

General Terms and Conditions of Sale, Delivery and Payment

- I. General - Scope of Application
- Our deliveries and performances are exclusively carried out on the basis of the following General Terms and Conditions of Sale, Delivery and Payment. They also apply to all future business transactions between the contracting parties, without the necessity of a special further hint. They also apply if we do not explicitly refer to them in future contracts, especially if we carry out deliveries or performances on the Purchaser's behalf without any reservation albeit being aware of the fact that the Purchaser's General Terms and Conditions contradict to and/or deviate from our General Terms and Conditions of Sale, Delivery and Payment.
 - All notes made by the Purchaser to his General Terms and Conditions are hereby rejected. We do not accept terms contradicting or deviating from our General Terms and Conditions of Sale, Delivery and Payment, neither by unreserved contract performance.
- II. Offers and Conclusion of Contract, Content of Performance
- Our offers to the Purchaser are without commitment. Only the order is regarded as a binding offer. At our option this offer is accepted by sending of a confirmation note or the unreserved carrying out of the ordered deliveries or performances.
 - Information about properties and durability and technical data and descriptions in our product information, advertising materials or technical data sheets, as well as information made by the manufacturer or his agents in terms of § 434 Sec. 1 No. 3 of the German Civil Code (BGB) cannot be construed as a warranty with regard to the properties or durability of the goods we shall deliver, unless such information has been stipulated by an individual agreement.
 - Any relevant identified use of the goods according to the European Chemicals Regulation No. 1907/2006 (REACH) cannot be construed as an agreement of contractual properties or use of goods we shall deliver.
 - With regard to sales by test or sample, these only imply that the sample has been professionally construed, but cannot be taken as a warranty with regard to the properties or durability of the goods we shall deliver.
 - We give advice on applications to the best of our knowledge. All details and information regarding the suitability and application of our goods do not release the Purchaser from our obligation to test and examine the suitability of the products for the intended purpose.
 - If our systems are purchased or installed, the corresponding system properties can only be provided if only the system components named are used. This applies in particular for systems requiring general building authority approvals or test certificates.
- III. Prices, Terms of Payment, Delay of Payment
- The applicable prices and the prices agreed upon at the conclusion of the respective contract, especially the prices mentioned in the order form or the confirmation note. If a price has not been especially agreed upon, the applicable prices are the prices in effect at the time of the conclusion of the contract according to our price list. The prices are calculated according to the weights and quantities ascertained by us, if the Purchaser does not dissent immediately after the receipt of the goods. Added to these prices is the respective legal rate of VAT (value added tax) in effect at the day of delivery as well as the necessary packing costs for a proper shipment, costs of transport from our factory or from our warehouse, the freight charges and – if agreed – the costs of transport insurance. In case of foreign shipments there might be further country specific charges.
 - We reserve the right to adjust our prices, if after the conclusion of the respective contract, cost changes arise due to collective agreements, increases of prices of suppliers or due to changes in currency exchange rates.
 - Unless another date of payment has been agreed upon, our invoices are payable within 30 days after receipt without discount. After the expiry of the due date for payment mentioned on the invoice, the Purchaser is in delay according to § 286 Sec. 2 No. 2. of the German Civil Code (BGB).
 - The Purchaser is only liable for a right of set-off or retention if his counterclaims have been established as final and absolute or have not been disputed by us within two weeks after our knowledge of the set-off or if they have been accepted. In addition to this, the right of retention only exists if the pleaded counterclaim is based upon the same contractual relationship as our claim.
 - If the Purchaser does not pay due invoices, exceeds a granted credit period or if, after the conclusion of the contract, the Purchaser's financial circumstances impair or if, after the conclusion of the contract, we receive negative information about the Purchaser which call into doubt his ability to pay or his credit worthiness, we are allowed to call due the Purchaser's whole residual debt and, in modification of the original agreement, to ask for prepayment or security or, after delivery, to ask for an immediate payment of all our claims based upon the same legal relationship. This applies especially if the Purchaser ceases his payments, if a check of the Purchaser cannot be cashed, if a bill guaranteed by the Purchaser is not paid for by the Purchaser, if insolvency proceedings with regard to the Purchaser's assets are either applied for or have been started or dismissed due to a lack of mass.
 - In the case of Purchaser's delay of payment we are entitled to charge defaulted interest, namely, if invoiced in euros in the amount of nine percentage points above the applicable basic rate of interest of the German Bundesbank (central bank of the Federal Republic of Germany), and if invoiced in any other currency in the amount of nine percentage points above the applicable rate of interest of the main banking institution of the country whose currency is applied in the invoice. Additionally, we also have a claim for payment of a flat fee in the amount of EUR 40. This also applies, should the payment request be an installment or any other partial payment. The fee shall be credited against any due compensation for damages if the damage results from the due costs of legal enforcement.
- IV. Delivery and Performance time, Delay of Performance
- Delivery times only apply approximately, unless there has been an explicit written agreement of a fixed time bargain ("Fixgeschäft"). If we still exceed the agreed delivery times due to circumstances that we are responsible for, the Purchaser may rescind the contract after the fruitless expiry of an appropriate respite set by him. The rescission has to be in writing. Deliveries on Saturdays are only possible after a special agreement and at an extra charge.
 - We only default after the expiry of an appropriate respite set by the Purchaser. We are allowed to defer the delivery or performance for the duration of the impediment plus an appropriate start-up time in cases of force majeure and other unforeseeable, extraordinary circumstances we cannot be held responsible for, e.g. business disruptions by fire, water or similar circumstances, the breakdown of manufacturing facilities and machines, exceedance of delivery times or delivery failures by our suppliers as well as business disruptions due to a shortage of raw materials, energy or personnel, strike, lock-out, difficulties with regard to the acquisition of means of transport or traffic blocks or official interventions. If hereby delivery or performance is delayed for more than one month, we as well as the Purchaser are allowed to rescind the contract in writing – to the exclusion of any claims for damages – regarding the amount affected by the delivery failure and under the conditions according to No. VIII. Sec. 1–5 of this General Terms and Conditions of Sale, Delivery and Payment.
 - In each case of delay our liability for damages is restricted according to the regulations in No. VIII. Sec. 1–5.
 - We are allowed to modify deliveries and performances within the agreed delivery and performance times, if this is reasonable for the Purchaser.
 - The compliance with our delivery and performance obligations requires the timely and orderly performance of the Purchaser's obligations. We reserve ourselves the right to plead non-performance of the contract.
 - We are – without prejudice to further claims – entitled to charge a lump sum in the amount of the respective local storage costs, whether the goods are stored by us or for us by a third party, if the Purchaser falls behind with calling, taking or collecting goods or in case the Purchaser is responsible for the delay of conveyance or delivery. The Purchaser has the right to prove that no damage or less damage has occurred.
- V. Passing of Risk, Transport and Packing Costs
- Unless there is an explicit written agreement between us and the Purchaser, delivery is effected from our factory and warehouse and has to be collected there by the Purchaser at his own risk and costs. In this case the risk of an accidental loss and accidental impairment of the delivery items passes to the Purchaser after they have been placed at the disposal for collection at the time of the Purchaser receiving notification of this availability. For the rest the risk of a potential loss and a potential impairment of the delivery items passes to the Purchaser with the handing over to the carrier (even in case of a carriage-free and transport-insured delivery). The Purchaser is solely responsible for a carriage-secure delivery and a safe loading.
 - If the Purchaser asks for a packing deviating from the standard, this packing will be charged at net cost price.
 - Other loading devices such as safety belts etc. remain our property and have to be returned carriage-free to one of our factories. If this return is not effected within one month after delivery, the loading devices will be charged to the Purchaser.
 - Special agreements apply with regard to the provision of silos and containers as well as handling equipment.
 - The Purchaser is obligated to address complaints regarding transport damages directly to the freight carrier with a copy to us within the stipulated periods.
 - Unless otherwise agreed in individual cases, the Purchaser shall be responsible for the observance of statutory and official regulations regarding the import, transport, storage and use of the goods.
- VI. Obligations of the Purchaser/Retention of Title
- The delivered goods remain our property until full payment of the purchase price as well as of all of our other existing or future claims according to the buyer arising from the business relationship. The inclusion of the claim for the purchase price against the Purchaser into an open account and the acceptance of an account balance do not affect our retention of title.
 - The Purchaser is obliged to treat the purchased goods with care until the complete acquisition of property; he is especially obliged to insure them at sufficient replacement value at his own expense against loss and damage and destruction, like e.g. against damage by fire, water and theft. The Purchaser already now assigns his claims arising from the insurance contracts to us. We accept this assignment.
 - The Purchaser is neither allowed to pledge goods which are our property nor to transfer their ownership by way of security. According to the following regulations he is however entitled to resell the delivered goods in the ordinary course of business. The aforementioned entitlement does not exist if and as far as the Purchaser has – in advance and effectively – assigned or pledged the claim against his business partner arising from the resale to a third party or has agreed with the business partner a covenant not to assign.
 - To secure fulfillment of all our claims mentioned in No. IV. Sec. 1, the Purchaser assigns to us all claims – also those arising in the future and conditional ones – following from a resale of our delivered goods, together with all ancillary rights amounting to 110 per cent (gross) of the value of the delivered goods ranking before the residual part of his claims. Hereby we accept this assignment.
 - As long as and as far as the Purchaser fulfills his payment obligations towards us, he is authorised to enforce the claims against his customers which he assigned to us within the scope of his ordinary business management. He is however not allowed to agree an open account or a covenant not to assign with his customers with regard to these claims or to assign or pledge them to a third party. If, contrary to Sentence 2, there exists an open account between the Purchaser and the buyers of our delivered goods which are subject to a retention of title, the claim assigned to us in advance also refers to the accepted balance as well as, in the case of the buyer's insolvency, on the then existing balance.
 - On our demand the Purchaser has to account for the individual claims assigned to us and has to notify his debtors of the assignment together with the request to pay to us up to the amount of our claims against the Purchaser. We are also entitled to notify the Purchaser's debtors of the assignment and to enforce the respective claims. However, we will not make use of this entitlement as long as the Purchaser fulfills his payment obligations correctly and without delay and as long as there has been no application for the opening of insolvency proceedings and the Purchaser does not cease payments. But if one of the aforementioned cases occurs, we may demand from the Purchaser to disclose to us the assigned claims and the respective debtors and to give the information necessary for the enforcement of our claim to hand over the corresponding documents.
 - In the case of seizure or other third party interventions the Purchaser has to immediately notify us in writing so that we can bring a suit according to § 771 of the German Code of Civil Procedure (ZPO).

- The Purchaser treats and processes or alters the goods delivered by us under a retention of title exclusively for us without this entailing any obligation on our side. If the goods delivered by us under a retention of title are processed, mixed or connected with other items not belonging to us, we will become joint owners of the new article in proportion of the value of our delivered goods (invoice amount, including VAT) to the other items at the time of the processing, mixture or connection. For the new item resulting from the processing the same, ceteris paribus, applies as for the delivered item. If the processing, mixture or connection is carried out in the manner that the Purchaser's item has to be regarded as the main item, it is considered to be agreed that the Purchaser consents to us proportional joint ownership. Within the scope of his ordinary course of business the Purchaser is allowed to dispose of the new products generated by the treatment, processing or alteration or connection or mixture without any pledge or assignment as long as he meets his obligation arising from his business relationship with us. For security and to the extent of his interest in the sold goods the Purchaser already assigns to us his claims arising from the resale of the new products with regard to which we have proprietary rights. If the Purchaser connects or mixes the delivered goods with a main item, he already assigns to us his claims against the third party to the extent of the value of our goods. We hereby accept the assignments.
 - For security and to the extent of the value of our goods the Purchaser also assigns to us the claims arising against a third party from the connection of our goods with a plot of land.
 - We commit ourselves to releasing the securities we are entitled to on the Purchaser's demand and at our selection if the realizable value of our securities exceeds our secured claims for more than 20 per cent.
 - In the case of the Purchaser acting contrary to contract, especially in case of a delayed payment of more than 10 per cent of the invoiced value and for a not negligible time period, we are allowed to rescind the contract and to reclaim our delivered goods – irrespective of any further claims (for damages) we might be entitled to. After the retraction of our delivered goods we are entitled to their realization. The realization proceeds will be offset against our liabilities towards the Purchaser – less appropriate realization costs.
- VII. Rights of the Purchaser in Case of Defects
- The Purchaser has to notify us of open defects without delay, the latest however three days after the receipt of the goods. We have to be notified in writing of hidden defects within a time limit of eight days after their detection. The Purchaser is obliged to test whether the delivered goods are free from defects and fit for their intended purpose, if necessary by means of a sample processing. This also applies if components are added which have not been purchased from us. If defects are first detected during the manufacturing process, the processing has to be stopped at once and the unopened original bundles which have not been processed so far have to be secured. At our demand these bundles have to be provided to us for examination purposes. Objections with regard to hidden defects are excluded after three months after the passing of the risk to the Purchaser according to No. V. Sec. 1 in as far as the defects were reasonably detectable. In case of a delayed or not properly asserted claim for defects according to No. VII. Sec. 1 Sent. 1–7, the Purchaser loses his warranty claims under the conditions mentioned in No. VIII. Sec. 1–5 of these General Terms and Conditions of Sale, Delivery and Payment, unless the respective defect has been maliciously concealed by us.
 - In the case of the delivered goods being defective, we are, at our choice, only obliged to the rectification of the defect or to the delivery of goods free from defect (supplementary performance). If we are not prepared for or not able to do a supplementary performance, especially if the supplementary performance is delayed for more than a reasonable period of time because of reasons that we are responsible for, the Purchaser is, at his own choice, allowed to rescind the contract or to ask for a reduction of the purchase price. A rectification of the defect is considered to be failed after its second attempt, unless something else follows from the nature of the item or other circumstances. As far as the Purchaser has suffered a loss due to defects of our delivered goods or has had futile expenditures, our liability therefore is determined according to No. VII. Sec. 1, No. VIII. Sec. 1–5 and No. IX. Claims in case of defects by merchants within the meaning of the German Commercial Code (HGB) lapse at the latest one month after our rejection of the complaint.
- VIII. Rights and Obligations of Our Company
- Our company is only liable for damages or futile expenditures – arising from whatever legal reason – if the damage or the futile expenditures a) have either been caused by us or by one of our vicarious agents by a culpable breach of a material contractual obligation or are due to a grossly negligent or one of our vicarious agents, or b) are due to a grossly negligent or one of our vicarious agents.
 - In the case of damages or futile expenditures which were caused by an advice or by information that was not separately refundable, we are, according to No. VIII. Sec. 1 a) and b), only liable for an intentional or grossly negligent breach of duty as far as this breach of duty does not constitute a defect according to § 434 of the German Civil Code (BGB) with regard to the goods delivered by us.
 - We are liable for the breach of a material contractual obligation according to No. VIII. Sec. 1 a) without the existence of a grossly negligent or intentional behavior on our side, our liability for damages is restricted to the foreseeable and typically occurring damages. In such a case we are especially not liable for the Purchaser's loss of profit and for not foreseeable collateral consequential damages. The abovementioned limitation of liability according to sentence 1 and 2 equally applies to damages caused by the grossly negligent or intentional behavior of our staff or our agents. We are not liable for the Purchaser's collateral damages caused by the enforcement of contractual penalty clauses of third parties against the Purchaser.
 - The abovementioned limitations of liability (in No. VIII. Sec. 1–2) do not apply if our liability is compulsory due to the regulations of the German Product Liability Act or if we are faced with claims due to a violation of life, body or health. If the delivered goods lack a guaranteed property we are only liable for those damages the absence of which was part of the guarantee.
 - Any further liability for damages going beyond the one mentioned in No. VIII. Sec. 1–3 is excluded – without regard to the legal nature of the claims for damages. This especially applies with regard to claims for damages for default at the conclusion of the contract according to § 211 Sec. 3 of the German Civil Code (BGB) or for a default in the performance of the contract according to § 280 of the German Civil Code (BGB) or § 823 of the German Civil Code (BGB).
 - As far as these liabilities for damages are excluded or limited according to No. VIII. Sec. 1–4, this limitation also applies with regard to the personal liability for damages of our personnel, employees, staff, representatives and vicarious agents as well as performing agents.
- IX. Limitation of Claims
- The Purchaser's claims because of defects of the delivered goods or because of performances which were contrary to our duties – including claims for damages and claims for the reimbursement for futile expenditures – become time-barred within one year, unless something else follows from the subsequent No. IX. Sec. 2–4.
 - If the Purchaser is an entrepreneur and if he or another buyer within the supply chain has as an entrepreneur fulfilled claims of the consumer because of defects of the new goods delivered by us, which have also been delivered to a consumer, the Purchaser's claim against us arising from §§ 437 and 478 Sec. 2 of the German Civil Code (BGB) becomes time-barred at the earliest within two months after the Purchaser or another buyer in the supply chain has as an entrepreneur fulfilled claims of the consumer unless the Purchaser is in a position where he could have successfully pleaded limitation of claims towards his customers/contract partners. In either case the Purchaser's claims against us because of defective goods delivered by us become time-barred in as far as claims of the Purchaser's customers/contract partners against him because of defective goods delivered by us have become time-barred, the latest five years after we have delivered the respective goods to the Purchaser.
 - If we have acted contrary to our duties while rendering an advice and/or while giving an information that did not have to be separately paid for, without having delivered goods in connection with the information or advice or without the inaccurate advice or information constituting a defect of the delivered goods according to § 434 of the German Civil Code (BGB), the involved claims against us become time-barred within one year from the statutory start of the limitation period. The Purchaser's/customer's claims against us because of the infringement of contractual, pre-contractual or statutory duties, not amounting to a defect of the goods to be delivered or delivered by us according to § 434 of the German Civil Code (BGB) also become time-barred within one year from the statutory start of the limitation period. In as far as the abovementioned breaches of duty constitute a defect of goods delivered by us in the context of an advice or information according to § 434 of the German Civil Code (BGB), the limitation of the corresponding claims is determined by the regulations contained in Sec. 1 and 2 as well as 4.
 - In case of newly produced goods delivered by us that have been used in a building according to their usual form of use and that have caused a fault in the said building, claims by the Purchaser lapse within five years of the statutory commencement of the period of limitation. In deviation from sentence 1, a period of limitation of four years applies, if the Purchaser has utilized the goods delivered by us for the fulfillment of contracts, in which Part B of the German regulations for entering into construction services (VOB/B) is included, or a period of two years applies if the goods are materials that have been used only for repairs of buildings. The lapse according to the previous sentence occurs at the earliest two months subsequent to the date in which the Purchaser has fulfilled the claims by his contractual partner due to faults in the building which have been caused by goods delivered by us, unless the Purchaser has successfully cited the objection of a period of limitation to his client/contractual partner. A lapse of the claims by the Purchaser against us due to faulty goods delivered by us lapses under all circumstances if the claims of the client/contractual partner of the Purchaser due to faults in the goods delivered by us to the Purchaser have lapsed, at the latest however, five years after the date on which we delivered the goods to our Purchaser.
 - The regulations contained in Sec. 1–4 neither apply with regard to the limitation of claims because of an infringement of life, body or health nor with regard to the limitations of claims based on the German Product Liability Act nor because of a defect of title with regard to the goods delivered by us, consisting of the right of a third party to claim restitution of the goods delivered by us. Moreover, the abovementioned regulations do not apply with regard to the limitation of our Purchaser's/customer's claims based on the assertion that we have maliciously concealed defects of the goods delivered by us or have breached a duty while acting grossly negligent. In the cases which are enumerated in No. IX. Sec. 5 the limitation of these claims is regulated by the statutory limitation periods.
- X. Acceptance of Returned Goods
- The return of goods which have been delivered by us and which are free from defect is excluded. If, by way of exception, we consent to take back goods free from defect, a credit note will only be issued in as far as our laboratory determines the unlimited reusability of the goods. For the costs of the respective examination, reconditioning, reworking and new packaging, the actual costs, at least 20 per cent of the invoiced value or at least 30 Euro, will be deducted. Such a credit note will not be paid out; it only serves for the offset against future deliveries.
- XI. Covenant not to Assign
- Rights or claims against us, especially either because of defects of the goods delivered by us or because of a breach of duty committed by us, shall not, neither entirely nor partly be assigned or pledged to third parties without our explicit written consent; § 354a of the German Commercial Code (HGB) remains unaffected hereby.
- XII. Safety Data Sheet and Declaration of Performance
- The Purchaser agrees to download all relevant safety data sheets and declarations of performances under www.aquapanel.com if the Regulation EG No. 1907/2006 (REACH) and/or Regulation EG No. 305/2011 in its current version applies to the delivery item.
- XIII. Place of Performance, Place of Jurisdiction, Applicable Law, Commercial Terms
- Place of Performance and exclusive place of jurisdiction for all claims arising between us and either merchants or legal persons of public law or special property under public law is Iserlohn, for payments the place of payment mentioned in the invoice, in as far as there are no contradicting statutory regulations. We do, however, reserve the right to bring forward an action against the Purchaser also at his statutory place of jurisdiction.
 - The legal relationship between us and the Purchaser is exclusively determined by the laws of the Federal Republic of Germany, as it is applicable between German merchants and could be agreed upon between the respective countries of delivery (see 1. of these General Terms and Conditions of Sale, Delivery and Payment). The application of the regulations on the international sale of goods (CISG – Vienna Convention) and on German International Private Law is explicitly excluded.
 - In as far as commercial terms according to the International Commercial Terms (INCOTERMS) are agreed, the most recent version of the respective INCOTERMS (currently INCOTERMS 2010) is applicable.
- XIV. Final Provisions
- If some of the aforementioned regulations are invalid or partly invalid or excluded by a special agreement, this does not affect the validity of the remaining regulations.
 - We save our Purchaser's data within the scope of our mutual business connection according to the German Data Protection Act (BDSG).