

# General Contractual Terms Hydro



## § 1 General – Range of validity

1. The general contractual terms shall apply to all present and future business relations and installations.
2. Consumers as defined by the general contractual terms are individual persons with whom a business relationship exists, whereby the person does not exercise a trade or is not self-employed. Contractors as defined by the general contractual terms are individuals, legal entities or incorporated partnerships with whom a business relationship exists and who exercise a trade or work on a self-employed basis. In general, customers as defined by the general contractual terms are consumers as well as contractors.
3. Deviating, contradictory or supplementary General Terms even if known, shall not be part of the contract unless their validity is expressly acknowledged in writing.
6. Any treatment and processing of the goods by the contractor shall always be made in our name and order. In the event that the processing is made with items not belonging to us, we shall acquire the co-ownership of the new object in proportion of the value of the goods delivered by us to the other processed objects.  
The same applies, if our delivered goods are mixed with objects not belonging to us.

## § 2 Conclusion of the contract – Contents of the contract

1. Our quotations are without engagement. They are subject to reasonable technical modifications as well as reasonable alterations in construction, colour and/or weight.
2. By placing an order the customer declares his commitment to purchase the goods ordered.  
We shall be entitled to accept the order based on the contractual offer within three weeks upon receipt of the order. A conclusion of the contract shall only be established by our written order confirmation and in accordance with the terms of the order confirmation.
3. The conclusion of the contract is subject to the correct and punctual faultless delivery to us by our sub-suppliers. This is only the case, if we are not responsible for the undelivered goods, especially by the conclusion of a congruent hedging transaction with our sub-suppliers.  
The customer shall be informed without delay about the unavailability of the service. If a consideration has been made already, it is to be returned without delay.
4. We shall only undertake manufacture or supply of the object of the contract but not the assembly of the same unless a different agreement was expressly agreed upon.

## § 3 Delivery dates

1. The delivery periods as specified in the order confirmation commence to run from the date on which the confirmation is dispatched, but in any event not prior to the receipt of all the documents to be provided by the customer, clarification and approval of the drawings, and compliance with the agreed terms of payment.
2. The delivery period will have been complied with, provided prior to the expiry thereof the subject-matter of the contract has left the work or the customer has been notified that it is ready for dispatch.
3. The delivery period will be suitably extended in the event of measures being taken in connection with labour unrest, and especially strikes and lockouts, and also in the event of unforeseen circumstances arising outside the control of the supplier, provided such impediments are of appreciable influence on the manufacture or supply of the item concerned. The same will apply when the circumstances affect sub-contractors.
4. The customer can rescind the contract without setting a deadline, if we are unable to effect the entire delivery of goods prior to the transfer of risk. Furthermore the customer shall be entitled to rescind the contract, if upon placing the order part of the delivery becomes impossible and the customer has a legitimate interest to reject a partial delivery. If this is not the case, the customer shall have to pay the price that accounts for the partial delivery. The same applies to the sub-supplier's incapacity to deliver.  
If the acceptance of the goods is delayed during the acceptance period due to the impossibility or incapacity to deliver or if the customer is responsible fully or primarily for such conditions, he is obliged to make full payment.
5. Above and beyond this the provisions of articles 8, 9 and 10 of the present general contractual terms shall apply.

## § 4 Reservation of ownership

1. In contracts with consumers we shall reserve the right of ownership for the goods until full payment of the purchase price has been made. In contracts with contractors we shall reserve the right of ownership for the goods until complete settlement of all claims arising from a current business relation.
2. The customer is obliged to take good care of the merchandise. In case maintenance or inspection work is necessary, the customer has to perform this regularly at his own expense.
3. The customer is obliged to allow us third party access to the goods, as is the case with seizure of the goods, and to inform us without delay of possible damage or destruction of the goods. The customer also has to inform us without delay of a change of goods ownership or his own change of domicile.
4. In case of any infringements of the contract on the part of the customer, particularly in case of default in payment or a breach of duty as outlined under items 2 and 3 of this provision, we shall be entitled to rescind the contract and demand the return of the goods.
5. The contractor is entitled to resell the goods in a regular business transaction. Already now he assigns to us all claims covering amount of invoice arising from the resale to a third party. We accept the assignment. After the assignment the contractor is entitled to collect the claim. We shall reserve the right to collect the claim ourselves, if the contractor does not meet his liabilities to pay in due order and if he is in default in payment.

## § 5 Price and payment

1. The agreed price is binding for four months. It is based on the wage and raw material costs at the time the contract is concluded. If wages or the cost of raw materials rise by the time of delivery by more than 3 %, a corresponding adjustment will be made to the price. If a price adjustment clause is included in the contract, this will take preference.
2. In the absence of a special agreement, the prices are to be understood as being for delivery ex works and including loading, but not the cost of packing, freight or insurance.  
Where value added tax is due for payment, this will be added to the prices at the statutory rate ruling when the invoice is prepared.
3. In the event that no other arrangements are agreed upon, payment shall be made in cash without any deduction. If part payments have been agreed, the whole of the balance outstanding will be due for payment if the customer is overdue with two successive part payments or the amount not paid by the due date amounts to at least 1/10th of the overall price.
4. Furthermore the customer agrees to pay for the merchandise within 10 days. After the expiry of this term the customer is in default in payment.  
The consumer shall be charged whilst in default interest of 5 % above the basic interest rate.  
The contractor shall be charged whilst in default interest of 8 % above the basic interest rate. Towards a contractor we shall reserve the right to prove and claim higher default damages.
5. The customer shall only have the right to set-off, if his counterclaims are proof of title or recognized by us.  
The customer shall only exert the right of retention, if his counterclaim is based on the same contractual relation.

## § 6 Shipment and Transfer of risk

1. Dispatch will be effected at the expenses of the customer.
2. If the purchaser is a contractor, the following shall be applicable: The risk of accidental loss and accidental deterioration of the goods is devolved to the purchaser at the time the goods are handed over to him or to the forwarding agent, the carrier or any other person or office that is instructed to carry out the shipment. The same applies in the case that our own staff carries out the shipment. The same also applies in the case that we bear the costs for the shipment. At the customer's request, the consignment will be insured during transit at the customer's expense by us and covered under our general policy.
3. If the purchaser is a consumer, the following shall be applicable also for a sale to destination according to buyer's instructions: The risk of an accidental loss and an accidental deterioration of the purchased goods is only devolved to the purchaser at the time the shipment is delivered to the purchaser. In this case the purchaser bears the costs for a transport insurance.
4. The delivery of the goods is considered to be made, even if the purchaser's acceptance of the goods is delayed.
5. If the shipment is delayed due to reasons for which the customer is responsible, the customer shall be charged for the actual costs incurred by storage, beginning one month after the date of notification of readiness for dispatch or at least 0.5 % of the invoice amount for each month of storage.

## § 7 Plans documentation

By providing building or assembling plans, we only provide a guarantee for their accuracy in relation to their connection with the goods to be supplied, but not for the measurements, arrangement and foundations for the building construction itself.

If, during work on the plan documentation, technically unavoidable or advisable modifications to the subject matter of the contract are discovered, these, provided they are reasonable as far as customer is concerned, will be permissible.

We shall reserve our property rights and copyright over our drawings and other plan documentation. A third party shall have no access to the documents.

## § 8 Warranty

1. If the purchaser is a contractor, we shall give a warranty for deficient merchandise, to be fulfilled as we deem fit, either through subsequent improvement or replacement delivery.
2. If the purchaser is a consumer, he shall first have the choice between a subsequent improvement or a replacement of the deficient merchandise. However, we shall be entitled to reject his option for the elimination of deficiencies, if it involves disproportional costs and if another way to eliminate the deficiencies is not considerably detrimental to the consumer's interests.

However, if the value of the object of the contract exceeds EUR 40,-- we shall first be entitled to opt for a subsequent improvement within a reasonable period of time.

Should a subsequent improvement or replacement fail to remedy the defect, the customer shall in principle have the choice to demand a reduction of the purchase price or a withdrawal.

3. In the event of a minor lack of conformity with the contract, particularly in case of small deficiencies, the customer shall have no right to rescind the contract.
4. If a further subsequent improvement is deemed reasonable for the customer, we shall be entitled to make subsequent improvements a second time within an appropriate period of time.
5. Contractors have to notify us in writing about obvious deficiencies within a period of two weeks after receipt of the goods; otherwise asserting the claim for warranty will be impossible. In order to meet the deadline it is sufficient to send the notification in time. The full burden of proof lies with the contractor to present all preconditions for the claim, especially to prove the deficiency itself, the time when the deficiency was identified and that notice of the defect was made in due time.

Consumers have to inform us in writing about obvious defects within a period of two months after the merchandise's lack of conformity with the contract had been detected.

In order to meet the deadline it is essential that we receive the notification. In the event that the consumer fails to inform us about the defect, all claims for warranty lapse two months after the defects have been detected. This does not apply in case of malevolence on the part of the vendor. The burden to prove the moment of time the defect had been detected lies with the consumer. In the case that the consumer was induced to buy due to incorrect statements on the part of the manufacturer, the burden of proof for the decision to buy lies with the consumer.

In case of used goods the burden to prove the deficiency of the goods lies with the consumer.

6. In the event that the customer chooses to rescind the contract because of a legal or material defect after an attempt to fulfill the contract has failed, he is not entitled to claim additional damages as a result.

In the event that the customer chooses to claim damages because a further attempt to fulfill the contract has failed, the merchandise remains with the customer, if that can be reasonably expected of him. The damages are restricted to the difference between the purchase price and the value of the defective article. This regulation does not apply in case that we committed a malevolent breach of contract.

7. For contractors the warranty period is one year beginning upon the delivery of the merchandise. In case the merchandise is not collected, the warranty period starts with the transfer of risk. This applies also to the case that the object of the contract is incorporated into a building.

For consumers the period of limitation is two years following delivery of the goods. In case the goods are not collected, the period of limitation commences with the transfer of risk. For used goods the period of limitation is one year following delivery of the goods. This regulation shall not apply, if the customer fails to inform us about the defect due time (item 5 of this regulation).

8. If the purchaser is a contractor, nothing but the manufacturer's product specification is the basis for the agreed state and condition of the product. Public statements, recommendations or advertising by the manufacturer shall not be considered as contractual information about the product's state and condition.

9. In the event that the customer is supplied with improper instructions for assembly, we are only obliged to supply the corrected instructions for assembly. However, this is only the case if a correct assembly is impossible without proper instructions.

10. We shall not provide the customer with any guarantees based on adjective law. All information solely relates to the product's condition.

11. We shall assume no warranty for damage resulting from the following:

Unsuitable or inexpert usage, faulty assembly or bringing into operation by the purchaser or a third party, natural wear and tear, faulty or negligent treatment, overloading, inappropriate working materials, replacement materials, deficient constructional works and penstocks, unsuitable erection site, the passing of foreign bodies, chemical, electrochemical or electrical influences, insofar as they cannot be attributed to any fault on our part.

The guarantee will only apply provided the installation instructions are accurately complied with, together with the installation drawings and the instructions for operating. Replaced parts shall become our property.

12. All liability ceases if repairs or alterations to the goods supplied are made by a third party without our consent. After notification by the customer, we require the necessary time and opportunity to carry out all repair work or spare part deliveries, otherwise we shall be released of any warranty for defects.

13. For the performance of the turbine, on which the contract has been based, we will be responsible on the basis that, for each complete one per cent whereby, after allowing for the measured tolerances of  $\pm 2\%$  recognized by the standards organization (International Electro-technical Commission), the average degree of efficiency attained beyond the said tolerance falls short of the degree of efficiency taken as the basis for the contract, he will allow a deduction of 2 per cent from the ex works supply price for the turbine in question, with the choice of carrying out the necessary improvements instead.

If the shortfall in performance (having regard to the measurement tolerances) amounts to more than five per cent, we will be required within a reasonable period to improve the goods or replace them to the extent that the shortfall below the degree of efficiency taken as the basis for the contract is not more than 3 %.

If a number of degrees of efficiency are taken as the basis for the contract, depending on various degrees of impingement, then any measured higher degrees of efficiency with individual degrees of impingement may be offset against lower degrees of efficiency with other degrees of impingement. The customer will be entitled to arrange at his own expense for a test to be carried out by an impartial expert in connection with fulfillment by the supplier of the liability he has assumed. There will be recognition of the results of the test by the supplier only provided the test is carried out during the guarantee period and we are invited to attend in order to look after our interests.

Further claims by the customer, in particular claims for compensation of damage caused not to the object of contract itself, are ruled out as far as this is permissible by law.

In case of disputes during acceptance tests the recommendations of the International Electronic Commission shall apply: "International Code for the acceptance tests of water turbines in power plants" (Publishing house Bureau Central de la Commission Electrotechnique internationale, 1. rue de Varembe, Genève/Suisse).

#### § 9 Assignment of claims for warranty

In case we are entitled to assert claims towards our sub-suppliers due to a delayed or defective supply, we have already relinquished our claims to the customer who can accept this assignment at any time. However, up to this acceptance or by consent of the customer even after the acceptance we shall be entitled to assert claims of warranty towards the sub-suppliers, especially in the case of components that are separate and can be assessed individually, like gearboxes, couplings, generators, etc.

#### § 10 Limitation of liability

1. In case of a breach of duty due to a minor negligence, our liability shall be restricted to an average damage that - depending on the type of goods - is foreseeable, immediate and typical for this contract. The same applies to a breach of duty due to minor negligence that was committed by our legal representatives or persons employed.

To contractors we shall not be liable for the breach of insignificant contractual duties caused by minor negligence.

2. For damages not caused to the delivered merchandise itself, we shall only be liable - irrespective of any legal argument - for

- a) Intent,
- b) gross negligence by the owner, the executive body or senior staff,
- c) culpable harm to life, body and health,
- d) defects which had been willfully kept secret or their non-occurrence had been guaranteed,
- e) defects of the object of delivery insofar as there exists a liability for objects that are used in private under the law of liability for material damage and injury to persons.

We are also liable in the event of culpable breach of essential contractual duties caused by gross negligence by staff in non-executive positions or caused by minor negligence; in the latter case this is limited to a damage that is representative to the contract and is reasonably foreseeable.

3. A customer's claim for damages due to a defect falls under the statute of limitation after one year. The period of limitation commences on delivery of the goods. This does not apply to the case where we are guilty of fraud or gross culpability with the effect of harm to body or health or the loss of a customer's life.

#### § 11 Final regulations

1. The law of the Federal Republic of Germany shall apply. The regulations of the UN law of purchase shall not apply.

2. If the customer is a merchant, a juridical person under public law or a separate fund under public law, the only legal domicile for all actions resulting from the contract is our place of business. The same regulation shall apply, if the customer has no general legal domicile in Germany or if his residence or regular domicile is unknown at the institution of an action.

3. In the event that individual terms of the contract including these general contractual terms are or become partially or completely invalid, the validity of the remaining terms shall not be affected. A term which is partially or completely invalid shall be replaced by a term which relates most closely to the economic purpose of the invalid term.