

# GENERAL TERMS OF SUPPLY (GTS)

Rev. 08 December 2020

## **SCOPE OF APPLICATION**

These Terms and Conditions of Service are basically designed for legal transactions between companies. They do not apply to legal transactions with consumers within the meaning of § 2 (1) Clause 2 of the Consumer Protection Act, German Federal Law Sheet (BGBl. 49/79).

### **1. SCOPE**

1.1 The General Terms of Supply (GTS) in the version published on our website ([www.aquasys.at/gts](http://www.aquasys.at/gts)), shall apply unless the contracting parties made an express written agreement to the contrary. They solely shall apply – even for future contracts. Third party terms and conditions cannot form part of the contract, even if the seller did not or will not raise any objections.

1.2 If the underlying business involves the delivery and licensing of software, the General Software Conditions issued by the Association of the Austrian Electrical and Electronics Industry in the version published on our website ([www.aquasys.at/alb](http://www.aquasys.at/alb)) apply to this part of the delivery.

1.3 If the underlying business involves the maintenance of software previously delivered and licensed by the seller, the Software Maintenance Conditions issued by the Association of the Austrian Electrical and Electronics Industry in the version published on our website ([www.aquasys.at/alb](http://www.aquasys.at/alb)) apply to this part of the delivery.

1.4 The following provisions relating to the supply of goods shall apply mutatis mutandis to the supply of services.

### **2. FORMATION OF CONTRACT**

2.1 The contract shall be deemed to have been concluded once the seller – upon receiving the order – sends a written order confirmation and/or effects delivery.

2.2 Offers made by the seller are without engagement and subject to prior sale.

2.3 If import and export licenses, foreign exchange or other similar permits or other official authorisations are required for the fulfilment of the contract, the buyer shall make every reasonable effort to obtain the requisite licenses and permits in due time. Failing to obtain these, leads to an extension of the agreed delivery period.

### **3. PRICES**

3.1 Unless not otherwise agreed prices will be ex works and are not including VAT. Any duties, taxes and customs or other dues levied in connection with the delivery shall be borne by the buyer. The goods will be packed as usual in trade and packaging can only be returned upon express agreement.

3.2 In case of an order deviating from the customary range offered, the seller reserves the right to alter the prices accordingly.

3.3 Any order for repair work shall be performed by the seller as required and expedient and invoiced on the basis of time and materials expended. The same shall apply to work and additional services the necessity and expedience of which becomes apparent only during the execution of the order. In such case, no special notification must be sent to the buyer unless the original cost estimate without engagement is exceeded by more than one third.

3.4 Cost incurred by the seller for the preparation of offers for repair work or for appraisals must be reimbursed by the buyer, even if the respective order is not placed.

### **4. DELIVERY AND DELIVERY PERIOD**

4.1 In case the seller is unable to effect delivery in due time due to hold-ups in the seller's or subcontractor's operational processes having a demonstrable material impact on the seller or due to unforeseeable events, due to the rejection of an essential work piece, in case of force majeure or due to labour conflicts, the delivery period shall be extended accordingly.

4.2 In cases in which the delay in delivery is attributable to the seller's gross negligence or other similar acts, the seller shall be obliged to reimburse the damage caused by such delay, whereas the seller's liability shall be limited in such way that for each full week of delay 0.5 % of the invoice amount are charged, however, the total sum of damages paid shall not exceed 5 % of the invoice amount.

4.3 The seller shall be entitled to effect and invoice partial or advance deliveries.

4.4 If goods ready for shipment cannot be dispatched through no fault of the seller's or if the buyer does not wish the goods to be shipped, the seller can arrange for such goods to be stored at the buyer's expense and invoice them. In such a case, delivery shall be deemed to have been effected and this shall not have any impact on the terms of payment agreed upon.

4.5 If the buyer does not accept the goods contractually delivered at the contractually agreed place or time and if such delay is not attributable to any act or omission on the part of the seller, the seller may either require performance or may set an additional period of time for the acceptance of the goods and - if the buyer fails to accept the goods within this set period of time - rescind the contract. Should the buyer fail to accept the goods, the seller may place them in storage at the buyer's expense and risk. In addition, the seller may require reimbursement for all reasonable expenses incurred in the course of the execution of the contract if such expenses are not covered by the considerations received.

4.6 Where standby delivery has been agreed upon, delivery shall be deemed to have been requested one year after placing the order at the latest.

### **5. DEFAULTS & DOWNTIME OF PERFORMANCE & SERVICES**

5.1 In principle, the seller is entitled to excess costs for requirement changes in performance by the buyer and / or disruption in performance, which are within the sphere of the buyer.

5.2 In the event of excess costs arising from requirement changes in performance, the original contract price is to be applied pro rata. Failing such, the customary reasonable price in industry is applied.

5.3 The seller can claim excess/downtime costs under the following conditions for any defaults and/or downtime in performance due to events caused by or within the sphere of the buyer: The seller has notified the buyer in a timely manner of a disruption in the provision of services / performance caused within the sphere of the buyer and has outlined related excess/downtime costs in written form. Examples of events in the sphere of the buyer that can lead to disruptions in the provision of services include: execution documents provided by the buyer, necessary advance services by the buyer, provided materials of the buyer, all instructions of the buyer vis-a-vis the seller as well as other actions for which the buyer is indebted to the seller.

### **6. WARRANTY AND ACCEPTANCE**

6.1 Unless not otherwise agreed the risk passes with delivery to the first carrier.

6.2 Separately agreed upon quality tests or operating trial runs shall have no effect on the provisions regarding place of performance and transfer of risk.

### **7. PAYMENT**

7.1 The buyer shall not be entitled to withhold payment on account of warranty claims or other counterclaims not recognised by the seller.

7.2 If the buyer is in arrears with an agreed payment or other consideration, the seller may insist on performance of the contract and may, at its discretion: a) suspend the performance of its own obligations until such time as the payments or other considerations in arrears are made; b) require an appropriate extension of the delivery period; c) declare the entire amount of the outstanding purchase price to be immediately due and payable; d) charge default interest of at least 1 % per month plus VAT starting on the due date, unless the seller can prove costs exceeding such amount; e) rescind the contract if the buyer fails to perform within a set reasonable additional period of time. Upon the seller's request, the buyer must return to the seller any goods already delivered and pay damages for any loss in value of the goods as well as reimburse the seller for all expenses reasonably incurred during the execution of the contract. Regarding goods yet to be delivered, the seller shall be entitled to provide finished or fitted parts to the buyer and charge the corresponding portion of the sales price.

7.3 If the seller invoices partial amounts, the corresponding partial payments shall be due and payable upon receipt of the respective invoice. This shall also apply to any amounts exceeding the original contractual sum which arise due to additional deliveries or any other agreements, irrespective of the terms of payment agreed upon for the main delivery.

7.4 All payments are to be made net cash and without any discounts and in the agreed currency to the seller's paying agent. Cheques or bills of exchange are accepted for payment only. Any expenses arising in connection therewith (e. g. collection and discount charges) shall be borne by the buyer. All payments by bills of exchange are subject to the seller's prior written consent.

7.5 Any discounts granted shall be conditional on the receipt of the full payment.

7.6 The seller retains the title to all goods delivered until full payment of all invoice amounts plus interest and expenses. Until such time, the buyer may only resell, process, convert or combine

the goods with the seller's written consent, unless the goods are intended for resale, processing, conversion or combination. In order to secure the seller's claim to the purchase price, the buyer agrees to assign to the seller its own claims resulting from any such resale, processing, conversion or combination of the goods and to make appropriate mention of this fact in its books or invoices. In case of any pledge or other claims, the buyer shall be obliged to mention the seller's title to the goods and inform the seller immediately.

7.7 In case of any default by the buyer, the buyer agrees to reimburse the seller for any collection and recovery fees charged by debt collections agencies and legal expenses, if any.

#### 8. WARRANTY AND LIABILITY

8.1 Warranty shall only apply to defects the existence of which at the time of delivery can be proven by the buyer. The warranty period shall be 12 months unless special warranty periods were agreed upon for individual items. This shall also apply to deliveries and services to be affixed to a building or land. The warranty period shall commence upon the transfer of risk but latest with completion of installation.

8.2 The warranty shall lapse immediately if the buyer or any third party not expressly authorised to do so alters or repairs the delivered items without the seller's written consent. Any invoices therefor shall not be recognized by the seller. The original warranty period shall not be extended by reason of any work or deliveries performed under warranty.

8.3 The seller may at its sole discretion exchange any defective goods and/or parts or repair them. The buyer shall bear any additional costs in connection with such exchange or repair (especially costs for the assembly or disassembly of goods or parts, transport, travelling, mileage allowance, etc.).

8.4 The seller shall be entitled to request that the defective goods or parts be sent to it for repair or exchange purposes. The buyer shall cover the expenses and risks of transport.

8.5 The seller shall only be responsible for any remedy of defect carried out by the buyer, if such remedy was effected with the seller's prior written consent.

8.6 For those parts of the goods that the seller purchased from any subcontractor other than a vicarious agent, the seller shall by no means be liable for any damages beyond the seller's own rightful claims for damages against such subcontractor. If the seller manufactures goods based on the buyer's design data, drawings or models, the seller's liability shall not apply to the accuracy of the design but solely to its obligation to manufacture the goods in accordance with the data provided by the buyer. The seller shall neither assume any liability for repair orders, alterations or remodelling of used or third-party goods nor for the delivery of used goods.

8.7 For repairs or commissioning, the seller expressly states that it shall not assume any warranty or liability for: i the operability of the entire system in which the repaired component was or is to be fitted; ii the correct dimensioning of the entire system and use of the repaired component within such system. For repairs, the seller's extent of liability for any damages shall, unless otherwise provided by mandatory law, be limited to triple the value of the repair work.

8.8 The seller shall be liable for personal injuries caused by the seller or its vicarious agents. The seller shall only be liable for any damage caused by the seller (or its vicarious agents) if the buyer can prove gross negligence or similar acts.

8.9 Unless otherwise required by mandatory law, the seller's total liability for any damage shall be limited to the insurance cover of the seller which can be found at [www.aquasys.at/insurances](http://www.aquasys.at/insurances) or can be handed over on demand.

8.10 Any reimbursement for consequential, property, indirect damage, loss of profit and savings, loss of interest and damage resulting from third party claims vis-à-vis the buyer as well as the reimbursement for material damage resulting from the product liability act as well as product liability claims that may be derived from other provisions shall be excluded.

8.11 After the lapse of three years after delivery, claims for damages may only be asserted if provided for by mandatory legal regulations, irrespective of whether a damage is noticeable or not.

8.12 Any restrictions of liability and warranty as well as any limitations to the amount of liability as set forth in these GTS shall not exclude each other but shall apply concurrently.

#### 9. RESCISSION OF CONTRACT

9.1 The buyer shall only be entitled to rescind the contract in case of a delay in delivery attributable to the seller's gross negligence and not remedied within a set reasonable period of grace.

9.2 Except in the case of number 7.2 e) above, the seller shall be entitled to rescind the contract: a) if the execution of delivery and/or the commencement or continuation of the performance is rendered impossible or continued to be delayed despite a reasonable grace period for reasons attributable to the buyer; b) if there are any concerns as to the buyer's solvency and the buyer refuses to make any advance payments or to provide suitable collateral before delivery upon the seller's request; or c) if the credit insurance of the seller sets a lower credit limit for the buyer, d) if due to the circumstances described in number 4.1 above, the delivery period is extended by more than half of the originally agreed upon delivery period, however at least by six months. e) if the execution of the order involves the installation or commissioning by the seller in a country or destination for which the Austrian Federal Ministry for Europe, Integration and Foreign Affairs has issued security level 3 or higher at the time or during the period of the installation.

9.3 The seller's right to rescind the contract for any of the above reasons shall also apply to yet unperformed parts of delivery or services.

9.4 The seller shall be entitled to rescind the contract without any grace period and to demand reimbursement of expenses in the event of composition or insolvency proceedings were instituted against the buyer's assets or an application for the institution of insolvency proceedings was dismissed for lack of sufficient assets.

9.5 In the event of a rescission of contract, all deliveries or services performed in whole or in part are to be invoiced and paid according to the contract, irrespective of any claims for damages the seller may have. This shall also apply to any deliveries or services not yet accepted by the buyer as well as to any preparatory work effected by the seller. However, the seller shall also be entitled to request the return of goods already delivered.

9.6 Any other consequence of such rescission shall be excluded.

#### 10. INTELLECTUAL PROPERTY RIGHTS, COPYRIGHT & DATA PROTECTION

10.1 If the seller manufactures goods on the basis of design data, drawings, models or other specifications provided by the buyer, the buyer shall indemnify and hold the seller harmless for any violation of proprietary rights.

10.2 Work documentation such as plans, sketches and other technical documents as well as sample catalogues, brochures, illustrations etc. shall remain the seller's intellectual property and shall be subject to the relevant legal provisions concerning copying, imitation and competition. If an order is placed elsewhere, the seller may request such documentation at any time and the buyer shall be obliged to return them upon such request.

10.3 Until revocation, the seller is entitled to use and process the data communicated and transmitted to him by the buyer, including personal data of employees of the buyer (e.g. contact data such as name, function, e-mail address, mobile phone number) in the context of future business contact with the buyer and for product information.

#### 11. PLACE OF JURISDICTION, APPLICABLE LAW, PLACE OF PERFORMANCE, MISCELLANEOUS

11.1 The place of jurisdiction for all disputes arising directly or indirectly from the contract shall be the Austrian court locally competent for the seller's seat. However, the seller may take recourse to any other court.

11.2 The contract shall be governed by the law applicable to the seat of the seller. UN sales law (CISG), international private law and international conflict-of-law and reference norms are not applicable.

11.3 The place of performance for deliveries and payments shall be the seat of the seller even in cases where the goods supplied are handed over as per agreement at another place.

11.4 In the event that any of the provisions under these GTS becomes invalid or unenforceable, a legally valid and enforceable provision shall apply that comes closest to the economic purpose of the original provision. All other provisions under these GTS shall remain unaffected.

11.5 The contract shall pass to any legal successors of the contractual parties and/or any acquirer of the entire company of the relevant contractual party according to the consent given herewith in advance. The contractual parties agree that the contractual provisions shall apply to any legal successor and/or acquirer of the company accordingly. Any such changes or changes in the control of one of the contractual parties shall have no effect on the contract