

Terms and Conditions of Delivery and Payment

1. Scope of Application

Our terms and conditions of delivery and payment apply to all orders from companies as defined by § 14 BGB (German Civil Code). They also apply to all future business with the customer.

Our deliveries and services are exclusively effected on the basis of our terms and conditions of delivery and payment. We do not accept any deviating conditions defined by the customer, even if we unconditionally execute the contract in spite of being aware of any conflicting or deviating terms and conditions of the customer.

Deviations from these terms and conditions of delivery and payment are only valid, if they have been accepted by us in writing.

2. Conclusion of Contract

Our offers are subject to change without notice. The binding period is three months from quotation date.

We carefully select the brands and manufacturers of the plant components. Should the customer suggest to use a different brand, we will inform the customer about possible additional costs and invoice them accordingly.

The nomination of a manufacturer or brand is not a warranty, but in case of doubt to be understood as „..... or equivalent“.

If the order deviates from our offer (dissent), it is regarded as a new offer and a contract is not concluded, before we have confirmed the customer's changes in our order confirmation.

The data, prices and other terms and conditions in our order confirmation are binding, unless the customer objects in writing within 8 working days.

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3. Delivery

3a. Delivery Time

Delivery periods start with complete technical and commercial clarification, but not earlier than at the date of our order confirmation.

If delivery depends on the customer's cooperation (according to 5.), our delivery time will change according to the delays in the customer's cooperation.

Our delivery commitment is subject to complete and correct supply to ourselves, unless failure of delivery was caused by us. If delivery to ourselves fails, even if congruent orders have been placed with reliable suppliers, we are released from our delivery commitment and can withdraw from the contract. For compliance with the delivery dates and delays dispatch ex works is decisive. These delays are considered as complied with when notice of readiness for dispatch has been given, if the goods cannot be dispatched in time without our fault.

3b. Delivery Item and Scope of Delivery

The delivery item and scope of delivery are determined by the terms of the delivery contract under consideration of corresponding legal norms, technical specifications and generally accepted branch conventions. Deviations from the delivery contract have to be agreed on in writing. We are entitled to effect partial shipments or partial services to a reasonable extent. Short delivery or over-delivery are allowed within the scope of branch conventions, especially due to technical regulations.

4. Prices-Delay-Payment Terms

4a. Our prices are calculated in €, ex works, plus the corresponding legal VAT. Payment is effected cashless. It is considered as effected as soon as the amount is credited to our account without any restriction or deduction.

4b. Invoices are payable strictly net within 30 days after invoice date. Therefore the payment is automatically considered to be delayed 30 days after invoice date without further reminders.

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- 4c. Payment terms result from the order confirmation.
- 4d. If the customer has received a prepayment bond, it has to be returned not later than on arrival of goods, when 60 % of shipment are performed.
- 4e. Should an adverse financial status of the customer become known, we are entitled to retain our shipments and services until the customer has paid or until he has provided a performance bond with him being liable as a principle issued by a German major bank or a public law savings bank. If payment or security are not furnished within 7 working days after request for this additional security, we can withdraw from the contract. In such a case we expressly reserve the right to claim compensation.

5. Customer's Obligations to Cooperate

When an order has been placed, the customer is obligated to perform the following services on site:

- Cabling
- Unload the plant components or provide lifting tools and scaffoldings as required
- Air- and water pipes up to the plant/plant components
- Provide foundations if required
- Chemicals and supply of chemicals
- Drawings / layouts / measurements which are or will be required for further performance of the order

Further Obligations to Cooperate are:

- Observance of contractual payment dates
- Obtain required permissions and approvals
- Supplies and advance payments determined by the contract that exceed the above mentioned customer's obligations as well as
- other documents to be provided by the customer

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6. Acceptance

If no deviating acceptance periods have been agreed on, the customer has to accept the delivery item within 8 calendar days after notice of completion or start-up. After this date all perils are transferred to the customer in any case. The customer cannot refuse delivery unless there is a defect that considerably diminishes the common and/or contractually granted application of the delivery item.

7. Transfer of Perils

Unless otherwise agreed in the order confirmation/delivery contract, delivery is effected „ex works“, so that at that time all perils regarding diminution including loss by accident are transferred to the customer. Any delivery is therefore effected at the cost and responsibility of the customer.

As for service contracts the perils are transferred to the customer on his acceptance. The Incoterms 2010 are the basis for these terms and conditions.

8. Default of Acceptance

If the agreed delivery date is delayed by more than 2 weeks on demand of the customer or due to any reasons the customer is responsible for, the goods prepared for the original delivery date will be stored at the risk of the customer from that date. The warehouse charges amount to 0.5 % of the net invoice value per week or part thereof. Moreover we will pass on all additional insurance charges to the customer.

9. Documentation

Plant documentation (manual, drawings, specifications, service notes) will be supplied in triplicate. Every additional copy will be charged extra. We calculate one working day for the total package including acceptance, start-up and training of the operating staff. Should this time not be sufficient due to special requests from the customer or other reasons from his side, we will charge the customer's account with any additional cost. These costs include labour cost, expenses and material cost.

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10. Defects

- 10a.** The customer is not entitled to any claims against us due to defects that do not preclude or only slightly diminish the common and/or contractually granted application and/or the value of the delivery item.⁵
- 10b.** Claims based on defects are not justified, if the customer has caused this defect, e.g. by overuse, faulty or improper handling of the plant and/or plant components or by application of unsuitable operating materials.
- 10c.** Moreover we are not liable for natural attrition.
- 10d.** If the goods show any defect at transfer of perils we are entitled and obligated to remedy deficiencies. Supplementary performance is effected – at our own option – either in terms of remedy or as a replacement delivery. If the cost of supplementary performance amounts to more than 50 % of the net delivery value we are entitled to refuse supplementary performance.
- 10e.** If supplementary performance fails or is not effected within a reasonable time given by the customer or if it has been refused by us, the customer is entitled to adequately reduce the purchase price, withdraw from the contract or claim compensation - within the limits of the following paragraphs.
- 10f.** If the defect results from a culpable violation of an important contractual obligation, we are only liable for defects typical for the contract.
- 10g.** If a material defect results in a damage, we are liable according to the legal requirements for:
- Injuries to persons
 - Damages covered by product liability or
 - Resulting from gross negligence
 - Or resulting from material defects fraudulently concealed
- 10h.** More extensive claims - however natured – are excluded: We are particularly **not** liable for damages that did not occur at the delivery item itself, loss of profit or any other financial loss.
- 10i.** § 478 BGB (German Civil Code) remains unaffected of paragraphs a-h.

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11. Retention of Title

- 11a.** The delivered/to be delivered plant as a functional entity remains our property until full payment of all receivables resulting from the business relationship.
- 11b.** If the goods/plant is combined with other items or if it becomes part of a larger entity, the customer already agrees to us becoming co-proprietor of this new entity in the amount of our scope of supply.
- 11c.** If the customer sells the delivered plant, he already transfers his claims against his buyer including all ancillary rights resulting from the resale to us. The transfer applies to the amount the customer owes us.
- 11d.** The customer remains entitled for collection of these receivables even after the transfer. Should the customer fail to fulfil his obligation to pay and other obligations towards us, he has to specify the transferred receivables and their debtors and all required data regarding collection, hand over the corresponding documents and inform the debtor.

12. Acts of God

In the case of acts of God, labor disputes, and other extraordinary and unintentional circumstances we are entitled to postpone delivery by the duration of the hindrance and a reasonable start-up time or partially/ completely withdraw from the contract.

13. Confidentiality

Our offer and all drafts, calculations, drawings etc. prepared by us are our intellectual property and must not be duplicated or left for inspection to a third person. The documentation must not be used for reproduction of identical or similar plants. If the order has not been placed, all documents have to be returned to us – unrequested. We will hold the customer liable for any damage resulting from a breach of confidentiality.

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14. Limitation of Actions

Customer's claims resulting from the delivery contract are subject to §§ 438, 479 BGB (German Civil Code) and are limited to 12 months.

Claims according to ProdHaftG (Product Liability Act) or resulting from intentional or gross negligence on our part lapse according to legal regulations.

The start of limitation is determined by legal regulations.

15. Place of Jurisdiction, Place of Performance, Applicable Law

Place of delivery is Viernheim. The place of jurisdiction for any conflicts between the parties, including suits regarding certificates, drafts and checks, is Lampertheim.

The business relationship is solely subject to Federal Republic of Germany Law, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

16. Severability Clause

The invalidity of one regulation does not affect the validity of the remaining regulations.