

# Contract Terms for Sales & Delivery

## ITT Water & Wastewater Herford AG, Boschstr. 4, 32051 Herford, Germany

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### I General Clauses

- (1) Our deliveries, services and offers are made solely in accordance with ITT's contract terms. These also apply to future business relations, even if not expressly agreed upon again. The contract terms are considered accepted at the latest after receiving the goods / the services. Hereby we expressly refuse to accept diverging stipulations or letters of confirmation with reference to the customer's own contract terms.
- (2) Changes of our contract terms are only valid if confirmed in writing by ITT.
- (3) All agreements, including collateral agreements, promises, consultations or other declarations of our employees / agents are only legally binding if confirmed in writing by ITT. Waiver of the necessity of written confirmation by ITT must be set down in writing.

### II Offer

- (1) ITT is bound by an offer for six weeks unless a different period is expressly agreed upon.
- (2) The supporting documents, illustrations drawings, and statements with reference to power, consumption, weight and dimensions, which belong to an offer, only have to be approximately true unless exact compliance is expressly agreed upon.
- (3) The estimate of costs, offers, drawings and other supporting documents, the concept of the ITT installations and production methods are the intellectual property of ITT. They are subject to the legal copyrights. Without express consent in writing by ITT, they must not be handed over to third parties, either wholly or in part, or brought to the knowledge of third parties, subject to the respective legal regulations. As a precaution, we bring to the customer's attention that parts of our installations are subject to patents rights both in Germany and in other countries.

### III Closing of the contract

- (1) An order is only accepted by ITT if it is confirmed in writing or immediately carried out.
- (2) Our employees within and outside of our offices render advisory services according to best knowledge and state of the art. The service is suited to regular operational situations. If the conditions of use, e.g. the water conditions, change within the time between our offer and delivery, the customer is obliged to inform us in writing.

### IV Extent of delivery

- (1) Our written confirmation of the customer's order determines the extent of delivery.
- (2) Enquiries, changes etc. must be confirmed in writing by ITT.

### V Deadline for delivery

- (1) The deadline for delivery starts on the day of our confirmation of the customer's order, but not before an agreement about all technical and commercial details is reached.
- (2) The deadline for delivery is met if, before the deadline expires, the goods have left the works or ITT has informed the customer of its readiness to deliver.
- (3) Keeping the deadline for delivery depends on the customer fulfilling his contractual obligations.
- (4) The deadline for delivery is extended for a reasonable time in case of industrial actions during labour disputes, especially strikes and lockouts, as well as in case of unforeseen obstacles, e.g. mobilisation, war, riots, etc. This also applies if ITT's suppliers are faced with such circumstances.
- (5) The deadline for delivery is extended for a reasonable time if official declarations or other statements of the customer necessary for delivery in time are not received in time.
- (6) If the customer has been informed that goods are ready for shipment, he is obliged to call for the goods immediately. Otherwise, we are entitled to store the goods at the customer's risk and expense. The customer bears the risk of accidental destruction or deterioration of the goods as soon as he is informed of the readiness for shipment.
- (7) The customer is obliged to accept at any time partial delivery or partial service.
- (8) ITT is entitled to dispose of the goods after a reasonable deadline set by ITT has expired without the customer accepting the goods. In this case ITT is entitled to deliver after a reasonable delay. This clause does not have any effect on the customer's contractual obligation to pay for the goods.
- (9) If the delivery is delayed, the customer is entitled to rescind the contract, with regard to the obligations not yet fulfilled, after expiry of a reasonable deadline extended in accordance with Subsection 4 and 5 or after expiry of a reasonable extension of the original deadline.
- (10) Any additional claims of any kind of the customer are excluded unless the delay was due to at least gross negligence of ITT.

### VI Prices / Payment

- (1) Unless otherwise agreed, prices, with the addition to value added tax, are considered to be ex works, not including packaging and loading.
- (2) If considered necessary by ITT, standard packaging will be used for the goods at the customer's expense.
- (3) Unless otherwise agreed in writing, our fees are payable immediately without any discount and at no costs to ITT. If a payment period between ITT and the Customer is agreed the payment period starts with receipt of related invoice latest.
- (4) ITT is entitled to demand reasonable interim payment for finished parts of the goods to be manufactured or for delivered material and components.
- (5) Bills of exchange are only acceptable if this form of payment is expressly agreed upon. The customer bears interest and costs of discounting. Bills are only paid by the final credit entry.
- (6) After the customer has been in arrears with payment for thirty days, ITT is entitled to demand interest from the 30th day on. The interest rate will be 8 % higher than the applicable discount rate set by the European Central Bank are. This does not exclude further compensation claims.
- (7) The customer is only entitled to set his own claims off against the price owed to ITT or to withhold payment, if his claims are not contested by ITT or if ITT has acknowledged his claims or if the claims are confirmed by the court.

### VII Risk of destruction/deterioration and acceptance of the goods

- (1) The customer bears the risk of accidental destruction / deterioration as soon as the goods have left the works; this also applies in case of goods delivered free. If the shipment is delayed due to circumstances for which the customer is responsible, the customer bears the risk of accidental destruction / deterioration since the day the goods are ready for shipment.

- (2) ITT determines the route and manner of shipment unless different stipulations are made by the customer.
- (3) The customer is obliged to accept goods with negligible faults, without prejudice to his rights under Sec. IX. The customer is obliged to call for and accept the goods fourteen days after receiving notice that the goods are ready for shipment.
- (4) If faultlessly manufactured goods are not accepted in due time, ITT is entitled to instruct at the customer's expense a publicly appointed sworn expert to establish that the goods have been manufactured according to the contract. The customer is obliged to allow examination of the goods by the expert; otherwise the goods will be presumed to be manufactured in accordance with the contract.

### VIII Reservation of Title

- (1) Title of the goods is reserved by ITT until full payment, including litigation costs and interest.
- (2) The customer is not allowed to pledge the goods or pass title of the goods as security to third parties. The customer is obliged to inform ITT immediately of pledges, as well as seizure or other dispositions by third parties.
- (3) The customer assigns in advance all claims resulting from reselling the goods to third parties, regardless of prior processing, to ITT as soon as this contract is closed. The customer is not allowed to come to agreements with his own customers which exclude or can have an adverse effect on ITT's rights. After the cession of the claims, the customer is still entitled to collect the assigned claims, without prejudice to ITT's right to collect the claims if ITT's customer does not pay in due time. ITT is entitled to demand that the customer informs us about the debtor and the assigned claims, makes all announcements necessary for collection, hands over relevant documents and informs his debtor about the cession.
- (4) If the delivered goods, of which title has been reserved by ITT, are sold together with other goods which are not property of ITT, the customer's claims against his own customer are considered to be assigned to ITT only in so far as it is necessary to cover the price (including value added tax) agreed upon between ITT and its customer.
- (5) If the securities granted to ITT by the customer amount to more than ITT's claims against the customer, ITT will, if so desired, release the customer accordingly. ITT will select the securities to be released.

### IX Liability for Faults

- (1) The customer is obliged to inform us in writing of faults, either immediately or at the latest within one week after the receipt of the goods / services. ITT must be informed in writing of faults, which cannot be detected within this period by careful examination, immediately after detecting the faults. Damage caused by shipment must be documented upon delivery and the haulage company must be informed. All notices of defects must be sufficiently specified and set down in writing.
- (2) This warranty does not include faults and damage for which ITT is not responsible, especially faults and damage caused by inexpert treatment or maintenance, unauthorised changes to the goods and other disturbances caused by the customer, force majeure or natural wear and tear. This only applies if the customer does not refute our notice that one or more of these circumstances caused the fault or the damage.
- (3) The use or installation of components or spare parts which are not manufactured / sold by ITT excludes all claims resulting from the warranty.
- (4) In departure of the above-mentioned warranty terms, for ultraviolet spots our special standard terms of warranty for WEDECO ultraviolet spots apply.
- (5) The warranty is fulfilled at no costs to the customer by correcting the fault or second delivery / service, according to ITT's choice.
- (6) If ITT fails, after the customer has set a reasonable deadline, to correct the fault or deliver again, the customer can choose to demand a reduction of the price or to rescind the contract. All further compensation claims or rights resulting from the warranty are excluded unless ITT acted intentionally or grossly negligently. In principle, compensation claims are limited to the value of the customer's order.
- (7) The restriction of liability as set out in No. 3 and 6 does not apply to claims for damages based upon injury to the customer's life or health caused by negligence of ITT.
- (8) The restriction of liability as set out in No. 6 does not exclude the customer's compensation claims if he fulfilled, in accordance with legal liability, claims of his own customers with regard to new goods sold to him by ITT.
- (9) Please contact your local ITT partner for specific details on warranties of system, parts and components.

### X Rescission, Impossibility of Performance, Adaption of the Contract

- (1) In the case of unforeseen events as described in Sec. V., which have a significant effect on the economic implications of the delivery or service, or which significantly change the nature of delivery / service or which have a significant effect on our operations, the terms of the contract are to be changed accordingly. If this is economically unreasonable, we have the right to rescind the contract.
- (2) In the case of threatening insolvency of the customer (e.g. application for insolvency procedure, inability to pay, delay of payment) we have the right to rescind the contract.

### XI Data protection

We inform the customer in accordance with the German Federal Data Protection Act, that we store and process the customer's data. These data are used only to fulfill our obligations resulting from the contract.

### XII Validity, Place of Performance, Forum

- (1) If a clause of the contract is or becomes invalid, the rest of the contract remains valid. The invalid clause shall be replaced by a clause which is as close as possible to the wording, sense and purpose of the contract.
- (2) This contract is governed exclusively by German Law, excluding CISG or other foreign or international law.
- (3) The place of performance and the forum for all deliveries, services and payments is Herford, Germany.