

Xylem Water Solutions Deutschland GmbH conditions for the sale and supply of products

1. APPLICATION

Except as otherwise expressly agreed in writing, these conditions (“**General Conditions**”) shall exclusively apply to all deliveries and services of Xylem Water Solutions Deutschland GmbH (in the following: Contract). Deviating conditions of the Purchaser shall not apply.

2.1 Minimum order value, validity of quotations

Quotations are valid for thirty (30) calendar days from the date of issuance unless otherwise agreed in writing by Supplier. Supplier reserves the right to cancel or withdraw the quotation at any time with or without notice or cause prior to acceptance by the Purchaser. Supplier nevertheless reserves its right to accept any contractual documents received from the Purchaser after this 30-day period.

3. PRODUCT INFORMATION

All information and data contained in general product documentation and price lists, whether in electronic or any other form, are binding only to the extent that they are by reference expressly included in the Contract.

4. DRAWINGS AND DESCRIPTIONS

4.1 All drawings and technical documents relating to the Product or its manufacture submitted by one party to the other, prior or subsequent to the formation of the Contract, shall remain the property of the submitting party.

4.2 Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than that for which they were provided. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

4.3 Supplier shall, not later than at the date of delivery of Products, provide free of charge information and drawings which are necessary to permit the Purchaser to erect, commission, operate and maintain the Product. Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each. Supplier shall not be obliged to provide manufacturing drawings for the Product or for spare parts.

5. INSPECTIONS AND TESTS

5.1 Inspections

5.1.1 If expressly agreed in the Contract, the Purchaser shall be entitled to have the quality of the materials used and the parts of the Product, both during manufacture and when completed, inspected and checked by its authorised representatives. Such inspection and checking shall be carried out at the place of manufacture during normal working hours after agreement with Supplier as to date and time, and at the Purchaser’s expense.

5.2 Tests

5.2.1 Acceptance tests provided for in the Contract shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours.

5.2.2 If the Contract does not specify the technical requirements, the tests shall be carried out in accordance with the Supplier’s standard practice.

5.2.3 If the Purchaser in due time has requested in writing, Supplier shall notify the Purchaser in writing of the acceptance tests in sufficient time to permit the Purchaser to be represented at the tests. If the Purchaser is not represented, the test report shall be sent to the Purchaser and shall be accepted as accurate. With regard to standard products (as defined by Supplier from time to time) only a “production card” will be delivered with the Product stating that the Product has passed the test procedure and thereby is approved. If requested by the Purchaser in writing and prior to the performance of the test, a test report will be sent to the Purchaser at an additional cost reasonably determined by Supplier.

5.2.4 If the acceptance tests show the Product not to be in accordance with the Contract, Supplier shall without delay remedy any deficiencies in order to ensure that the Product complies with the Contract. New tests shall then be carried out at the Purchaser’s request, unless the deficiency in Supplier’s sole opinion was insignificant.

5.2.5 Supplier shall bear all costs for acceptance tests carried out at the place of manufacture. The Purchaser shall however bear all costs and expenses for its representatives in connection with such tests. The Purchaser shall bear all costs for any optional tests requested by the Purchaser.

6. DELIVERY, PASSING OF RISK

6.1 Any agreed trade term shall be construed in accordance with INCOTERMS 2010. If no trade term is specifically agreed, the delivery (“**Delivery**”) shall be CIP, Purchaser’s address as set out in the Purchaser’s purchase order accepted by Supplier. However, Supplier’s costs for CIP delivery shall be paid by Purchaser as set out in clause 9.6 below.

6.2 Partial shipments shall be permitted unless otherwise agreed.

7. TIME FOR DELIVERY

7.1 Time for Delivery

If the Parties, instead of specifying the date for Delivery, have specified a period of time on the expiry of which Delivery shall take place, such period shall start to run as soon as the Contract is entered into, all official formalities have been completed, payments due at the formation of the Contract have been made, any agreed securities have been given and any other preconditions have been fulfilled.

7.2 Delay on part of Supplier

7.2.1 Any time periods specified by Supplier in the Contract for Delivery are to be treated as estimates whilst the Supplier shall make reasonable efforts to deliver on time. If Supplier anticipates that it will not be able to deliver the Product at the time for Delivery (“**Delay**”), Supplier shall inform the Purchaser thereof and, if possible, the time when Delivery can be expected.

7.2.2 If Delay is caused by any of the circumstances mentioned in clause 14 or by an act or omission on the part of the Purchaser, including suspension under clauses 9.4 or 14, the time for Delivery shall be extended by a period which is reasonable having regard to all the circumstances in the case. This provision applies regardless of whether the reason for the Delay occurs before or after the agreed time for Delivery.

7.2.3 In case of Delay, the Purchaser may in writing demand delivery within a final reasonable period which shall not be less than ninety (90) days from the Supplier’s receipt of such demand. If Supplier does not deliver within such final period and this is not due to any circumstance for which the Purchaser is responsible or a Delay covered by clauses 7.3 or 14, then the Purchaser may by notice in writing to Supplier terminate the Contract in respect of such part of the Product that cannot, in consequence of Supplier’s failure to deliver, be used as intended by the Parties. **THE PURCHASER SHALL IN NO EVENT BE ENTITLED TO ANY LIQUIDATED DAMAGES IN THE CASE OF DELAY.**

7.2.4 If the Purchaser terminates the Contract due to Delay, it shall be entitled to compensation for the loss it has suffered as a result of Supplier’s Delay. The total compensation shall not exceed, except in cases of intent or gross negligence, 10 percent of that part of the purchase price which is attributable to the part of the Product in respect of which the Contract is terminated.

7.3 Delay on part of the Purchaser

7.3.1 If the Purchaser anticipates that it will be unable to accept Delivery of the Product at the Delivery time, it shall forthwith notify Supplier in writing thereof, stating the reason and, if possible, the time when it will be able to accept Delivery.

7.3.2 If the Purchaser for any reason fails to accept Delivery at the Delivery time, it shall nevertheless pay any part of the purchase price which becomes due on Delivery, as if Delivery had taken place. Supplier shall arrange for storage of the Product at the risk and expense of the Purchaser. Any other direct and/or financial costs incurred as a result of such failure to accept Delivery shall be borne by the Purchaser. Supplier shall, if the Purchaser so requires in writing, insure the Product on behalf of the Purchaser and at the Purchaser’s expense.

7.3.3 Unless the Purchaser’s failure to accept Delivery is due to any such circumstance as mentioned in clause 14, Supplier may by notice in writing require the Purchaser to accept Delivery within a final reasonable period.

7.3.4 If, for any reason for which Supplier is not responsible, the Purchaser fails to accept Delivery within such period, Supplier may by notice in writing terminate the Contract in whole or in part. Supplier shall then be entitled to compensation for the loss it has suffered by reason of the Purchaser’s default. The compensation shall not exceed that part of the purchase price which is attributable to that part of the Product in respect of which the Contract is terminated.

8. ALTERATIONS AND CANCELLATION

8.1 If the Purchaser requests an alteration of the Contract, and Supplier accepts such alteration (which acceptance shall not be unreasonably withheld), the alteration will be deemed as a new Contract entitling Supplier to a restart of the Delivery time which will start to run on the date of the approval in writing by Supplier of the alteration.

8.2 All additional costs incurred as a result of the alteration will be charged to the Purchaser, in addition to the purchase price.

8.3 If the Purchaser cancels the Contract in whole or in part without cause, the Purchaser shall, unless otherwise agreed in writing, reimburse Supplier for (i) all costs and expenses incurred by Supplier under the Contract up until and including the date of cancellation, (ii) any additional costs and expenses incurred as a result of the cancellation and (iii) Supplier’s profit margin on the completed work and a reasonable termination clause.

9. PRICES AND PAYMENT

9.1 The purchase price shall be the price for such Products set out in Supplier's price list as of the date for Delivery if not specifically set forth in the Contract. For domestic sales, payments shall be made within 30 days of the date of the invoice in the currency stipulated in the Contract, unless otherwise agreed in writing. For export sales, full payment in advance by telegraphic transfer is required in the currency stipulated in the Contract, unless otherwise agreed in writing.

9.2 Whatever the means of payment used, payment shall not be deemed to have been effected until Supplier's account has been fully and irrevocably credited.

9.3 If the Purchaser fails to pay by the stipulated date, Supplier shall be entitled to interest from the day on which payment was due. The statutory law interest rates shall apply.

9.4 In case of late payment, Supplier may suspend its performance of the Contract until payment is received.

9.5 Notwithstanding other rights to terminate the Contract under other clauses in these General Conditions, the Supplier shall, if the Purchaser has not paid the amount due within three (3) months, be entitled to terminate the Contract by notice in writing to the Purchaser and to claim compensation for the loss it has incurred.

9.6 Unless otherwise agreed in writing, all prices are FCA Supplier's plant, and do not, even if Delivery is CIP in accordance with clause 6.1 above, include transportation costs or charges relating to transportation. This means that in addition to the Product price, Purchaser shall compensate Supplier for all its transportation costs and charges, as set out in invoice from Supplier to Purchaser, despite that CIP delivery applies and such costs and charges shall thus be solely the responsibility of the Purchaser. Prices exclude special packing unless otherwise agreed to by Supplier in writing. All costs and taxes for packing shall be paid by the Purchaser as an additional charge. Such costs and charges are subject to change without notice.

9.7 The price for the Products does not include any applicable sales, use, excise, GST, VAT, or similar tax. The Purchaser shall have the responsibility for the payment of such taxes if applicable.

9.8 If, during the performance of the Contract, the financial condition of the Purchaser is such that Supplier in good faith and in application of usual banking standards deems a payment in time insecure, or if a material change in the ownership of the Purchaser occurs, or if the Purchaser fails to make any payments in accordance with the terms of its Contract with Supplier, then, in any such event, Supplier is not obligated to continue performance under the Contract and may stop goods in transit and defer or decline to make delivery of goods, except upon receipt of satisfactory security or cash payments in advance.

9.9 If the Purchaser fails to make payments or fails to furnish security satisfactory to Supplier, then Supplier shall have the right to enforce payment to the full Contract price of the work completed and in process.

9.10 Upon default by the Purchaser in payment when due, the Purchaser shall immediately pay to Supplier the entire unpaid amounts for any and all shipments made to the Purchaser irrespective of the terms of said shipment and whether said shipments are made pursuant to this Contract or any other contract of sale between Supplier or any of its affiliates and the Purchaser, and Supplier may withhold all subsequent shipments until the full amount is settled. Acceptance by Supplier of less than full payment shall not be a waiver of any of its rights hereunder.

10. WARRANTY, PURCHASER'S DUTIES IN WARRANTY CASES, REIMBURSEMENT OF EXPENSES, LIABILITY

10.1 Purchaser's warranty claims depend on his proper compliance with his statutory duties of examination and notification. In the event of an obvious defectiveness or incompleteness of the goods, Supplier shall be notified in writing without delay, but at the latest within two weeks of the delivery arriving at its destination. Claims of Purchaser on account of a defectiveness or incompleteness are excluded if Purchaser fails to comply with this obligation.

10.2 In the case of product defects Supplier can elect to remove the defects or to provide a defect-free replacement. Only if this repeatedly fails or is unreasonable and the defect is not only insubstantial Purchaser is entitled to rescission or reduction of the purchase price in accordance with the statutory provisions. Sec. 445a BGB remains unaffected. Purchaser is entitled to claims for damages in accordance with clause 10.5.

10.3 Concerning any replacement of products or removal of defects a warranty period of 3 months since delivery respectively the execution of service applies which runs, however, at least until the expiry of the warranty period of the original service (see clause 10.7).

10.4 Purchaser has to inform Supplier immediately, and in any case not later than two (2) weeks after discovery of the defect, about each indication of product defects by his clients concerning Supplier's services. Should Purchaser not fulfil this obligation his claims for product defects against

Supplier shall expire. Moreover, Purchaser has to safeguard proofs in adequate manner and to give Supplier the opportunity of examination at his request.

10.5 Supplier is liable without restriction under the Product Liability Act, in the event of an express assumption of a warranty or of a procurement risk or in the event of willful or grossly negligent violations of a duty. Supplier is also liable without restriction in the event of willful or negligent injury to life, physical well-being or health. In the event of Supplier's negligence (other than gross negligence) resulting in property or pecuniary damage, Supplier shall only be liable for a breach of essential contractual duties the fulfillment of which is inevitable for the proper performance of the contract and Purchaser can particularly rely on, however, limited to characteristic damages that were foreseeable at the time of signature.

10.6 No warranty is given for damages of all kind caused by improper treatment, change, installation and/or operation of the delivered product or by incorrect advice or instruction by Purchaser unless Supplier has caused those damages at least negligently.

10.7 Defect claims shall become time-barred after 12 months as of the statutory commencement of the limitation period. The same applies to legal defects. In the event of willful or grossly negligent breaches of a duty, claims arising from tortious acts, the absence of a warranted quality, the assumption of procurement risks or personal injury, the statutory time periods apply. Secs. 438 para. 3, 445b and 634a para. 3 BGB remain unaffected.

10.8 A further-reaching liability for damages than that provided in the paragraphs of this clause 10 is excluded - without regard to the legal nature of the asserted claim.

10.9 The aforementioned restrictions of liability also apply, in terms of the reason and amount, in favour of Supplier's statutory representatives, employees and other vicarious agents.

11. ADDITIONAL GENERAL CONDITIONS OF WARRANTY FOR WEDECO PRODUCTS AND SPARE PARTS

11.1 UV-Lamps are wearing parts and therefore subject to the natural process of aging. The warranted runtimes of the lamps can be taken from the order data.

In case of a technical defect the following rules for replacement (reimbursement) shall apply:

- (i) A defect occurring up until 1'000 running hours: full reimbursement
- (ii) A defect occurring after more than 1'000 running hours: Proportional calculation / credit note (pro rata)

11.2 Limitations of warranty

This warranty

- b) only applies to cases of defect in material or manufacturing, any form of damage during transport is excluded;
- c) is limited to operation of the UV Lamps with in maximum 4 activations for every 24 operating hours. Any further conditions must comply with the requirements in the operation manual.
- d) is limited to 30 months from the date of delivery, irrespective whether the UV-Lamp was in operation or not.
- e) includes transportation costs for returning a defect UV-Lamp. The most cost-effective mode of transportation is to be chosen. Within Germany a return of lamps with a package length of more than 1.2 meters has to be announced to the Supplier in advance. In such case Supplier will organize for a collection of such lamps.

11.3 Return of UV-Lamps

In case of warranty the "procedural instructions for returns" have to be followed. In particular in case of UV-Lamps the following details are needed when filling a claim (NCR):

- (i) Type of UV-device and identification number;
- (ii) Operating hours and amount of activations / de-activations of the UV-Lamp

In principle one NCR per plant has to be filled; collective returns will not be accepted.

11.4 Disposal of UV-Lamps

Supplier bears the costs for the environment-friendly disposal of UV-Lamps delivered by the supplier Xylem after they have reached their guaranteed lifetime.

Such lamps have to be returned free of charge to the following address:

Xylem Water Solutions Deutschland GmbH
Wedeco UV- / Ozonanlagen
Boschstrasse 12
32051 Herford
Germany

12. ALLOCATION OF LIABILITY FOR DAMAGE CAUSED BY THE PRODUCT

12.1 Supplier shall not be liable for any damage to property or the environment caused by the Product after it has been delivered to the Purchaser. Nor shall Supplier be liable for any damage to products manufactured by the Purchaser, or to products of which the Purchaser's products form a part.

12.2 The Purchaser shall indemnify, defend and hold Supplier harmless to the extent that the Supplier incurs liability towards any third party in respect of loss or damage for which the Supplier is not liable according to the preceding paragraph.

12.3 If a claim for damages as described in this clause 12 is lodged by a third party against one of the Parties, the latter party shall forthwith inform the other party thereof in writing.

12.4 Supplier and Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the Product.

13. CONFIDENTIALITY

The Parties agree that any information received from the other party in connection with the Contract that evidently or by its nature should reasonably be understood to be confidential, shall not be disclosed by the recipient to any third party without the prior written approval of the disclosing party, except to the extent (i) this is necessary for the receiving party to exercise rights and perform duties pursuant to the Contract, (ii) the information is available to the general public or later becomes publicly available other than through a breach of the Contract, (iii) the information is actually known to the receiving party on the date that such information is disclosed as evidenced by written records in existence prior to the date of the receipt, (iv) the information is subsequently lawfully obtained by the receiving party from a third party or third parties, or (v) the information is independently developed by the receiving party prior to the disclosure.

14. FORCE MAJEURE

14.1 Either party shall be entitled to suspend performance of its obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: industrial disputes and any other circumstance beyond the control of the parties such as pandemic, fire, earthquake, natural disaster, acts of God, war, extensive military mobilization, insurrection, requisition, seizure, embargo, acts of governments, strikes, lockouts, restrictions in the use of power and defects or delays in deliveries by sub-contractors ("**Force Majeure**").

14.2 The party claiming to be affected by Force Majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance.

14.3 If Force Majeure prevents the Purchaser from fulfilling its obligations, it shall compensate Supplier for expenses incurred in securing and protecting the Product.

14.4 Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to terminate the Contract by notice in writing to the other party if performance of the Contract is suspended under this clause 14 for more than six (6) months.

14.5 If the Purchaser terminates the Contract due to Force Majeure, the Purchaser shall, unless otherwise agreed in writing, reimburse Supplier for (i) all costs and expenses incurred by Supplier under the Contract up until and including the date of the termination and (ii) any additional costs and expenses incurred as a result of the termination.

15. ASSIGNMENT

The Purchaser shall not assign or transfer this Contract or any interest in it, or monies payable under it, without the prior written consent of Supplier and any assignment made without such consent shall be null and void. Supplier may assign its rights and/or delegate its duties in whole or in part to any affiliated company. Supplier shall notify Purchaser of any such assignment or delegation.

16. INVALIDITY

If a provision within this Contract is unlawful, invalid or not enforceable at a competent court, such provision shall not have any effect on the remaining provisions of this Contract.

The unlawful, invalid or unenforceable provision shall be deemed to be replaced by an appropriate, lawful provision preferably as close to the purpose of the unlawful, invalid or not enforceable provision as possible.

The same shall apply in case the Parties forgot to govern a matter in this Contract.

17. PRIVACY AND CUSTOMER DATA

Purchaser acknowledges that Supplier may collect and process personal data for the purposes outlined in the contract. Supplier's data privacy policy is available at <https://www.xylem.com/en-us/support/privacy/>. Further, Purchaser acknowledges that it has read and understood Supplier's privacy policy and agrees to the use of personal data outlined herein. The collection and use of personal data by Purchaser is Purchaser's responsibility.

Purchaser agrees and authorizes Supplier to store any data collected from Supplier equipment ("**Customer Data**") on such hardware, software, networking, storage, and related technology indefinitely. Purchaser grants Supplier a royalty-free, non-exclusive, irrevocable right and license to access, store, and use such Customer Data and any other data or information Purchaser provides to Supplier, to (1) provide services; (2) analyze and improve services; (3) analyze and improve any Supplier equipment or software; (4) for any other internal use; and (5) create anonymized data and use such anonymized data for any purpose.

18. EXPORT RESTRICTIONS

Purchaser acknowledges that each Product and any related software and technology, including technical information supplied by Supplier or contained in documents (collectively "**Items**"), is subject to applicable export controls. Purchaser shall comply with all applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item. Purchaser shall not, without first obtaining any required license to do so from the appropriate government agency; (i) export or re-export any Item, or (ii) export, re-export, distribute or supply any Item to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by an applicable authority. Purchaser shall cooperate fully with Supplier in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold Supplier harmless from, or in connection with, any violation of this Clause by Purchaser or its employees, consultants, agents, or customers.

19. DISPUTES AND APPLICABLE LAW

19.1 All disputes arising out of or in connection with the Contract shall be finally settled at the competent court in Aschaffenburg, Germany. Furthermore, it shall be at Supplier's sole choice to initiate legal proceedings at the registered office of the Purchaser or in case the dispute involves a bill of exchange at the place of payment of such bill of exchange.

19.2 The Contract shall be governed by the substantive law of Germany, excluding the application of the Convention on International Sales of Goods (CISG).