or should have foreseen at application of customary care. Indirect damages and consequential damages, which are a consequence of defects of the performance, are furthermore only replaceable, as far as such damages are typically to be expected when using the performance as intended.
- 9.5. In case of a liability for simple negligence the obligation to indemnify of PohlCon for material damages and from this resulting further financial losses is limited to an amount of EUR 10,000,000 per case of damage. This is also valid if it concerns a violation of contract-essential duties.
- 9.6. The above exclusions and limitations of liability apply to the same extent in favor of the organs, legal representatives, employees and other vicarious agents of PohlCon.
- 9.7. These liability exclusions and limitations do not apply to the liability because of intentional and grossly negligent behavior, for guaranteed characteristics, because of injury to life, body or health or according to the product liability law and for data protection-legal claim bases.

## 10. Additional Conditions for Assembly Work

### 10.1. Services of the contracting party

By placing the order, the contractual partner assures the following services free of charge for PohlCon:

- provision of a German-speaking site management authorised for instructions (including hourly wage work, supplements and technical specifications) and measurements on site;
- coordination with other trades;
- plans and drawings in accordance with § 3 VOB/B in editable data format;
- adequate lighting in corridors and work rooms;
- dry work rooms, temperature inside at least 12 °C;
- site power for site lighting and power tools, power connections 380/220 V at a maximum distance of 50 m from the respective workplace;
- accident-proof fixed equipment or suitable lifting platforms for installation at a height of over 4.00 m above the installation level (floor level at which work is performed);
- unrestricted freedom of assembly, i.e. the respective assembly level below the individual assembly points is free of all materials and can be accessed with a mobile scaffold;
- completion of all preliminary work on site and in particular all masonry and caulking work;
- ensuring continuous assembly without interruptions in normal working hours;
- lockable, illuminated room for storing tools and small materials;
- sufficient space for team and, if necessary, office containers;
- adequate changing facilities, washing water and sanitary facilities;
- protection of the services carried out by the contractor, insofar as these are made accessible to third parties before acceptance;
- any necessary construction cleaning.

### 10.2. Acceptance and measurement

The contracting partner has to measure assembly works together with PohlCon and to accept - if necessary by way of partial acceptance before these are covered by following performances or taken in use by following trades. Otherwise, the acceptance of this service is considered to be carried out after the expiry of six working days after the beginning of the use or the concealment.

Self-contained construction sections, levels or assembly sections must also be measured and accepted together after completion. If on the part of the contracting partner no representative should be present for the production of the measurement despite date arrangement or assembly performances of the PohlCon are covered up, without the contracting partner having informed about this and having given opportunity for the production of a common measurement, PohlCon is entitled to account for after a measurement produced by her. PohlCon is entitled in this case with performances concealed by subsequent works to account for the quantities also according to plan documents with a security surcharge of 10%. The contracting partner reserves the right to prove smaller quantities.

The costs for a repeated journey requested by the contract partner for checking the measurement or the acceptance are to be borne by the contract partner.

### 10.3. Interruptions of construction work/insufficient clearance for construction

PohlCon is entitled in the case of interruption of construction lasting longer than 72 hours for which it is not responsible to demand partial acceptance and partial remuneration (material

costs without assembly costs) or the surrender of a lockable storage room for material already delivered at its choice. Otherwise PohlCon may transport the material back again at the expense of the contracting partner and (after end of the interruption) let deliver again. This is also valid if material delivered on time cannot be installed because of lack of advance performances on the part of the customer.

#### 10.4. Subcontractors

PohlCon shall be entitled to perform services through the use of qualified subcontractors.

## 11. Data Protection

PohlCon processes personal data according to the respectively valid data protection regulations. Detailed explanations for the processing of personal data by PohlCon are contained in the separate information on data processing. The contracting parties commit themselves to the protection of confidentiality. They commit themselves to process personal data, which become known to them in the context of the contract processing, only in a lawful and data protection compliant way. Furthermore, the contracting parties undertake to employ only such employees who are obliged to observe confidentiality and have been instructed accordingly.

## 12. Return of Packaging, Section 15 (1) of the German Packaging Act (VerpackG)

Pursuant to section 15 (1), sentence 1 of the Packaging Act, PohlCon is required to accept returns of certain packaging, which is not covered by the system participation obligation, from the contracting party. This obligation to accept returns is limited to used, emptied packaging of the same type, shape and size as those put into circulation by PohlCon. The quantity of packaging material that will be accepted as returns is limited to the extent of the packaging material provided. Where the contracting party is a consumer, this obligation to accept returns shall further be limited to the packaging of goods directly sourced from the PohlCon product range. The contracting party and PohlCon agree that the location for returning packaging materials shall be the respective PohlCon delivery warehouse. Transport and disposal costs shall be borne by the contracting party. As far as invoicing and payment modalities are concerned, sections 6.2 to 6.5, 6.7 and 6.8 of these terms and conditions shall apply accordingly.

## 13. Compliance

- 13.1. The parties agree to uphold all laws, provisions and official acts, including but not limited to regulations on the environment, labour, occupational health and safety, applicable in relation to the contract.
- 13.2. The parties agree to observe all sanction and export control regulations applicable in relation to the contract, in particular sanctions enforced by the EU, the United States and the UN.
- 13.3. The parties agree not to undertake any actions considered illegal in their respective jurisdiction or actions that could be considered acts of bribery or corruption.
- 13.4. Any violations against this compliance clause constitute grounds to terminate the contract without notice. The parties shall be held liable for all damage incurred as a result of the corresponding violation. This clause is reviewed on a regular basis and revised to account for new legal requirements and operational necessity.

## 14. Place of Jurisdiction/Choice of Law

The legal venue for all possible disputes from the business relation between the parties is the seat of the PohlCon in Berlin. However, PohlCon is entitled to sue at the seat of the contracting party or the delivery address/place of the building project. German law applies exclusively under exclusion of the UN-purchase right.

## 15. Miscellaneous

If the contract or these General Terms and Conditions contain any gaps, such legally effective provisions shall be deemed as agreed, that would have been agreed on by the Contracting Parties with regard to the commercial objectives of the contract and the purpose of these General Terms and Conditions, had they been aware of the gap. In the event of any discrepancies between the English and German versions, the German version of these terms and conditions shall be authoritative.