

General Terms and Conditions (GTC)

§ 1 General

Only the following General Terms of Sale and Delivery shall apply to our orders, contracts and offers unless a different agreement has been made by us in writing or confirmed in writing. These terms apply to all of our business dealings. General terms and conditions conflicting with the General Terms of Sale and Delivery of GUS Gewässer-Umwelt-Schutz GmbH will not be recognized. Their validity is expressly objected to. Our silence upon receipt of the buyer's general terms and conditions shall not be deemed consent to their inclusion.

Our Terms of Sale and Delivery in their respectively applicable version, once effectively agreed, shall also become part of all future contracts in ongoing business relationships without the need for explicit reference in the individual case, even if differing agreements are made for individual transactions. These terms also apply to business and sales abroad.

§ 2 Offers, Prices

2.1 All our offers and oral agreements are non-binding. We are only bound after further written confirmation.

2.2 Declarations by our employees, travelling staff or commercial agents always require our written confirmation to be effective. Unless otherwise agreed in writing, solely our prices valid on the day of the order confirmation shall be decisive. Packaging and loading materials are not included in our prices. If we are entrusted with inbound transport, the actual transport costs will be charged additionally.

2.3 We are entitled to increase agreed prices retrospectively if the essential cost factors underlying the price, in particular wages, raw materials and energy costs—individually or in total—increase by more than 5% and more than 4 months lie between conclusion of contract and delivery. The increase is limited in amount to the actual cost increase of the underlying cost factors. In the event of price increases of more than 5% of the agreed price, the customer shall have a 14-day right of termination from notification of the price increase. Termination must be in writing.

§ 3 Shipment and Transfer of Risk

3.1 Delivery shall be made, at our choice, by a usually suitable means of transport ex works, but at the buyer's risk, unless we carry out the transport with our own vehicles and our own personnel and the damage is not caused by third parties.

3.2 The risk shall pass to the buyer upon handover of the goods to the forwarding agent or carrier, but at the latest when the goods leave the works or warehouse. This applies in particular to sales in which CIF, CFR, FAC, FAS or FOB has been agreed.

§ 4 Delivery Periods

4.1 The indication of delivery periods is generally non-binding unless an express agreement on a fixed date has been made in writing. Furthermore, our delivery periods are subject to the reservations of self-supply, deliverability and intermediate sales. The delivery period begins on the day of our acceptance of the order, but not before complete clarification of all execution details.

4.2 The delivery period is met by timely notification of readiness for shipment if dispatch is impossible without our fault.

4.3 The day of dispatch shall be deemed the day of delivery; in the case of agreed collection, the day of dispatch of the notice of readiness for shipment. If, for goods typically kept in stock, we exceed a non-binding delivery date or a non-binding delivery time by more than 10 working days, the buyer shall have the right to set us in writing a reasonable grace period for delivery. If the order concerns goods not typically kept in stock, the right to set a grace period first arises when a period is exceeded by more than 20 working days. With such reminder we shall be in default.

4.4 Events of force majeure, industrial disputes at our company or our suppliers and comparable unforeseeable obstacles over whose occurrence or removal we have no influence shall extend the agreed delivery periods by the duration of the obstacle, but at most by two weeks. If in this case the delayed delivery is of no interest to the buyer, then after expiry of an additional period of 14 days to be set by him in writing with a declaration of refusal, he shall be entitled to withdraw from the contract.

4.5 Claims for damages due to non-performance or delayed delivery are excluded unless intent or gross negligence exists on our part or on the part of our vicarious agents. 4.6 If dispatch or handover is delayed for reasons attributable to the customer by more than one month from notification of readiness for dispatch or collection, we shall be entitled to store the delivery item at the customer's expense and risk. In the case of storage with us, we shall be entitled to charge 0.125% of the agreed price per full week. The customer remains free to provide evidence of lesser damage.

§ 5 Partial Delivery

5.1 GUS Gewässer-Umwelt-Schutz GmbH is entitled to make partial deliveries. The buyer is obliged to accept partial deliveries.

5.2 If we are in default with deliveries of the still outstanding parts and a grace period of two weeks to be set in writing by the buyer expires fruitlessly, the buyer may withdraw from

the entire contract only if the missing parts cannot be procured elsewhere and the parts delivered alone are of no interest to the buyer.

§ 6 Terms of Payment, Default

6.1 Unless expressly agreed otherwise, our invoices for goods shall be due for payment without any deduction after the date of performance. The date of performance corresponds to our delivery date.

6.2 Bills of exchange and cheques will, if at all, only be accepted on account of performance and subject to the possibility of discounting. All expenses incurred shall be borne by the buyer. Acceptance of a bill of exchange after maturity or prolongation does not constitute a deferment. We reserve the right to return bills or cheques at any time. If the buyer is in default of payment, we shall be entitled, without special proof, to claim default interest of 10 percentage points above the respective base interest rate and to charge €5.00 for each reminder. The assertion of higher default damage in individual cases remains reserved.

6.3 If the buyer does not fulfil his payment obligations or has a bill of exchange or cheque protested or if other circumstances become known which make the fulfilment of the buyer's liabilities to us appear at risk, all our claims based on deliveries made shall become immediately due irrespective of previously agreed payment terms. Outstanding deliveries by us to the buyer may then be made dependent on the provision of suitable securities, until which our delivery obligation shall be suspended.

6.4 The buyer is entitled to make advance payment instead of providing suitable security. If the required security is not provided before one week has expired, we may withdraw from the contract.

6.5 If payment by instalments has been agreed, the respective remaining amount shall become immediately due if the buyer is in arrears in whole or in part with an instalment for longer than 7 days. Payments to third parties, in particular to commercial agents or travelling salespersons, will not be recognized unless these persons are expressly authorized to collect.

6.6 If call-off of the goods has been agreed, we shall be entitled to invoice them at the time of readiness for dispatch. The purchase price shall then be due for payment.

6.7 For special productions we shall be entitled to demand an advance payment of 30% of the order amount after conclusion of the contract.

§ 7 Set-off, Right of Retention

7.1 Set-off against our claims is only permitted with undisputed or legally established claims of the customer.

7.2 However, set-off with synallagmatic counterclaims remains permissible, even if these are disputed by us.

7.3 A right of retention due to other claims of the customer against us that do not arise from the same contractual relationship is excluded.

§ 8 Retention of Title

8.1 The delivered goods shall remain our property until full satisfaction of the claims to which GUS Gewässer-Umwelt-Schutz GmbH is entitled against the buyer from the business relationship.

8.2 The buyer is entitled to sell and dispose of the goods in the ordinary course of business on customary terms. However, the buyer is not entitled to pledge the goods subject to retention of title or to assign them by way of security.

8.3 To secure our claims, the buyer hereby assigns to us all claims which accrue to him against his customers from the resale in the amount of the invoice amount incl. statutory VAT, irrespective of whether the goods were resold without or after processing. 8.4 In the event of processing or combination of our goods with other goods, without obligation on our part, we shall be entitled to co-ownership of the new item in the ratio in which the invoice amount of our goods stands to the sum of the invoice values of the other goods used. The value of the goods subject to retention of title within the meaning of this condition is our invoice value.

8.5 If the buyer becomes the sole owner of the new item, it is hereby agreed that co-ownership in the aforementioned ratio shall be granted. At the request of the buyer we are prepared and obliged to release securities at our discretion if and to the extent that the value of the securities exceeds the value of our claims from the current business relationship by 10%.

8.6 The buyer shall remain entitled to collect the claims against his customers as long as he properly and punctually meets his payment obligations to us. Our authority to collect the claim ourselves shall remain unaffected. However, we undertake not to collect the claims as long as the buyer meets his payment obligations from the proceeds received, is not in default and, in particular, no application has been filed to open insolvency proceedings over the buyer's assets. If this is the case, the buyer shall be obliged to render account of the

sales of the goods subject to retention of title, to name the third-party debtors and to provide us with all information necessary for collection. He shall notify the third-party debtors of the assignment without being asked and request them to make payment only to us.

8.7 In the event of conduct in breach of contract by the buyer, in particular in the event of default in payment, we shall be entitled to secure the goods subject to retention of title at the buyer's expense and to keep them in safekeeping or have them kept until all of the buyer's liabilities have been paid in full. This does not constitute a withdrawal from the contract unless expressly declared. We shall only be liable for damage in the context of such safekeeping if this is based on intentional or grossly negligent fault on our part or on the part of our vicarious agents. Any attachment of the goods subject to retention of title by us shall always constitute a withdrawal from the contract. After securing the purchased item we shall be entitled to sell the secured goods in the best possible way by private sale and to credit them against the purchase price if the buyer does not fully settle the entire payment arrears within two weeks after another written request.

8.8 The buyer is obliged to treat the goods subject to retention of title carefully and properly and to insure them against water, fire, burglary, theft and other usual risks. All claims against the insurer(s) or third-party tortfeasors shall be assigned to us on account of performance. The buyer shall inform us without delay of enforcement measures by third parties against the goods subject to retention of title or against the claims assigned for security to third-party customers, providing all information and papers necessary for an intervention by us. The costs of the intervention shall be borne by the buyer. Furthermore, the buyer shall notify us of damage to and loss of the goods subject to retention of title as well as any change of his company or residence. GUS Gewässer-Umwelt-Schutz GmbH accepts the aforementioned assignments.

§ 9 Copyrights

9.1 All copyrights of use, by any procedure and for any purpose, in sketches, drafts, originals, films, models, drawings and the like created by GUS Gewässer-Umwelt-Schutz GmbH shall, subject to express different provisions, remain with us.

9.2 Without our consent they may not be made accessible to third parties. Production means—such as films, tools, dies, etc.—shall, subject to express different provisions, remain our property.

9.3 The right to exploit these items and the intellectual achievements embodied in them shall remain exclusively reserved to us.

9.4 We are entitled to affix our own company and brand marks. The customer is prohibited from removing such marks affixed by us.

§ 10 Acceptance

10.1 The parties shall be entitled to require that goods for which special quality requirements are a condition or which are delivered abroad be examined and accepted at the delivery works or our warehouse immediately after notification of readiness for shipment.

10.2 We shall bear the objective costs of acceptance. Subsequent complaints—where these are not latent defects not recognizable in the context of proper inspection—are then legally irrelevant.

10.3 If the buyer has accepted the goods in the sense described above, the delivery shall be deemed to have been rendered in conformity with the contract in every respect upon dispatch.

10.4 If, in these cases, despite agreement and written request with the stipulation of a reasonable period of at least 10 working days and with reference to the consequences, the buyer does not accept the goods before delivery, acceptance shall nevertheless be deemed to have been granted upon expiry of the period and performance shall be deemed to have been rendered in conformity with the contract upon delivery.

10.5 Delivery delays caused by delayed or omitted acceptance by the buyer in the aforementioned sense extend the stated or agreed delivery period. In addition, in the absence of acceptance by the buyer for a delivery abroad, we shall have the right to insist on acceptance in accordance with these conditions and to withhold delivery until acceptance has taken place.

§ 11 Warranty, Complaints, Liability

11.1 GUS Gewässer-Umwelt-Schutz GmbH grants the buyer a warranty period of 10 years from the day of delivery to him for all deliveries of goods—except electronic, pneumatic, hydraulic components or parts thereof subject to wear. Otherwise, the warranty period is 1 year from handover of the goods, unless the law mandatorily provides otherwise, as for buildings (§§ 438 para. 1 no. 2, 634a para. 1 no. 2 BGB), in the event of fraudulent concealment (§ 438 para. 3 BGB) or in the case of the right of recourse (§ 445 b para. 1 BGB).

General Terms and Conditions (GTC)

11.2 If the customer plans to take the purchased item abroad and the purchased item there is subject to special statutory provisions, compliance with these provisions is the sole responsibility of the customer, unless we have been informed by him of these provisions and have expressly confirmed in writing their compliance.

11.3 The buyer shall examine the goods without delay after their arrival at the place of destination—§ 9 of these terms remains unaffected—for flawless condition, completeness and conformity with the contract. § 377 HGB shall apply accordingly.

11.4 Obvious defects and defects recognizable upon proper examination must be notified by the buyer in writing within 8 days after receipt.

11.5 Non-obvious defects and defects not recognizable upon proper examination must be notified by the buyer in writing without delay after discovery. If timely notice of defects is not given, the goods shall be deemed accepted and any warranty rights for the defects concerned shall lapse. The buyer cannot derive any rights from the fact that we deal with his complaint, examine the goods or correspond with him or third parties because of the complaint.

11.6 Insofar as the buyer plans to install or attach the goods, then in order to avoid increased expenditure he must first examine the properties of the goods relevant for installation or attachment and/or for subsequent use and immediately notify any defects in writing. If the buyer omits the examination described above, although this was reasonable given the type and condition of the goods, and/or the required immediate notice of defects, both his otherwise existing warranty claims in this respect and the buyer's claims under § 439 para. 3 BGB lapse without replacement.

11.7 In the event of a notice of defect, the buyer shall, upon request, give us the opportunity to examine within a reasonable period. If this is refused, warranty claims lapse.

11.8 In the case of justified and timely complaints we are entitled, at our choice and taking into account the buyer's legitimate interests, to make a replacement delivery, to remedy the defect or to reimburse the diminished value. For the replacement delivery or remedy the buyer must grant us a reasonable period of at least 14 days. Required replacement parts will be invoiced initially and credited after return and examination of the defective parts.

11.9 Construction and circuit diagrams necessary for the remedy will be provided by us free of charge. The expenditure incurred by the buyer through carrying out the remedy is covered on a lump-sum basis by the basic discount granted. If the replacement delivery is unsuccessful or the remedy is unsuccessful and the complaints are not remedied within a further grace period of 15 days to be set in writing by the buyer, the buyer may, at his choice, demand reduction of the purchase price or rescission of the contract, rescission however only if it is not merely a minor defect irrelevant for the intended use of the goods.

11.10 Insofar as removal and installation costs are to be reimbursed by us pursuant to § 439 para. 3 BGB, also in accordance with the foregoing provisions, the following shall apply: Only such costs are necessary within the meaning of this provision as arise from the installation/attachment of goods of the same kind, are customary in the market and are substantiated by the buyer in writing. There is no claim to an advance in this respect. Set-off with such claims is permitted to the buyer only in accordance with § 7 of these terms and otherwise excluded, unless we expressly agree. Further costs as a consequence of consequential damage due to defects—for example lost profit, operational downtime costs—are not costs of removal/installation and therefore are not to be reimbursed by us pursuant to § 439 para. 3 BGB.

11.11 Insofar as the costs of removal or installation increase in the course of subsequent performance because the delivered goods were taken to a place other than the place of delivery named in the contract, these additional costs—in particular travel, transport and wage costs—shall not be reimbursed by us. This shall not apply by way of exception if the relocation results from the intended use. 11.12 Rights of recourse (§§ 445 a, 478 BGB) will be acknowledged by us only to the extent that the buyer was legally obliged to provide a warranty in principle and in amount.

§ 12 Limitation of Liability

12.1 The customer's claims for damages exist in unlimited amount according to the statutory provisions if they are based on injury to life, body or health and are caused by an intentional or negligent breach of duty by us, one of our legal representatives or vicarious agents, or are based on the Product Liability Act or on deceit.

12.2 If damage is based only on negligent breach of a material contractual duty (cardinal duty) by us, our legal representatives or vicarious agents, we are likewise liable for damages, however limited in amount to the typically occurring and foreseeable damage, unless we are liable without limitation pursuant to the provision in the foregoing paragraph of these terms. No changes in the rules on the burden of proof to the detriment of the buyer are associated with the limitation of the amount of damages.

12.3 Material contractual duties (cardinal duties) within the meaning of the foregoing provisions are duties whose fulfilment enables the proper performance of the contract in the

first place and on the compliance with which the customer may regularly rely. Furthermore, material contractual duties (cardinal duties) are such duties the breach of which endangers the achievement of the purpose of the contract. The statutory distribution of the burden of proof remains in place.

12.4 Claims for damages going beyond this against us, our legal representatives and vicarious agents as well as agents are excluded, regardless of the legal ground on which they are based.

§ 13 Liquidated Damages

If the buyer expressly or impliedly refuses performance of the contract without justifying reason and in particular acceptance of the subject matter of the contract, then after another written request with reference to the consequences and with refusal threatened, with a period of 7 days, we are entitled, instead of performance of the contract, to demand liquidated damages in the amount of 25% of the order sum. The assertion of damage going beyond this remains reserved. The buyer is free to provide evidence that we have incurred only lesser damage.

§ 14 Materials Provided, Prescribed Design, Assembly/Repair, Acceptance

14.1 Materials provided

If it is agreed with the customer that materials required for production are provided in whole or in part by the customer, the suitability thereof for the specific use shall be ensured by the customer. We are not obliged to examine products or materials provided for their suitability for the contractually specified production purpose. If we discover defects in the products/materials provided before or during production, the customer will be informed of this without delay. It is then his decision to procure replacements or to commission us to procure the products/materials to be replaced against charge. All delays arising as a result shall extend the previously agreed delivery periods by the duration of the delay. The customer shall reimburse us for all additional expenditure incurred by the replacement of the products/materials provided, in particular additional working time and materials supplied by us. If a defect in the products/materials provided is discovered only after production has been carried out, the customer shall nevertheless pay the agreed purchase price and accept the goods. In any case we do not assume a warranty for products/materials provided.

14.2 Prescribed design

If the customer prescribes the design, the customer alone shall bear responsibility for compliance with all national and international statutory requirements in every respect. We are not obliged to examine a prescribed design for its technical and legal harmlessness. If we discover defects in the prescribed design before or during production, the customer will be informed of this without delay. It is then his decision to provide for correction or to commission us with the correction against charge. All delays arising as a result shall extend the previously agreed delivery periods by the duration of the delay. The customer shall reimburse us for all additional expenditure incurred by the correction of the prescribed design, in particular additional working time. If a defect in the prescribed design is discovered only after production has been carried out, the customer shall nevertheless pay the agreed purchase price and accept the goods. In any case we do not assume a warranty for prescribed designs.

14.3 Assembly by us or our vicarious agents

If we are commissioned with assembly, the customer shall be liable for all costs of any waiting times if, at the agreed start of assembly, we are unable to begin work punctually due to insufficient construction progress. Construction-related postponements of the assembly date must be notified to us by the customer without delay. If such notification takes place 3 days or less before the start of assembly, the customer shall pay us compensation in the amount of 7% of the order sum. The customer remains at liberty to provide evidence of lesser damage. We also reserve the right to assert damage going beyond this.

Insofar as we are commissioned with assembly at the customer's premises, we are entitled to send the necessary tools and equipment in advance and at our own expense to the customer. He is obliged to accept the consignment, to check it for completeness according to the delivery note transmitted in advance and for intactness and to store the delivery properly. If the delivery is incomplete or damaged, he must complain of this to the carrier and notify us of this without delay in writing. If he does not fulfil this obligation and we are therefore unable to enforce any replacement claims against the carrier, the customer shall be liable for the damage thereby incurred by us. Insofar as our tools and equipment suffer damage or are lost during storage at the customer's premises, he shall be liable for the damage thereby incurred by us insofar as he breaches the duties of a prudent merchant. 14.4 Preparatory assembly work by the customer

Insofar as preparatory work such as electrical installations and/or the laying of water supply and discharge lines etc. is necessary as preparation for the assembly service agreed with us, this shall be carried out by the customer.

If we are commissioned with assembly and the customer performs preparatory assembly work, we are not obliged to examine this for freedom from defects. Further work by us does not in any case constitute acceptance of the customer's preliminary work. If we discover defects in the preliminary work before or during our assembly work, the customer will be

informed of this without delay. It is then his decision to eliminate the defects in the preliminary work himself or to commission us with elimination of the defects against charge. All delays arising as a result shall extend the previously agreed delivery periods by the duration of the delay. The customer shall reimburse us for all expenditure incurred by the elimination of the defects in the customer's preliminary work and for any dismantling work thereby necessary of trades already carried out by us, in particular additional working time and materials supplied by us—insofar as these cannot be used again. If a defect in the preparatory assembly work is discovered only after completion of our assembly work, the customer is nevertheless obliged to accept and pay for our assembly work—insofar as these are free of defects in themselves.

14.5 Acceptance

If acceptance of our performance or a partial performance is contractually agreed or legally prescribed, the customer shall carry out acceptance within 12 working days after our written notification that the performance is ready for acceptance. If this period expires fruitlessly, the performance shall be deemed accepted. This shall only apply, however, if in our written notification of readiness for acceptance we have expressly pointed out this legal consequence.

§ 15 Place of Performance, Place of Jurisdiction, Applicable Law

15.1 The place of performance for all claims from contractual relationships between us and the buyer is Nordhorn. If the buyer is a merchant, a legal person under public law or a special fund under public law, Nordhorn shall be the place of jurisdiction, including for actions in bill of exchange or cheque proceedings.

15.2 This shall also apply to contracts with foreign contracting partners. German law alone shall be decisive for the contractual relationship. The applicability of international laws, e.g. the UN Convention on Contracts for the International Sale of Goods, is excluded. Insofar as we must take legal or enforcement measures abroad, the buyer undertakes to bear all court and out-of-court costs including the costs of legal assistance and/or such costs as arise through the engagement of a collection agency, insofar as our claims are justified.

**GUS Gewässer-Umwelt-Schutz GmbH
Bentheimer Straße 300
48531 Nordhorn**