

General Purchasing Terms and Conditions

Status as of
2019-02-13



1. Application

- 1.1. Unless expressly agreed otherwise in writing, all orders of goods or services placed by Herrenknecht AG and its subsidiaries ("Herrenknecht") with their suppliers are subject exclusively to the following General Terms and Conditions of Purchase ("Terms and Conditions of Purchase"). Any deviating, contradictory or supplementary general terms and conditions of the supplier shall only become part of the contract insofar as Herrenknecht expressly consents to their validity in writing. This also applies even if Herrenknecht accepts the supplier's deliveries unconditionally having knowledge of his general terms and conditions.
- 1.2. The terms and conditions of purchase apply in their respective versions as a framework agreement for future orders with the supplier, even without reference to them. The latest version of the terms and conditions of purchase can be found at www.herrenknecht.com/en/general-terms-and-conditions-of-purchasing/.
- 1.3. Any references to the applicability of statutory provisions are for the purpose of clarification only. Even without such clarification, the statutory provisions shall therefore apply insofar as they are not directly modified or expressly excluded in these terms and conditions of purchase.

2. Conclusion of contract

- 2.1. Orders, amendments and other legally relevant declarations are only binding if they are made in writing. Written form is also maintained when the declarations are submitted by fax, email or in agreed electronic data exchange. Written orders do not require a signature to be valid.
- 2.2. All correspondence must be conducted with the purchasing department. Agreements with other departments that modify the provisions of the terms and conditions of purchase require express written confirmation by the purchasing department.
- 2.3. The supplier shall confirm acceptance of the order to Herrenknecht or notify Herrenknecht of any errors (e.g. typographical or calculation errors) or incompleteness within 5 days. Herrenknecht will then correct the order and return it to the supplier for confirmation.
- 2.4. Herrenknecht's silence on offers, requests or other declarations by the supplier shall only be deemed to be consent if this has been expressly agreed in writing.

3. Delivery, transfer of risk, delivery period and delayed delivery

- 3.1. Unless otherwise stipulated in the respective purchase order, the supplier shall deliver DAP destination (Incoterms 2010), including proper packaging.
- 3.2. All wood used (crates, pallets, dunnage, etc.) must be treated according to the IPPC standard and labeled accordingly.
- 3.3. For ex works consignments larger than 30 kg, Herrenknecht's freight forwarder (EM-Logistik GmbH, ph.: +49 (0)7824 / 302-6480, fax +49 (0)7824 / 649-2990) shall be informed of readiness for collection.
- 3.4. The risk of accidental loss and accidental deterioration of the goods shall be transferred to Herrenknecht upon handover at the place of performance. If acceptance has been agreed, this shall be decisive for the transfer of risk.
- 3.5. The delivery period stated in the order is binding. The supplier shall notify Herrenknecht immediately in writing with reasons and the anticipated delay if it is foreseeable that the agreed delivery deadline can not be met. Partial deliveries or deliveries before the agreed delivery date may only be made with the prior written consent of Herrenknecht.
- 3.6. Should the supplier fail to perform or to meet the agreed delivery time or fall into default, then the rights of Herrenknecht – in particular the right of withdrawal and to compensation – shall be determined in accordance with the statutory provisions.
- 3.7. Acceptance of the delayed delivery does not constitute a waiver of claims for damages.

4. Transfer of ownership

With delivery of the goods, ownership shall be transferred to Herrenknecht unconditionally and irrespective of payment of the purchase price. At the latest, however, Herrenknecht shall acquire unencumbered ownership of the goods upon full payment of the purchase price. Any form of retention of title shall cease to exist with the transfer of ownership.

5. Documentation

- 5.1. The supplier shall immediately provide proof-of-origin certificates (e.g. supplier declarations, movement certificates in accordance with the preferential rules of origin) requested by Herrenknecht, duly completed with all required information.
- 5.2. Upon delivery, instruction manuals and spare parts lists requested by Herrenknecht shall be sent by electronic means to artikeldokumentation@herrenknecht.de.
- 5.3. Requested documentation is considered an essential component of the order. Where the requisite documentation is not made available, the order will not be regarded as delivered in full.

6. Prices, terms of payment and offsetting

- 6.1. The price stated in the purchase order is binding and includes all services and ancillary services of the supplier as well as all ancillary costs (e.g. proper packaging, export documents, customs duties, import charges, transport costs including any necessary insurance).
- 6.2. Invoices shall be sent to Herrenknecht as a single copy, with the purchase order, order and project numbers, quantity, price and other allocation characteristics (in particular Herrenknecht item numbers). Invoices shall be sent separately from delivery of the goods. In the case of deliveries from areas outside the customs territory of the EU, an invoice copy or a pro forma invoice must be enclosed with the goods delivery.
- 6.3. After full delivery and receipt of a proper and verifiable invoice, according to the agreed payment terms Herrenknecht will pay within 14 days with a 3% cash discount or net within 60 days. For electronic invoice transmission, the date of transit is accepted as the base date (receipt date) for payment.
- 6.4. If, with Herrenknecht's consent, the supplier pays with bills of exchange, the note tax and a reasonable discount rate shall be compensated.
- 6.5. Payment by Herrenknecht shall not be deemed acceptance of the invoice.
- 6.6. Herrenknecht shall be entitled to offset claims that Herrenknecht has against the supplier. The supplier shall have a right of set-off or retention only on the basis of legally binding or undisputed counterclaims from the same legal relationship.

7. Defective delivery

- 7.1. Herrenknecht's rights in the case of defects in material and title of the goods and other derelictions of duty by the supplier shall be governed by statutory provisions, unless otherwise stipulated in the following.
- 7.2. In accordance with statutory provisions, the supplier shall be liable in particular for the agreed nature of the goods. In any case, those product descriptions that – in particular through name or reference in the purchase order from Herrenknecht – are part of the respective purchase order shall apply as agreement on the nature of the goods. It makes no difference whether the product description originates from Herrenknecht or the supplier.
- 7.3. Herrenknecht's duty of scrutiny in accordance with Section 377 of the German Commercial Code is limited to defects which are clearly identifiable during Herrenknecht's external inspection of incoming goods, including the delivery documents, as well as during quality inspection by Herrenknecht using the sampling method (e.g. transport damages, incorrect delivery and short delivery). If acceptance has been agreed, there is no duty of scrutiny. It also depends whether an inspection is feasible in view of the circumstances of the individual case.
- 7.4. The obligation to notify regarding defects discovered later remains unaffected. In all cases Herrenknecht's complaint shall be deemed to be immediate and timely if received by the supplier within 10 calendar days after identification of the defect.
- 7.5. The supplier guarantees the contractual nature of the goods for a period of 24 months after commissioning by the end customer, but at the latest 36 months after delivery of the goods to Herrenknecht.
- 7.6. Herrenknecht shall inspect the delivered goods upon receipt, provided that this is customary in the ordinary course of business and according to their type and intended use.
- 7.7. If Herrenknecht demands supplementary performance, the supplier shall meet this requirement immediately.
- 7.8. In urgent cases, or if the supplier fails to remedy the claims for defects, Herrenknecht may take the necessary measures at the supplier's expense and without prejudice to his obligations; with the exception of urgent cases, the supplier shall be notified before the measures are implemented.

8. Drawings and other documents

- 8.1. All drawings shall be discussed with Herrenknecht before production begins. Upon completion of the work, the supplier shall immediately send Herrenknecht the "as-is" drawings, calculations and other technical documents relating to the delivery in the required number of copies and the required form. The supplier shall transfer ownership of them to Herrenknecht free of charge. This shall not affect the intellectual property rights associated with such items. Herrenknecht or third parties may use them free of charge for maintenance and modification purposes and to produce spare parts.
- 8.2. Herrenknecht's approval of drawings, calculations and other technical documents shall not affect the supplier's sole responsibility in respect of the goods to be delivered. Unless the supplier objects in writing, this shall also apply to suggestions and recommendations made by Herrenknecht and to modifications discussed by the supplier and Herrenknecht.
- 8.3. All final planning documents, equipment, tools, models etc. made available to the supplier by Herrenknecht shall remain the property of Herrenknecht and may only be used for the contractually agreed purposes. They may only be made available to third parties to the extent necessary and to carry out the order. The

supplier shall transfer to Herrenknecht the exclusive rights of use and exploitation of all documents, drawings, calculations, etc. produced by the supplier in connection with the execution of the order without the need for separate remuneration.

9. Export controls and customs

9.1. As soon as possible before the date of delivery, the supplier shall inform Herrenknecht in writing of any approval requirements of his goods in accordance with applicable German, European (EU), US export, customs and foreign trade law as well as the export, customs and foreign trade law of the country of origin of his goods. In this respect the supplier shall provide the following information and data:

- a) The export list number according to Annex AL to the German Foreign Trade and Payments Ordinance or comparable list items of relevant export lists;
- b) The European (EU) lists of goods;
- c) The "Export Control Classification Number" according to the "U.S. Commerce Control List" (ECCN), provided that the goods are subject to the "U.S. Export Administration Regulations" (EAR);
- d) The commodity code (HS/CN code);
- e) The country of origin (foreign trade policy/non-preferential origin);
- f) (Long-term) supplier declarations on preferential origin (for EU suppliers) or certificates on preferences (for non-EU suppliers);
- g) Any other information and data Herrenknecht requires for the export and import and in the event of selling on for the re-exportation of the goods.

The supplier shall notify Herrenknecht without delay in writing of any changes to the above information and data.

10. Regulatory compliance

- 10.1. The supplier is responsible for adherence to the recognized rules of technology (in particular DIN standards, VDE regulations, VDI guidelines, DVGW regulations) and the legal provisions on product safety (in particular the Product Safety Act); international minimum standards of labor law, in particular all conventions of the International Labor Organization regarding labor rights, working time and occupational safety, as well as all applicable statutory and official regulations.
- 10.2. The supplier shall not participate actively or passively, directly or indirectly, in any form of bribery or corruption, violation of human rights or discrimination against his employees, forced labor or child labor.
- 10.3. The supplier shall ensure that all commissioned by him who are involved in any way in the production of the products supplied by him to Herrenknecht shall comply with the obligations listed in clauses 10.1 to 10.2 above.
- 10.4. The supplier shall also ensure that the products supplied by him comply with the provisions of Regulation (EC) No 1907/2006 on the Registration, Evaluation, Authorization and Restriction of Chemicals ("REACH Regulation"). If required by the provisions of the REACH Regulation, the substances contained in the supplier's products shall be pre-registered or registered after expiry of the transitional period, provided the substance is not exempted from registration.
- 10.5. Suppliers who have their head office in countries outside the EU shall appoint an EU-based Only Representative ("OR") according to Article 8 of the REACH Regulation, who must be disclosed to Herrenknecht by name with details of the address. The OR shall assume all of the supplier's registration and other REACH obligations. If the OR has undertaken pre-registration or registration, this must be reported to Herrenknecht with the registration number. In the event of a change of the OR or discontinuation of the OR, the supplier shall inform Herrenknecht without delay.
- 10.6. The supplier confirms that the products supplied by him do not contain substances from the so-called candidate list according to Section 59 clauses 1 and 10 of the REACH Regulation. The supplier shall notify Herrenknecht immediately in writing if products supplied by him contain substances in the candidate list. The supplier shall indicate the individual substances by name and shall report as precisely as possible the percentage by mass.
- 10.7. If hazardous substances in the sense of the Hazardous Substances Ordinance are supplied or products for which the release of such substances cannot be ruled out, the supplier must provide Herrenknecht unasked with the data required for the safety data sheet.
- 10.8. The supplier shall also ensure that the products delivered by him comply with all requirements of Regulation (EC) No. 1272/2008 ("CLP Regulation"). In particular, non-EU suppliers are responsible for ensuring their OR has registered the products supplied in the classification and labeling list according to Sections 39-42 of the CLP Regulation.
- 10.9. The supplier shall comply with the provisions on conflict minerals laid down in Section 1502 of the Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") (conflict minerals as defined in the Dodd-Frank Act). Should conflict minerals be necessary in the production or for the function of the products supplied by the supplier, their origin shall be disclosed. Upon request, the supplier shall provide Herrenknecht and Herrenknecht's associated companies with the

documentation required by the Dodd-Frank Act on the use and origin of conflict minerals in full and without delay.

- 10.10. In the event that the supplier is in breach of any of the foregoing obligations, the supplier shall indemnify Herrenknecht and its customers against any and all costs and claims of third parties for breach of the foregoing provision. This shall not apply if the supplier is not responsible for this breach of duty. At any time Herrenknecht is also entitled to immediately cancel the relevant order and to refuse acceptance of the relevant delivery without Herrenknecht incurring any costs. Any existing damages claims shall remain unaffected.
- 10.11. If the supplier should engage subcontractors, it is agreed that the supplier shall be responsible to Herrenknecht for their actions and commissions, including material deliveries and compliance with all regulatory requirements, as well as for his own work.

11. Information obligation

- 11.1. The supplier shall notify Herrenknecht without delay in writing of the following changes:
 - a) Changes in the manufacturing process, of materials or supplier parts for goods or of services, relocation of production sites, changes in procedures or equipment for the examination of the goods or of other quality assurance measures;
 - b) Changes in the dominant influence in the supplier's company; and
 - c) Negative changes in the financial situation of the supplier.
- 11.2. Herrenknecht shall be entitled to verify to the extent necessary whether the changes have a negative impact on the goods, the order or the business relationship. Upon request, the supplier shall provide the necessary documents and evidence and enable inspections to be carried out to the extent required.

12. Confidentiality, reference and data processing

- 12.1. The supplier shall treat the contract and all business or technical information he becomes aware of in connection with the business relationship as confidential. This information may be provided by the supplier only to those persons who must necessarily be involved for its use for the purpose of the delivery to Herrenknecht and who are also obliged to maintain confidentiality.
 - 12.2. Without prior express consent in writing, the supplier shall not be permitted to mention Herrenknecht or the business relationship between the supplier and Herrenknecht in any way as a reference.
- ## 13. Fulfillment, jurisdiction, applicable law
- 13.1. The place of performance for goods and services is Herrenknecht's place of business or the delivery address stated on the purchase order. Herrenknecht's place of business shall be the place of performance for payments.
 - 13.2. The law of the Federal Republic of Germany shall apply to all disputes arising from or in connection with these terms and conditions of purchase, a purchase order and the business relationship between the supplier and Herrenknecht, with the exclusion of the UN Convention on Contracts (CISG).
 - 13.3. Court of Jurisdiction is the seat of the court of general jurisdiction for Herrenknecht. Herrenknecht may, however, also sue the supplier at his court of general jurisdiction.