



## **General Terms and Conditions**

As of: July 2017

### **1 General**

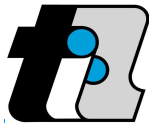
1. Any deliveries and services shall be based on these Terms and Conditions and on contractual agreements concluded separately. Deviating conditions of purchase of the buyer shall not become part of the contract even through the acceptance of an order. A contract shall be concluded—if there is no special agreement—through the written confirmation of the order by TIA.
2. TIA shall reserve ownership rights and copyrights to samples, cost estimates, drawings, and similar physical and non-physical information—including in electronic form—; these may not be made accessible to third parties. TIA may only provide information or documents designated as confidential by the buyer to third parties with the permission of the buyer.

### **2 Prices and Payment**

1. If no separate agreement was concluded, prices shall apply ex works, including loading ex works, though only for packing and unloading. Prices shall include VAT in its respective legal amount.
2. Without a special agreement, payments must be made onto an account of TIA as follows:
  - 40% when placing an order prior to the commencement of our planning activities
  - 40% after the delivery of the system components (at least 90% of the value of the material), though, at the latest, within 14 days of the readiness for delivery notification if the delivery date must be delayed for reasons for which TIA is not responsible.
  - 20% after the cold commissioning and submission of the commissioning certificate, though, at the latest, within 10 weeks of the readiness for delivery notification if the commissioning is delayed for reasons for which TIA is not responsible.
  - Payable without deduction within 14 days of receipt of the invoice
3. The buyer shall only be granted the right to withhold payment or to offset through counterclaims if his counterclaims are uncontested or legally established.

### **3 Delivery Period, Delivery Delays**

1. The delivery period shall be specified by the agreements between the contract parties. Adherence by TIA requires any commercial and technical questions to have been answered between the parties and the buyer to have completed all of his obligations, such as obtainment of any official certificates or permits or providing down payments. Should this not be the case, the delivery period shall be extended appropriately. However, this shall not apply if TIA is responsible for the delay.
2. Meeting the delivery period shall be conditional upon the receipt of correct self-deliveries on time. TIA shall announce any impending delays as soon as possible.
3. The delivery period shall be met if the delivery object leaves the TIA warehouse before its expiry or its readiness for delivery notice is sent. If acceptance is required, it shall be determined by the acceptance date—except in case of justified acceptance refusal—, alternatively, by reporting acceptance readiness.
4. Should the dispatch or the acceptance of the delivery object be delayed for reasons for which the buyer is responsible, the costs resulting from the delay shall be charged to the buyer one month after reporting the dispatch or the acceptance readiness.
5. Should the failure to meet the delivery period be caused by force majeure, labor disputes or other occurrences outside of the influence of the supplier, the delivery period shall be appropriately extended. TIA shall announce the beginning and end of such circumstances to the buyer as soon as possible.
6. The buyer may withdraw from the contract without setting a deadline if performance of the service prior to the transfer of risk becomes impossible for TIA. Furthermore, the buyer may withdraw from the contract if part of a delivery becomes impossible for an order and he has a justified interest in rejecting the partial delivery. Should this not be the case, the buyer must pay the contractual prices for the partial delivery. The same shall apply in case of inability by TIA. Apart from that, Section 7. 2. shall apply.
7. Should it become impossible for or should TIA become unable to provide the delivery during the acceptance delay or if sole or primary responsibility for these circumstances lies with the buyer, the buyer shall continue to be required to provide compensation.



8. Should TIA be in default and should the buyer incur damages thereby, he may demand flat-fee default damage compensation of 0.5% for each full week of default, but no more than 5% of the value of the respective part of the total delivery that could not be used in time or according to contract due to the delay.
9. Should the buyer—in consideration of statutory exceptions—provide the supplier with an appropriate grace period for his service which passes unsuccessfully, the buyer may withdraw from the contract under the respective statutory regulations.
10. Further claims from default shall be exclusively determined by Section 7. 2 of these Terms and Conditions.

**4. Transfer of Risk, Acceptance**

1. Risk shall be transferred to the buyer when the delivery object leaves the warehouse, even if partial deliveries will be made or if TIA assumed other services, such as shipping costs, delivery, or installation.
2. Should shipping be delayed or should the item not be shipped or commissioned for reasons for which TIA is not responsible, risk shall be transferred to the buyer from the day the readiness to ship notice is sent. TIA must provide the insurance coverage demanded by the buyer at his expense.
3. Should cold commissioning be required, the transfer of risk shall be determined by it. Should the commissioning be delayed for reasons for which TIA is not responsible, commissioning shall be considered to have been performed 60 days after the completion of the installation or 90 days after the readiness to deliver notice.
4. Ownership shall be transferred after receipt of the last payment.
5. The buyer shall be responsible for securing the construction site and any materials and equipment.
6. Should commissioning be required, it shall determine the transfer of risk. Commissioning must be performed without delay for the commissioning date or, alternatively, after TIA reports its readiness for commissioning. The buyer may not refuse the commissioning in case of an insignificant defect. Should the commissioning be delayed for reasons for which TIA is not responsible (e.g., too little wastewater), commissioning shall be considered to have been performed at least 60 days after completion of the installation.
7. Partial deliveries shall be permitted insofar as they are tolerable to the buyer.

**5. Retention of Title**

1. TIA shall retain title to the delivery object until the receipt of all payments owed under the delivery contract.
2. TIA may insure the delivery object against theft, destruction and fire, water, or other damages at the expense of the buyer, unless the buyer provides the insurance coverage himself.
3. The buyer may not sell or pledge the delivery object or provide it as a security. The buyer must notify TIA without delay of any pledges, confiscations, or seizures by third parties.
4. Should the buyer behave in a non-contractual manner, especially in case of payment default, TIA may reclaim the delivery object after issuing a notice and the buyer shall be required to hand it over.
5. Due to the retention of title, the supplier may only demand the delivery object if he withdrew from the contract.
6. Applications for the launching of insolvency proceedings shall allow TIA to withdraw from the contract and to demand the immediate return of the delivery object.

**6. Defect Compensation Claims**

1. Under exclusion of further claims—conditional upon Section 7—, TIA shall provide the following services for material and legal defects of the delivery as follows:
2. Material Defects
  - i. Any parts discovered to be defective prior to the transfer of risk shall be rectified or replaced without defects free of charge at TIA's discretion. The discovery of such defects must be reported to TIA in writing without delay. Replaced parts shall become the property of TIA.
  - ii. Following coordination with the supplier, the buyer must provide sufficient time for any rectification or replacement deliveries deemed necessary by TIA; otherwise, TIA shall be released from any liability for resulting consequences. Only in urgent cases of risk to operational safety or to avoid disproportionate damages of which TIA must be notified immediately may the buyer rectify the defect himself or through third parties and demand reimbursement from TIA.
  - iii. TIA shall cover the direct costs of rectification or replacement deliveries, including shipping,—should the complaint prove to be justified. TIA shall also bear the costs of any removal or installation and the provision of any required fitters and assistants, including traveling costs, if this does not result in a disproportionate burden for TIA.



- iv. The buyer shall have the right to withdraw from the contract within what is statutorily permissible if TIA—in consideration of statutory exceptions—fails to meet a grace period deadline for rectification or replacement delivery due to a material defect. In case of merely insignificant defects, the buyer shall merely be granted the right to reduce the contractual price. Rights to contractual price reductions shall otherwise be excluded.
- v. Further claims shall be governed by Section 7. 2 of these Terms and Conditions.
- vi. No guarantee shall be provided, especially not in the following cases: Unsited or inappropriate use, incorrect installation or commissioning by the buyer or a third party, natural wear, wrong or negligent treatment, improper maintenance, unsited operating material, poor construction, unsited soil or chemical, electrochemical or electric influences—if TIA is not responsible for them.
- vii. If the buyer or a third party performs improper rectification, TIA shall not be liable for any resulting damages. The same shall apply to changes made to the delivery object without TIA's prior permission.
- viii. The contractor may assume technical guarantees for the offered positions and selected procedures after the cold commissioning. This shall require the conclusion of a maintenance contract for the duration of the guarantee or proof of the maintenance of the units in accordance with the manufacturer's specifications.
- ix. The guarantee period shall begin with cold commissioning, but no later than 4 weeks after the delivery or the shipping readiness notice.

### 3. Legal Defects

- i. Should use of the delivery object lead to violations of industrial property rights or domestic copyrights, TIA shall, at its expense, provide the buyer with rights to further usage or shall modify the delivery object in a manner tolerable to the buyer that will prevent further rights violations.
- ii. Should this not be possible under economically suitable conditions or within an appropriate period, the buyer may withdraw from the contract. TIA may also withdraw from the contract under the stated conditions.
- iii. Furthermore, TIA shall release the buyer from uncontested or legally established claims of the respective holder of the rights.
- iv. TIA's obligations in Section 6 shall be, conditional upon Section 7. 2, final for industrial property right or copyright violations.

They shall only exist if

1. the buyer notifies TIA about any asserted industrial property rights or copyright violations,
2. the buyer supports TIA to an appropriate extent with the defense against asserted claims or allows TIA to perform the modifications in accordance with Section 6,
3. any defense measures, including out-of-court settlements, remain reserved to TIA,
4. legal defects are not due to directives of the buyer and
5. the rights violation was not caused by the buyer modifying the delivery object on his own initiative or by using the delivery object in a non-contractual manner.

### 7. Liability

1. If the delivery object cannot be used according to contract due to culpably omitted or incorrect suggestions or advice by TIA before or after contract conclusion or due to culpable violations of other contractual obligations—especially instructions for the operation and maintenance of the delivery object—, the regulations of Sections 6 and 7 shall apply accordingly under exclusion of further claims of the buyer.
2. TIA shall only be liable for damages outside of the delivery object—for whatever of reason—in case of
  - i. intent,
  - ii. gross negligence of the owner/bodies or executives,
  - iii. culpable injuries to life, the body or one's health,
  - iv. fraudulently concealed defects,
  - v. guarantee assurances,
  - vi. defects of the delivery object, insofar as liability is assumed under the German Product Liability Act [Produkthaftungsgesetz] for personal injuries or material damages for privately used objects.



3. In case of culpable breaches of essential contractual obligations, TIA shall not be liable for gross negligence by its executives or for simple negligence, in the latter case, limited to reasonably foreseeable damages typical for the contract.
4. Further claims shall be excluded.

**8. Statute of Limitations**

1. Any claims of the buyer—for whatever legal reasons—shall expire within 12 month of the cold commissioning. Statutory statutes of limitation shall apply to damage compensation claims in Section 7. 2. They shall also apply to defects of construction or delivery objects used for construction in their usual manner that thereby caused the defects.

**9. Software Use**

1. If a delivery includes software, the buyer shall be granted the non-exclusive right to use the delivered software and any of its records. The software shall be provided for use on the designated delivery object. Any use of the software on more than one system shall be prohibited.
2. The buyer may only reproduce, edit, or translate the software or transfer its source code into its object code within the framework of what is legally permissible (Section 69 a et seq. of the German Copyright Act [Urheberrechtsgesetz]). The buyer may not remove or change manufacturer specifications—especially copyright notices—without TIA's express prior permission.
3. Any other rights to the software and its records, including copies, shall remain with the supplier or the software provider. Granting sublicenses shall not be permitted.

**10. Applicable Law, Place of Jurisdiction**

1. Legal disputes between TIA and domestic buyers
  - i. Any legal relationship between TIA and the buyer shall be governed exclusively by the laws of the Federal Republic of Germany applicable to the domestic parties among each other.
  - ii. The place of jurisdiction shall be Lübeck. However, TIA may also sue at the main office of the buyer.
2. Arbitration proceedings between TIA and foreign buyers

Disputes, differences of opinion, or claims from or in relation to this contract, including its validity, invalidity, violation, or dissolution, shall be settled through arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chamber of Commerce. The version of the Swiss Rules of International Arbitration in effect when the notice of arbitration is sent shall apply.

Arbitration shall consist of two arbitrators.

The seat of arbitration shall be Zurich.

The language of the arbitration proceedings shall be German or English.