



# Conditions of Purchase of ANDRITZ AG and ANDRITZ HYDRO GmbH

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## 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 enclosed 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 other creative works, the customer shall receive a fully paid-up and royalty-free exclusive right of exploitation, unrestricted in terms of scope, territory, including the right to reproduce, distribute (including further sub/licensing, particularly to other contract partners and the Final Customer) and communicate to the public.

## 2 SCHEDULES

All schedules and deadlines shall be met exactly.

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

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 its own risk and expense.

In case. the schedules and delivery dates indicated in the order are not met by the contractor, the following contractual penalties shall be paid until the actual delivery date on the basis of the total order value:

Delivery and service: 2 % per each week commenced, up to a maximum of 10% of the total order value;

Documentation: 1 % per each week commenced, 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 the entitlement to charge contractual penalties, the customer shall also be entitled to withdraw from the entire order or the remaining part thereof.

## 3 PACKAGING AND SHIPPING

The terms of shipping and packaging guidelines of the customer according the 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 if the deliveries require special shipping and packaging measures.



If deliveries exceed the loading dimensions (special transports), the contractor shall inform the customer about the exact data (package dimensions, weight) at least 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.

Marking the packages for handling and storage shall be in accordance with the documents stated in the purchase order.

The contractor shall submit a complete notice of readiness for shipment and dispatch advice (referring to the purchase order number) in two copies for each delivery.

Shipping and packing instructions for deliveries to the customer's plant:

Each package shall include a packing slip and a delivery slip containing detailed information on the goods and packaging data according to the customer's instructions.

If deliveries are not made to the customer's address, but to a third party or to the final customer's site, the following packing, marking and shipping instructions shall apply:

ANDRITZ shipping documents shall be provided, and the contractor shall comply with the following instructions:

- 1) Prior to packing, all parts must be marked with ANDRITZ dispatch labels. A complete list of the shipped parts shall be sent in due time to the customer for producing the ANDRITZ dispatch labels.
- 2) Packing shall be made according to the packing instructions stipulated in the purchase order. If seaworthy packing is required, the complete packing process (appearance of the supplies prior, during and after packing) shall be photographed and the pictures shall be sent to the customer immediately.
- 3) The delivery to site or to the final customer shall only be made after the customer's prior approval.

The contractor shall submit a valid preference certificate (such as a movement certificate, certificate of origin, supplier declaration etc.), if stipulated in the purchase order. No value shall be indicated in the shipping documents, unless otherwise required in the customer's packing, marking and shipping instructions.

All products that are subject to special product regulations (e.g. dangerous goods regulations) shall be classified, packed and labeled properly for the respective mode of transport. The legally required safety data sheets shall be attached to the order confirmation as well as to the package containing such goods.

The customer will not accept c.o.d. (cash on delivery) shipping. EUR-pallets will not be exchanged. All damages and expenses arising from a failure to comply with the shipping and packing instructions shall be borne by the contractor.

## **4 ACCEPTANCE AND GUARANTEE**

The customer's confirmation of acceptance or receipt on the delivery slip and/or payment shall not be construed as acceptance that the deliveries or works are complete and/or free from any defects. The customer is not obligated to check or inspect the goods and services received from the contractor before startup or use. The contractor waives any objection due to a delayed defect notification and such notification may be raised until one month after the expiry of the guarantee period. With respect to the



deliveries and services, the date of delivery shall be the date when the contractor has completely fulfilled all of its obligations under the purchase order (including the submission of the complete and correct documentation) free of any defects.

In addition to the generally required and expressly agreed conditions, the contractor shall also guarantee the completeness and suitability of all deliveries and services for the intended use and that all deliveries and services are completely free of defects until the end of the warranty period.

The guarantee period ends 24 months after the date of Acceptance of the whole Plant, however, latest 48 months from complete fulfillment of contractor's obligations according to the purchase order, whichever occurs first. For steel structures and corrosion protection the warranty period ends 36 months from Acceptance of the whole Plant, however, latest 60 months from Completion of Erection. The guarantee period for the entire contractual scope shall begin anew when replacement parts are installed and/or repairs made. 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 purchase order if a major defect occurs during this period.

The customer shall also be entitled to correct defects itself 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.

The limitation period provided by law for instituting legal proceedings against the contractor with respect to guarantee claims shall start upon expiry of the guarantee period.

The guarantee period for spare parts shall be 24 months from installation of these parts. The contractor shall guarantee the availability of spare parts and wearing parts for the scope of delivery for a period of 10 years after the end of the guarantee period.

## **5 WITHDRAWAL**

The customer shall be entitled to withdraw from the purchase order after granting a reasonable grace period (normally 14 days) if the contractor is in breach of contract. An explicit grace period shall not be required when customer implicitly granted a sufficient period to cure the breach of contract.

The customer is entitled to withdraw from the purchase order in part or in whole at any time without justification. In this case, the customer shall pay the contractor the portion of the purchase order value which corresponds to the supplies already delivered and the services already performed according to the purchase order, plus proven direct costs for works in progress and costs arising out of the cancellation of sub supplier orders. The contractor shall take all measures to minimize the costs and expenses payable by the customer due to the cancellation of the purchase order. If the customer withdraws from the purchase order, it shall be entitled to use the deliveries free of charge until their replacement.

## **6 PRODUCT LIABILITY**

In case a claim is raised against the customer arising from the violation of safety regulations or on the basis of applicable product liability laws or regulations, the contractor shall indemnify and hold the customer harmless from all claims, liabilities, costs, losses and damages incurred by the customer,



provided such claim is based on or attributable to defects or failures in the deliveries and services. The contractor shall provide all information and documents on the respective manufacturer or importer of the products necessary to defend product liability claims of third parties without delay. Furthermore, the contractor shall provide complete and easily understandable operation and maintenance manuals in the agreed language, store all required documents and carefully monitor its products.

The contractor shall obtain sufficient insurance to cover all risks in connection with product liability and provide such policy to the customer upon its request. Any insurance maintained by the contractor shall in no event limit its responsibilities and liabilities under this clause 6, even if the customer has reviewed the contractor's insurance policy without providing any comments.

## **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, the final customer and/or third parties acting on their behalf shall be entitled to inspect the progress and quality of the works in the offices, manufacturing and storage facilities of the contractor and its subcontractors at any time during the engineering, manufacturing and packing phase. Such inspections may include intermediate and final technical inspections (including packing inspections) and audits of the contractor's and its subcontractors' quality control system. No inspection or waiver to inspect or audit the contractor's or its subcontractors' works shall relieve the contractor of its obligations and liabilities.

The contractor shall comply with all applicable national and international standards and the latest state-of-the-art.

## **8 CE-MARKING / EU DECLARATION**

If a CE-marking for the deliveries and services and/or an EU declaration of conformity for the machinery, pressure equipment, electrical equipment, ROHS, or an EU declaration of incorporation for incomplete machinery is required or permitted, the contractor shall be obliged to comply with all legal requirements and shall affix the CE-marking to the completed machinery or plant. In addition, the contractor shall submit to the customer the necessary EU declarations of conformity for the machinery or EU declarations of incorporation for incomplete machinery including the required risk assessments and operation and maintenance manuals in the languages required for the documentation.

If the Regulation (EC) No 1907/2006 („REACH“) applies, the Contractor shall provide a safety data sheet (article 31) or information on substances (article 33) in English at no cost to the customer at the latest when the first delivery is made.

## **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 the customer has not raised any express objections. Any claims against the customer may only be assigned upon the customer's prior written consent, otherwise such assignment will have no effect towards the customer.

The contractor hereby acknowledges and agrees that the contractor's contractual obligations, such as but not limited to guarantee obligations, may be assigned to the final 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 and other information provided for the execution of the purchase order remain the property of the customer at all times, shall be handled as business secrets and shall be protected against unauthorized access. Such documents shall be marked as the property of the customer and shall be returned immediately upon request.

## 11 PRICES AND TERMS OF PAYMENT

All prices are firm and fixed 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 requirements set out in the order, including, but not limited to, the due delivery of documentation, have been fulfilled. Customer is entitled to set off from any payment claims which it or an affiliate of it might have against the contractor.

Unless stipulated otherwise in the purchase 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.

## 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 countries shall indicate all information required by law concerning tax requirements and the movement of the goods in their invoices. The last payment shall only be effected after the contractor has presented a final invoice for all the deliveries and services and any claims in relation thereto.

The final invoice shall contain all claims from the respective order. By issuing the final invoice the contractor confirms that any and all claims in connection with the purchase order have been raised and that no further claims will be raised thereafter.

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

The supplier herewith confirms that:

- it 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);
- it 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);



- the 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;
- it 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 contractor is using to supply products and/or services when doing business with ANDRITZ.

The customer 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 contractor will hold harmless and indemnify the customer from and against damages arising out of a breach of the Supplier Code.”

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

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

During the performance of the purchase order the contractor shall comply with all applicable laws and regulations concerning labour and employment, the employment of foreign labour as well as anti-dumping laws. If the contractor fails to comply with such laws and regulations, it shall be liable for any consequences resulting therefrom, and to the fullest extent permitted by law indemnify and hold harmless the customer and its representatives, such as board members or managing directors, from any penalties or fines imposed by public authorities, even if such representatives have no contractual relationship with the contractor as well as to bear the reasonable legal representation costs of the customer.

The contractor shall ensure that all personnel who performs works on site have a valid employment contract with the seconding employer, and all mandatory insurance requirements are fulfilled. All personnel must be registered with the local health insurance institution in the seconding employer's country and all social insurance contributions must be paid.

The contractor also agrees to deploy for the customer in Austria only employees who are subject to an employment relationship which involves full compulsory social insurance with an Austrian employer and are registered with an Austrian regional health insurance fund and for whom contributions are paid.

Third-country nationals:

Especially when deploying third-country nationals in an EU/EEA country or Switzerland, the contractor must ensure that all necessary residence and/or employment permits have been obtained before the start of the assignment.

For Austria the deployment of third-country nationals must be requested in advance by the contractor, with the submission of all necessary residence and/or employment permits and is only possible with the prior written consent of the customer.

All documents required to comply with these laws and regulations (in particular the confirmation of registration with the social insurance) shall be submitted to the customer at least 4 weeks before any personnel is sent to site. The same shall apply to short-term visits, such as final inspections after assembly, start-up supervision, etc. The contractor shall ensure that the required documents are up to



date and fulfill all applicable legal requirements during the performance of the purchase order. If the required documents have not been submitted in accordance with the above, access to the company premises or the site will be denied.

**Subcontractors:**

The contractor shall not appoint any further subcontractors in order to fulfill its contractual obligation. In the event that subcontractors do in fact need to be used, the customer's prior written consent must be sought.

If the contractor subcontracts parts of the contractual scope with the customer's consent, it shall be liable to the customer, its authorized representatives as well as any persons that are legally liable on the customer's behalf, irrespective of its own opportunity to carry out checks, for any non-compliance with laws and regulations, such as but not limited to, anti-dumping laws. The contractor shall ensure that its subcontractors only use personnel that complies with all of the aforementioned requirements.

## **15 EXPORT CONTROL**

The contractor shall obtain all required export licenses, in particular for the export of the deliveries and services to the country of the final customer at its own expense. The contractor shall guarantee at the time when the purchase order is placed that no legal or other reasons prevent or impede the complete delivery of the deliveries and/or provision of services. The contractor shall inform the customer of any new export bans or limitations in due time after the conclusion of the purchase order and shall present alternative options free of charge as early as possible.

When the customer places a purchase order, the contractor shall notify the customer if the deliveries contain goods listed in the DUAL-USE list (COUNCIL REGULATION (EC) No 428/2009) or if they are subject to authorization or forbidden according to the Foreign Trade Act, the Safety Concept or other export permissions/prohibitions (especially for RU, BY and IR and always as amended), as well as the US-export, the US re-export and the US embargo laws. The contractor shall disclose the HS Code (8-digit customs tariff number), the ECCN number (Export Control Classification Number) and the AL-number.

The contractor shall promptly notify the customer if the deliveries 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 become subject to authorization or were admitted to the DUAL USE list thereafter. This also applies if the contractor has learned of other impediments or limitations to export the deliveries.

If the deliveries are re-exported or forwarded, the customer will comply with all applicable trade law provisions (see section 4 of the ANDRITZ Code of Conduct and Ethics) and is principally not obliged to provide the contractor with an End-Use certificate (EUC).

## **16 OTHER**

The contractor guarantees that the use of the deliveries and services provided by him does not infringe the rights of third parties (Intellectual property rights, trademarks, samples, patents, regional limitations, etc.) and that their use does not violate existing boycott measures, sanctions, blacklists, etc.

The contractor provides its offers free of charge and agrees that the technical part of the offer and the technical documentation can be provided to third parties (such as, but not limited to its engineering partners or the final customer) by the customer.





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 final customer strictly confidential and shall use the information solely for the fulfillment of the purchase order.

## **17 PLACE OF JURISDICTION, APPLICABLE LAW**

- 17.1 Subject to Article 17.2 hereof, all disputes or claims arising out of or in connection with this Contract, including disputes relating to its validity, breach, termination or nullity, shall be submitted to the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber and shall be finally settled under the Rules of Arbitration (Vienna Rules) of VIAC by one or three arbitrators appointed in accordance with the said Rules. Austrian substantive law under exclusion of its Conflict of Law Rules and excluding the UN-Convention on Contracts for the International Sale of Goods 1980 shall be applied to the contractual relationship and the arbitration agreement. The place of arbitration shall be Vienna. Arbitration proceedings shall be held in English language.
- 17.2 The customer shall be entitled to assert claims against the contractor through the competent court in Graz, Austria instead of through arbitration. In this case Austrian Law shall apply under exclusion of its conflict of law rules and excluding the UN-Convention on Contracts for the International Sale of Goods 1980.