

# General Purchasing Terms of Andritz Separation GmbH

(May 2010 edition)

Our „General Purchasing Terms“ exclusively apply to companies and legal entities under public law.

The basis of a contract shall exclusively be our General Purchasing Terms even if provided otherwise in the Seller's written order confirmation. Quotations and consultation provided by the Seller shall be without charge to and not binding on us. The Seller is obliged to collect sufficient information on all details concerning the subject of inquiry or supply.

## 1. Order Award

- 1.1 Purchase orders shall only be legally binding if issued on our order forms and duly signed or if agreed upon under a supply contract.
- 1.2 Verbal, telephone, fax or electronically transmitted orders must be confirmed in writing on our order form to become valid unless our orders which are transmitted by fax or electronically contain a note that no written confirmation will follow.
- 1.3 Variations and/or amendments to orders principally need to be agreed in writing.

## 2. Order Confirmation

The Seller must return to us the duly signed order confirmation which is enclosed with the order form, immediately after receipt. Order confirmations of other kind will not be accepted by us. Terms of delivery of the Seller shall be binding on us only on the condition that we expressly accepted these in writing. The purchase order is also deemed to be unconditionally and pursuant to our General Purchasing Terms accepted if the Seller is perceived to have commenced carrying out the order after receipt of the order form.

## 3. Prices

- 3.1 Unless otherwise agreed upon in the order, the prices are fixed and shall apply DDU (including packing and preservation), delivered free, uninsured, in accordance with Incoterms in the applicable version.
- 3.2 Unless prices and conditions have been stipulated in our order form, the contract shall be brought about only after the prices have been agreed upon in writing or if we have expressly stated that the usual compensation (Section 632, para 2, German Civil Code) shall be considered agreed upon.
- 3.3 The Seller knows that the prices agreed upon will be the basis of our price calculation. With due regard to our interest in constant prices, the Seller undertakes to have follow-up orders executed at the agreed prices as well. Only in case order-related cost have undergone substantial changes (e.g. raw materials/components, wages, carriage, energy) the Seller may request an adaptation of the prices agreed upon in accordance with the influence of the relevant cost factors. Type and extent of the adaptation will be determined by us as appears fair (Section 315 – German Civil Code).

## 4. Delivery date

- 4.1 If the Seller realizes that the dates agreed upon cannot be maintained he shall immediately advise us accordingly. His commitment to maintain the dates agreed upon shall remain unaffected.
- 4.2 In case of delay on the part of the Seller we shall be entitled to deduct a penalty in the amount of 0.2% up to 5% at a maximum of the total order value for each calendar day of delayed delivery or to claim compensation for the damage caused by the delay; §341 point 3 BGB is excluded. In the event that we first assert the above lump-sum penalty, it shall not prevent us from claiming compensation of the special damage caused by the delay against which the penalty shall be set off. The penalty shall not be considered waived in case the supply has been accepted and/or paid for without reservation either completely or in part.
- 4.3 If the goods are delivered before the stipulated date – which may only be made with our consent – the specified periods related to delivery shall not begin before the delivery date originally agreed upon.
- 4.4 Should maintaining the delivery date become impossible due to force majeure or subsequent instructions given by us, the Seller shall advise us in writing without delay. We will then decide as appears fair (Section 315 – German Civil Code) whether and by what period the delivery period will be extended.
- 4.5 Force majeure shall only be such inevitable circumstances that could not be foreseen upon signing the contract, such as armed conflicts and natural disasters. Strikes, production faults, scrap castings, supply bottlenecks or delayed delivery by the Seller's suppliers are among the circumstances that are not considered force majeure.

## 5. Shipping Instructions

The delivery and shipping instructions as well as the specifications for packing materials issued by us shall be duly observed. Packing shall be restricted to the extent required for protection of the goods. It shall exclusively consist of environmentally safe and recyclable materials. Unless otherwise agreed, packing shall be taken back cost-free. All cost incurred by us due to non-observance of the delivery, shipping and packing instructions shall be to the Seller's account.

## 6. Handing over / Acceptance

- 6.1 The Seller knows that we cannot inspect the delivered goods for deficiencies, type and quantities immediately after handing over or acceptance. Therefore, the Seller renounces the right to insist on our duty to examine and make a complaint in respect of a defect immediately on receipt of the goods in the sense of Sections 377, 378 of the German Commercial Code. Time limit for the complaint is within 4 weeks after detection of the defect while assembly of the delivery item.
- 6.2 The Seller grants us the opportunity of a preliminary inspection of the goods at his factory. Carrying out such inspections is not combined with acceptance. In the event that these inspections cause any cost, they shall be to the Seller's account except our personal expenses and/or personal expenses of third parties. Provided these inspections have to be repeated due to the Seller's fault, all resulting cost shall be to his account.
- 6.3 In case the delivery item will be installed in a plant to be supplied by us to third parties, the liability for material defects and the warranty (pursuant to the provisions of clause 7. below) shall commence after acceptance of the total plant at the works of the third party.
- 6.4 Any shipment shall be accompanied by a delivery note giving our purchase order number, item number and, if required, part number.

## 7. Liability for Material Defects and Warranty

- 7.1 If the purchased goods or the work performed are defective, the Seller shall primarily be liable in accordance with the arrangements agreed upon. Otherwise, he shall be liable pursuant to the provisions of the law on contracts of sale and of work and services as well as to the trade practice adopted at our company's domicile and the safety regulations applicable there. The warranty period covers 24 months after acceptance of the complete plant in the third party's works. Contrary to the provisions of Section 635 of the German Civil Code we shall be entitled either to request elimination of the defect or supply of a faultless item. In case of urgency we shall be entitled to request remedy of the defect either by the Seller or by third parties or to procure a replacement. In case of replacement or remedy, the entire warranty period shall commence at the time of the new start up.
- 7.2 The Seller undertakes to supply spare and wear parts for the delivered item up to 10 years after delivery at generally accepted market prices and delivery times.

- 7.3 By accepting the order the Seller expressly guarantees that the delivery item does not impinge any right, in particular no industrial property rights of third parties. Furthermore, he shall indemnify us against claims by third parties in the event that such rights should nevertheless be asserted by third parties and make up for the damage suffered by us. If industrial property rights of third parties have been infringed, the Seller will moreover undertake either to satisfy the claims of the patent holder or to have the delivery item modified such free receiving plant that infringement of the industrial property rights will be cancelled without impairing the originally agreed quality or guarantee and services. The statutory liability of the Seller that goes beyond this provision shall remain unaffected.

- 7.4 The seller shall moreover be liable pursuant to the statutory provisions for other guarantees assumed by him.

## 8. Cancellation/Interruption of contract performance

- 8.1 Cancellation  
We shall be entitled to withdraw either completely or in part from the order even without the Seller being at fault. If so, we will be obliged to pay the Seller the contract price proportionate to the supplies and services rendered. In addition, we will be obliged to reimburse direct cost of supplies and services that are being rendered and for which proof has been furnished as well as cost of cancellation of orders placed with the Seller's suppliers. Upon receiving notification of our cancellation, the Seller shall make all effort to minimize the cost to be refunded by us. All and any additional claims arising out of or in connection with a cancellation – no matter for what legal ground – shall be excluded.
- 8.2 Insolvency  
We shall be entitled immediately to cancel an order in case insolvency proceedings are instituted for the property of the Seller.
- 8.3 Interruption of contract performance  
We are entitled any time to request the Seller to interrupt contract performance. If so, the Seller is bound to draw our attention to the consequences and to offer an economically best possible modification of the time schedule for the project concerned. The Seller will not assert any claims for an interruption of contract performance up to 6 months at a maximum.

## 9. Payment

- 9.1 Unless otherwise agreed upon, payments shall be made within 2 weeks less 2% discount after delivery and receipt of invoice or within 30 days net. In the event that the documents and/or certificates agreed upon should not be available at the payment date, the delivery is considered not made and payment will only be made after the outstanding papers have been presented.
- 9.2 We are allowed to assert a right of retention for any claim to which we are entitled towards the Seller – no matter for what legal ground – even if such claims have not yet become due.
- 9.3 Unless agreed upon in the order, assignment of claims and/or reservation of titles of the Seller will not be recognized.

## 10. Order Documents

- 10.1 The information contained in our inquiries or orders, the enclosed drawings and drafts as well as samples, models, patterns, printing plates and other expedients remain our property and may not be used elsewhere without our written consent; they must be returned with the offers or after the order has been executed without any special demand having to be made by us.
- 10.2 All drawings, calculations and other, especially technical, documents remain our property and may without special permission also be used for stock keeping of spare parts, repairs and changes and be passed on to third parties. The copyright will not be affected by this provision.
- 10.3 Our order may only be used for advertising purposes, including specialized publications, provided we have approved of such use in writing. The Seller shall not be entitled to name complete plants as his reference for which he provided a considerable portion of the components.
- 10.4 The order as well as all data, papers, etc. related to it must be treated as our trade secret. They must not be disclosed to third parties. In case of a breach of this provision the Seller shall have to pay a penalty of 5% of the ordered value. In addition, we will be entitled to claim reparation of the damage sustained by us. The penalty just mentioned will be offset against such reparation.
- 10.5 Any annex to the order of technical or commercial nature shall be an integral part of the order.
- 10.6 The following priorities shall apply in case of discrepancies in the order documents and our General Purchasing Terms:
  1. Wording of the purchase order and its annexes
  2. Our "General Purchasing Terms".

## 11. Place of Performance / Partial Invalidity / Jurisdiction/Applicable Law

- 11.1 The place of performance for supplies and services shall be the place of destination; for payments the headquarters of ANDRITZ SEPARATION GmbH, Cologne.
- 11.2 In case one or several provisions of the contract have become or become invalid, the other provisions shall remain in force.
- 11.3 The place of jurisdiction shall be Cologne. However, we can bring an action against the Seller at his place of jurisdiction.
- 11.4 The applicable law is German material law. The contract relations shall be governed pursuant to the provisions of the Civil Code (BGB) and the Commercial Code (HGB) valid in the Federal Republic of Germany. The application of the UN Convention of the International Sale of Goods shall be excluded.

## 12. General

- 12.1 Materials we made available shall be kept in safe custody by the Seller cost-free until they are used. They remain our property and must not be used elsewhere. They shall be unambiguously identified as "property of Andritz Separation GmbH" and be stored separately. This reservation of title shall also apply in case the materials are processed. The Seller's guarantee obligation for his scope of supplies as well as complete design and operativeness will not be affected by materials we made available.
- 12.2 The Seller shall advise us in advance on substantial components of the purchase or of the works being supplied by sub-contractors and obtain our approval to use them.
- 12.3 We and/or our customers and/or third parties authorized by us shall be entitled at any time during normal business hours to inspect the processing and/or the manufacturing progress of the order.
- 12.4 Our "General Purchasing Terms" shall be applicable to purchase orders, contracts for work and services as well as all other supply agreements. The term "Seller" used above shall also mean contractor or other suppliers.
- 12.5 The Purchaser reserves the right to store ordered goods cost-free at the Seller up to a period of 6 months at a maximum.