



# General Terms and Conditions of H2O GmbH for Export Deliveries

## **I. Scope of Obligation to Supply**

1. For all deliveries and performances, inclusive proposals, advisements and other performances of additional service only the General Terms and Conditions for Export Deliveries of the Supplier are valid. General Terms and Conditions of the Purchaser are not valid, even not if the Supplier doesn't contradict.
2. The scope of supply shall be as set forth in the written acceptance of order issued by the Supplier. Incidental and collateral agreements shall not be effective unless they are confirmed in writing by the Supplier.
3. Protective devices shall be supplied only if, and to the extent as may be, agreed.
4. Any documents and particulars pertaining to the tender submitted, such as illustrations, drawings, weight specifications, and ratings, shall be deemed to be approximate only, unless a statement to the effect that they are final is expressly made; this is no express warranty for the characteristic feature. Cost estimates, drawings, and other documents as well as the copyright thereto shall remain the property of the Supplier. They must not be made available or accessible to any third party.

## **II. Prices, Terms of Payment, Securities**

1. Unless otherwise agreed, prices are for delivery EX WORKS Steinen according to actual valid INCOTERMS, without taxes, shipping, freight, packing, insurance, customs duties and any other incidentals. All prices are quoted in EURO. Unless otherwise agreed, offers are valid 90 days after their date. The prices of the acceptance of order are definitive. Offers are without obligation.
2. Unless otherwise specified, payments shall be effected net and free Supplier's bank at the contractual date.
3. A right of retention or a set-off claim by the Purchaser shall only exist in case of undisputed or non-appealable counterclaims.
4. In case of written express agreement, the Purchaser may pay by cheque. The debt will be deleted by redemption. The costs of payment of the cheque are beard by the Purchaser.
5. In the event of payment(s) not being received when due, default interest at the amount of the current rate of overdraft facilities of the Federal German Bank shall be charged without prior formal notice of arrears being required. The Supplier may raise further damage.
6. In case of delay of payment or danger for the claims the Supplier may demand the payments or securities, and he may deliver other parts of delivery after prepaying or giving securities by the Purchaser without being late.
7. At the latest 30 days after account, the Purchaser is in delay.
8. In the event of hire purchase, the Purchaser has to pay the unpaid part of the account immediately, if one instalment is due more than 14 days.

## **III. Delivery Period, Problems of Fulfilment**

1. The delivery period shall begin from when the acceptance of order is mailed but not before all required documents are received and all relevant particulars clarified. Keeping to agreed delivery dates shall be conditional upon the Purchaser duly discharging his contractual obligations, in particular as regards all payments being promptly received by the Supplier as and when due, securities and installations are done. If the Purchaser missed these obligations, the delivery period will be extended adequately without delay of the Supplier.
2. Delivery shall be deemed effected in time if and when the equipment is dispatched or ready for dispatch in time and the Purchaser has been given notification of the readiness for dispatch but the dispatch is late for reasons the Supplier is not responsible.
3. If the delivery or other obligations of the Supplier or his sub-contractors should be delayed because of force majeure, industrial disputes or any similar events which are beyond the control of the Supplier (break-downs, delays in the supply of essential raw and building materials, rejects, whether occurring in the Works of the Supplier or in the Works of his sub-contractors), the delivery date shall be reasonably extended. The Purchaser will be informed as soon as possible about the beginning and the end of these events. If the fulfilment of the Supplier's obligations is impossible or unacceptable for the Supplier because of these events, he can cancel the contract; the Purchaser has this right, too, if the delay is unacceptable.
4. If, for reasons other than those specified above, the work should be delayed through the fault of the Supplier and if such delays cause any loss to the Purchaser, the latter shall, to the exclusion of any further claims, be entitled to a compensation of not more than 0.5 % for each full week of delay up to a maximum total of 5 % of the value of that part of the contract which, because of delayed completion of any of its

components, cannot be properly put into operation. Any indemnity payable by the Supplier under this provision shall be effected when the final settlement is made. The Purchaser shall only be entitled to withdraw from the contract in the scope of the legal rules, if the Supplier is responsible for the delay of the delivery and the extension was not successful; the same shall be deemed for other breach of duty which are no fault, and in case of impossibility.

5. The rights to cancel the contract of point 3 or 4 concern basically the not fulfilled part of the contract. The Purchaser shall be entitled to cancel fulfilled partial deliveries if they have no interest for him.
6. Further claims of the Purchaser because of delay are excluded, expect the rights of point VIII.

## **IV. Acceptance**

1. If an acceptance is agreed, it have to be done immediately after the notification of being ready for acceptance.
2. If special features of delivery are agreed or the Supplier is demanding this, the Purchaser has to do the acceptance, same for separate parts of delivery.
3. If the acceptance is delayed by reasons for which the Supplier is not responsible, the delivery deems to be accepted after the 10<sup>th</sup> day of work after the report of being ready for acceptance.
4. The effect of acceptance starts if the delivery has been at work without the agreement of the Supplier.
5. The Purchaser has to organise all conditions of the acceptance and bears the costs of acceptance excluding the personal costs of the Supplier.
6. The acceptance cannot be refused because of unessential defects, excluding the rights of point VII.

## **V. Passage of Risk, Dispatch**

1. The risk shall pass to the Purchaser not later than on the date the equipment is dispatched, even if there are partial deliveries or the Supplier takes over other performances like dispatch or installation. Should dispatch be delayed by reasons for which the Purchaser can be held responsible, the risk shall pass to the Purchaser upon notification by the Supplier that the equipment is ready for dispatch.
2. For the interpretation of the trade provisions the INCOTERMS in the actual version of the date of contract are valid.
3. The Supplier has the choice of the way and means of transport, same for choice of forwarding agent.
4. Delivery which is ready for dispatch - and the Purchaser is informed about this - has to be requested immediately; if not, the Supplier has the right to store it and to calculate it, and the Purchaser is bearding the risk and the costs.
5. Partial deliveries shall be permissible, an account is possible for them.

## **VI. Property**

1. Ownership of the equipment shall only pass to the Purchaser when the Supplier has received payment in full for the same. Should validity of title be dependent on compliance with special regulations in force in the country of the Purchaser, the latter shall, for his own account, see to the due completion of such formalities.
2. The delivery has to be insured against fire, water, theft, breaking and other damages at the Purchaser's expense. In case of demanding he has to prove this. If there is no insurance, the Supplier has the right to insure the delivery at the expense of the Purchaser.
3. The Purchaser has the obligation to keep the delivery in impeccable condition and organise immediately necessary repairs by experts. He has to inform the Supplier about details of the delivery, for example the location. The Supplier can visit the location of the delivery every time. Unless otherwise agreed, the delivery is not for freely disposition of the Purchaser, sale, letting or other dispositions are forbidden without written agreement of the Supplier. The Purchaser has to inform about changed location of delivery or danger for the property like confiscation, in case like this he has also to inform other persons about the foreign property and bear the costs.
4. In case of non-contractual behaviour of the Purchaser, for example default of payment or insolvency, the Supplier has the right after reminder to take back the delivery, to demand the whole payment or securities. The costs of withdrawal bears the Purchaser, ha has no right of retention. For every whole month till the beginning of the contract the Purchaser has to pay a compensation of use at the amount of 2 % of the purchase price.
5. If the worth of the securities is 20 % over the sum of all claims, the Supplier has to give back securities at his option after the demand of the Purchaser.



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## VII. Warranty Claims

1. Defaults have to be indicated immediately by written notice, at the latest one week after entry of the delivery. Defaults which cannot be discovered in this time in case of careful check shall be indicated immediately after discovery.
2. The Supplier undertakes, at his option, to rectify or replace, free of charge, any such parts which are defect. In case of unsuccessful remedying of the defect or unsuccessful replacement or unsuccessful written and adequate extension the Purchaser can reduce the purchase price or cancel the part concerned. If the other part of the contract has no interest for him, he can cancel the whole contract. If the defects are unessential he has only the right to reduce. In urgent case of danger for the safety in operation or for the defence of disproportionate damages has the Purchaser the right to remove the fault by himself or by third, the Supplier has to substitute the necessary expense. Any parts replaced as set forth above shall become the property of the Supplier.
3. These warranty claims become statutebarred within 12 months from the entry or, in the event of the erection being included in the contract, from completion of the erection, or in case of acceptance with the acceptance. In the event of the despatch or erection of the equipment being delayed through no fault of the Supplier, the warranty shall expire at the latest 13 months after receipt of notification that the equipment is ready for despatch. The legal deadline of § 479 BGB keeps untouched.
4. The Supplier does not assume warranty for damages resulting from the following reasons:  
unsuitable or inappropriate use, unauthorised and incorrect mounting or setting in motion by the end user or third party, later alteration works made by the end user or third party, normal wear, careless or faulty handling, maintenance or service, non-respecting the prescriptions in the instruction manual, inapt operating fluids as oils, defective construction works made by the end user, inapt construction ground, influences being beyond the control of the Supplier, such as chemical, electrochemical or electrical influences, as well as exceptional temperatures and influence of the weather. The Supplier shall not assume any liability for the installation and performance of machines not installed by him.
5. Further claims in case of defects on the part of the Purchaser, in particular any compensation for any damage to equipment other than that supplied, shall be excluded, expect the rights of point VIII.
6. Warranty means the general legal warranty, there is no express warranty. An express warranty has to be agreed in an written agreement.

## VIII. Liability

The rights and obligations of the parties shall be finally and exclusively determined by the provisions of these General Terms of Deliveries. Other rights are excluded. But this limited liability is not valid for rights of the law of product liability, intent or gross negligence, in case of malicious withholding of faults, in case of faulty damage of health, life or body, in case of express warranty for the characteristic feature or the damage of essential contractual obligations. The compensation for the damage of essential contractual obligations is limited by the foreseen and typical damage. Other claims are excluded for example loss of profit, saving expenses, claims of compensation of third or any indirect or consequential loss or damage. These rights become statutebarred lawfully.

In case of exclusion or limitation of the Supplier's liability, the liability of the employee or the representatives is limited in the same way.

## IX. Place of Performance

The place of performance for the deliveries is the place of delivery. If the Supplier has to produce any performance ( for example installations), the place of performance is the site where the performance has to be produced. The Purchaser has to provide the payments at the given site noticed in the account.

## X. Place of Jurisdiction, Legal Disputes, etc.

1. Any disputes arising out of the terms of the contract shall be brought before the court of justice having jurisdiction in the area where the Supplier has its main office. However the Supplier may choose to bring an action at the domicile of the Purchaser.
2. For this contract, German law is valid, the law of international purchase (Agreement of Vienna from 11. April 1980 of the United Nations) is excluded.
3. If a rule of these General Terms is not valid, the other rules shall still be valid.
4. In the event of both parties having agreed to submit to Arbitration, the following provisions shall apply:  
Disputes arising out of the contract, in particular as to its inception, interpretation and implementation/performance, whether as to fact or as to Law, shall be referred exclusively to a Court of Arbitration for final and binding decision.  
The Court of Arbitration shall be so constituted and convened, and conduct its proceedings in such manner, that any award made shall be enforceable in the country of whichever party the award is made against. However, unless statutory regulations under the relevant legal system make a different mode of procedure necessary, Arbitration Proceedings shall be initiated as follows:  
Each party shall nominate one Arbitrator within one month receiving the other party's request to do so. The two Arbitrators shall then elect an Umpire. In the event of either party failing to make a nomination within one month after being there unto required by the other party, in the event of one Arbitrator resigning or constantly protracting the arbitration proceedings, and/or in the event of the two Arbitrators failing to agree within one month as to the Umpire, the missing Arbitrator and/or Umpire shall be appointed by the Chairman of the International Chamber of Commerce at Paris (France). For this arbitration procedure, Swiss or Swedish law (or other neutral law) could apply to the contract.

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