



## TERMS AND CONDITIONS OF PURCHASE OF ANDRITZ Kufferath GmbH

(September 2019 edition)

Only our “Terms and Conditions of Purchase” apply to companies, public corporations or public-private utilities. Contracts are based on our Terms and Conditions of Purchase only, even if the seller’s written confirmation of order contains other terms and conditions. The seller’s quotations and consultations are not binding on us and are free of charge. The seller must 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 they are drawn up on our orders forms and bear a corporate signature or have been agreed in a supply contract.
- 1.2. To be valid, oral orders or those placed by telephone, fax or electronically must be confirmed by us in writing unless our order placed by fax or electronically contains the proviso that no written order follows.
- 1.3. Any amendments or additions must be the subject of a written agreement.

### 2. Prices

- 2.1. Prices are firm and apply DDP including packing, preservation, delivered free place of destination, uninsured, on the latest Incoterms unless otherwise agreed in the order.
- 2.2. Unless prices and conditions are already specified in our order, the contract does not come into effect until there has been agreement in writing on prices or we expressly declare that the usual fee (Civil Code [BGB] Section 632.2) is to be regarded as agreed.
- 2.3. The seller is aware that we base our price calculation on the agreed prices. In view of our resulting interest in keeping prices constant, the seller undertakes to fill subsequent orders at the agreed prices. Only if there is a significant change in costs relating to the order (eg wages, carriage, energy), the seller may request an adjustment of the agreed prices consistent with the effect of these cost factors. We determine the nature and extent of any adjustments at our discretion (Civil Code Section 315).

### 3. Delivery time

- 3.1 If the seller recognizes that the agreed deadlines cannot be kept, he must inform us immediately. This does not affect the obligation to comply with agreed deadlines.
- 3.2 In the event of the seller’s default we have the right to charge a penalty for delay from 0.2% to 5% of the value of the full order for each calendar day beyond the date of delivery or to claim compensation for any actual losses we incur. If we claim the above penalty for delay, this does not prevent us from claiming compensation for our actual losses, in addition to the penalty for delay. The penalty for delay will not be waived if the delivery has been accepted and/or paid for in whole or in part without reservation.
- 3.3 For deliveries made before the specified delivery date – which can only be done with our permission – the relevant periods do not begin until the originally agreed date.
- 3.4 If it proves impossible to meet a delivery date due to force majeure or due to our delay in making arrangements, the seller must inform us immediately in writing. In this case we decide at our discretion (Civil Code Section 315) whether the delivery period will be extended and by how much.
- 3.5 Only unavoidable circumstances that were not foreseeable when the contract was entered into, such as acts of war and natural disasters, are regarded as force majeure. Events such as strikes, manufacturing faults, reject castings, power failures or delays by the seller’s suppliers are not regarded as force majeure.



#### **4. Forwarding instructions**

Our instructions regarding delivery and shipping and materials specifications for containers must be complied with. Containers must be limited to the size necessary to protect the goods and must consist only of environmentally friendly and recyclable materials. Unless otherwise agreed, containers must be taken back free of charge. Costs incurred by us due to failure to comply with delivery, shipping and packing instructions must be paid by the seller.

#### **5. Delivery / Acceptance**

- 5.1. 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 waives compliance with the duty to inspect and give notice of defects as referred to in the Commercial Code [HGB] Section 377 and 378 and hereby allows a period of up to four weeks after discovery of such faults after the delivered goods are installed.
- 5.2. The seller gives us an opportunity to pre-inspect the goods in his works. The conduct of such inspections does not imply acceptance. Any costs incurred by such inspections, with the exception of our personal expenses and/or the personal expenses of third parties, are paid by the seller. Any costs resulting from repeated inspections for which the seller is responsible must be paid by him.
- 5.3. If the goods have to be installed in a structure supplied by us to a third party, liability for material faults and warranty (as part of Clause 7) begins on acceptance of the complete structure at the third party's site.
- 5.4. A consignment note quoting our order number, item number and, if necessary, part number, must be enclosed with every delivery

#### **6. Liability for defects and warranty**

- 6.1. If the goods or services are defective, the seller is liable for them, in the first instance as part of the agreements made, otherwise in accordance with the statutory terms of the laws on contracts of sale or works and commercial usage and safety rules, official specifications and any other relevant guidelines of the trade associations applying to our registered office. The warranty period is 24 months after acceptance of the total structure at the third party's site. Contrary to the Civil Code Section 635 we have the option of demanding correction of the fault or delivery of fault-free goods. In urgent cases we have the right, at our option, of correcting the faults ourselves or having them corrected by third parties or having them replaced. In the event of replacement or correction the full warranty period begins when the goods are put into service.
- 6.2. The seller undertakes to supply spare parts and parts subject to wear and tear for the goods for 10 years after delivery at market prices and delivery times.
- 6.3. By accepting the order the seller expressly guarantees that the goods are not encumbered by any rights, in particular third-party proprietary rights. He must also hold us harmless from claims by third parties if third parties nevertheless claim rights, and reimburse us for any resulting losses. If any infringement of third-party rights is established, the seller also accepts the obligation either to discharge the patent holder's claims or to alter the goods free place of delivery at his expense so that the infringement of the proprietary rights is lifted without impairing the originally agreed quality, performance or performance guarantees. This does not affect the seller's further statutory liability.
- 6.4. The seller also accepts statutory liability for any other accepted guarantees



## 7. Cancellation / Suspension

### 7.1. Cancellation

Even if the seller is not at fault, we have the right to cancel the order in full or in part. If we do so, we must pay the seller the contract price in proportion to the goods and services already supplied and reimburse the verified direct cost of goods and services in progress or reimburse the cancellation of sub-orders. Once cancellation has been declared, the seller must make every effort to keep any costs payable by us as low as possible. No further claims, regardless of their legal basis, will be accepted.

### 7.2. Suspension (Interruption of the execution of contract)

We have the right to demand that the seller cease further work on the order at any time. If we do so, the seller must inform us of the consequences and suggest to us the economically best possible arrangements for proceeding with the project. The seller will not make any claims as a result of suspensions of up to 6 months.

## 8. Payment

- 8.1. Unless otherwise agreed, payments are made within 60 days net. If the agreed documents and/or certificates are not produced by the date of payment, the delivery is regarded as not complete and payment will be made only when the missing documents are produced.
- 8.2. We can claim a right of retention for any accounts payable to us by the seller – regardless of the legal grounds – even if these accounts are not yet due.
- 8.3. Assignments and/or reserves of title by the seller are not recognized unless otherwise agreed in the order.

## 9. Order documentation

- 9.1. The information in our inquiries or orders, enclosed drawings and designs and samples, models, plates and other aids supplied by us remain our property and may not be used for other purposes without our consent in writing; they must be returned voluntarily with the quotations or on completion of the order.
- 9.2. Any drawings, calculations and other documents, in particular technical documents, supplied by the seller become our property and can be disclosed to third parties without special permission for stock-keeping of spare parts, repairs and alterations. This does not affect proprietary rights.
- 9.3. The order may only be used for advertising purposes, which also include professional publications, with our permission in writing. Regarding projects for which the seller supplies essential parts, he does not have the right to quote these projects as references.
- 9.4. The order and any information, documents etc. relating to it must be handled in confidence as our business secret and must not be disclosed to third parties. In the event of a breach, the seller must pay a contractual penalty of 5% of the value of the order. We also have the right to claim compensation for any loss we incur in addition to the above contractual penalty.
- 9.5. Leaflets containing technical or commercial information enclosed with the order are an integral part of the order.
- 9.6. If there are any contradictions in the order documentation or our terms and conditions, the following order is applicable:
  1. Text of the order, including appendices,
  2. Our “Terms and Conditions of Purchase”.



## **10. Place of performance, partial invalidity, place of jurisdiction, applicable law**

- 10.1. For goods and services the place of performance is the place of destination and for payments the registered office of Andritz Kufferath GmbH in Düren.
- 10.2. If any individual terms of the contract are invalid, the remaining terms are binding.
- 10.3. The place of jurisdiction is Düren. However, we can take action against the seller at his general place of jurisdiction.
- 10.4. German law is applicable. The contract is governed by the terms of the Civil Code [BGB] and the Commercial Code [HGB] of the Federal Republic of Germany. The UN Convention on international trade contracts (CISG) is not applicable.

## **11. General**

- 11.1. Any materials provided by us must be kept by the seller in safe custody free of charge until they are used; they remain our property and must not be used for other purposes. They must be clearly marked "Property of Andritz Kufferath GmbH" and stored separately. This reserve of title also applies in the event of processing or treatment. The seller's warranty for his goods and the entire design and efficiency is not affected by our materials.
- 11.2. If essential parts of the purchase or the project are supplied by subcontractors, the seller must inform us of this in advance and they must be approved by us.
- 11.3. We and/or our customers and/or third parties instructed by us have the right at any time to inspect the production status of the order in normal business hours.
- 11.4. Our Terms and Conditions of Purchase apply to purchase, works and all other supply contracts. Where "seller" is referred to above, this also means project contractors, project suppliers or other suppliers.
- 11.5. The buyer reserves the right to store ordered goods with the seller free of charge for up to 6 months.
- 11.6. When procuring energy services, products and equipment that have or may have an impact on the signifact us of energy, the buyer reserves the right to undertake the evaluation of the procurement in whole or in part from an energy-related point of view.
- 11.7. The seller is required by the buyer to provide alternatives that have a positive effect on the energy consumption of the requested itmes when requesting energy-related services, products or facilities from the buyer.