

# General Purchasing Terms of ANDRITZ Kaiser GmbH

(Version September 2004)

Our „general purchasing terms (AEB)“ are exclusively valid for commercial companies, juristic persons of public law or public fund assets. The exclusively basis of the contract is our AEB, even if the written order confirmation from the seller contains contrary sales conditions.

Offers and consultation from the seller are not binding for us and are free of charge. The seller is obliged to inform himself sufficiently about the details which have an influence on the execution of the proposal or the object of the order.

## 1. Order allocation

1.1. Orders are only legally valid if they are issued on our forms and are signed by the company or agreed in the form of supply contract.

1.2. Verbal orders, orders by telephone, telex or electronically issued orders are generally only valid after our written order confirmation, unless our orders transmitted by fax or electronically contain the clause that no written order will follow

1.3 Changes or additions generally require written agreement.

## 2. Order confirmation

The seller immediately sends back a copy of the written order as an confirmation signed by the company. We are only obliged to adhere to the seller's terms of delivery if we have expressly acknowledged them in writing. The order also counts in acknowledgement of our AEB without any reservation if the seller is recognized to commerce performing the order after receipt of the written order.

## 3. Prices

3.1. The prices are fixed prices and based on DDP terms including Packaging, preservation, with uninsured delivery to the stated location according to most current version of the Incoterms

3.2. If prices and conditions are not already mentioned in our order, the order is valid once a written agreement regarding the prices has been issued or when we expressly declare that the usual fee (§ 632 sec. 2 BGB) is to be seen as agreed.

3.3. The seller is aware that we use the agreed prices as a basis for our price calculations. Under consideration of our resulting interest for price consistency, the seller is obliged to carry out follow-up orders at he agreed prices. The seller may only request an adaptation of the prices if a fundamental change to the costs relating to the order (e. g. wages, raw materials or energy) occurs and only request an increase for the relevant costs factors. The type and extent of the adaptation is determined with the appropriate discretion (315 BGB).

## 4. Delivery date

4.1. If the seller recognizes that the agreed deadlines cannot be upheld, he must inform us immediately. The obligation to comply with the agreed deadlines remains unaffected.

4.2. If the seller delays we reserve the right to apply a penalty for each calendar day delayed after the agreed delivery date at a sum of 0,2% up to max. of 5% of the value of the total order or to demand replacement of the concrete damages caused by the delay. If we apply the aforementioned flat penalty rate at first this does not stop us from demanding replacement of damages caused by the delay which are then to be added to the penalty charge. We are not obliged to make the seller aware of any delay. The delay penalty does not count as waived if the delivery is completed or partially accepted with reservation and/or is paid.

4.3. Upon delivery before the stipulated delivery date, which is only permitted with our agreement, the connected periods start with the originally agreed delivery date.

4.4. If compliance with the delivery date is impossible due to force majeure or adjustments made by us the seller must notify us in writing. We use our discretion (§315 BGB) to decide whether and for which amount of time the deadline will be extended

4.5. Circumstances involving force majeure are only unavoidable circumstances which were not present upon entering the contract such as wars and natural catastrophes. Strikes, theft, casting rejects, supply shortages or delays caused by the sup-suppliers are not examples of circumstances with force majeure.

## 5. Dispatch instructions

All of the delivery and dispatch instructions provided by us as well as the material information for packaging are to be regarded. The packaging is to be limited to the extend required to protect the goods and may only be made of environmentally friendly and recyclable materials. If no other arrangements are made in writing, the packaging is to be taken back free of charge. Costs which we incur due to ill consideration of the delivery, dispatch and packaging instructions will be covered by the seller.

## 6. Transfer/acceptance

6.1. The seller is aware that we are unable to inspect the delivery objects immediately upon transfer or acceptance for defects, type and quantities. The seller therefore waives the obligation for the compliance of the inspection and defects notice in the sense of §§ 377, 378 HGB through us.

6.2. The seller gives us the opportunity to undertake a former inspection of the goods in the seller's factory. The execution of such controls is not connected to an obligation to accept the goods. If these controls cause extra costs, the costs are to be covered by the seller, with the exception of our personal costs and/or the personal costs of third parties. In the case of repetitions which are the fault of the seller, all of the resulting costs are covered by the seller.

6.3. If the delivery object is a built into a unit which is to be delivered to us through a third party, the liability for damages and the guarantee (according to fig. 7) takes place when the complete unit is accepted on the third party's premises.

## 7. Damage liability and guarantee

7.1. If the purchased item or service is defective, the seller is initially liable for this according to the agreement made. This is subject to the legal conditions of the purchase or order contract laws as well as the trading terms valid at our location and the relevant valid safety instructions. The guarantee period is 24 months after acceptance of the complete unit in the third party's premises. Different from § 635 BGB, we are entitled to choose between redelivering goods to eliminate the defect or to demand the delivery of goods of defects.

7.2. The seller is obliged to the deliver replacement and expendable parts for the delivery objects for upto 10 years from the date of delivery at the standard markets prices and delivery times.

7.3. The seller expressly guarantees that though acceptance of the order that the delivery objects are not subject to any third party rights and especially third party protective rights. The seller must also fee is of any third party claims. Should any third party rights be made valid, the seller must replace all damages occurring. In the case of establishment of the injury to third party rights, the seller accepts the liability to either satisfy the demands of the patent owner or to alter the delivery object sufficiently upon this own costs so that the injury to protection rights is eliminated, without the originally agreed goods or guarantee and services are not impaired. The additional legal liability of the seller remains unaffected.

7.4. Any other transferred guarantees are the responsibility of the seller according to legal conditions.

## 8. Cancellation

8.1. Cancellation. We have the right to completely or partially step back fro the contract even without any fault of the seller. In such a case, we are obliged to pay the seller. The contractual price proportional to the delivered service and goods and to replace the any proven costs low upon receipt of the notification cancellation of the contract. Further claims, for whichever reason, are excluded.

## 8.2. Insolvency

We are entitled to the immediate cancellation of an order if an insolvency process is opened against the assets of the seller.

## 8.3. Discontinuation of the execution of the contract.

We have the right to demand the seller to discontinue execution of the order process at any time. The seller must inform us about any resulting consequences in such a case and to offer us the best possible economic change to the dates in connection with the project. The seller will not make any claims for a rest period of 6 months.

## 9. Payment

9.1. If no other arrangements are agreed, payments are effected after delivery and after receipt of the invoice within 14 days minus 2% cash discount or within 30 days net. Should the agreed documentation and/or attest not be provided before the payment date, the delivery counts as not fulfilled and the payment will only take place after the outstanding documents are received.

9.2. We can make the right to retain payment valid for all payable invoices which are due to us against the seller- for whichever legal reason – even if the due invoices are not yet due for payment.

9.3. Assignments and/or title retention require our previous written permission

## 10. Other documents

10.1. The information in our proposals or orders, the drawings and drafts included as well as any other uses without our written permission; they must be returned without any prompting after successful completion of the order.

10.2. All of the drawings, calculations and other, in particular technical documents, delivered by the seller become our property and can be used without any special permission for purpose including spare parts, repairs and changes and may be passed on the third parties. The copyright laws remain unaffected.

10.3. The use of the order for advertising purposes, which can also be understood as professional publication, is only permitted without our written authorization. A complete unit which the seller adds fundamental parts to is not allowed to be used as a reference.

10.4. The order and all of the information making reference to it such as documents etc. are to be treated confidentially as our business secret and may not be made accessible to third parties. The seller is obliged to pay a penalty at a sum of 5% of the order value for any infringement. In addition, we are authorized to demand replacement of damages which are appropriate to the afore mentioned contractual penalty.

10.5. The order of extra info sheets which technical or commercial contents are an integrated part of the order.

10.6. The following order of ranking is valid for any conflicts in the order documents and our AEB's.

1. The order text including any attachments

2. Our "general purchasing terms" (AEB).

## 11. Place of execution, partly ineffectiveness, court if jurisdiction and applicable law.

11.1. Place of execution for deliveries and services is the destination for payments which is the main location of Andritz Kaiser GmbH, Bretten.

11.2. in the case of ineffectiveness of the individual contractual clauses the other clauses remain binding.

11.3. The court of jurisdiction is Bretten. We can however begin proceedings against the seller in his general court of jurisdiction.

11.4. The laws of the Federal Republic of Germany are valid. The contractual relationship is a regulated according to the civil law book (BGB) and the trade law book (HGB) in the Federal Republic of Germany. The validity of the UN treaty for the international sale of goods ds (CISG)

## 12. General

12.1. Any materials provided by us will be stored by the seller free of charge until use is required, they remain our property and may not be used for other purposes. This retention of title is also valid in the case or processing or producing. The guarantee obligation of the seller for the extent of his delivery as well as the complete construction and the functionality is not effected by our additional orders.

12.2. If fundamental parts of the purchase goods or production are delivered by sub-suppliers the seller must inform us in advance and request our permission.

12.3. We and/or our customers and/or our representative third parties have the right to check the progress and/or production status at all times during normal hours of business.

12.4. Our AEB are valid for purchasing, production and all other supply contracts. Under the previously mentioned term "seller", the company, the production supplier or any other supplier can also be understood.