

General Conditions of Sale, Delivery and Payment – Germany

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1. General, Scope of application.

(1) Our present Conditions of Sale, Delivery and Payment (hereinafter “Conditions of Sale”) shall take effect to the exclusion of any other terms. Any conflicting or deviating conditions of the customer are agreed to be of no force and effect unless expressly agreed to in writing by us.

(2) Even if we carry out delivery without reservation, despite knowing that the customer’s conditions are adverse to or deviate from our terms and conditions of sale, our Conditions of Sale shall be construed as applying.

(3) They shall also apply to all future business transactions with our customers.

(4) They shall only apply to corporate bodies under public law, legal entities under public law and companies in the sense of Art. 310, paragraph 1 of the German Civil Code (“BGB”).

2. Customer’s obligations.

(1) Our goods and services are typically delivered on the basis of information our customer gives us regarding the systems and all other related equipment and processes our products are likely to come in contact with (hereinafter “systems”). We will not check these systems and their operation on site at the customer’s premises. Unless expressly agreed otherwise, in particular the proper installation of the goods purchased from us by the customer shall be the sole responsibility of the customer.

(2) We reserve the right to use the most compact design available, which is compatible with established technical processes in each individual case. Furthermore, we reserve the right to change the design, construction and arrangement details of the products unless this was excluded due to restrictions brought to our attention at the time the contract was placed (i.e. in connection with the available space on site and the quality specifications for the product / water – waste water quality / substances, etc.). Failure to notify us of such restrictions when placing the order will result in the exclusion of our liability if and insofar our goods and services are not compatible or suitable for the intended purposes on site due to this failure to inform us about any restrictions we would otherwise not have been aware of.

(3) For our services to be appropriate and the goods we deliver to be processed and used as intended, it is of material importance that the customer fulfils his subsequently described obligations (hereinafter “obligations”):

(a) The customer shall provide us with full and correct details relevant to the scope of services to be rendered by us, e.g. information about the conditions on the site of the customer, systems, associated equipment and processes, the product to be treated, the water / waste water quality and other substances to be treated or measured with our products, including all other facts that may be hidden, not obvious or subject to modifications and could affect the level of effectiveness of our products.

(b) The systems of the customer must work or be operated within their control parameters, or, in the absence of such parameters, under normal operating conditions.

(c) The systems must be in good operating condition and operated, serviced and repaired where necessary according to specification.

(4) If the customer does not duly comply with the above obligations, our goods may not work properly or as intended or cause damage to the systems of the customer and even injuries to persons. Insofar as such damages or injuries arise from the fact that the customer has failed to comply with his obligations, we shall be released from all obligations with regard to liability for defects, compliance with target values, cost savings or any other obligations entered into by us. In particular, we may not be held responsible for any losses, damages or injuries suffered by the customer in this respect or for which the customer is consequently held liable by third parties.

3. Delivery, delivery dates and delay in delivery.

(1) The risk of loss or damage to the goods shall pass to the customer at the time the goods are handed over to the carrier.

(2) Unless separately and explicitly agreed upon as binding, the delivery dates indicated by us are estimated and not guaranteed.

(3) We are liable for damage due to delay in delivery under the statutory provisions insofar as the delay in delivery is due to a deliberate or grossly negligent breach of contract we can be held responsible for. We shall not be liable for simple negligence unless the delay in delivery we are responsible for can be attributed to the negligent breach of a material contractual obligation. In this case, however, our liability to pay damages shall be limited to the payment of the foreseeable, typically occurring damage.

4. Offer, conditions of payment, due date, prices and no set-off clause.

(1) Unless otherwise agreed or specified in our written offer, our offers are valid for a period of two weeks.

(2) Where there is reasonable doubt on our part as to the customer's ability to meet his financial obligations, we are entitled to refuse deliveries unless the customer provides adequate security.

(3) Unless otherwise determined, all payments shall become due within 30 (thirty) days from the date of the invoice without deduction.

(4) The statutory value added tax (hereinafter "VAT") is not included in our quoted prices. Its legal amount on the date of invoicing will be shown separately on the invoice.

(5) All taxes, levies and contributions that may have to be paid in addition to the purchase price shall be borne by the customer, i.e. he either has to pay them himself or reimburse us if the taxes, levies and contributions were paid by us.

(6) All prices are to be understood "EXW shipping point", i.e. "ex works".

(7) Our prices are fixed prices provided the ordered goods are taken over within two weeks after we have notified the customer that the goods are ready for dispatch. If the dispatch is delayed on the request of the buyer or a delay occurs for which nrw-Anlagentechnik cannot be held responsible, the customer will be charged 0.01 per cent of the invoice amount for each month.

(8) In case of default of payment by the customer, we shall be entitled to claim interest at a rate of 8 per cent points p.a. over the base rate. Moreover, we reserve the right to prove that the default of payment has resulted in higher damage.

(9) The customer shall only be entitled to set off claims and exercise a right of retention if his counter-claims have been established as enforceable or if they are not disputed.

5. Payments for excessive consumption, lost or damaged goods.

(1) If the payment for the goods is based on other factors than the actual quantity of goods delivered (e.g. payment of a fixed amount or payment on the basis of consumption or production), the customer agrees to pay for all goods that are

(a) consumed by the customer as a result of non-compliance with the obligations determined in section 2 or

(b) lost or damaged after the risk has passed to the customer.

(2) The customer will provide us with all necessary information for establishing the amounts payable to us and also give us the opportunity to check this information.

6. Consignment goods.

- (1) Where goods are delivered on consignment, the customer is liable for any loss or damage to the consignment goods in his custody unless the loss or damage involves circumstances that could not have been avoided by exercising due care.
- (2) We are entitled to enter the customer premises at any appropriate time and upon prior notice (subject to reasonable notice) to check on such goods and the related documentation.
- (3) The customer agrees to return such goods to us in accordance with our shipping instructions.
- (4) The customer is obliged to check that all goods delivered on consignment are complete and free of defects and to notify us immediately of any defects or damages. In addition to that, the goods must be clearly marked as our property.

7. Liability for defects and length of warranty.

- (1) Any claim by the customer which is based on any defect in the quality or condition of the goods presupposes that the latter has duly fulfilled his obligations according to Article 377 of the German Commercial Code ("HGB") to examine the goods and notify us of any defect. No claims can be made for worn wear parts. It is the customer's own responsibility to check whether the goods ordered from the supplier are suitable for the intended purpose. Goods that are not suitable can only be claimed as defective if the seller has confirmed their suitability in writing. In case of failure to comply with assembly, mounting, operating and maintenance instructions provided by the seller, or where changes to the product are made, parts are replaced or consumables are used that do not correspond to the original specifications, claims for defects cannot be accepted unless the customer proves that the defect was not caused by these circumstances but already existed at the time the risk was passed to the customer.
- (2) Once a defect in the purchased goods is established, we are free to choose between remedying the defect under the condition that the goods are sent back to us free of charge, repairing the goods as necessary on site within a reasonable delay, or delivering new goods that are free from any defect. After three unsuccessful attempts to remedy a defect the customer is entitled to withdraw from the contract or to claim a reduction in price. The seller may refuse to rectify a defect as long as the buyer fails to comply with his obligations. Any liability for repair work performed by the buyer or third parties without the seller's consent shall be excluded.
- (3) Unless explicitly agreed otherwise, the warranty period for new products during which a defective product claim can be made is 12 months from the time the risk is passed to the customer. Any further liability shall be restricted to the conditions and scope of our liability insurance. The liability for other damage and costs, in particular consequential damage and costs is excluded. Natural wear, inadequate maintenance, improper operation, corrosion caused by the media used and cases of force majeure void our warranty.

8. Adherence to legal requirements; permits.

- (1) It is the customer's responsibility to adhere to all legal requirements applicable to the storage, use, transport, installation, maintenance, elimination, registration and labelling of all goods from and after they have been received by the customer. This also applies to the proper control and disposal of all waste and residues (including containers) generated in connection with the customer's use of the goods.
- (2) The customer agrees to ensure that all goods and services provided to the customer for the purpose of being exported are only exported in accordance with the applicable export control laws and provisions.
- (3) All long-term permits and licenses as well as those necessary for operating installations or equipment or for using the goods shall be obtained exclusively by the customer at his own costs.

10. Force majeure.

- (1) Neither party shall be liable for any failure to fulfil the terms of this contract (excluding the assumption of the occurrence of a breach of contract) if the impossibility of performance,

including for economic reasons, is due to events of force majeure, with the proviso that the force majeure event does not apply to the customer's obligation to pay for the goods and services on the due date.

(2) In particular, all cases of disruption of operations due to force majeure, strikes, lock-out or similar events or causes beyond our control shall release us from our obligation to fulfil the contract for the duration and extent of such hindrance. This shall also apply if such circumstances affect a producer, thus causing delay in our own supply chain. If a force majeure event occurs making it impossible to meet a delivery date, the scheduled delivery date shall be postponed for the period of time that the circumstances or their effects on our operations continue.

11. Confidentiality and intellectual property.

(1) Both parties agree to treat all documents, material, ideas, data, drawings, information and know-how disclosed and provided to them by the other party as strictly confidential insofar as this information has been either explicitly classified as confidential or its confidential nature has been established on basis of other circumstances.

(2) The customer agrees to refrain from subjecting our goods to chemical tests, analyses or any form of "reverse engineering" without our prior written consent.

(3) We reserve the property rights and copyrights to all images, drawings, calculations and other documents we provide to the customer subject to the possibility of granting the customer the right to use these drawing and data for his own purposes without further costs.

(4) The customer confirms being professionally engaged in selling the goods subject to the present contract and agrees not to apply for patents for the goods or for processes and methods to use the goods without our express written consent. Moreover, he warrants that no patents of that type are asserted against us or our customers based on the purchase and use of these goods.

(5) The customer is fully liable for any infringement of third party patent rights where we deliver goods to the customer whose design or any other characteristics, including changes to the goods and services, has been made according to the customer's specifications or carried out by the customer or his representative/s staff on their own initiative. The customer will defend us and hold us harmless against any such claims.

(6) Any software, including the associated documentation, we may provide to the customer in connection with this Agreement remains our property. We agree to grant the customer a non-transferable and non-exclusive license for this software for the duration of this Agreement. The customer undertakes neither to copy the software, nor to grant sublicenses, to translate the software, to re-transcribe or to decode the software. The license expires at the end of our business relationship at the latest. The software and all associated documentation must be given back to us by this time at the latest.

(7) Where the customer or his representative/s or staff has ordered a particular execution, specification or a requirement, the customer will defend us and hold us harmless against any claims and warranty claims asserted against us in connection with a breach of third party rights.

12. Limitation of liability.

- (1) Claims for damages shall be excluded irrespective of the legal grounds.
- (2) The limitation of liability shall not be applicable insofar as the customer claims compensation for damage caused by a wilful act of gross negligence, or where compensation is claimed for damage resulting from injury to life, body or health, or breach of essential contractual obligations, or under the Product Liability Act.
- (3) In breaching essential contractual obligations, or if the damage was caused negligently, we are only liable for the foreseeable damage typical for this type of contract.

13. Retention of title.

- (1) We retain title to the goods until receipt of all payments in full resulting from the business relationship with the customer.
- (2) In case the customer acts contrary to the contract and in particular if he is in default of payment, we are entitled to reclaim the goods. By reclaiming the goods, we cancel the contract. We are entitled to market the reclaimed goods; the proceeds from these activities shall be set off against the liabilities of the customer – after deduction of reasonable costs of sale.
- (3) The customer is obliged to handle the goods with care; he is in particular obliged to adequately insure the goods for their replacement value against fire and water damage as well as theft at his own charges. Insofar as maintenance and inspection work is necessary, the customer shall carry it out at his own costs and in due time.
- (4) If the goods have been seized or otherwise taken control of by third parties, the customer must notify us immediately in writing to enable us to file a claim according to Article 771 of the German Code of Civil Procedure. Insofar as the third party is not able to refund the legal and non-legal costs of a claim according to Article 771 of the German Code of Civil Procedure to us, the customer shall be liable for the loss we have incurred.
- (5) The customer may sell the goods in the normal course of business. However, any such sale shall involve the assignment of the corresponding claims against the buyer or third parties to us. The amount assigned shall be the invoice total (VAT included), irrespective of the fact whether the purchased goods were resold without or after processing. After the assignment, the customer shall still be entitled to recover the sum due. Our right to collect the payment ourselves shall remain unaffected. However, we agree not to recover the sum due as long as the customer complies with his duty to pay on account of the collected proceeds, as long as he is not in default of payment, and in particular in the absence of a request to engage in settlement or insolvency proceedings or a stoppage of payments. Otherwise we may request the customer to disclose the assigned claims and their debtors to us, to provide us with all necessary information to collect the money, to hand over the associated documents and to inform the debtors (third parties) about the claim assignment.
- (6) Any processing or transformation of the goods by the customer is always performed on our behalf. In cases where the goods are combined, we shall acquire co-ownership of the new item in the proportion of the invoice value (final amount of the invoice including VAT) of the goods to the value of the other processed items at the time of processing. The new item shall be treated in the same way as the goods subject to retention of title.
- (7) In cases where the goods are mixed, we shall acquire co-ownership of the new item in the proportion of the invoice value (final amount of the invoice including VAT) of the goods to the value of the other mixed items at the time of mixing. If, as a result of the mixing, the new item is mainly owned by the customer, a transfer of the proportional co-ownership to us shall be deemed to be agreed. The wholly or not wholly owned item shall be kept by customer on our behalf.
- (8) In addition to that, the customer assigns to us the claims against third parties destined to secure our claims against the customer and arising from the connection of the goods with real property.
- (9) We engage to release the securities we are entitled to upon request of the customer insofar as the recoverable value of the securities of the supplier exceeds the claim to be secured by more than 10%. We shall be free to choose the securities to be released at our own discretion.

14. Conflicting terms, severability clause.

(1) In case of conflict between the present Conditions of Delivery and a proposal or offer submitted by us the terms and provisions in the proposal or offer shall prevail.

(2) If any provision of this Agreement is, or is likely to be held, illegal, invalid or unenforceable in whole or in part in any jurisdiction this shall not affect the validity or enforceability in that jurisdiction of any other provision of this Agreement or the validity or enforceability of that provision or any other provision in any other jurisdiction, provided that the Parties shall in good faith negotiate a replacement provision or structure or agreement which in a legal, valid and enforceable way to the nearest extent reflects the original commercial intent of the Parties.

15. Place of jurisdiction, applicable law, place of performance.

(1) In case of disputes, the parties will first strive to reach an amicable settlement out of court and engage in talks on management level to this end. The right of each party to directly invoke the jurisdiction of the court in Mönchengladbach shall remain unaffected.

(2) Unless otherwise specified in the order confirmation, the place of performance is our place of business.

(3) The parties agree to submit to the exclusive jurisdiction of Germany.

(4) These terms and conditions shall be governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.