

# General Business Conditions

## 1. Quotations and Orders

- 1.1 Quotations, supplies and performances shall be effected solely on the following conditions that form an integral part of each quotation and each contract. No business or purchasing conditions of the orderer deviating therefrom shall have effect unless accepted by us in writing.
- 1.2 The quotation documents such as illustrations, drawings, dimension sheets and lists of weights shall only be deemed approximate unless expressly stated as being certified and final. We reserve the rights of property and authorship with respect to our cost estimates, drawings and other documents which shall not be made available or disclosed to third parties. If any quotation of ours is not accepted, the said documents shall be returned to us on request.
- 1.3 Our quotations are without engagement unless they explicitly include an option.

## 2. Scope of Supplies and Performances

- 2.1 The written acknowledgement of order shall be deemed binding with respect to the scope of our supply and/or performance. Any verbal or telephonic statements and agreements require for their legal effect our written confirmation. Amendments are likewise subject to our written approval and give us the right to charge for additional supplies and/or performances. If there is any decrease in our cost or effort, we shall duly inform the orderer of the price adjustment.
- 2.2 Electrical equipment is subject to the provisions laid down by the German Association of Electrical Engineers (VDE).
- 2.3 Paintwork, rubber cladding and corrosion protection shall be governed by our detailed specifications.
- 2.4 Protection requirements will be included in the supply to the agreed-upon extent. The orderer himself shall be responsible for the observance of all regulations, environment protection statutes and work accident prevention clauses in force on the erection site.

## 3. Prices and Terms of Payment

- 3.1 Our prices are valid ex works including loading at the works. The packing foreseen in our detailed specifications is included in the price, but the price does not cover any packing for special storage conditions specifically demanded by the customer; in this latter case we do not undertake any guarantee for the suitability of the packing. For domestic supplies and performances, the price will be augmented by the value added tax at the rate in force on the date of invoice.  
When more than 6 months lie between the signing of contract and the agreed delivery date, our prices valid at the time of delivery and/or availability shall be effective, if following order acknowledgement, the principal cost factors, especially the cost of labour and materials, have undergone any changes.
- 3.2 Unless otherwise agreed, our invoices shall be due for settlement, net cash and free from charges, within 30 days from the date of invoice. The agreed payments shall also be effected if the orderer fails to take any action for which he is responsible on delivery or if he subsequently causes the equipment ordered by him to be put in storage. In such cases the payments shall be due as from the date on which we advise readiness for despatch.
- 3.3 The customer shall desist from claiming any right to withhold payment, whether under the current contract or under any other and/or earlier transactions. Offsetting through counter-claims is only admissible to the extent that the same are recognized by us or found by us to be due for honouring or legally valid.
- 3.4 All taxes, charges and other imposts levied outside Germany shall be borne by the orderer.

## 4. Delivery Periods and Deadlines

- 4.1 Insofar as we have not committed ourselves to fixed deadlines, we shall do our utmost to deliver by the established delivery dates.
- 4.2 The delivery periods will be extended
  - if drawings due for approval by the orderer do not reach us by the appointed dates,
  - if a stipulated Letter of Credit is not opened within the appointed time by the orderer,
  - or if stipulated down-payments are not remitted on the due dates.The delivery time is deemed to have been observed if advice of readiness for despatch is passed to the orderer within the laid-down delivery period.
- 4.3 If, as may happen, we are not supplied correctly or punctually by our subcontractor, we shall endeavour to negotiate a new delivery date with the customer. If a new delivery date cannot be agreed upon, we reserve the right to withdraw, either wholly or in part, from the contract.
- 4.4 Partial deliveries are admissible.

- 4.5 Unforeseen events, whether in our works or in third-party undertakings, on which the manufacture and transportation of the object of supply materially depend and for which we, seen objectively, are not culpably responsible, e.g. labour disputes, wars and uprisings, action by public authorities, traffic bottlenecks, dearth of raw materials and energy, as well as all major damage sustained through the action of water, fire and machines, release us from the obligation to adhere to the delivery dates, providing that we notify the orderer of such events without delay.
- 4.6 If despatch is delayed through the instigation of the orderer, the latter shall be required to meet the costs of storage following a one-month period of grace as from the date on which the readiness for despatch was announced.  
Furthermore, we are entitled, at our discretion, to otherwise dispose of the object of supply following the appointment and fruitless lapse of an adequate respite, and to supply to the orderer within a duly extended delivery period.
- 4.7 No claim for liquidated damages can be filed. The liability under § 287 BGB is excluded.
- 5. Acceptance**
- 5.1 If preliminary, constructional and acceptance tests are prescribed, the costs for the preliminary and constructional tests as well as the personal costs for the acceptance testing shall be borne by the orderer.
- 5.2 Acceptance can ensue only in the supplier's works immediately after manufacture. At his request, the orderer will be notified in advance as to the anticipated date of completion. If acceptance is not carried out, or is not performed punctually or in its entirety, we are entitled to deliver the object of supply without acceptance or to store it at the expense and risk of the orderer. The equipment shall be deemed to have been supplied in every way as per contract at the end of two weeks following notification of readiness for acceptance.
- 6. Despatch, Packing and Passage of Risks**
- 6.1 The risks pass to the orderer as soon as the consignment has been handed over to the person effecting transportation or as soon as the consignment has, for the purpose of despatch, left our works premises or, if despatch to the orderer ensues directly from another manufacturer's works, the works premises of that other manufacturer. If, after established readiness for despatch, such despatch is kept back at the orderer's request or held up due to circumstances for which the orderer is responsible, then the risk passes to the orderer as from notification of readiness for despatch.
- 6.2 If no special arrangements are made, we are free to select the means of transport, the transportation route and the mode of packing.
- 6.3 The packing is specially prepared for each order and shall not be returned to us. The orderer has to dispose of the packing acc. to the respectively valid legal regulations.
- 6.4 In a free-destination delivery (e.g. free erection site), neither the off-loading of the equipment from the means of transport, nor the disposal of the packing material belong to our scope of performance.
- 6.5 Without prejudice to the orderer's rights under Section 9. the orderer is obliged to accept delivered objects of supply, even if they exhibit defects.
- 6.6 At the request of the orderer, the consignment will be insured on his behalf and for his account against theft and breakage and against damage incurred through transportation, fire and water.
- 7. Erection, Erection Supervision and Commissioning**
- 7.1 Erection, supervision of erections, and supervision of erection costs shall only be included in our scope of performance if expressly so agreed.
- 7.2 Our liability does not extend to damage caused by our personnel in the pursuance of their erecting and/or supervising activities unless we ourselves, our supervising personnel or other co-responsible cause damage either with intent or through gross negligence. We accept no responsibility whatsoever for damage caused through mild negligence on the part of our erectors or other co-responsible.
- 7.3 Furthermore, the erection, erection supervision and commissioning are governed by the "General Conditions for Service Abroad" valid at the time the performances are effected.
- 8. Purchaser's Right of Withdrawal**
- 8.1 The orderer can withdraw from the contract, if the entire performance becomes impossible prior to passage of risks. The orderer is also entitled to withdraw from the contract if, under an order placed for similar items, the realization of any one part of the supply becomes numerically impossible and if he, the orderer, has a justifiable interest in refusing to accept the complete consignment; should that not be the case, the orderer can reduce the payment due by the sales price of the refused partial delivery.
- 8.2 If such impossibility or incapacity arise during delay in accepting or through default on the part of the orderer, the latter will remain obliged to remit due payment.
- 8.3 The orderer is also entitled to withdraw if a respite granted us for remedying and/or replacing in connection with a fault for which we are responsible under the supply terms is negligently allowed by us to lapse without due action being taken. The said respite shall not take effect until the fault or liability has been recognized by us or demonstrated to us. The orderer's right of withdrawal shall also apply if we lack the means or capacity to effect or replacement.

8.4 The orderer can only declare to withdraw if his interests in the consignment are materially prejudiced. It shall be assumed that his interests are not materially prejudiced if the supplied item continues to be used.

**9. Our Right to Withdraw**

We have the right to withdraw from the contract, wholly or partially, if unforeseen circumstances arise analogous to those indicated in Section 3 to the extent that such circumstances materially affect the economic significance or content of the performance or have a considerable impact on our undertaking. The same applies to the case in which execution becomes subsequently impossible. The orderer cannot claim any liquidated damages in connection with such withdrawal. If we should wish to avail ourselves of the right to withdraw, we must notify the orderer to that effect without delay.

**10. Warranty, Notice of Defects and Liability**

10.1 Unless otherwise stated in the contract, we undertake warranty only for technical data that have been confirmed in writing. Certain properties shall only be deemed assured if we have given prior express assurance in writing.

The warranty provisions specified hereunder do not apply to wearing parts and expendables (e.g. sponge rubber balls).

10.2 The orderer shall inspect the consignment immediately on arrival of same and shall inform us in writing of any defects or incompleteness within two weeks therefrom at the latest. Defects that are not discovered until during operation shall be reported to us immediately either by letter or by PC networking. This shall in no way affect the orderer's commitments emanating from Section 6.

10.3 No warranty can be assumed for any damages incurred through the following causes; improper or inadequate use, faulty installation and/or start-up by the orderer or third parties, natural wear-and-tear, improper storage, failure to adopt conservation measures, damage done to packing, faulty or negligent handling, excessive loading, unsuitable operating media, substitute materials, defective civil engineering, as well as chemical, electrochemical or electrical factors.

10.4 When goods are delivered without erection commitments, the warranty period shall begin as from notification of readiness for despatch. When deliveries also entail erection and/or erection supervision, the warranty period shall begin as from notification of completed installation. The warranty period shall cover 8000 operating hours and extend up to 12 months at the latest as from notification of readiness for despatch and/or completed installation. If readiness for despatch or installation is delayed due to circumstances for which we cannot be held responsible, the warranty period will end 18 months after passage of risks. (Sub-section 6.1)

10.5 We shall fulfil our warranty obligations by effecting repairs or by replenishing free of charge, at our discretion, all such parts as have demonstrably become unserviceable or severely impaired in their utility value within the warranty period, especially due to faulty construction, bad materials or inadequate design. Exempted from the warranty coverage are wearing parts, seals, and parts that become damaged in the course of inspection or during the replacement of wearing parts. Replaced items become our property. We are liable in respect of third-party products only to the extent that we are entitled to file warranty claims against the product suppliers. Special warranty arrangements are valid with regard to the painting. (Sub-section 2.3)

10.6 The warranty shall lapse if the orderer or third parties effect repairs or modifications on the equipment without our prior written approval, and shall also lapse if the orderer does not take suitable steps to ensure that we can remedy the fault so that the damage is reduced and not increased.

10.7 Following prior consultation, the orderer shall allow us the needful time and opportunity to carry out all remedies and replacements reasonably deemed to be necessary, failure to do which shall absolve us from liability for the defects in question. Only in urgent cases of operational safety of which we must be immediately informed, or if we are delayed in removing the fault, shall the orderer have the right to effect remedy himself or via third parties and to claim from us an adequate reimbursement of the costs entailed in the fault removal.

10.8 Of the costs immediately arising through the repair work and/or replacement we shall bear, provided the claim is found to be justified, the costs for the replacement item including those of despatch, dismantling and mounting and finally those involved in a possible delegation of our erectors if such action be deemed reasonable and necessary in the individual case. The orderer shall bear all other costs, especially for helping personnel, lifting gear, etc.

10.9 In the event of a complete operational standstill, the warranty period for the supply item shall be prolonged to cover the idle period just so long as the supply item cannot be put into effective service as a result of the remedying and/or replacement action.

10.10 The provisions governing delivery period and liability shall apply likewise in the event of deficient repair work or replacements. No liquidated damages can be claimed.

10.11 All further claims, no matter on what legal grounds, are excluded, especially with regard to consequential damages unless we ourselves, our supervising personnel or other co-responsible cause damage with intent or through gross negligence. We accept no responsibility whatsoever for mild acts of carelessness on the part of our co-responsible.

**11. Performance Guarantee for Cleaning and Debris Filter Systems**

**11.1 Cleaning Systems**

We guarantee that, with the use of the cleaning system, the heat transfer coefficient of the condenser or heat exchanger, according to the VGB-Guideline R130Me, first edition 1995, determined and corrected will remain constant.

The guarantee shall be deemed fulfilled if, on expiry of the guarantee period, the measured heat transfer coefficient is equal or superior to the value calculated prior to start-up of the cleaning system. The measurement tolerances laid down by the VDI shall be applied in the measurements taken. Should this guarantee not be fulfilled for reasons lying within our sphere of responsibility, we are to be given sufficient opportunity to fulfil the guarantee by taking suitable steps and making all due modifications and additions. The costs of the measurements shall be borne by the orderer.

The precondition for our performance guarantee is that the equipment be correctly installed and operated in compliance with our operating instructions. During the guarantee period, at least the number of oversized sponge rubber balls prescribed by us in our operating instructions, and of our manufacture, shall be in constant circulation.

The performance guarantee will have to be amended in the event of:

- a ferrous (II)-sulphate dosing
- a non-continuous operation of the facilities
- hard precipitations in the cooling tubes due to inadequate cooling water treatment
- steam-side fouling on cooling tube surfaces
- sea-water desalination

**11.2 Debris Filters**

We guarantee that, through application of the debris filters, all mussels and all other granular contaminants collecting in the filter element will be efficiently removed by the backwash process. The precondition for this guarantee is that the filters are correctly mounted and operated in compliance with our operating instructions.

If this guarantee is not fulfilled for reasons lying within our sphere of responsibility, we are to be given sufficient opportunity to fulfil the guarantee by taking suitable steps and effecting due modifications and additions.

11.3 Proof of fulfilling the aforesaid preconditions for accepting our performance guarantee shall be furnished by the orderer.

**11.4 Performance Guarantee Period**

The performance guarantee period is identical with the warranty period specified in Subsection 10.4.

**12. Retention of Title**

12.1 The supplied items shall remain our property until all claims arising out of the transaction with the orderer have been completely satisfied. Under the current commercial invoice, the reserved property shall serve as security for our outstanding claims.

12.2 From delivery up to the passing of title, the orderer shall insure the supply items against any detriment and to their full value. We have the right to take out appropriate insurances at the expense of the orderer if the latter does not prove the existence of such insurances by the presentation of policies.

12.3 The pledging or mortgaging of retention goods to third parties for the purpose of securing debts is forbidden. In the event of distraint or other infringement of our rights by third parties, the orderer shall expressly draw their attention to the proprietary rights and notify us accordingly without delay.

12.4 The machining and processing of the retention item(s) is effected without obligation for us as manufacturer within the meaning of § 950 BGB. The processed goods are deemed as retention goods within the meaning of these conditions. If the orderer processes the retention item or combines it with other items, we are entitled to co-ownership of the new object to the invoiced value of our proprietary right should lapse through combination or onward processing, the customer shall here and now transfer his proprietary rights in the new stock or item to the extent of the invoiced value of the retention item(s). He safeguards the retention item(s) for us free of charge. The co-ownership rights pursuant hereto are represented by the retention item(s) within the meaning of this section.

12.5 Only with our previous written consent may the customer combine the retention item(s) with real estate in such a way that the retention property forms an integral part of such real estate.

12.6 The customer shall only be entitled to re-sell or otherwise dispose of the retention item(s), if he has purchased from us with a view to re-selling, such resale ensuing in the course of his normal business and just so long as he is not in default over and towards ourselves. Herein, the customer cedes us, to the value or our purchase price claim, all his proceeds ensuing from the resale including any securities there may be. If the retention property is sold together with other goods not belonging to us, the resale proceeds shall be ceded to us to the value of the retention property. If the customer sells retention goods which have been processed together with other goods not belonging to us, the cession will be to the value of our co-ownership proportion.

12.7 The orderer has the right to collect funds from resale up to our revocation that can ensue at any time. At our demand, the orderer is obliged to inform his customer of the cession in our favour and to submit to us all information and documents necessary for collection. Furthermore, we have the right, at the expense of the orderer, to inform the latter's customer of the cession. The claim to retention of title shall only be construed to be a withdrawal from the contract if expressly stated as such in writing and to the extent that no legal provision to the contrary exists.

12.8 Insofar as the validity of the retention of title outside Germany is governed by formal provisions or other preconditions or is legally not possible, the orderer shall take steps to ensure that we are accorded an equivalent security.

**13. Liability**

To the extent that the afore-going sections do not contain any special requirements, no claim for liquidated damages on the part of the orderer is admissible, whatever the legal grounds may be (e.g. non-fulfilment, incapacity, positive infringement of provisions and contravention of obligations at contract negotiations, illicit action, compensation in cases of joint liability, failure to repair or poor execution of such repair) unless it be that managing personnel and co-responsible cause damage with intent or through gross negligence.

**14. Limitation of Liability**

To the extent that we are liable for damage caused within the meaning of binding legal provisions or of these "General Business Conditions", our indemnity obligation shall be limited to the sum due to us under the agreed contractual terms, i.e. to the value or our erection liability insurance sum in the case of erection, and to the value or our operational and product liability insurance sum. The amount of insurance coverage will be disclosed by us on request.

**15. Liability for Secondary Obligations**

15.1 If through any fault of ours the supplied item cannot be expediently used by the orderer due to our failure to impart or our bad imparting of suggestions and advice or due to our failure to fulfil or bad fulfilment of secondary contractual obligations prior to or after signing of contract – this applies especially to operating and maintenance instructions for the supply item – then the provisions contained in Section 10 herein shall have effect to the exclusion of all further claims on the part of the orderer.

15.2 Moreover, although we inform and advise our customer to the best of our knowledge, we can only be held liable in that respect if a special indemnity has been previously negotiated.

**16. Place of Fulfilment, Place of Jurisdiction, Applicable Law**

16.1 The place of fulfilment for all commitments emanating from the present contract shall be Wetter, Ruhr.

16.2 The place of jurisdiction for all disputes arising out of the relations between us and the orderer – also in the case of bill and cheque proceedings – shall be Wetter, Ruhr.

16.3 The contractual relations shall be governed exclusively by the laws valid in Germany. The uniform laws relating to the international purchase of movable goods and to the conclusion of such contracts shall not apply.

**17. Scope of Validity**

These "General Business Conditions" shall also apply by analogy to other kinds of contracts, especially works contracts and works supply contracts.

**18. Other Points**

If any individual provisions or parts thereof should be or become null and void, or if there should be any legal hiatus in a contract concluded on the basis of these "General Business Conditions", the said hiatus shall not make ineffective any of the other provisions or parts thereof. A ruling should rather be made that is legally as close as possible to that which the contracting parties intended or which they would have desired in keeping with the contract if they had initially taken that point into account.