

# TERMS AND CONDITIONS OF PURCHASE

## ANDRITZ Maerz GmbH

(January 2019)

Our Terms and Conditions of Purchase apply exclusively to companies, legal entities under public law or special funds under public law.

Contracts are based solely on our Terms and Conditions; we do not accept deviating or conflicting provisions unless these have been given our explicit written approval. This also applies even if the seller's written order confirmation contains other contract terms.

The seller's quotations and consultations are not binding for us and are free of charge. The seller is bound by his offers and is obliged to obtain sufficient information about details affecting the subject of the inquiry or order.

### 1. Award of contract

- 1.1 Orders are only legally valid if drawn up on our order forms with a corporate signature or agreed in a supply contract.
- 1.2 Orders issued verbally, by phone, fax or electronic transmission must be confirmed by us in writing to become valid, unless our fax or electronic order states that no written order will follow.
- 1.3 Amendments or additions must always be agreed in writing.

### 2. Order confirmation

The seller shall return a copy of the order form to us without delay, bearing a corporate signature as order confirmation. We shall not accept any other form of order confirmation. The seller's terms and conditions of supply are only binding for us if we have explicitly accepted them in writing. The order is also deemed to be unconditional and accepted in compliance with our Terms and Conditions if the seller manifestly starts executing the order after receiving the order form.

### 3. Prices

- 3.1 The prices are fixed prices and apply DDP including packaging and preservation, supplied free place of destination, uninsured, pursuant to the Incoterms as amended, unless agreed otherwise in the order.
- 3.2 If prices and conditions are not already stipulated in our order, the contract does not come into effect until written agreement has been reached about the prices or we explicitly declare that the usual remuneration (Section 632 (2) of the German Civil Code [BGB]) is deemed to be agreed.
- 3.3 The seller is aware that our price calculation is based on the agreed prices. In view of our resulting interest in keeping prices constant, the seller undertakes to execute subsequent orders at the agreed prices. The seller can only demand an adjustment of the agreed prices if there has been a significant change in costs relating to the order (e.g. wages, carriage, energy) consistent with the effect of these cost factors. We shall specify the type and scope of the adjustment at our discretion (Section 315 BGB).

### 4. Delivery time

- 4.1 The seller must inform us immediately when it becomes apparent that the agreed deadlines cannot be met. This does not affect the obligation to comply with the agreed deadlines.
- 4.2 In the event of default on the part of the seller, we are entitled to charge a penalty of 0.2% to max. 5% of the value of the full order for every day beyond the date of delivery or to demand compensation for any damages actually incurred. If we initially claim the above flat-rate penalty for delay, this does not prevent us from claiming compensation for damages actually incurred, which is to be offset from the penalty. The penalty shall not be waived if the delivery has been accepted and/or paid for unconditionally in whole or in part. The seller waives the right to have the penalty reduced by a court or arbitration tribunal.
- 4.3 For deliveries made before the stipulated delivery date, which are only permitted with our consent, the related periods do not begin until the originally agreed date.
- 4.4 The seller must inform us immediately in writing if it should be impossible to meet a delivery date due to force majeure or due to our subsequent arrangements. Otherwise, claims to extend the delivery date cannot be taken into account. In this case, we shall decide at our discretion (Section 315 BGB) whether the delivery period shall be extended and by how much.
- 4.5 Force majeure refers only to those unavoidable circumstances which were not apparent on entering into the contract, such as war and natural disasters. Force majeure does not include strikes, manufacturing faults, reject castings, power failures or delays by the seller's suppliers.

### 5. Forwarding instructions

- 5.1 Our instructions regarding delivery and forwarding must be heeded, together with the specifications for packaging materials. Packaging must be restricted to the extent necessary to protect the product and must consist only of environmentally-friendly and recyclable materials. Unless agreed otherwise, packaging materials must be taken back free of charge.
- 5.2 Any costs we incur due to failure to comply with the delivery, forwarding and packaging instructions must be paid by the seller.

### 6. Take over / acceptance

- 6.1 The seller is aware that we cannot inspect goods for faults, type and quantity as soon as they are handed over or accepted. The seller therefore foregoes our compliance with the direct duty to inspect and give notice of defects pursuant to Sections 377 and 378 of the German Commercial Code (HGB), and hereby grants us a period of up to four weeks after discovery of such faults within the warranty period.
- 6.2 The seller grants us the possibility of pre-inspecting the goods at his site. We and/or our customers and/or a third party authorised by us have the right to check order handling and/or progress at any time during normal business hours. Such inspections do not constitute any kind of acceptance. Any costs incurred by these inspections shall be paid by the seller, apart from our personal expenses and/or the personal expenses of third parties. All costs caused by repeated inspections for which the seller is responsible shall be paid by the seller.
- 6.3 If the goods are to be installed in a system supplied by us to a third party, liability for material faults and warranty (clause 7) begins on acceptance of the complete system at the third party's site.
- 6.4 A delivery note stating our order number, item number and part number (where applicable) must be enclosed with every delivery.

### 7. Liability for material faults and warranty

- 7.1 If the goods or services are defective, the seller is liable accordingly in the first instance on the basis of the agreements made, and otherwise pursuant to the statutory provisions of the laws pertaining to contracts of sale or works, together with commercial usage and safety regulations, official requirements and any other relevant guidelines of the trade associations which apply to our registered office. The warranty period is 24 months after acceptance of the complete system at the third-party site.  
We have the right to choose the type of supplementary performance between correction of the fault or delivery of fault-free goods.  
In urgent cases, we have the right to choose to correct the fault ourselves or have it corrected by third parties or to procure a replacement, at the seller's costs. In the event of replacement or correction, the full warranty period begins at the point in time of commissioning the system again. If subsequent performance is not possible within an appropriate period of time, we are entitled to reduce the price or to withdraw from the order.
- 7.2 In case we incur damage due to lack in performance or delayed delivery, the seller shall provide full compensation.
- 7.3 The seller undertakes to supply spare and wear parts for the goods at normal market prices and delivery times, for a period of up to 10 years counting from the point in time of delivery.
- 7.4 On acceptance of the order, the seller guarantees explicitly that the goods are not encumbered by any rights, in particular third-party proprietary rights. Furthermore, the seller shall indemnify us from any third-party claims if any rights should nevertheless be asserted by third parties, and shall reimburse us for any damages thus incurred. On ascertaining the infringement of any third-party proprietary rights, the seller shall also be obliged either to discharge the patent holder's claims or to change the goods at his own costs free place of delivery in

such a way that the infringement of the proprietary rights no longer applies, without impairing the originally agreed quality, performance and performance guarantees. This shall not affect the seller's further statutory liability.

- 7.5 The seller is liable according to the statutory provisions also for any other accepted guarantees.

### 8. Cancellation / Suspension

- 8.1 Cancellation  
We have the right to withdraw in full or in part from the order even if the seller is not at fault. In this event, we are obliged to pay the seller the contract price in proportion to the goods and services that have already been handed over, and also to refund the verified direct costs of goods and services in progress or refund the cancellation of sub-orders. After such cancellation has been declared, the seller is obliged to make every effort to minimise the costs that are to be refunded by us. All other claims for any legal reason whatsoever are ruled out.
- 8.2 Insolvency  
Where permitted by law, we are entitled to cancel an order immediately if an application is made to initiate insolvency proceedings against the seller's assets.
- 8.3 Suspension (interrupting execution of the contract)  
We have the right to demand that the seller interrupts execution of the order at any time. In this case, the seller must inform us of the resulting consequences and offer the best possible amended schedule in economical terms with regard to the project as a whole.
- 8.4 We reserve the right to keep the ordered goods free of charge at the seller's site for a maximum period of 6 months.

### 9. Payment

- 9.1 Unless agreed otherwise, payments shall be made within 60 days after delivery and receipt of the invoice less 2% discount or after 90 days net. If the agreed documentation and/or certificates are not made available by the payment deadline, delivery is deemed not complete and payment shall not be made until the outstanding documents have been provided.
- 9.2 We can assert withholding rights with regard to all accounts payable to us by the seller for any legal reason whatsoever, even if these accounts are not due yet.
- 9.3 Unless agreed otherwise in the order, we do not accept any assignments and/or reservations of title by the seller.

### 10. Order documentation

- 10.1 The details given in our enquiries or orders, the enclosed drawings and designs together with samples, models, plates and other aids supplied by us remain our property and must not be put to any other use without our written consent; they must be returned to us unsolicited together with the offers or on completion of the order.
- 10.2 All drawings, calculations and other documents supplied by the seller, especially technical documents, become our property and can be used and disclosed to third parties without special permission, also for purposes of spare parts management, repairs and modifications. This does not affect any copyrights.
- 10.3 Our written consent is required before using the order for advertising purposes, including professional publications. Complete systems for which the seller has supplied essential parts may not be quoted as references by the seller.
- 10.4 The order and all related information, documents etc. must be treated in confidence as our business secret and must not be disclosed to third parties. In the event of any infringement, the seller is obliged to pay a penalty amounting to 5% of the order value. We are also entitled to demand compensation for any damages we have thus incurred, which shall be offset from the above penalty.
- 10.5 Leaflets containing technical or commercial information enclosed with the order form an integral part thereof.
- 10.6 The following priority shall apply in the event of any contradictions between the order documentation and our Terms and Conditions of Purchase:
  1. Text of the order including appendices
  2. Our Terms and Conditions of Purchase.

### 11. Place of fulfilment, partial invalidity, place of jurisdiction, governing law

- 11.1 The place of fulfilment for goods and services is the place of destination stated in the order form; for payments the place of fulfilment is the registered office of ANDRITZ Maerz GmbH in Dusseldorf.
- 11.2 If individual contract provisions should be ineffective, the remaining provisions remain binding.
- 11.3 Dusseldorf is the place of jurisdiction, although we reserve the right to take legal action against the seller at his general place of jurisdiction.
- 11.4 German law shall apply. The contract shall be governed by the provisions of the German Civil Code (BGB) and the German Commercial Code (HGB). The UN Convention on the International Sale of Goods (CISG) and the international conflict of law rules do not apply.

### 12. General

- 12.1 Any materials provided by us shall be taken into safe keeping free of charge by the seller until they are used; they remain our property and must not be put to any other use. They are to be marked clearly as "Property of ANDRITZ Maerz GmbH" and kept in separate storage. This reservation of title also applies in the event of processing or treatment. The seller shall inform us in good time if any national regulations apply to obtain the retention of title. Our materials do not affect the seller's guarantee obligations for his scope of supply and for the overall design and functionality.
- 12.2 The seller shall inform us in advance if essential parts of the goods or project are to be supplied by sub-contractors, and must obtain our corresponding approval.
- 12.3 Our Terms and Conditions apply to purchase, works and all other supply contracts. "Seller" as used above shall also include project contractors, project suppliers or other suppliers.
- 12.4 The seller herewith confirms that:
  - he has received and read a copy of the ANDRITZ Supplier Code of Conduct and Ethics ("Supplier Code"), which is published on the ANDRITZ web site at [www.andritz.com](http://www.andritz.com) (<http://www.andritz.com/index/gr-procurement.htm>);
  - he undertakes to comply with the Supplier Code and agrees that it shall form the basis of present and future business with ANDRITZ (ANDRITZ AG and its affiliates);
  - this Supplier Code shall form part of any agreement entered into between the seller and any ANDRITZ company, regardless of whether it is expressly incorporated into the contract by reference or not;
  - he shall be held responsible for ensuring compliance with the Supplier Code by his employees, company representatives, as well as subcontractors and any business partners that the seller is using to supply products and/or services when doing business with ANDRITZ.

ANDRITZ reserves the right to terminate the business relationship or contract in the event of a major breach of the rules laid down in the Supplier Code. The seller will hold harmless and indemnify ANDRITZ from and against damages arising out of a breach of the Supplier Code.