

## Conditions of Delivery and Payment

### I. CONCLUSION OF CONTRACT

1. All of our sales proposals are made subject to confirmation. Supply contracts, other agreements and side deals, especially inasmuch as they deviate from the terms set out below, only take effect when first confirmed by us in writing. Charges for planning stage work will only be waived if the supply contract is formally concluded and remains in place.
2. The supplier retains the unlimited right in respect of both title and copyright to use all drawings and other related documents, including in particular construction designs and cost estimates; third parties may not be given access to these. If the bidder so requests, or in the event that the order is not given to the bidder, all drawings and other documents associated with the tender are to be returned without delay.
3. As regards all documents that the customer makes available to the supplier, the customer bears full responsibility for ensuring that no third party trademark rights are breached. The customer indemnifies the supplier from any claims that may be made by third parties in this respect.

### II. SCOPE OF SUPPLY

1. The full scope of what is to be supplied is defined by the supplier's written order confirmation or, in the event that no such confirmation is produced, by the customer's written order. Where one or more of the customer's purchasing terms deviate from the sales terms of the supplier, acceptance of an order does not constitute acceptance of such terms as part of the contract.
2. Insofar as these are required by law or where their inclusion has been specifically agreed, safety devices are provided with all goods supplied. The supplier accepts no liability for the consequences of industrial accidents.
3. Inasmuch as such provisions relate to the safety of our work and of the goods supplied, the provisions of the Association of German Electrical Engineers apply to all supplies and work undertaken. Deviations from these provisions are permitted insofar as the same levels of safety are ensured through other means.
4. Dimensions, weights, performance data, illustrations and drawings are only binding for the design of items supplied if these have been specifically confirmed in writing. If changes to the construction prove necessary during production, the supplier will, in the absence of written confirmation to the contrary, provide no guarantee that the production process corresponds in every detail to the tender or to the order confirmation.
5. Deviations in weights and measures within normal industry tolerance levels and relevant DIN standards are permitted. Over and above this and insofar as it does not impair the ability of the product to be used as contractually defined, the supplier reserves the right to change the weight and measurements in the course of technical developments, as work is done on standardisation and as production techniques are enhanced.

### III. PRICE

Invoices are issued at the prices prevailing on the day of delivery. In the absence of any special agreement, prices (exclusive of statutory sales tax) apply ex-works, without installation or assembly and exclusive of packaging, freight, insurance and any other expenses

### IV. PAYMENT TERMS

1. Payments are to be rendered in cleared funds at the supplier's accounts office.
2. All invoiced amounts are to be paid net within 30 days of date of invoice. Payments are to be in EURO, without any deductions, by bank transfer.
3. Bills of exchange are only accepted where this has been specifically agreed and even then not in lieu of but rather by way of payment. Discounting costs and the cost of drawing such bills are borne by the customer.
4. The payment terms referred to under '3' above, apply only to standard appliances and supplies of replacement parts. Payment for production of special equipment with off-site mounting is to be made as follows:
  - one third down payment upon receipt of the order confirmation;
  - one third as soon as the customer is informed that the main parts are ready for dispatch;
  - the remainder when equipment has been formally accepted by the customer.Should this be delayed due to reasons for which the customer is responsible, the remainder becomes due from the day of delivery and, insofar as this was agreed, installation or assembly is also delayed, the due date is defined by the day of delivery alone.

For orders from abroad, half of the order value is to be paid with order and the remainder on delivery (i.e. when the equipment is ready for dispatch). Such payments are to be made by irrevocable letter of credit.
5. If due payment dates are missed, interest is applied at an annual rate of 9% above base. The supplier is not required to issue a reminder before applying such interest.
6. If a customer fails to keep to these payment terms, or facts come to light that cast doubt on the customer's creditworthiness, then all of the supplier's invoices, including those for which bills of exchange have been received, become immediately due for payment. The same applies to costs incurred for services rendered and for goods in production or finished but not yet supplied. In such cases, the supplier may decline to carry out any outstanding work or to make outstanding deliveries unless payment is made in advance or collateral security is provided. After giving the customer a period of grace, the supplier may also withdraw from the contract or claim damages for the customer's failure to fulfil his obligations. Further, by virtue of the agreed retention of title the supplier may prohibit the resale or adaptation of the goods supplied and demand at the customer's expense that they be returned or that the customer customer's indirect title in such goods be transferred.

7. For all types of payment, the point of settlement is regarded as the day on which the supplier is in full possession of cleared funds. Debts can be discharged by payment to one of the supplier's representatives or travellers only if that individual has the authority to collect such debts.
8. The customer may only set off a debt or instigate a right of retention insofar as the invoices used for such purpose are undisputed and were validly raised.

### V. DEADLINES FOR PROVISION OF SUPPLIES AND SERVICES

1. The date given in the supplier's written order confirmation is treated as the definitive date in terms of the deadline for the provision of supplies and services. It is a prerequisite of maintaining this deadline that the supplier receives on time all documents to be provided by the customer, the necessary approvals and release notes, that the plans are clarified and approved on time, and that the customer adheres to the agreed payment terms and other sundry obligations. If these requirements are not fulfilled on time, the deadline shall be extended accordingly. This shall not apply if the supplier is responsible for the delay.
2. Maintaining customer delivery deadlines is subject to our own deliveries being received in order and on time.
3. The deadline is deemed to have been met as follows:
  - a) For deliveries without installation or assembly: if the equipment is dispatched from the factory ready for use, or is shipped to distribution, within the agreed deadlines for providing supplies and services. If delivery from the factory is delayed for reasons for which the customer is responsible, the deadline is deemed to have been met if the customer is informed that the goods are ready for dispatch within this agreed deadline.
  - b) For deliveries with installation or assembly: if this is done within the agreed deadline.
4. If the delivery deadline cannot be kept due to acts of God, industrial action or such other events that are outside of the supplier's control, the deadline shall be extended accordingly. The supplier shall notify the customer as soon as possible when such circumstances arise and when they end.
5. The customer may withdraw from the contract without notice if, prior to transfer of risk, it ultimately becomes impossible for the supplier to fulfil the whole order. The customer may also withdraw from the contract if it becomes impossible for a part of an order to be fulfilled and the customer has a justifiable reason to decline a part delivery. Should this not be the case, the customer has to pay that part of the contractual price arising from the part delivery. The same applies if the supplier is in any way incapacitated. Otherwise section XI, clause 2 shall apply.

If such incapacity or inability to fulfil orders arises while a customer is delaying formal acceptance of goods, or if the customer is solely or largely responsible for such circumstances, then he remains liable to fulfil his obligations.
6. Should the supplier default on delivery terms and as a result the customer incurs a debt, then the customer is entitled to demand a lump sum as compensation for such default. For each full week of delay this sum shall be 0.5%, and in total not more than 5%, of the value of that part of the total delivery that cannot be used as scheduled or as per contract as a result of the delay.

If the customer grants the defaulting supplier - taking into account legal exceptions - a reasonable new deadline for making the delivery and this deadline is exceeded, then the provisions of the law entitle the customer to withdraw from the contract.

Only grounds listed at section XI, clause 2 of these terms and conditions may be cited in support of other claims based on delivery delays.

7. If dispatch is delayed at the customer's request, the customer may be charged a storage fee equal to one 1/2 percent of the invoice value for every month that accrues, starting one month after notification that the goods were ready for dispatch was sent to the customer. The storage fee is limited to 5 percent, unless it can be shown that actual costs were higher. If delays occur to dispatch and/or installation and assembly of the item to be delivered due to reasons for which the customer is responsible, then the customer is billed for costs arising from such delay, starting from one month after notification that the item was ready for dispatch and/or installation and assembly.

The supplier is however entitled, after a reasonable deadline has been set and expired without resolution of the matter, to make alternative use of the goods due for delivery and to supply the customer within an accordingly extended period.
8. Part deliveries are permitted.

### VI. TRANSFER OF RISK

1. Risk passes to the customer as follows, even where freight-paid delivery has been agreed:
  - a) For deliveries without installation or assembly: risk is transferred when a delivery of goods, ready for use, is collected or when it reaches distribution. Goods are packed with the utmost care and the supplier uses his best endeavours to ensure safe carriage. On request, and at the customer's expense, the supplier will insure the delivery against damage caused by breakage, transportation, fire or water.
  - b) For deliveries with installation and assembly on the day on which the customer commissions the equipment: insofar as a period of trial operation has been agreed, risk is transferred at the end of a successful trial. This is conditional upon the trial being conducted and/or the customer commissioning the equipment without delay following it being assembled, installed and declared ready for use. If the customer declines an offer to conduct a trial or to commission the equipment, then the risk for the duration of the delay passes to the customer 14 days after such offer was made.
  - c) If dispatch, delivery, the start of the installation or assembly, or the execution of this work is delayed at the customer's request, or due to reasons for which the customer is responsible, then risk passes to the customer at the point that such delay arises. However, upon request, and at the customer's expense, the supplier undertakes to affect such insurances as the customer may require.

2. All goods supplied are to be accepted by the customer without prejudice to all rights arising from section VIII. Evidence of insignificant flaws shall not constitute grounds for non-acceptance.
3. Insofar as the customer does not issue special instructions, goods will be packed with care and the supplier, while accepting no liability, will use his best endeavours to arrange safe carriage. Any discrepancies in the contents of the dispatch note or invoice are to be notified to the supplier in writing immediately after receipt of the goods.
4. Cardboard packaging, boxes and crates are charged at cost, but are not taken back.

#### **VII. INSTALLATION AND ASSEMBLY**

Off-site assembly is governed by the relevant version of our separate conditions for equipment assembly.

#### **VIII. RETENTION OF TITLE**

1. The supplier retains title to the items supplied until payment has been received for all elements of the supply contract, including taxes and the costs arising from any legal proceedings.
2. The supplier is entitled, at the customer's expense, to insure the supplied items to which he has retained title against theft, fire, water and other damage, insofar as the customer is not able to show that he has himself arranged such insurance.
3. Title rests with the supplier for as long as the current account balance between supplier and customer is in favour of the supplier. Where goods are sold on, the customer's receivables due from such sales, to the value of the debts still outstanding to the supplier, are deemed to have been assigned, even in the event that the customer has adapted the supplied goods, processed them or fitted them into something else. Where retention of title is enforced, the supplier is entitled, in addition to proven costs, to charge extra lump sum expenses equal to 10% of the sales price.
4. The customer is permitted neither to pledge the supplied items nor to assign them as security. If the goods become the subject of distraint, impoundment or any other order from a third party, then the customer must notify the supplier without delay.
5. Should the customer be in breach of contract, in particular as regards payment default, the supplier is entitled, after issuing a warning, to take back the items supplied and the customer is obliged to release them. Neither the enforcement of title retention nor the impounding of the supplied items by the supplier shall be deemed as withdrawal from the contract.
6. An application by the customer to begin insolvency proceedings entitles the supplier to withdraw from the contract and to demand the immediate return of the goods supplied.

#### **IX. CLAIMS FOR DEFECTS AND DEFICIENCIES**

To the exclusion of all other claims, and subject to section XI, clause 2, the supplier provides the following warranties in respect of physical defects and defects of title:

##### **Physical Defects**

1. All parts that turn out to be defective as a result of events prior to the transfer of risk will either be repaired or replaced with non-defective parts. The supplier will decide whether to repair or replace and the work will be done at no cost to the customer. Where defects of this sort are noticed, written notification is to be sent to the supplier immediately. Replacement parts become the supplier's property.
2. After reaching agreement with the supplier, the customer is to give him sufficient time and opportunity to carry out all of the repairs and to provide all of the replacement parts that appear necessary to him; should this not be given the supplier shall not be liable for any consequences arising out of such work. Only in urgent cases where operational safety is endangered and/or in order to avoid disproportionately large losses, and where the supplier must be immediately advised, does the customer have the right to rectify the defect himself or to have it rectified by others and then to claim reimbursement of the necessary expenditure from the supplier.
3. Insofar as a claim turns out to be justified, the supplier shall bear all direct costs arising from the repair and/or supply of replacement parts, these being the costs of parts themselves and their carriage. The supplier shall also bear the cost of dismantling defective parts and fitting replacements, as well as the cost of mustering such fitters and extra workers as may be required, including travel costs, save only if to do so would place the supplier under a disproportionate financial burden.
4. Where a supplier has been set a reasonable deadline to repair or replace a physical defect, the law provides for the customer the right to withdraw from the contract in the event that the supplier - taking into account legal exceptions - allows such deadline to pass with the work undone. Where only an insignificant defect is in evidence the customer is merely entitled to a reduction in the contract price. In all other circumstances, no right to a price reduction exists. Any other claims must be based on the grounds defined in section XI, clause 2 of these terms and conditions.
5. In the following instances, in particular, no liability is accepted:  
Incorrect use or use for purposes for which the equipment is not intended; erroneous assembly and/or commissioning by the customer or a third party; natural wear and tear; incorrect or careless treatment of the equipment, especially where this causes it to be put under excessive strain; irregular maintenance; use of unsuitable production means or replacement materials; faulty building work; unsuitable site; and, insofar as the supplier is not responsible for it, any extraneous influences from chemicals, electro-chemicals or electricity.
6. In the event that the customer or a third party affects repairs without following correct procedures, the supplier is not liable for any consequences that arise therefrom. The same applies for any alterations made to the goods supplied without the supplier's prior approval.

##### **Defects of Title**

7. Should use of the item supplied lead to a breach of commercial trade marks or of German domestic copyright law, the supplier shall as a minimum, and at his own expense, procure for the customer the right to continue to use it or shall modify it in a way that is acceptable to the customer such that the breach no longer exists. If it is not possible to do this due to disproportionate expense or within a reasonable time, the

customer is entitled to withdraw from the contract. In the foregoing conditions, the supplier also has the right to withdraw from the contract.

Moreover, the supplier will indemnify the customer from any undisputed or validly made claims from the affected rights-holder.

8. Subject to the terms of section XI, clause 2, the supplier obligations for cases of breach of trade mark or copyright laws referred to in section IX, clause 7 are definitive. They arise only if:
  - the customer informs the supplier immediately of any breach that has occurred of trade mark or copyright law,
  - the customer gives the supplier all reasonable support in defending any claim that is validly made and/or enables the supplier to carry out modification works as per section IX, clause 7,
  - all measures, including civil rulings, used to defend any action are left to the discretion of the supplier,
  - the defect of title is not related to any instruction from the customer, and
  - the breach of rights was not caused by the customer making his own alterations to the supplied item nor due to him using it in ways other than as intended by the contract.

#### **X. RETURN OF SUPPLIED GOODS**

1. It shall be regarded as agreed, that in deviation from § 19 Electrical and Electronic Equipment Act, the buyer or possessor of waste electrical and electronic equipment has the duty to dispose those equipment at its own expense.
2. Before the return shipment of any supplied goods regardless of the way and for what reason, customer shall request supplier's customer service for a return shipment number.
3. For environmental and safety reasons supplier will accept only such items that are clean, empty and free of any chemical residues.
4. Supplier may either refuse the acceptance of returned items or return them to the customer at the customer's costs if the aforementioned requirements are not met.

#### **XI. VOLUNTARY RETURN OF GOODS**

If a voluntary return of goods has been agreed on, the customer shall bear the direct costs of returning the goods. Costs amounting to 25% of the value of the goods shall be charged for the quality inspection of the returned goods if the goods show no damage.

#### **XII. LIABILITY**

1. If, through the fault of the supplier as a consequence of the non-execution or deficient implementation of recommendations and advice given before or after the contract was sealed, or through a breach of any other obligations associated with the contract - in particular in respect of instructions for using and maintaining the item supplied - the item cannot be used by the customer as described in the contract, then, to the exclusion of any other claims from the customer, the provisions of section IX and section XI, clause 2 shall apply accordingly.
2. For damages arising other than from the supplied item itself, the supplier shall be liable - whatever the legal justification for any claim - only:
  - a) in cases of intent,
  - b) in the event of gross negligence on the part of the owner / board or senior executives,
  - c) in the event of culpable harm being caused to life, body or personal health,
  - d) in the case of defects that he has wilfully failed to mention or the lack of which he has guaranteed,
  - e) in the case of defects to the supplied item, to the extent of the provisions of product liability law for personal injury or physical damage to objects owned for personal use. Where there is a culpable breach of a material contractual obligation, the supplier shall be liable even if such breach arises through the gross negligence of staff other than senior executives or through less serious acts of negligence, with liability limited in the latter case to reasonably foreseeable damages typical in such contracts.  
No other claims will be accepted.

#### **XIII. TIME LIMITATIONS**

The customer's right to make a claim - no matter for what legal reason - lapses after 12 months. Inasmuch as a customer's claim relates to the provisions of section IX or section XI, the right to such claim lapses 12 months after the customer takes possession of or commissions the supplied item and in any event no later than 18 months after notification was given that it was ready for dispatch. Statutory deadlines apply in respect of claims for compensation as per section XI clause 2, sub-clauses a) to e). They also apply in respect of building works and in respect of any supplied item that has been used on a construction job in its usual way and has given rise to defects in the job.

#### **XIV. USE OF SOFTWARE**

1. Where software is included amongst the items supplied, the customer is granted the non-exclusive right to use the software, together with the documentation provided. This right is specific to use of the software on the system supplied. Use of the software on more than one system is not allowed.
2. The customer is allowed to copy the software, reengineer it, translate it or convert from the object code into the source code only to extent that this is legally permitted (clause 69a ff. German Copyright Law). The customer undertakes not to remove or, without the prior express agreement of the supplier, to alter the producer's details, especially the copyright marks.
3. All other rights in respect of the software and documentation, including copies thereof, rest with the supplier and/or the software contractor. Issuing sub-licences is not allowed.

#### **XV. JURISDICTION**

1. For all disputes arising directly or indirectly from the contractual relationship between supplier and customer sole jurisdiction shall, at the discretion of the supplier, rest with the courts of the city in which the supplier's main premises are located or of a city in which the supplier has subsidiary premises.
2. German law shall apply in all matters relating to the contract.

## **XVI. ENFORCEABILITY OF THE CONTRACT**

1. Should individual provisions of these supply terms or of the delivery transaction be or become invalid, this shall not affect the validity of the remaining provisions. The parties to the contract undertake to agree a new provision that comes as close as possible to the intended purpose of the void provision.
2. All goods supplied by the supplier are supplied exclusively on the foregoing conditions of sale. In order to become effective, any agreements that deviate therefrom or any of the customer's business terms must be specifically agreed by the supplier in writing. The supplier's terms and conditions of supply formally become a part of the contract at the very latest at the moment that the customer accepts the delivery.

## **XVII. EXPORT COMPLIANCE**

1. Customer acknowledges that supplied goods may be subject to certain export and re-export restrictions of the E.U., U.S.A. or other countries.
2. Supplier's obligation to fulfil its contractual obligation to supply is always subject to national and international law and regulations of export compliance, embargoes or other restrictions.
3. Buyer undertakes to refrain from using the supplied goods neither separately nor after combination with other items for the following transactions:
  - Transactions involving persons, organizations or institutions listed on sanction lists under the EC-Regulations, U.S. and/or other export control laws and regulations.
  - Illegal transactions involving embargoed countries.
  - Transactions for which the required authorization is not granted.
  - Transactions related to nuclear, biological or chemical weapons or related to other military end-use.
4. Without prejudice for any other remedy rights or damages, supplier in case of the breach of any restrictions as set out in clause 3 above shall be entitled to claim for a contractual penalty to be determined at the supplier's equitable discretion (in accordance with paragraphs 339, 315 German Civil Code).

Issue: 07/2019

## **Ecolab Engineering GmbH**

**This document is an English translation of the German original.  
For all legal purposes, the German original shall apply.**