

These General Terms and Conditions for Deliveries and Services apply to all goods sold or delivered by us (hereinafter “Deliveries”) and to our performance of assembly, repair and other work or services (hereinafter “Services”).

**1. Acceptance of the General Terms and Conditions**

1.1 All our Deliveries and Services are made or provided solely on the basis of the terms and conditions set out below. In addition, our rates shall apply as applicable on the date of contract conclusion. Our General Terms and Conditions for Deliveries and Services and the rates are part of each contract and shall also apply to all future deliveries, services, and offers, even if not separately agreed again.

Our Terms and Conditions only apply with respect to persons who, when concluding the contract with us, are carrying out their commercial or self-employed professional activity (entrepreneur (*Unternehmer*) as defined by Sec. 14 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*)).

1.2 Our business partner’s general terms and conditions of business do not apply. We hereby object to their inclusion in the contract. They are not accepted even if we do not explicitly object to them again after receipt. Our General Terms and Conditions will be deemed to have been accepted at the latest on acceptance of our Deliveries and Services.

**2. Offer and contract conclusion**

2.1 Our offers are non-binding. The conclusion of a contract and any agreement will become binding only by our written order confirmation or by our performance of the delivery or service. In the latter case, the invoice replaces the confirmation of the order or services. Supplements, amendments or side agreements to the contract including these General Terms and Conditions will be binding only if confirmed by us in writing. The same shall apply to a waiver of this provision.

2.2 Should it turn out at the beginning of performance that the required scope of performance exceeds the scope initially ordered, such more extensive scope shall be deemed to have been approved by the customer, provided that the customer has been informed by us accordingly and has not objected in writing within a reasonable period of time. Our staff and our agents are not authorised without our written consent to perform any service on objects which were not delivered by us, even if such object is an integral part of the overall system.

2.3 Images, dimensions, weights or other specifications in brochures, circulars, price lists or other publications or in our offer and/or the documents pertaining thereto are approximate only, unless we have explicitly listed them as being part of the contract because their fitness for the specific purpose intended under the contract requires strict conformity. This is associated with a warranty only if we explicitly refer to it as such in writing.

2.4 We retain all title, copyright and other rights to the documents pertaining to the offer and any drawings, tools, calculations and other documents and equipment made available to the customer; they may be made available to third parties only if we have given our consent. At our request, such documents and equipment shall be returned to us or destroyed if not required anymore in the ordinary course of business.

2.5 We reserve the right to make changes regarding engineering, materials used and design, provided that the purpose of the contract is not impaired thereby and such change appears to be reasonably acceptable to the customer.

2.6 Where parts to be delivered fall within the scope of export control regulations, the conclusion of the contract shall be subject to the grant of approval. In the event of subsequent export bans, embargoes or other trade restrictions, section 5.2 shall apply.

**3. Prices**

3.1 Prices for Deliveries are euro net prices ex works or warehouse, plus packaging, freight, postage, customs duties and insurance.

3.2 Prices for Services are calculated based on time spent according to our rates applicable from time to time. Surcharges will be charged for any Services performed outside the ordinary working time on workdays. Travel and waiting times shall be deemed to be working time.

3.3 The prices stated by us will be binding for 4 months; after that they can be increased in accordance with any increases occurred in the costs of labour or materials.

3.4 Cost estimates, offers, and budget estimates are binding only if made in writing.

3.5 The costs of Services include the provision of the tools required, but not the materials otherwise required for performance of the Services.

**4. Payment and default**

4.1 Save where otherwise stated in the order confirmation, the amount invoiced shall be due and payable cash without deductions after receipt of the invoice. The customer will be in default without a reminder 10 days after receipt of the invoice. The receipt of the payment in our account is decisive for its timeliness. This subsection also applies to invoices for payments in advance and by instalments.

4.2 For Services, we may demand payment by instalments which reflect the scope of Services to be provided from time to time. We may demand that security be provided in accordance with the statutory provisions. Except where agreed otherwise, the following applies:

- 30% after receipt of the order confirmation
- 30% after performance or readiness of the principal parts for delivery or collection
- 30% after delivery or, if the contract also encompasses assembly, after the end of assembly
- 10% after the passing of risk.

4.3 We are entitled to perform Deliveries or Services which are still outstanding only against advance payment or provision of security if the customer is in default of payment and circumstances transpire which are suitable to reduce the customer’s credit-worthiness and the payment of our outstanding claims under the relevant contractual relationship is jeopardized thereby.

4.4 The customer can set off only against counterclaims which are undisputed or have been finally established by a court. The same applies to the exercise of a right of retention.

**5. Delivery/performance period**

5.1 The delivery/performance period is observed if readiness for delivery has been notified before its expiry. Where collection is required, the notification of readiness for collection is decisive. However, the period does not begin to run until presentation of the documents, approvals and clearances to be obtained by the customer and, if applicable, receipt of any advance payment agreed. This does not apply if we are responsible for the delay.

5.2 Delivery and completion dates are subject to unforeseen obstacles such as force majeure and other disturbances for which we are not responsible, war, terrorist attacks, import or export restrictions, industrial action or any breakdown beyond our control of our or our suppliers’ operations. In the event of any such disruption which is of a temporary nature the delivery periods agreed will be extended by the duration of such disruption. If the disruption is not of a temporary nature, the customer is entitled to rescind the part of the contract not performed. This also applies where the customer cannot be reasonably expected to accept the delivery or performance as a result of the delay.

5.3 If we are in default with regard to any delivery or performance, or if delivery or performance becomes impossible, our liability for damages is limited in accordance with section 10. We are not in default if the materials to be used were incorrectly or incompletely supplied to us without us being responsible. We will inform the customer of any foreseeable delay.

5.4 If the customer is in default of acceptance or culpably violates other duties of cooperation, the customer will be charged a lump sum of 0.5 % of the price of the goods to be delivered or of the services to be performed for each week for damage caused by the delay and any additional expenses. Any further claims or rights based on default of acceptance are not affected thereby.

5.5 Deliveries by instalments and corresponding billing are admissible, unless not reasonably acceptable to the customer.

5.6 We reserve the right to otherwise dispose of the delivery or service after a reasonable grace period for delivery or acceptance has expired without success and to make delivery to the customer within a reasonably extended period.

**6. Passing of risk and shipment**

6.1 Where goods are shipped by us, such shipment will be at the customer’s expense and risk. The risk passes to the customer at the point in time when the goods are handed over to the customer or to the carrier. This also applies in case of delivery by instalments. We will take out insurance for deliveries only if explicitly requested by the customer and at the customer’s expense.

6.2 We will choose the type of shipment and the packaging. We will not accept any return of transport or other packaging in accordance with the Packaging Ordinance except for pallets. The customer is obliged to take care of disposing packaging at its own expense. We will not refund any transport costs for the return of packaging.

6.3 The place of performance for all Deliveries made under the contractual relationship is our registered office in Osnabruck. If, in addition, Services have been agreed to be performed at any place other than our registered office, the place of performance is the place where such services are to be performed.

6.4 In the event of a delay of, or a failure to make, delivery or acceptance due to circumstances not attributable to us, the risk shall pass to the customer on the date of the notification of readiness for delivery or acceptance.

**7. Acceptance of the Services**

7.1 The contractual Services will be provided and tested for functionality to the extent reasonably acceptable to us. Except where explicitly agreed, we will not carry out any commissioning or trial operation. Commissioning and trial operation will be charged in accordance with our rates as applicable

from time to time pursuant to section 1.1. If required, we will train the customer in the operation. The customer will make its staff available for this. The customer's staff will follow our instructions in this regard. The customer will procure the materials and supplies required for the functionality test at its own expense.

7.2 Acceptance will take place after a successful functionality test. Any experts or authorities which may be required for this will be involved by the customer in due time at the customer's expense. We will prepare a record of acceptance to be signed by both parties. Any defects or refusals of acceptance shall be recorded in the record. With this, acceptance is deemed to have taken place. If acceptance is delayed for reasons for which the customer is responsible, any additional costs incurred by us as a result of the additional attempt of acceptance shall be remunerated separately. If the customer commercially uses the Services provided by us prior to acceptance, such use shall be deemed to constitute acceptance. With acceptance, the risk passes to the customer.

7.3 Services shall be deemed to have been accepted if, after the notification of readiness for acceptance, 12 work days have passed and the customer has failed to accept the Services within that period for any reason other than a defect already notified due to which performance is impossible or significantly impaired.

7.4 The customer is entitled to refuse acceptance only if the defect causes the Services to be no longer suitable for the typical use and/or the use intended under the contract and/or extinguishes or significantly reduces their value. If the work has defects which do not entitle the customer to refuse acceptance, acceptance shall be made under the proviso that defects are remedied. If despite being aware of the defect the customer accepts a defective work without reserving the rights at acceptance, the customer is not entitled to any warranty rights with regard to such a defect.

7.5 In the event that pursuant to the contract Services are to be provided at a location other than our registered office and a loss or deterioration occurs prior to acceptance without us being at fault, the customer will pay us the price agreed in the contract for the Services performed and any costs incurred beyond that.

## **8. Complaints and notification of defects**

8.1 The customer shall examine all Deliveries without undue delay for defects, completeness and conformity with the contract.

8.2 Obvious defects shall be notified by the customer in writing without undue delay after their discovery, but in any event within 14 days of receipt of delivery. If a defect is not notified in due time, the delivery will be deemed to have been approved. If such a defect transpires at a later point in time, the notification has to be given within the same time limit. Otherwise, the delivery will also be deemed approved with regard to that defect.

8.3 If the notification of a defect is unfounded, we are entitled to demand that the customer reimburse us any expenses incurred.

8.4 This section 8 shall also apply to the provision of Services.

## **9. Warranty**

9.1 The warranty period is 12 months from delivery or acceptance of the Services. This shall not apply to Services relating to a building or where planning and monitoring services are provided for the same; in these cases, the limitation period is 5 years. The contractually agreed warranty periods shall also apply to parts and services subsequently improved or replaced as part of cure; they begin to run upon the completion of cure, but only with regard to the parts

or Services subsequently improved or replaced. The limitation of the warranty period does not apply to claims of the customer for damages due to an injury to life, body or health or due to a breach of duty by us or by our agents resulting from intent or gross negligence which all become statute-barred in accordance with the statutory provisions.

9.2 We assume no warranty for fair wear and tear and wear parts. Wear parts include all components which, as a result of abrasive, rolling, rotating, impact, scraping, chemical or thermal stress, suffer progressive loss of material. Rotating parts are also wear parts. The quality of goods or any damage which occurs after the passing of the risk as a result of improper handling, storage or set-up or failure to observe installation or handling instructions or excessive stress or use or inappropriate equipment, commissioning or maintenance or as a result of alterations made without our consent; the quality of the goods or damage arising as a result of force majeure, special external influences not provided for in the contract or as a result of any use of the Deliveries and/or Services other than the use provided for in the contract or typical use.

9.3 If, pursuant to the above, a defect exists at the time of passing of the risk, we will at our discretion either deliver to the customer goods and/or work free of defects or remedy the defect. Parts replaced will become our property.

9.4 The customer shall grant us the time and opportunity required for subsequent improvement. If we are not granted such opportunity, we will not be liable for the consequences thereof. Save in the cases specified in Sec. 637 of the German Civil Code, the customer is entitled to remedy defects of Services provided by us itself only if we have given our written consent or if the operational safety is at risk or to prevent unreasonably high damage, with the customer being required to inform us immediately.

9.5 In the event of subsequent improvement, we will bear the expenses required for remedying defects, in particular costs of transport, infrastructure, labour and materials, provided that they do not increase as a result of the goods or services delivered having been subsequently moved to a location other than the place of performance, unless the move corresponds to the designated use.

9.6 The customer cannot assert any rights based on defects if the Deliveries or Services are altered without our written consent by a third party or by incorporating parts of unknown origin and the remedy of defects is unreasonably impeded thereby. The customer shall bear any additional costs of remedy resulting from such alteration. In the event that the customer has culpably contributed to the occurrence of the defect, in particular by failing to comply with its obligation to prevent or mitigate damage, we are entitled to damages equivalent to the cause of contribution after cure.

9.7 The customer can assert further statutory rights based on defects (rescission, reduction of the purchase price) in accordance with the provisions below only after cure has failed. Cure shall be deemed to have failed upon the second unsuccessful attempt unless the circumstances suggest otherwise. If the defect is insignificant, the customer is only entitled to reduce the contractual purchase price. The customer's right of rescission is excluded unless performance is demonstrably of no interest to the customer despite a reduction of the purchase price. If the defect is limited to individual parts of several divisible obligations, rescission is limited to the individual parts concerned.

9.8 In case of construction services, the customer cannot demand rescission of the contract. The customer's right to reduce the purchase price is not affected thereby.

9.9 In the event of defects in parts produced by other manufacturers which we cannot remedy for licence-related or factual reasons, we will at the customer's option either assert the warranty claims against our manufacturers and suppliers for the customer's account or assign those claims to the customer. The customer can assert warranty claims against us with regard to such defects only if the enforcement of such claims against our manufacturer or supplier in court was unsuccessful or is futile, for example due to insolvency. The running of the limitation period for those warranty claims of the customer against us is suspended for the duration of the legal dispute.

9.10 Warranty is excluded for deliveries of used goods or replacement parts, unless liability is prescribed by law.

9.11 In the event of a culpable infringement of IP rights, the customer will inform us in writing without undue delay if such claims are asserted against the customer. In that event we will at our option and expense either modify or replace the goods delivered so that third party rights are not infringed anymore. The customer will reasonably support us in the defence and in the implementation of modification measures. The customer is not entitled to any claims if the customer is responsible for the IP or copyright infringement. If that cannot be accomplished within a reasonable period of time or at reasonable costs, the parties can rescind the contract or reasonably reduce the consideration.

9.12 Claims for damages are governed solely by section 10, irrespective of their legal ground.

## **10. Liability**

10.1 Our liability for damages is limited in accordance with this section 10, irrespective of the legal ground.

10.2 We are not liable in the event of simple negligence of our management, officers, employees and other agents, except in the event of a breach of a material contractual obligation. Material contractual obligations are the obligations to perform the Delivery or Services in due time and free of defects, obligations which have an impact on the functionality or fitness for use which is greater than insignificant, and obligations to provide advice, to protect and to exercise proper care, which are intended to enable the customer to use the subject matter of the contract in accordance with the contract or to protect the life and health of staff or of the customer or to protect a customer's assets from significant damage.

10.3 Where we are liable for damages based on negligence in accordance with this section, liability is limited to foreseeable damage typically arising when using the Deliveries or Services in accordance with their designated uses.

10.4 In the event of liability for simple negligence, our compensation obligation for damage to property and any further financial losses resulting from such damage is limited to our business liability insurance cover which we will prove to the customer at the customer's request. If our insurance company is not required to pay due to any circumstance for which we are responsible, our maximum liability is limited to the amount of insurance.

10.5 In the event that test data is lost or data or carrier materials are damaged, our liability is limited to the amount which would have to be spent to restore the data if the customer had ensured proper backup of such data.

10.6 If we provide technical information or any advice free of charge and such information or advice is not covered by the scope of Services owed and agreed under the contract, any liability in this regard will be excluded.

10.7 The above exclusions and limitations of liability also apply for the benefit of our management, legal representatives, persons vested with general commercial power of representation under German law (*Prokurist*), employees and other agents.

10.8 The above limitations do not apply in the event of intentional behaviour, fraudulent intent or guarantees assumed, or to liability for culpable injury to life, body or health or under the German Product Liability Act.

## 11. Software

11.1 Any software products by other manufacturers pertaining to the subject matter of the contract are governed by the general terms and conditions of those manufacturers which shall have priority for such products. In addition, our terms and conditions as set out in this section 11 shall apply.

11.2 The customer is granted a non-exclusive licence to use our software products and the relevant documentation. The customer may not grant any sub-licences.

11.3 We are generally not obliged to provide the source code for the software product.

11.4 The customer may neither remove nor alter without our prior written consent any manufacturer information, in particular copyright notices.

## 12. Retention of title and security

12.1 The goods delivered will be our property until the purchase price has been paid in full. The retention of title is to secure all current and future claims resulting from the contractual relationship existing between us and the customer regarding Deliveries and/or Services, including balance claims. All Deliveries will remain our property until payment of all liabilities arisen under the contractual relationship.

12.2 The processing or transformation of goods delivered and still owned by us will always be deemed to be on our behalf without any liabilities arising on our part. If our ownership is extinguished by processing, mixing or combining it is hereby agreed that we will acquire proportional co-ownership of the new item with such proportional share being calculated on the basis of the amount invoiced. In the event that we do not acquire ownership this way, the customer hereby assigns to us its future ownership or co-ownership of the item newly created as security.

12.3 With the conclusion of the contract, the customer assigns to us by way of security all claims, including balance claims from current account agreements, to which the customer may be entitled as a result of a sale, processing or combination of the goods delivered by us. This also applies to any other claims which the customer may have against third parties in connection with the Deliveries, e.g. insurance claims. We hereby accept the assignment. The assignment is limited in amount to the value of the goods delivered by us according to our invoice. We hereby authorise the customer, subject to revocation, to collect the claims assigned to us in its own name. We can revoke this authorisation only in the event of liquidation. The customer is obliged to disclose the assignment if so requested by us in the event of default in payment. In this case, the customer is obliged to provide us with the information and documents required. We are also entitled to disclose the assignment to the customer's debtor ourselves and to demand the debtor to make payment to us.

12.4 The Deliveries may neither be pledged nor otherwise transferred as security without our consent. If any third party seeks access to the Deliveries, the customer is obliged to refer to our title and to inform us without undue delay. If the third party is unable to reimburse us the court and out-of-court fees incurred in this connection, the customer shall be liable to the seller in this regard.

12.5 If the customer acts in breach of contract, in particular in the event of default in payment, we are entitled to assert our retention of title and to demand return of our Deliveries when a reasonable grace period has expired without success. The assertion of our retention of title does not constitute a rescission of the contract.

12.6 If the value of security provided by the customer exceeds our claim by more than 50 % in total, we will release security of our choice.

## 13. Customer's cooperation duties for Services

13.1 The customer shall check the activity reports prepared by our staff which include working times, travel times, waiting times not caused by own fault, preparation and handling times. The customer shall sign those reports after review. If the customer finds fault with our Services, the customer has to record this in the activity reports or otherwise inform us in writing.

13.2 The customer has to instruct our staff without undue delay at the beginning of the project at its own expense with regard to safety requirements and risks and take all measures required to protect persons and property at the place of work.

13.3 The customer shall make required equipment such as water, compressed air, electricity power conduits to the control box, connections for potential equalization in the immediate vicinity of the service location and additional required resources and auxiliary services, specifically including but not limited to heat, equipment, general tools, cranes, hoist, forklift, scaffolding, mobile operating platforms, lighting and monitoring of the building site available at its own expense and in a timely manner before the start of performance.

13.4 Any and all preliminary work required for our performance such as earth works, bricklaying, electric work, metalwork and foundation work shall be carried out by the customer in a timely manner before the start of performance.

13.5 The customer will grant our staff access to a dry and lockable room to store materials, tools and clothing free of charge. Furthermore, the customer shall, if necessary, make available appropriate lockable break rooms and work rooms with heating and lighting, lavatories, sanitary facilities and first-aid materials for our staff. If the items stored are damaged or lost due to fault of the customer or any third party attributable to the customer, the customer will be liable to pay compensation.

13.6 Unless otherwise agreed, the customer will transport all materials from the point of arrival and store them in a safe place and protected from weather influences until arrival of our staff. The materials shall be made available to our staff for inspection and examination.

13.7 The customer is responsible for setting up the tank mines and pipe trenches, for embedding the tanks in the construction trenches, as well as for the foundations, holing-through, pipe ducts, sewage installations, feeding pipes, and the painting, unless such works are included in our order; such works must be completed in due time before the start of the Services. The tanks must be secured against buoyancy in the case of groundwater, rainwater or top water. The safety precautions required to this effect must be taken by the customer.

13.8 If the customer fails to comply in due time with its cooperation duties, we are entitled, but not required to perform the actions to be performed by the customer in its stead at the customer's expense. If any service cannot be performed for any reason for which we are not responsible, all Services already provided by us as well as reasonable costs incurred shall be paid and reimbursed by the customer.

13.9 The customer will inform us without undue delay in writing of any reservations concerning the planned performance of the Services, preliminary work by its subcontractors or discrepancies when reviewing the technical drawings.

13.10 It is up to the customer whether or not to take out insurance.

13.11 The customer can demand changes regarding the content and scope of the Services. We will determine the delay and the additional costs caused by the changes desired and provide the customer with a corresponding change offer. In case of failure to reach an agreement, we are entitled to reject the demand. If the customer agrees with the change offer we will confirm this in an additional written agreement, stating the additional remuneration and any changes in the schedule.

13.12 The materials received shall be handed over to the assembly staff for inventory control without prior unpacking. Our drawings and our instructions given to the assembly staff are solely decisive for the execution of the facility. Any deviations requested from the customer require our prior written consent.

13.13 Our staff are not obliged to work overtime when performing services at a customer (more than 8 hours on workdays) or to work on free Saturdays or Sundays or holidays. However, they shall be granted the possibility to work beyond the ordinary working time if they consider this to be necessary, following our prior consent. In this event, the customer is obliged to take any reasonably acceptable measures required to extend working time, e.g. to obtain any official permits which may be required. If our staff cannot start performance without undue delay after arrival or have to suspend performance for a presumed period of more than 4 working hours, we are entitled to recall our staff and to determine a new date for performance. Any additional costs incurred will be charged based on expenses. This shall not apply if the customer is not responsible for the delay or suspension.

## 14. General provisions

14.1 If any provision of these Terms and Conditions or of the contract is or becomes ineffective in whole or in part, the effectiveness of the other provisions hereof shall not be affected thereby.

14.2 Any taxes, fees and levies in connection with any performance outside of Germany shall be borne by the customer and, if applicable, reimbursed to us.

14.3 The requirement of written form is also observed by text form in accordance with Sec. 126b of the German Civil Code, i.e. by fax or email.

## 15. Jurisdiction, applicable law

15.1 The place of jurisdiction is the place where our company has its registered office. However, we are also entitled to bring action at the place where the customer has its registered office.

15.2 The contractual relationship is governed by the laws of the Federal Republic of Germany, excluding all conflict-of-laws rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

PURPLAN GmbH Wallenhorst, last updated:  
October 2016