



General Terms and Conditions

(General Terms and Conditions of Delivery and Service)

All purchase contracts, contracts for work and work performance contracts concluded with our company are governed exclusively by these Terms and Conditions of Delivery and Service. Any deviating terms and conditions of the customer are hereby expressly rejected. The general terms and conditions of the contracting partner are also invalid in the case of unconditional delivery of goods by our company. Our General Terms and Conditions of Delivery and Service in the respective version in force – to the exclusion of all others - constitute a legally binding component of the business relationship.

We reserve, without restriction, our proprietary rights and rights of exploitation under copyright over cost estimates, drawings, photographs and other records (hereinafter: documents). The documents may not be made accessible to third parties without our prior written consent and shall, if we are not awarded the contract, be returned to us immediately on request. All documents shall be returned to us on request. This also applies to any form of documentation which we have provided, including photographs, videos and other records. Static calculations shall only be submitted if requested by the customer and only at an extra charge.

I. Offer, delivery, delivery deadlines

Our offers are without engagement. Orders require our written acknowledgement, which will be provided immediately if appropriate. Our written order acknowledgement alone shall be authoritative with respect to the scope of delivery and any other terms of the contract. Technical details and descriptions of the delivery item in brochures, other printed publications and descriptions on our home page shall only be binding if reference is made to them in the order acknowledgement.

Deliveries are made ex works, unless otherwise agreed. Minor changes to the delivery item in design, shape and form and in the values specified in the description shall be permitted for technical reasons provided the purpose, quality and functionality are not compromised thereby.

The delivery deadline is deemed to be met if, by the time it has expired, the delivery item has been dispatched or collected or, if delivery is delayed for reasons for which the customer is responsible, the customer has been notified of the item's readiness for dispatch within the agreed delivery period. The delivery period begins when all the details of the order have been clarified. Adherence to the delivery deadline is subject to the fulfilment of the contractual obligation to be met by the customer heretofore.

If fulfilment of the obligation to deliver is prevented by force majeure, industrial action such as a strike or lockout or the effects thereof or other events which are outside our sphere of intention, the delivery deadlines shall subsequently be extended by the duration of the prevention of the original obligation. This shall also apply if such circumstances are encountered by our upstream suppliers. The customer shall be notified without delay of the beginning and end of such hindrances. If it is not feasible for our company or the customer to fulfil the contract as a result of the delay in delivery, both parties shall have the right to rescind the contract.

Punctual and complete delivery is subject to the provision that we have been supplied in due time and in full by our suppliers (reservation as to oneself obtaining delivery).

We reserve the right to make partial deliveries to complete the order within the prescribed period – provided this is not unreasonable for the customer. These may be invoiced separately.

We are entitled to rescind the contract and demand compensation in damages for non-performance if the customer, without being entitled to refuse acceptance of the item, irrevocably refuses acceptance or fails to accept the item within a set period of 14 days.

II. Prices and terms of payment, offsetting and retention

Unless otherwise agreed, prices are ex works including loading in the works and packing to commercial standards for transportation by road. Prices are subject to value added tax at the relevant statutory rate. If the delivery deadline agreed is in excess of three months, ENREGIS is entitled, in the case of an increase in the cost of materials or labour costs, to levy additional charges on the basis of its original cost-based pricing for the increased costs incurred.

Our invoices are payable either within 14 days of the invoice date with a 2% discount or within 30 days of the invoice date net. However, ENREGIS reserves the right in individual cases to make deliveries subject to cash payment. Invoices for repairs and customer services shall be due without discount within 14 days of the invoice date.

In the event of default in payment, interest shall be charged at 8 percentage points above the base rate. The customer is entitled to furnish evidence that a loss has not been incurred or is significantly lower than the flat rate. ENREGIS reserves the right to claim greater damages.

The customer is not entitled to withhold payment or offset an obligation against any counterclaims unless the counterclaims are undisputed or have been established by law. The right to withhold payment or offset an obligation is otherwise inadmissible.

Any value-added tax due and any public charges (taxes, fees, customs duty, etc.) for which the supplier is called upon in the case of deliveries of materials and/or posting of personnel outside the Federal Republic of Germany shall be paid by the customer.

If the customer fails to honour bills or cheques or stops his payments, or if it becomes apparent after the contract has been concluded that our entitlement to payment is jeopardized by the customer's inability to pay, we are entitled to call in all the amounts outstanding from the business relationship – even if bills or cheques have already been issued for these amounts. In such cases we are entitled to make outstanding deliveries dependent on advance payments or provision of security. Further statutory claims shall remain unaffected.

III. Transfer of risk and acceptance, insurance

The risk passes to the customer at the latest on dispatch of the delivery items, and even if partial deliveries are made or ENREGIS has taken on other services, such as the forwarding costs or carriage and assembly.

If dispatch is delayed on account of circumstances for which ENREGIS is not responsible, the risk passes to the customer on the day on which the items are ready for dispatch; however, ENREGIS is obliged to take out the insurance required by the customer at the request and expense of the customer.

The items supplied shall be accepted by the customer, even if they demonstrate immaterial defects, notwithstanding the rights arising from Section VI.

Transport securing devices (reusable systems) are the property of ENREGIS. If these are not replaced in perfect condition, returned free of charge or paid for, they shall be invoiced at generally accepted market prices.

IV. Delivery/collection of our products to/at the construction site

The effective agreement for our company to use its own vehicles to make deliveries to the customer's construction site requires written confirmation by way of our order acknowledgement. It is incumbent upon the customer to provide access to his construction site via a hard-surfaced road which is safe for fully laden truck-trailers. In the absence of such a road, our customer shall undertake to notify us accordingly and provide suitable means to transport our products from a hard-surfaced unloading point, situated as close as possible to the customer's construction site, to the construction site itself.

In the event that our products are collected by our customer or by the customer-appointed haulage contractor, we shall not undertake any duties to secure the load onto the transportation vehicle. We shall not conduct an inspection of the secured load. If a haulage carrier is engaged, such haulage carrier shall be expressly bound by the customer to fulfil the task of securing the load and transporting the products on the vehicle.

V. Retention of title

The product shall remain our property until all outstanding amounts arising from the business relationship have been paid in full. In the case of an outstanding account the retained title shall represent the security for the balance of our claims.

If the payment is made by the customer to a joint paying agency which subsequently pays the contract price over to us, we shall continue to retain title of the property as stipulated heretofore and hereinafter until such time as the contract price has been transferred to us in full. Payment to our company shall not effectively be discharged until we have received the amount in full. If an application is made to open insolvency proceedings with regard to the assets of the paying agency, irrespective of whether the insolvency proceedings are opened or, due to insufficient assets, are not opened or suspended, any outstanding accounts receivable from the customer shall be paid directly to our company.

The product subject to retention of title shall be processed on our behalf, without our accruing any obligations therefrom. If our product is processed, combined or mixed with other products which do not belong to our company, we shall acquire joint ownership of the new item in proportion to the invoice value of the product subject to retention of title and the value of the other processed, combined or mixed products at the time of processing, combining or mixing. If the customer acquires sole ownership of the new item, he shall, at the same time, transfer joint ownership to our company of the new item in proportion to the invoice value of our product subject to retention of title and the value of the other processed, combined or mixed products at the time of processing, combining or mixing, and shall hold it in safekeeping on our behalf with the care and diligence of a prudent businessman.

Resale of the product supplied by our company, irrespective of whether it is unprocessed, processed, combined or mixed, shall only be permitted to resellers in the usual course of business subject to the retention of title, provided the amount due from the resale passes to us. The customer is prohibited from pledging the product or transferring it by way of security or from agreeing to a no assignment clause. The customer shall notify our company immediately of any seizures by third parties or any other infringement of our rights.

The customer hereby assigns to us in advance any accounts receivable accruing to him at the present time or at a later date from the resale or from any other legal basis with regard to the product supplied by us on their creation in the amount of the value of the product subject to retention of title. We accept such assignment. The value of the product subject to retention of title is our invoice amount plus a surety fee of 10%, which is, however, excluded in the case of conflicting third-party rights. In the event of the resale of our product after processing, combining or mixing or the resale of the new item created by processing, combining or mixing with our product, the account receivable from our customer's buyer shall be assigned pro rata in the amount of the invoice value of our processed, combined or mixed product or in the amount which corresponds to our share of joint ownership, if this is lower. This also applies in the event of a resale after our product has been combined or mixed to form the essential component of another item.

The customer shall be authorized, until our revocation, to collect the accounts receivable arising from the resale. At our request the customer shall notify us of the debtors of the assigned claims, provide us with the information and documents necessary to assert our rights against the debtors, and give notice of assignment to the debtors.

If the value of the securities in our possession exceeds that of our accounts receivable by a total of over 10%, we are obliged, at the customer's request, to release securities at our discretion. On settlement of all our accounts receivable from the business relationship, ownership of the product subject to retention of title and the assigned claims shall pass to the customer.

VI. Returns

Returns which are not based on a legal claim asserted by the customer are only permissible if prior agreement has been received in writing from our company and if the product is in its original packaging and in brand-new condition, is not over 3 months old from the date of manufacture and does not fall below a net value of € 50.00. Before returning a product, the customer shall advise us of the quantity and item number, the original invoice or original delivery note, the serial number and the reason for the return. In the case of such a return - not based on a claim asserted by the customer - the costs incurred shall be borne by the customer. The customer shall also pay us an additional charge for accepting the returns of 30% of the net value plus any other costs incurred, for example, due to damaged packaging. If the returned products show evidence of damage or traces of wear, we expressly reserve the right to apply further costs for accepting the returns.

VII. Liability for defects

The customer undertakes to inspect the product immediately on delivery. Complaints regarding obvious or identifiable defects shall not be considered unless they are immediately lodged in writing, no later than 7 days of receipt of the goods, and regarding hidden defects no later than 7 days following detection.

Our liability for defects applies solely to defects which arise as a result of a circumstance existent on transfer of the risk, especially due to a manufacturing flaw or a fault in the material. We shall not be liable for damage, defects and failures which arise, inter alia, as a result of improper or incorrect assembly or handling by the customer, unauthorised alterations to the product supplied or natural wear and tear (e.g. UV radiation, extended storage due to adverse weather conditions, mechanical wear such as mechanical seals on pumps). The customer shall return defective items to us at our request.

If the complaint regarding the defect is justified, we shall, at our discretion, repair the product or supply a replacement. The customer shall notify us and obtain our consent before carrying out any remedial measures of his own.

Provided the measures are appropriate, ENREGIS shall bear the labour costs up to a maximum amount which is reasonable and acceptable on the basis of an internal table of empirical values.

If, through our own fault, we fail to replace or repair the damaged product within a reasonable period prescribed for this purpose, if the supplementary performance has ultimately failed or if we refuse such performance, or if this is unacceptable to the customer, the customer shall be entitled to rescind the contract or demand a price reduction. The pro rata temporis linear depreciation comparing the actual useful life and the anticipated full service life shall be used as the basis to determine the value of the use. If the defect is immaterial and the product can be utilised by the customer without detriment to him, the customer shall only be entitled to a reduction in the contract price. Liability to pay damages within the framework of the liability for defects is covered by Section VIII. of these terms and conditions. Claims arising from defects expire by limitation within one year of the commencement of the statutory limitation period. This does not apply to the delivery of products which have been utilised in the manner in which they would customarily be used on a structure and which have caused its defectiveness (§ 438 subsection 1 item 2 BGB [*German Civil Code*]). The statutory period of limitation shall apply in this case.

If the sale by the final seller to the end user constitutes a sale of consumer goods in accordance with § 474 BGB, any right of recourse by the customer against us shall be governed by the statutory provisions unless a separate agreement has been concluded with us in accordance with § 478 subsection 4 page 1 BGB.

VIII. General liability

Notwithstanding the provision under I. 9. of these terms and conditions, claims for damages of any nature within the framework of and outside the liability for defects - for delayed performance or impossibility, incorrect advice or incorrect planning, fault on conclusion of the contract, violation of other contractual obligations, tortious acts or other legal reasons - also in the specific case of damage which is not related to the delivery item itself - are excluded. Our liability extends solely to intent or gross negligence, culpable harm to life, body and health, defects which have been fraudulently concealed, defects of the delivery item for which liability is established in accordance with the product liability legislation for physical damage to privately used objects and for personal injury, failure to comply with a guarantee of quality, and for culpable violation of essential contractual obligations; in the latter case, however, liability in the case of ordinary negligence shall be limited to contractual, reasonably foreseeable damage.

Any liability to pay damages which extends beyond these terms and conditions, without consideration of the legal nature of the claim asserted, is excluded. This applies in particular to claims for damages for fault on conclusion of the contract, for other violations of obligations or for claims in tort for compensation of physical damage in accordance with § 823 BGB. Insofar as our liability to pay damages is excluded or limited, this shall also apply with regard to the personal liability to pay damages of our employees, workers, representatives and vicarious agents.

Technical consultation does not form part of the supply contract; it shall only be binding if it has been expressly acknowledged in writing by ENREGIS in the order acknowledgement. Such consultation shall not release the customer from his responsibility to plan for, establish the layout and process the products supplied in an appropriate, professional manner. This also applies specifically to the utilization of our calculation/design software.

The use of our products, in particular the products for cleaning and treating rainwater or other media, is expressly prohibited on environmentally relevant sites.

IX. Marking of products

Any alteration to the delivery item requires the prior written consent of ENREGIS. Any alteration to the delivery item and any special stamp which could be construed as a mark of origin of the customer or third parties and give the impression that the item is a special product are not permitted.

X. Place of performance, jurisdiction, and applicable law

The place of performance for delivery is D-59846 Sundern

The jurisdiction for disputes with business people, legal persons under public law or persons who have no domestic jurisdiction, even for actions on dishonored bills and cheques, is also Arnsberg. We are also entitled, at our discretion, to proceed against the customer in the court having jurisdiction over his legal domicile.

The contractual relationship is governed exclusively by German law. EU legislation on the sale of goods, the conflicts of law rule of international private law and in particular the Rome I Regulation are not applicable.

XII. Validity

Should individual terms and conditions in this document – for whatever reason – be or become invalid or void, the validity of the remaining terms and conditions shall remain unaffected.