



General Terms of Delivery

of Güntner GmbH & Co. KG (hereinafter referred to as "Supplier")

I. Scope of Application

for use with:

1. a person who, at the time of entering into the contract, acts in the exercise of his commercial or self-employed professional activity (entrepreneurs),
 2. legal entities under public law and special funds under public law.
- (hereinafter referred to as "Contracting Party")

II. General Provisions

1. All deliveries, services and offers of Supplier shall be made exclusively on the basis of these General Terms of Sale and Delivery (hereinafter referred to as „Delivery Terms“), except where the application is expressly excluded. The Delivery Terms are an integral part of any and all contracts which Supplier enters into with the contracting parties on the services or supplies offered by Supplier. They shall also apply to any and all future deliveries, services or offers, even where they are not specifically agreed again.
2. Conditions of the Contracting Party or of third parties deviating from these Delivery Terms shall not apply, even where Supplier does not separately object to their effectiveness in individual cases. These Delivery Terms shall also apply exclusively where Supplier carries out the delivery without reservation having knowledge of conditions of the Contracting Party being contrary to and deviating from the Delivery Terms and/or referring to a letter which contains Terms and Conditions of the client or a third party or makes reference to such.
3. Supplier reserves rights of ownership of and copyrights to any and all cost estimates, drawings and other documents. They may not be made accessible to any third parties. Supplier shall be obligated to make plans designated by the Contracting Party as confidential accessible to third parties only with the consent of the Contracting Party.

III. Offer

Information of Supplier on the item of delivery or performance (such as illustrations, drawings, details on weight and dimensions, design and performance data) and the representation of the same shall only be approximate, unless the usability for the contractually intended purpose requires exact conformity. They are not guaranteed quality features but rather descriptions or characterizations of the supply or service. Deviations customary in the trade and deviations based on statutory provisions or constituting technical improvements as well as the replacement of components by equivalent parts shall be permissible unless they negatively impact the usability for the contractually designated purpose.



IV. Scope of Supply

1. Supplier's order confirmation in writing shall govern the scope of supply. In the event of an offer by Supplier with a fixed delivery date and acceptance in due time, Supplier's offer shall be governing where no order confirmation exists.
2. Additions to and amendments of the agreements made, including these Delivery Terms as well as subsidiary agreements, must be made in writing in order to be effective. With the exception of authorized signatories (Prokuristen) and managing directors (Geschäftsführer), Supplier's employees are not authorized to make any deviating oral agreements.

V. Place of Performance/place of subsequent performance (Nacherfüllung)

1. The Place of Performance for all obligations arising out of the agreement is Fürstenfeldbruck, unless agreed otherwise. Should the Supplier also be responsible for the installation or the delivery, the place of performance is the location at which the installation and the delivery respectively takes place.
2. Subparagraph 1 shall apply accordingly to the place of subsequent performance (Nacherfüllung).

VI. Pricing and Payments

1. The prices of the price list and Supplier's offers, unless indicated otherwise therein, shall be understood to be net cash (without deductions) ex works plus shipping and VAT at the applicable statutory rate as may be amended from time to time.
2. Any agreed cash discount deduction shall require the fulfilment of any and all obligations of the Contracting Party to Supplier in due time, including fulfilments of other contracts.
3. In the event of an order of catalogue equipment, Supplier's price lists valid on the day of the order shall be governing in each case. Where there is a period of more than four months between order and delivery, Supplier's price list valid at the time of delivery shall be governing.
4. In the event of an order of special equipment and systems, Supplier shall be entitled to invoice labour and material price increases with an appropriate reasonable overhead surcharge, where such increases are incurred between the time of submission of the offer and the time of completion. If the increase exceeds 5 % of the agreed price, the Contracting Party shall be entitled to terminate the contract (right of termination or withdrawal).
5. Work not estimated shall be invoiced in accordance with the wage hours to be certified by the Contracting Party plus any accommodation allowances and travel expenses and in accordance with the material consumed at current prices. Special requests or requests for changes made by the Contracting Party after order confirmation or after commencement of manufacturing shall also be invoiced separately.
6. If the Contracting Party falls behind with the acceptance of goods or falls into arrears with a payment due in whole or in part, Supplier shall be entitled to withdraw from the contract after the expiry of a reasonable deadline set by Supplier.



7. Supplier shall be entitled to carry out any outstanding deliveries or to perform outstanding services only against payment in advance or against provision of a collateral if, subsequent to entering into the contract, Supplier becomes aware of circumstances which are capable of significantly reducing the client's creditworthiness and by which the payment of Supplier's outstanding receivables by the client under the respective contractual relationship (including under other individual orders which are based on the same framework contract) is jeopardized.
8. A right of withdrawal shall also exist when Supplier becomes aware of circumstances after conclusion of the contract from which the credit unworthiness of the Contracting Party arises. If Supplier justifiably withdraws on such grounds, the Contracting Party is to identify the supplied goods, store it separately and have it picked up, all at the expense of the Contracting Party. Instead of withdrawing, Supplier may enjoin the Contracting Party from selling, mixing, treating and processing, withhold or reject further deliveries on said contract as well as on other contracts in whole or in part and request immediate payment for all deliveries. Supplier's claims for compensation of damages shall remain unaffected.
9. Invoice amounts are to be paid within 30 days without any deduction, unless otherwise agreed in writing. The date of payment shall be governed by its receipt by Supplier. Checks shall only be deemed payment after cashing. If the client fails to make payment when due, the outstanding amounts are to be charged interest from the due date at 5 % annually. The right to assert higher interest and other damage in the event of default of payment shall remain unaffected.
10. Payments shall be effected in euro or, as the case may be, in the legal tender in Germany at the time of payment, unless expressly agreed otherwise.
11. The offsetting with counterclaims of the Contracting Party or the retention of payments due to such claims shall only be permitted if the counterclaims are uncontested or legally effective.

VII. Delivery Times

1. Delivery times and dates for supplies and services indicated by us shall in all cases only be approximate, unless a fixed period or a fixed date has been expressly warranted or agreed. If shipping is agreed, the delivery times and dates shall apply to the time of handover to the shipper, carrier or third party authorized to carry out the transport.
2. The delivery time shall commence with the dispatch of the order confirmation but not before the provision of the documents, authorizations and releases to be procured by the Contracting Party and not before prior receipt of an agreed advance payment.
3. The delivery time shall be adhered to if by its expiry the delivery item has left the factory or its readiness for dispatch has been communicated.
4. If non-compliance with the delivery deadline can be attributed to force majeure, labour disputes or other events, for which Supplier is not responsible, the delivery time shall be extended by a reasonable period.
5. The delivery time shall also be extended if the circumstances according to subparagraph 4 are incurred by subcontractors.



VIII. Liability

1. Supplier's liability for compensation of damages, irrespective of legal grounds, in particular due to impossibility, default, defective or incorrect delivery, breach of contract, infringement of duties during contract negotiations and liability in tort, to the extent that culpability is involved, shall be limited pursuant to the present Article VIII.
2. Supplier shall not be liable in the event of simple negligence of its bodies, legal representatives, employees or other vicarious agents, unless material contractual obligations (Kardinalpflichten) are breached. Material for the contract are obligations for the timely delivery and installation of the delivery item free of significant defects as well as consulting, protection and due care obligations, which are to enable the client to use the delivery item according to contract or serve the purpose of protecting life and health of the client's personnel or of protecting the client's property against substantial damage.
3. If Supplier is liable on the merits for compensation of damages, such liability shall be limited to damage, which Supplier has anticipated at the time of entering into the contract as a possible consequence of a breach of contract or which Supplier should have foreseen by applying due care and attention. In addition, indirect and consequential damage arising from defects of goods delivered shall only be eligible for compensation if such damage is typically to be expected with intended use of the delivered goods.
4. In the event of liability for simple negligence, Supplier's obligation to pay compensation for property damage and additional financial losses arising shall be limited to an amount of EUR 1 million per event of damage (Schadensfall), even where it involves an infringement of material contractual obligations (Kardinalpflichten).
5. The preceding liability exclusions and limitations shall apply to the same extent to the benefit of the bodies, legal representatives, employees and other vicarious agents of Supplier.
6. The limitations of this Article VIII shall not apply to Supplier's liability due to intentional conduct, guaranteed quality features, injury to life, body or health or under the Product Liability Act.
7. The occurrence of a delay in delivery shall be governed by the statutory provisions, pursuant to which in each case a reminder letter by the Contracting Party is required. Where the Contracting Party incurs damage due to a delay arising due to Supplier's own culpability, the Contracting Party shall be entitled, in exclusion of further compensation for damages resulting from delay, to claim a half percent for each full week but overall not more than five percent of the value of that part of the total delivery that cannot be used in due time or according to the contract due to the delay. If the delay is caused intentionally or by gross negligence or constitutes a violation of a material obligation, the statutory liability shall apply. Supplier reserves the right to demonstrate that the Contracting Party has suffered no loss at all or only a substantially smaller loss than the aforementioned lump sum.
8. If shipping is delayed at the request of the Contracting Party, then, beginning one month after notification of the readiness to ship, the costs incurred for storage shall be invoiced to the Contracting Party in the case of storage in Supplier's factory. Supplier shall otherwise be entitled to dispose of the delivery item and to provide the Contracting Party with an appropriately extended deadline, if Supplier has unsuccessfully granted the Contracting Party a reasonable deadline to agree with shipping or to accept the goods.



9. Compliance with the delivery time shall require fulfilment of the contractual obligations by the Contracting Party.
10. Continuous conformity of the device with the applicable guidelines can only be ensured if necessary assembly or replacement work in explosion-proof environments is carried out by Supplier. This shall concern the following items:
 - assembly or replacement of explosion-proof fan motors
 - assembly or replacement of fully explosion-proof fans
 - assembly or replacement of repair switches for explosion-hazard environments
 - assembly or replacement of terminal boxes for explosion-hazard environments

Irrespective of whether the assembly or the replacement occurs within the warranty period, Supplier can only ensure continuous conformity of the device with the applicable guidelines after the assembly or the replacement if the replacement was carried out by a qualified employee of Supplier. Generally, the assembly or the replacement may only be carried out by a qualified person who holds a qualification according to Technical Rules for Operating Safety (TRBS) 1203.

If the assembly or the replacement is carried out by an outside company which is not authorized by Supplier, the declaration of conformity issued by Supplier shall no longer be valid. In such event, the operator must ensure that the necessary tests are carried out in order to guarantee the ongoing admissibility of the operation of such device in explosion-proof areas. The company performing the work shall be liable for the work carried out instead of the Supplier.

11. The design and the material combination of air-cooled finned heat exchangers are optimized for their operation within dry air. Spraying and evaporating water may cause calcification that leads to incrustation. The minerals dissolved in the water (salt, among other things) may lead to various forms of corrosion. The percentages of lime and minerals in the water can greatly differ and depend on the site. Therefore, the water quality of the site must be analysed in every project. In order to ensure long-term trouble-free operation of sprayed dry coolers/condensers, we have defined corresponding requirements for the water quality. Any warranty for sprayed dry coolers/condensers and the HydroSpray system shall be excluded if the defined water quality is not met by appropriate measures. Appropriate measures include a softening system or, in addition to a softening system, demineralization by means of reverse osmosis (depending on the initial water quality at the location of the equipment).

IX. Transfer of Risk

1. The risk shall pass to the Contracting Party no later than upon the dispatch of the delivered goods, even where partial deliveries are made or Supplier agreed to pay shipping charges or provided other services such as delivery and installation. At the request of the Contracting Party, shipping by Supplier shall be insured at the Contracting Party's expense against theft, breakage, transport, fire and water damage as well as other insurable risks.
2. If shipping is delayed due to circumstances for which the Contracting Party is not responsible, the risk shall pass to the Contracting Party from the day of the readiness for shipping.



3. Supplier shall be entitled to make partial deliveries where such partial delivery can be used by the Contracting Party within the framework of the contractually stipulated purpose, the delivery of the remaining ordered goods is ensured, and the Contracting Party does not incur any significant additional expenses or additional costs because of such partial deliveries.

X. Retention of Title

1. The following agreed retention of title shall serve the purpose of securing any and all existing current and future claims of Supplier against the Contracting Party from the supply relationship existing between the contracting parties (including balance claims under a current account relationship limited to such supply relationship).
2. The goods delivered to the Contracting Party shall remain the property of Supplier until the payment in full of all secured claims (Eigentumsvorbehalt). The Contracting Party shall store the reserved goods free of charge for Supplier.
3. The Contracting Party shall be entitled to process and sell the reserved goods in the normal course of business until the occurrence of the liquidation event. Pledges and assignments as security are not permitted.
4. If the reserved goods are processed by the Contracting Party, it is agreed that the processing shall take place on behalf of and for the account of Supplier as manufacturer (Hersteller) and Supplier shall directly acquire property or – where the processing takes place from material provided by several owners or the value of the processed article is greater than the value of the reserved goods – the joint ownership (Bruchteileigentum) in the newly created article in the proportion of the value of the reserved goods to the value of the newly created goods. In the event that no such ownership should be acquired by Supplier, the Contracting Party hereby transfers the Contracting Party's future ownership or – in the aforementioned ratio – the Contracting Party's joint ownership in the newly created goods to Supplier as collateral. If the reserved goods are connected or inseparably mixed with other articles into a uniform article and one of the other articles is to be considered the main item, then, where the main item belongs to Contracting Party, Contracting Party shall transfer the joint ownership to Supplier in the uniform article in the ratio designated in sentence 1.
5. In the case of the resale of the reserved goods, the Contracting Party hereby assigns by way of security the claim arising therefrom against the Contracting Party – in the event of joint ownership in the reserved goods on a pro-rated basis according to the joint ownership share – to Supplier. The same shall apply to other claims that take the place of the reserved goods or that are otherwise arising with regard to the reserved goods, such as insurance claims or tort claims for loss or destruction. Supplier revocably authorizes the Contracting Party to redeem claims assigned to Supplier in the Contracting Party's own name. Supplier may revoke such collection authorization only in the case of exploitation.
6. If third parties gain access to the reserved goods, particularly by garnishment, the Contracting Party shall immediately advise them of Supplier's ownership and shall notify Supplier thereof in order to enable Supplier to enforce Supplier's property rights. If the third party is unable to reimburse Supplier for the judicial and extrajudicial costs arising in this connection, the Contracting Party shall be liable towards the Supplier for these.



7. Upon request, Supplier shall relinquish the reserved goods and the goods or claims that take their place at its discretion, to the extent that their value exceeds the amount of the secured claims by more than 50 %.
8. In the event of breach of contract by the buyer, especially in the event of default of payment, Supplier shall be entitled to reclaim the reserved goods.

XI. Warranty

1. Supplier's liability for defects (warranty) shall extend to state of the art goods being free of defects, in particular to flawless materials and flawless execution.
2. The Contracting Party has to notify Supplier immediately in writing of the detection of defects.
3. The subsequent performance (Nacherfüllung) does not contain the assembling or disassembling (Ein- und Ausbaurkosten) of the defective goods as long as we have not been initially obliged to assemble the goods.
4. In the event of defects, including defects of title such as infringements of intellectual property rights of parts of other manufacturers, which Supplier cannot rectify for reasons of licensing law or on factual grounds, Supplier at its discretion shall assert Supplier's warranty claims against the manufacturers and suppliers for the account of the client or assign them to the client. Warranty claims against Suppliers exist for such defects under the other conditions and in accordance with these Delivery Terms only if the legal enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or is pointless, for example, due to insolvency.
5. The Contracting Party shall be obligated to give Supplier the opportunity of subsequent performance (Nacherfüllung). If the Contracting Party fails to grant Supplier the opportunity of subsequent performance, Supplier shall be exempted from liability. Only in urgent cases of threats to the operational safety or to prevent disproportionately great damage, where Supplier is to be notified immediately, or if Supplier is in default with the rectification of the defect, shall the Contracting Party be entitled to rectify the defect on its own or have a third party do so and to request reimbursement of the necessary costs from Supplier.
6. Warranty shall be excluded
 - a) for attrition and natural wear and tear,
 - b) for dynamically stressed components and products,
 - c) for unauthorized assembly or commissioning by the Contracting Party or a third party,
 - d) for unsuitable or improper use,
 - e) for faulty or negligent handling,
 - f) for non-compliance with operating and maintenance instructions,
 - g) for non-compliance with technical documentation,
 - h) for the use of unsuitable operating resources,
 - i) for unauthorized changes or repairs undertaken by the Contracting Party or by a third party,
 - j) for unsuitable subsoil or assembly site,
 - k) for chemical or electro-chemical influences, unless Supplier is responsible for them.



7. Period of Limitation

Supplier shall provide a warranty to the Contracting Party within the scope of the preceding conditions for two years from the delivery of the goods. The five-year limitation period in the event of delivery recourse pursuant to sections 478, 479 of the German Civil Code shall remain unaffected.

8. Additional limitation of liability regarding installations/performances on vessels/ships

- a) In addition to the previous mentioned Article XI subparagraphs 1 – 6 and Article VIII subparagraphs 1 – 11 the following additional limitation of liability applies with regard to defects for installations/performances on vessels and/or applications on vessels.

Against the background of the special surroundings with performances by the Supplier on/for vessels, any claims of the Contracting Party with respect to compensation of subsequent damages from defects (Mangelfolgeschäden) in connection with the preparation for subsequent performance (Nacherfüllung), particularly costs for the provision for the subsequent performance (Nacherfüllung) of the vessel/the performance object (particularly charges for docking and costs for towage) are excluded.

The aforementioned additional limitation of liability does, in accordance with Article VIII subparagraphs 2 and 6, however, not apply to damages which are based on a provision under the Product Liability Act and/or damages which result from a deliberate or grossly negligent breach of contractual or statutory duties. Moreover, the aforementioned additional limitation of liability does not apply to damages which are based on infringement of material contractual obligations (Kardinalpflichten) and/or which are corresponding with an assumed guarantee.

- b) In order to ensure a protection against the risks and consequences of the aforementioned limitation of liability, Contracting Party is obliged to cover those risks and consequences with a corresponding insurance policy. The insurance policy of the Supplier does not/just to a limited extent cover such risks and consequences.
- c) If Supplier is obligated to the subsequent performance (Nacherfüllung), it is at Suppliers discretion to decide which type of subsequent performance (Nacherfüllung) is rendered, whereas particularly cost-related aspects shall be considered.

XII. Export

1. All products are provided by Supplier subject to the German Foreign Trade Act/German Foreign Trade Ordinance/EC Dual-Use Regulations as amended from time to time as well as the US export rules and regulations and are intended for use and to remain in the country of delivery agreed with the Contracting Party. If the Contracting Party intends to re-export, the Contracting Party shall be obligated to obtain the permits required. The re-export of products – individually or integrated into a system – in violation of the present provision shall be prohibited.



2. The Contracting Party must independently obtain information on each of the applicable rules and regulations. Irrespective of whether the Contracting Party specifies the place of final destination of the delivered products, it is the Contracting Party's own responsibility to obtain the necessary permits, if any, from each of the authorities responsible for foreign trade prior to the Contracting Party exporting such products. Supplier shall not be obligated to provide such information.
3. Any further delivery of products by the Contracting Party to a third party, with or without Supplier's knowledge, shall simultaneously require the transfer of the export license conditions. The Contracting Party shall be fully liable in the event of non-compliance with the relevant regulations.
4. The conclusion of the contract with the contracting parties is subject to the express requirement of compliance with the provisions of the German Foreign Trade Act/German Foreign Trade Ordinance/EC Dual-Use Regulations as well as the US export rules and regulations. If Supplier fails to make delivery to the Contracting Party based on the above regulations, the Contracting Party shall expressly waive any and all claims, of any kind whatsoever, against Supplier.

XIII. Legal Venue and Choice of Law

1. Exclusive legal venue, also internationally, for all disputes resulting directly or indirectly from the contractual relationship is Munich. Supplier shall be entitled at its option to bring a claim at the registered office of the Contracting Party.
2. These General Terms of Delivery and all legal relations between Supplier and Contracting Party shall exclusively be governed by the laws of the Federal Republic of Germany. The application of the UN Convention on Contracts for the International Sale of Goods shall be excluded. Mandatory statutory provisions remain unaffected by this clause.

XIV. Miscellaneous Provisions

These General Terms of Delivery have been prepared in the German and equally in the English and French languages. Should the different language versions differ from each other in their meaning, the interpretation of the German version shall prevail.

12/2015 These General Delivery Terms will now exclusively be used.