



# Conditions of Purchase of ANDRITZ AG and ANDRITZ HYDRO GmbH

(RELEASE DECEMBER 2020)

## 1 ORDERS AND ORDER CONFIRMATION

Orders with all supplements and changes and all agreements which are made verbally or by telephone are only valid when submitted to the contractor by the authorized purchasing department of the customer in writing or via fax, whereby the written or faxed order shall be decisive. Each order shall be confirmed immediately with the included order confirmation. Any terms contained in the offer or order confirmation which deviate from these Conditions of Purchase, in particular the General Terms and Conditions of Delivery of the contractor, are invalid unless recognized by the customer in writing.

The contractor shall obtain written authorization from the customer for all subcontractors used. The contractor shall supply the customer a copy of the order upon request.

In the event that the delivery includes planning, drafts or creative services, the customer shall be awarded factory usage rights, including the right to modify or copy, at no extra charge, and shall be entitled to transfer all documentation received from the contractor or his subcontractors to his partners and final customer's.

## 2 SCHEDULES

All schedules and deadlines shall be met exactly.

Orders before the agreed delivery data require written authorization and do not entitle the contractor to advance payment. The contractor shall inform the customer of the reason and expected duration of the delay in writing immediately in the event that it becomes apparent that it will not be possible to meet the agreed delivery date(s).

In the event that the delivery dates should change for reasons not attributable to the contractor, the contractor shall properly store the goods ordered for a period of up to 6 months at his own risk and expense.

In the event that the contractor fails to meet the schedules and delivery dates indicated in the order, the following contractual penalties shall be paid until the actual delivery date on the basis of the total order value regardless of fault:

Delivery and service: 2 % per week of delay begun, up to a maximum of 10% of the total order volume;

Documentation: 1 % per week of delay begun, up to a maximum of 5% of the total order volume.

These contractual penalties shall also apply to new schedules in the event that the customer and contractor agree to changes in the delivery date(s). This shall have no effect on any contractual penalties already incurred. Notwithstanding entitlement to contractual penalties, the customer shall also be entitled to withdraw from the entire order or the remaining part of the order which has not been fulfilled with a period of notice of 14 days or to demand fulfillment of the order in the event of delayed delivery, including for delays for part of the order.

## 3 PACKAGING AND SHIPPING

The terms of shipping and packaging guidelines of the customer according purchase order shall apply. The contractor shall request these from the customer if they are not known. The contractor shall



expressly inform the customer in good time in the event that the object of the order requires special shipping and packaging measures.

In case of deliveries exceeding the loading dimensions the contractor has to inform the customer about the exact data (package dimensions, weight) minimum 6 weeks prior to the delivery date.

At deliveries duty unpaid into the plant of the customer the goods have to be declared specifically as duty delivery and all relevant duty documents must be attached to the delivery.

Labeling of the packages in terms of handling and storage must be according to the documents stated in the purchase order.

A complete declaration of readiness to deliver must be submitted to the customer immediately in two copies for each delivery from an order, followed by a delivery announcement with the order number.

Terms of shipping and packaging guidelines for shipments into the plant of the customer:

Each unit or package shall also include a packaging slip or delivery bill with exact information on the contents and packaging data according to the documents stated in the purchase order.

Terms of shipping and packaging guidelines for shipments which are not sent directly to the customer, but to a third party or to the site of the client:

Such deliveries must be performed with ANDRITZ shipping documents only, therefore the following steps have to be followed:

- 1) Prior to packing all shipped parts must be marked with ANDRITZ dispatch labels. A complete list of the shipped parts has to be sent in time to the customer for producing the ANDRITZ dispatch labels.
- 2) The packing has to be according to the packing guidelines stated in the purchase order. In case of seaworthy packaging the complete packaging process (prior, during and after packing) must be documented with pictures and has to be sent to the customer immediately.
- 3) The delivery to site or final client must only be performed after approval of the customer.

The contractor shall submit a valid preferential certificate (such as a movement certificate, certificate of origin, supplier declaration etc.) if stated in the purchase order. No indication of value must be included in the shipping documents unless indicated otherwise in the customer's terms of shipping.

All products subject to special product regulations like hazardous goods regulations shall be rated, packaged and labeled properly in accordance with the respective form of shipping; the legally required safety data sheets shall be included with the order confirmation.

The customer will accept no orders sent c.o.d. EUR-pallets must not be exchanged. All damages and expenses arising from failure to comply with the shipping and packing regulations shall be borne by the contractor.

## **4 ACCEPTANCE AND GUARANTEE**

Confirmation of acceptance or receipt on the return shipping bill and payment are no indication of receipt of a proper shipment. The customer is not obligated to check or inspect the goods and services received from the contractor before startup or use. Complaints for any faults may be lodged within 90 days after acceptance. The order shall be considered fulfilled when all contractor obligations including all ancillary obligations such as the supply of complete and proper documentation have been fulfilled. The actual



delivery date shall be considered to be the date on which the order itself all such obligations have been fulfilled.

In addition to the generally required and expressly promised characteristics, the contractor shall also guarantee the completeness and suitability of all deliveries and services for the concrete intended use and the fact that all deliveries and services are completely free of fault for the entire guarantee period.

The guarantee period ends 24 months after the date of Acceptance of the whole Plant, however, latest 48 months from complete fulfillment according to the Contract. For steel structures and corrosion protection the guarantee period ends 36 months from Acceptance of the whole Plant, however, latest 60 months from Completion of Erection. The guarantee period for the entire object of delivery shall begin anew when replacement parts are installed and/or repairs made. The guarantee period for replacement parts supplied with the order shall be 12 months after the installation and startup of these parts. The customer shall be entitled to demand replacement parts free of charge at the location of use (even if the fault can be corrected), repair free of charge or a reasonable price reduction in the event that faults arise during the guarantee period, or to withdraw from the contract in the event of serious faults during this period.

The customer shall also be entitled to correct the faults himself or to have the faults corrected by third parties at the risk and expense of the contractor in urgent cases or in cases where the contractor fails to correct the faults within 7 days after being informed of the fault.

The contractor shall also bear all costs for testing measures, expert fees and all processing fees resulting from the fault.

Claims for compensation for faults may be asserted by the customer in a court of law for a period of 12 months after the lapse of the guarantee period.

The contractor shall guarantee the availability of replacement and wearing parts for the object of the contract for a period of 10 years after the end of the guarantee period.

## **5 WITHDRAWAL**

The customer shall be entitled to withdraw from the contract after a reasonable period of notice (normally 14 days) in the event of violation of the contract. A separate period of notice shall not be required when the contractor has already had an effective period of notice.

The customer shall be entitled to withdraw from the contract in part or in whole at any time without justification. In this event, the customer shall be obligated to pay the portion of the contract which has already been fulfilled and to compensate the contractor for any direct costs which can be proven to be associated with deliveries which are being processed and for unavoidable cancellation fees from subcontractors. The contractor shall be obligated to do everything in his power to keep the costs incurred by the customer as low as possible. In the event of withdrawal from the contract, the customer shall be entitled to use the object of the order free of charge until the acceptance of a substitute solution.

## **6 COMPENSATION FOR DAMAGES AND PRODUCT LIABILITY**

The contractor shall be liable for his subcontractors and suppliers as he is for his own products and services. The contractor shall be obligated to indemnify the customer from product liability claims from third parties and to provide all information and documents on the respective manufacturer or importer necessary to defend against product liability claims of third parties in good time for a period of 12 years after delivery.



The contractor shall be obligated to supply complete and easily understandable operating instructions in the agreed language, to archive all required documents and to carefully monitor all products.

The payment of contractual penalties for delays or incomplete deliveries and services does not relieve the contractor of his obligation to fulfill the contract or the associated liabilities. The customer reserves the right to demand compensation for damages in addition to the contractual penalties, whereby any contractual penalties paid will be deducted from these damages.

## **7 QUALITY ASSURANCE**

The contractor and his subcontractors shall be obligated to apply quality assurance measures in accordance with the pertinent current standards, such as ISO 9000, ISO 9001, ISO 9004 or ISO 3834, to all products and services provided.

The customer reserves the right for himself or for the end customer and/or their testing organizations or bodies to inspect the production and storage facilities of the customer and his subcontractors at any time during the drafting, planning and manufacture of the object of the order and during preparations for delivery in order to complete schedule checks and intermediate and final technical inspections (including for packaging) and to audit the quality control system of the contractor and his subcontractors. The completion of or waiver of tests and inspections does not limit the obligations of the contractor or relieve the contractor of his obligations to the customer.

The contractor shall be obligated to prepare and supply all deliveries and services in accordance with the applicable national and international standards and the latest technological standards.

## **8 SAFETY REGULATIONS**

For Supplies and Services required to be marked with the CE-sign and for which a EC declaration of conformity for the machinery, Pressure Equipment, electrical equipment, ROHS, or a EC declaration of incorporation for partly completed machinery is required or permitted the Contractor is obliged to conform to all of the legal terms concerning this matter and shall affix the CE-sign to a ready-to-use machinery/equipment and submit to the Customer all necessary EC declaration of conformity for the machinery or a EC declaration of incorporation for partly completed machinery including the required risk assessments and Operation and Maintenance Manuals in the language prescribed for the Documentation.

If there is to apply the EG-VO 1907/2006 REACH for supplies, there have to be provided a safety data sheet (articl. 31) or rather an information for products (articl. 33) in English and German for free.

## **9 RETENTION OF OWNERSHIP AND ASSIGNMENT**

All deliveries to the customer shall be free of rights of retention. All such rights are invalid, even if not expressly contradicted by us. Claims from deliveries to us may only be transferred with our express prior written authorization. Such transfer is only permissible if assignment is not possible as a result of these claims.

The contractor hereby expresses his consent to the assignment of his contractual obligations, in particular his guarantee obligations, to the end customer.



## 10 CUSTOMER PROVISIONS

All materials provided by the customer remain the property of the customer, shall be permanently labeled as such and shall be stored separately. All new, modified or connected goods including semi-finished goods which result from the processing and use of these materials shall pass into the ownership of the customer immediately.

Drawings, sketches, samples, models, aids and other documentation provided for the completion of the order remain the property of the customer at all times, shall be handled as business secrets and shall be protected against unauthorized access. The indicated documentation shall be labeled as the property of the customer and shall be returned immediately upon demand.

## 11 PRICES AND TERMS OF PAYMENT

All prices are fixed prices less VAT and shall include all taxes, duties, fees, etc. and all costs for documentation, technical inspection and testing, paint, corrosion protection, labeling, signs, etc.

Unless agreed otherwise, the customer will make all payments within 60 days after the agreed due date and receipt of the invoice and after fulfillment of all requisite obligations named in the order, in particular after submission of complete and proper documentation, by means of transfer. Payment can be withheld until the processing of all complaints.

## 12 INVOICING

All invoices shall include the order number, item number, etc. and shall be submitted to the customer with all documents required to identify the invoice (see order for company name and address).

Contractors from EU member states shall also include all goods movement certification in addition to the legally required information for tax exemption with all invoices. The final payment will only be authorized after submission of the final invoice containing all deliveries and services for the respective order and all associated payments.

The final invoice shall contain all claims from the respective order. The contractor expressly declares that no further claims will be asserted in relation to the order upon submission of the final invoice.

## 13 PLACE OF JURISDICTION, APPLICABLE LAW

**13.1** Subject to Article 13.2 hereof, all disputes arising in connection with the present Contract or related to its violation, termination or nullity which cannot be settled by mutual agreement, shall be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by one or more arbitrators appointed in accordance with these Rules. Arbitration proceedings shall be held in English language. Austrian substantive law under exclusion of the UN-Convention on Contracts for the International Sale of Goods 1980 and its rules about the conflict of Rules shall apply. The place of arbitration shall be Vienna.

**13.2** The Customer reserves the right of recourse to the civil court competent according to the applicable law of civil procedure. In this case Austrian law shall apply.

**13.3** Unless stipulated otherwise in the Order, the prices shall be quoted Delivered at Place Unloaded (DPU) delivery address of the contractor according to INCOTERMS of latest release. The contractor is responsible for the correct securing of the delivered goods on the transport vehicle.



## 14 ANDRITZ SUPPLIER CODE OF CONDUCT AND ETHICS (“SUPPLIER CODE”)

“The supplier 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)<sup>2</sup>;
- 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 supplier 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 supplier 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 major breach of the rules laid down in the Supplier Code. The supplier will hold harmless and indemnify ANDRITZ from and against damages arising out of a breach of the Supplier Code.”

*(<sup>2</sup><http://www.andritz.com/index/gr-procurement.htm>)*

## 15 REGULATIONS CONCERNING LABOUR- AND SOCIAL LAW / EMPLOYMENT OF FOREIGNERS

When carrying out DELIVERIES/SERVICES, the contractor is obligated to comply with the regulations concerning labour and social law applicable in the respective country of assignment as well as with the regulations concerning the employment of foreigners and with related regulation designed to combat wage rate- and social dumping, whereby upon failure to do so, the contractor shall incur the liability for any disadvantageous consequences. The liability for disadvantageous consequences shall also include the obligation on the part of the contractor to hold harmless to the fullest extent possible all persons, such as responsible agents and board members or managing directors of the Client who are subjected to penalties by public authorities, even if these persons have no contractual relationship with the contractor. Moreover, the contractor declares that he shall only assign employees to work in Austria at the customer who have an employment contract with an Austrian employer which includes full insurance coverage and who are registered with an Austrian regional health insurance fund and for whom the associated contributions are paid.

All documents required to comply with these laws and regulations (in particular the confirmation of registration with the social insurance fund) are to be turned over to the Client by the contractor in documentable form at the latest by 4 weeks before the assignment of the personnel to the construction site. This also applies for assignments of a shorter duration, such as for final inspection after assembly, commissioning monitoring, etc. The contractor shall also see to it that these required documents are up to date and thus fulfil the corresponding legal requirements throughout the duration of the execution of the order. Please take note that if the requirement to turn over the documents is disregarded, access to the company premises or the respective construction site will be denied.

Subcontractors



In the event that the contractor engages further companies for the purpose of fulfilling his contractual obligations, he shall be liable to the ANDRITZ HYDRO GmbH, their authorised representatives as well as responsible persons for noncompliance with legal regulations, especially with respect to regulations concerning laws designed to combat wage and social dumping, regardless of his own ability or the possibility for monitoring this. The contractor shall ensure that subcontractors as well only assign such personnel as complies with the aforementioned requirements.

## **16 EXPORT CONTROL**

The contractor shall be obligated to obtain all required export licenses, in particular for the export of the object of the contract to the country of the end customer, associated with the contract at his own expense. The contractor shall guarantee the complete delivery of the object of the contract at the point in time at which the order is placed and shall guarantee that there are no legal or other barriers to the fulfillment of the contract. The contractor shall inform the customer of any new export bans or limitations in good time after the conclusion of the contract and shall present alternative variants free of charge as early as possible.

The contractor undertakes to report to the customer upon placing of the order if the shipment contains goods listed in the DUAL-USE list (COUNCIL REGULATION (EC) No 428/2009) or if it is subject to authorization according to the Foreign Trade Act, the Safety Concept or other export permissions (always as amended), as well as the US-export, the US-re-export and the US embargo laws. The Contractor is under obligation to disclose the HS Code (8-digit customs tariff number), the ECCN number (Export Control Classification Number) and the AL-number.

The contractor must notify the customer without delay if the goods were not subject to an export authorization or were not included in the DUAL-USE list at the time the order was placed, but have in the meantime become subject to authorization or were admitted to the DUAL USE LIST. This also applies if the contractor has learned of other obstacles or restraints to export.

In the event of a re-export or forwarding the goods, the customer complies with all foreign trade law provisions worldwide (see bullet point 4 of the ANDRITZ Code of Conduct and Ethics) and is in principle not obliged to provide the Contractor with an End-Use certificate (EUC).

## **17 OTHER**

The contractor shall guarantee that the use of the deliveries and services provided by him does not infringe upon the rights of third parties (trademarks, samples, patents, regional limitations, etc.) and that their use is not in violation of existing boycott measures, blacklists, etc.

No compensation will be provided for the preparation of offers. The bidder declares his express consent to the provision of technical offer documentation to third parties (engineering partners, customer's, etc.) as required, whereby the bidder shall not be entitled to any compensation for this whatsoever.

The contractor shall give timely information to the customer of any planned subcontracting and seek its prior written approval thereto.

The contractor shall hold the contents of the order and the business relationship and all information obtained directly or indirectly from the customer or the end customer and all information supplied by the customer for the fulfillment of the order in the strictest of confidence and shall use this information solely for the fulfillment of the respective order.