



General Terms and Conditions of H2O GmbH for International Deliveries & Services

1. General

- 1.1. All deliveries and services to be provided by H2O GmbH are based on these General Terms and Conditions and any separate contractual agreements. Unless H2O GmbH has expressly agreed to them, any purchaser's general terms and conditions shall not become part of the contract. This shall apply also where H2O GmbH has not expressly contradicted, or where it performs deliveries or services without having contradicted the purchaser's general terms and conditions.
- 1.2. H2O GmbH reserves property- and copy-rights for samples, cost estimates, offers, reports, studies, drawings and other information of a physical and non-physical nature - also in electronic form; they may not be made accessible to third parties. The transfer of the aforementioned objects and documents does not include the transfer of rights or the granting of a user license.
- 1.3. H2O GmbH undertakes to make information and documents designated by the purchaser as confidential accessible to third parties only with the purchaser's consent.

2. Contractual Provisions

- 2.1. Unless expressly stated otherwise, our offers are subject to confirmation and non-binding.
- 2.2. In the absence of a special agreement, a contract is concluded with the written order confirmation of H2O GmbH.
- 2.3. The agreement of a guarantee requires the written form to be effective.
- 2.4. If changes in the contractual obligations arise after the submission of an offer due to new or changed legal regulations or new demands by authorities and testing agencies, the contract must be adapted taking into account the interests of both parties.

3. Prices, Payments, Securities

- 3.1. Unless otherwise agreed, our prices shall be EXW Steinen in accordance with INCOTERMS 2010.
- 3.2. The prices stated in H2O GmbHs order confirmation are valid.
- 3.3. All prices are net prices and do not include either import duties and/or value added tax or other local taxes applicable at the time of providing delivery or services.
- 3.4. Unless otherwise agreed, payment shall be made within 14 days without any deduction to the account of H2O GmbH.
- 3.5. In the event of non-compliance with payment deadlines, default interest shall be charged at a rate of 9% above the valid base interest rate. The assertion of further damages remains unaffected.
- 3.6. In the event of default in payment or if our claims are at risk due to a deterioration in the creditworthiness of the purchaser, we shall be entitled to make our claims due or demand securities. We are also entitled to carry out outstanding deliveries and services only against advance payment or against the provision of securities, without thereby falling into arrears.
- 3.7. The purchaser shall only have the right to withhold payments to the extent that his counterclaims are undisputed or have been legally established.
- 3.8. The purchaser shall only have the right to set off counterclaims from other legal relationships to the extent that they are undisputed or have been legally established.



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4. Dates, Obstacles to Performance

- 4.1. The delivery period shall result from the agreements between the contracting parties. Its observance by H2O GmbH presupposes that all commercial and technical questions between the contracting parties have been clarified and that the purchaser has fulfilled all obligations incumbent upon him, such as the provision of the necessary official certificates or approvals or the payment of a down payment. If this is not the case, the delivery period shall be extended accordingly. This does not apply if H2O GmbH is responsible for the delay.
- 4.2. Compliance with the delivery time is subject to correct and punctual supply by H2O GmbH's sub-suppliers. The supplier shall inform the purchaser as soon as possible of any imminent delays.
- 4.3. The delivery period shall be deemed to have been observed if the delivery item has left the factory of H2O GmbH or readiness for dispatch has been notified by the end of the delivery period. As far as a factory acceptance has to take place, the factory acceptance date is decisive - except in case of unjustified refusal of acceptance - alternatively the notification of the readiness for factory acceptance.
- 4.4. If dispatch or factory acceptance of the delivery item is delayed for reasons for which the purchaser is responsible, the purchaser shall be charged the costs incurred as a result of the delay, starting one week after notification of readiness for dispatch or factory acceptance.
- 4.5. If non-compliance with the delivery period is due to force majeure, industrial disputes or other events beyond the control of H2O GmbH, the delivery period shall be extended accordingly. H2O GmbH will inform the purchaser of the beginning and end of such circumstances as soon as possible.
- 4.6. The purchaser can withdraw from the contract without setting a deadline if H2O GmbH is finally unable to perform the entire performance before the transfer of risk. In addition, the purchaser can withdraw from the contract if the execution of a part of the performance becomes impossible and he has a justified interest in refusing the partial delivery. If this is not the case, the purchaser shall pay the contract price attributable to the partial delivery. The same applies in the event of inability of H2O GmbH. Otherwise, clause 9 of these terms and conditions shall apply.
- 4.7. If the impossibility or the inability to perform occurs during the default of acceptance or if the purchaser is solely or predominantly responsible for these circumstances, he shall remain obligated to counter-performance.
- 4.8. If H2O GmbH is in default and the purchaser suffers damage as a result, he is entitled to demand a lump-sum compensation for default. It shall amount to 0.5% for each full week of the delay, but in total not more than 5% of the value of that part of the total delivery which cannot be used on time or in accordance with the contract as a result of the delay.
- 4.9. If the purchaser sets H2O GmbH a reasonable deadline for performance after the due date - taking into account the statutory exceptions - and if the deadline is not met, the purchaser is entitled to withdraw from the contract within the framework of the statutory provisions. At the request of H2O GmbH, he undertakes to declare within a reasonable period of time whether he will make use of his right of withdrawal. Further claims arising from delay in delivery are exclusively determined according to clause 10 of these terms and conditions.

5. Passage of Risk, Dispatch

- 5.1. The risk shall pass to the purchaser when the delivery item has left the factory, even if partial deliveries are made or H2O GmbH provides additional services, e.g. shipping costs or delivery and installation.
- 5.2. If dispatch or acceptance is delayed or fails to take place due to circumstances for which H2O GmbH is not responsible, the risk shall pass to the purchaser on the day of notification of readiness for dispatch or acceptance.



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H2O GmbH undertakes to take out the insurances required by the purchaser at the purchaser's expense.

5.3. Partial deliveries are permissible, as far as reasonable for the purchaser.

6. Obligations of the Purchaser during On-site Services

6.1. The purchaser shall support H2O GmbH's personnel in carrying out work on site at his own expense.

6.2. He shall take the special measures necessary to protect persons and property on the construction site. He shall also inform the site manager about existing special safety regulations insofar as these are of significance for H2O GmbH's personnel. He shall inform H2O GmbH of any violations of such safety regulations by H2O GmbH's personnel. In the event of serious violations, he may, in consultation with the site manager, deny the offender access to the construction site.

6.3. The purchaser is obliged to provide technical assistance at his own expense, in particular:

- a. Provision of the necessary suitable assistants (bricklayers, carpenters, locksmiths and other skilled workers, handymen) in the number and time required for the work to be carried out. The auxiliary personnel shall follow the instructions of the site manager. H2O GmbH assumes no liability for the auxiliary staff. If a defect or damage has been caused by the auxiliary staff due to instructions of the site manager, then clause 10 of these terms and conditions shall apply.
- b. Carrying out all earthwork, construction, bedding and scaffolding work including the procurement of the necessary building materials.
- c. Provision of the necessary equipment and heavy tools (e.g. lifting gear, compressors) as well as the necessary commodities and materials (e.g. scaffolding timber, wedges, underlays, cement, plaster and sealing material, lubricants, fuels, drive ropes and belts).
- d. Provision of heating, lighting, operating power, water, including the necessary connections.
- e. Provision of necessary, dry and lockable rooms for the storage of H2O GmbH personnel's tools.
- f. Transport of the assembly parts on the construction site, protection of the construction site and materials against harmful influences of any kind, cleaning of the construction site.
- g. Provision of suitable, theft-proof lounges and work rooms (with heating, lighting, washing facilities, sanitary facilities) and first aid for H2O GmbH's personnel.
- h. Provision of the materials and performance of all other actions necessary for the adjustment of the delivery item and for the performance of a site acceptance test.

6.4. The technical assistance provided by the purchaser must ensure that the services can be commenced immediately after the arrival of H2O GmbH's personnel and can be carried out without delay until acceptance by the purchaser. If special plans or instructions of H2O GmbH are required, H2O GmbH shall make them available to the purchaser in good time.

6.5. If the purchaser does not comply with his obligations, H2O GmbH is entitled, but not obliged, after setting a deadline, to carry out the actions incumbent on the purchaser in his place and at his expense. Otherwise, the statutory rights and claims of H2O GmbH shall remain unaffected.

7. Acceptance

7.1. If acceptance has been agreed upon, it must be carried out immediately after notification of readiness for acceptance.



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- 7.2. If special properties of the delivery item have been agreed upon, or if H2O GmbH requests, the purchaser shall be obliged to carry out acceptance. This shall also apply to self-contained partial deliveries and/or services.
- 7.3. If the acceptance does not take place on time or not completely, and H2O GmbH is not responsible for the delay, the delivery item shall be deemed to have been accepted at the end of the 10th working day after notification of readiness for acceptance.
- 7.4. The effect of an acceptance shall in any case also occur if the delivery item is put into operation without H2O GmbH's consent.
- 7.5. The purchaser shall create the conditions necessary for the acceptance procedure. With the exception of H2O GmbH's personnel costs, the purchaser shall bear all costs associated with the acceptance.
- 7.6. The purchaser may not refuse acceptance due to insignificant defects, notwithstanding his rights under Clause 10.

8. Retention of Title

- 8.1. H2O GmbH reserves ownership of the delivery item until receipt of all payments, also for any additional services.
- 8.2. H2O GmbH is entitled to insure the delivery item against theft, breakage, fire, water and other damage at the expense of the purchaser, provided that the purchaser has not demonstrably taken out the insurance himself.
- 8.3. The purchaser may not sell, pledge or assign the delivery item by way of security. In the event of seizure, confiscation or other dispositions by third parties, he must notify H2O GmbH immediately.
- 8.4. In the event of breach of contract by the purchaser, in particular default in payment, H2O GmbH is entitled, after a reminder, to take back the delivery item and the purchaser is obliged to surrender it.
- 8.5. Due to the retention of title, H2O GmbH can only demand the return of the delivery item if it has withdrawn from the contract.
- 8.6. The processing or transformation of the delivery item by the purchaser is always carried out on behalf of H2O GmbH. If the delivery item is processed into a new item with other items not belonging to H2O GmbH, H2O GmbH acquires co-ownership of the new item. The co-ownership share is measured according to the value of the delivery item in proportion to the value of the other processed or transformed items at the time of processing or transformation.
- 8.7. If the purchaser combines or mixes the delivery item to a uniform item and if one of the other items is to be regarded as the main item, H2O GmbH is entitled to proportional ownership of the resulting item. The co-ownership share is measured according to the value of the delivery item in proportion to the value of the other combined or mixed items at the time of the combination or mixing. The purchaser already now assigns this co-ownership to H2O GmbH, whereby H2O GmbH already now accepts the assignment.
- 8.8. The purchaser assigns to H2O GmbH already at this point in time the claims against third parties arising from the resale of the delivery item with all ancillary rights as security. H2O GmbH accepts this assignment. The purchaser undertakes to retain ownership of the goods vis-à-vis his customers until the purchase price has been paid in full. In case of default of payment of the purchaser or in case of a substantial deterioration of the financial circumstances of the purchaser, H2O GmbH is authorized to inform the customers of the assignment and to collect the claims itself. The purchaser is obliged to provide the seller upon request with an exact list of the claims due to the purchaser with the names and addresses of the buyers, the amount of the individual claims, invoice date etc. and to provide H2O GmbH with all information necessary for the assertion of the assigned claims and to allow this information to be checked.



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8.9. The purchaser shall inform H2O GmbH immediately in writing of any access by third parties to the delivery item in which H2O GmbH has ownership, in particular also a foreclosure of the delivery item and the claims of H2O GmbH, and shall transmit the information and documents necessary for defense to H2O GmbH.

9. Purchaser's Rights in Case of Defects

- 9.1. H2O GmbH must be notified of defects immediately in writing, but at the latest within one week after receipt of the delivery item. Defects which cannot be discovered within this period, even after careful inspection, must be reported to H2O GmbH in writing immediately after discovery.
- 9.2. At the discretion of H2O GmbH, all those parts shall be repaired or replaced which turn out to be defective as a result of a circumstance prior to the transfer of risk. Replaced parts become the property of H2O GmbH.
- 9.3. In order to carry out all repairs and replacement deliveries which appear necessary to H2O GmbH, the purchaser must, after agreement with H2O GmbH, give H2O GmbH the necessary time and opportunity; otherwise H2O GmbH is released from liability for the resulting consequences. Only in urgent cases of danger to operational safety or to prevent disproportionately large damage, in which case H2O GmbH must be notified immediately, shall the purchaser have the right to remedy the defect himself or have it remedied by third parties and to demand reimbursement of the necessary expenses from H2O GmbH.
- 9.4. H2O GmbH shall bear - insofar as the complaint turns out to be justified - the direct costs of rectification or replacement delivery including dispatch. In addition, H2O GmbH shall bear any necessary installation and dismantling costs, insofar as this was the subject of the original service, as well as the costs of any necessary provision of the necessary workforce, including travel costs, insofar as this does not place a disproportionate burden on H2O GmbH.
- 9.5. The purchaser has a right to withdraw from the contract within the framework of the statutory provisions if H2O GmbH - taking into account the statutory exceptions - allows a reasonable period of time set for it for rectification or replacement delivery due to a material defect to elapse fruitlessly. If there is only an insignificant defect, the purchaser is only entitled to a reduction of the contract price. The right to a reduction of the contract price shall otherwise be excluded.
- 9.6. No liability shall be assumed in particular in the following cases: Unsuitable or improper use, faulty assembly or commissioning by the purchaser or third parties, natural wear and tear, faulty or negligent treatment, improper maintenance, unsuitable operating materials, faulty construction work, unsuitable subsoil, chemical, electrochemical or electrical influences - insofar as they are not in the responsibility of H2O GmbH.
- 9.7. If the purchaser or a third party carries out improper repairs, H2O GmbH shall not be liable for the resulting consequences. The same shall apply to modifications to the delivery item carried out without the prior consent of H2O GmbH.
- 9.8. The warranty claim expires 12 months after delivery or, if an acceptance according to clause 7 is to take place, after acceptance or after the dates mentioned in clause 7.3 or 7.4. If the readiness for acceptance is delayed through no fault of our own, the limitation period shall commence no later than 13 months after delivery or after notification of readiness for dispatch.
- 9.9. Further rights based on defects are excluded - notwithstanding any claims for damages under clause 10; this applies in particular to contractual or non-contractual claims for compensation for damage not caused to the delivery item itself.



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10. General Exclusion of Liability

- 10.1. If the delivery item cannot be used by the purchaser in accordance with the contract due to culpably omitted or incorrect proposals or advice, before or after the contract was signed, or because of other contractual ancillary obligations - in particular instructions for operation and maintenance of the delivery item - the provisions of clauses 10.2 and 10.3 shall apply, excluding further claims of the purchaser.
- 10.2. The Supplier shall only be liable - for whatever legal reasons - for damage which has not occurred to the delivery item itself:
- a. in case of intent,
 - b. in the event of gross negligence on the part of the owner or executive employees,
 - c. in the event of culpable injury to life, body or health,
 - d. in the case of defects which he maliciously concealed,
 - e. within the framework of a guarantee promise,
 - f. in case of defects of the delivery item according to product liability law.
- 10.3. In the event of culpable violation of essential contractual obligations, H2O GmbH shall also be liable for gross negligence of non-executive employees and in the case of slight negligence, in the latter case limited to reasonably foreseeable damage. Further claims are excluded.

11. Place of jurisdiction, applicable law, other agreements

- 11.1. All claims, disputes, or other matters in question between the Seller and the Buyer arising out of, or relating to, this Agreement or the breach of it which cannot be resolved by an amicable settlement between the parties shall be finally settled by arbitration.
- 11.2. German law shall apply to the contractual relationship.
- 11.3. An ineffective provision shall not invalidate the entire terms of delivery.

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