

Terms and Conditions of Sale and Delivery (02/2018)

Aqseptence Group GmbH

I. General

1. All supplies and services shall be subject to these terms and conditions as well as to any separate contractual agreements. Any deviating purchasing terms of the customer shall not become part of the contract even upon acceptance of an order. A contract shall come into force upon written confirmation of the order by Aqseptence.
2. Aqseptence shall reserve ownership and copyrights of all information and documents provided to the customer during the contractual relationship, e.g. samples, models, cost estimates, drawings, technical illustrations, information of a corporeal and incorporeal nature, including in electronic form; they may not be made accessible to third parties.

II. Prices and Payment Terms

1. Prices are for delivery ex works, including loading but excluding transport, packaging and unloading. The goods shall be packaged in the standard commercial manner as deemed necessary at our reasonable discretion. Prices are subject to value-added tax and/or other local taxes or fees at the respective statutory rate.
2. Invoices must be paid to our bank account without any deductions by bank transfer or automatic debit within ten days of the invoice date.
3. In the event of a delay in payment Aqseptence is entitled to claim default interest at the statutory rate as well as reminder fees in the amount of EUR 5.00 as of the due date. This shall not affect the right to assert higher claims for losses caused by delay. Receipt of the payment (value date of the credit to our bank account) shall be decisive for determining the timeliness of payments.
4. The customer shall have the right to withhold payments or set them off against counterclaims only to the extent that its counterclaims are uncontested or recognized by declaratory judgment.

III. Delivery, Transfer of Risk, Acceptance, Insurance

1. Unless otherwise agreed by the parties, delivery shall be ex works, which shall also be the place of performance for delivery and any subsequent performance. At the request and at the cost of the customer the goods shall be sent to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, Aqseptence is entitled to determine the means of delivery itself (in particular the carrier, transportation route and packaging). Partial deliveries are permitted.
2. The risk of accidental loss, accidental deterioration, damage or destruction as well as delayed delivery by third parties shall pass to the customer no later than when the delivery item has left the factory, including in the case of partial deliveries or if Aqseptence has taken on further services, e.g. dispatch, delivery and installation.
3. Where acceptance has been agreed, this shall be decisive for determining the transfer of risk. It must be carried out without delay on the acceptance date or alternatively following notice from Aqseptence of readiness for acceptance. The customer may refuse acceptance only on the grounds of a material defect. In other respects the statutory provisions on contracts for work and services shall apply to any agreed acceptance in accordance with the addition below.
4. If by way of derogation it is agreed that the risk will pass upon acceptance and dispatch or acceptance is delayed or not executed due to circumstances for which Aqseptence is not responsible, the risk shall pass to the customer as of the date on which notice of dispatch or readiness for acceptance is given.
5. Aqseptence undertakes to take out insurance at the request and at the cost of the customer. Unless otherwise agreed, Aqseptence shall insure the goods upon dispatch against theft, breakage, fire, water and other damage on Aqseptence's usual terms at the cost of the customer.

IV. Delivery Period, Delay

1. The delivery period shall be determined in the agreements between the contracting parties. Aqseptence's compliance with the delivery period shall depend upon all commercial and technical issues having been clarified between the contracting parties and the customer having performed all obligations incumbent upon it, such as furnishing the required official certificates or approvals, approving installation drawings or making an advance payment. If this is not the case the delivery period shall be extended appropriately. This shall not apply if Aqseptence is responsible for the delay.
2. The delivery period shall be deemed complied with if the delivery item has left Aqseptence's factory or notice of readiness for dispatch has been given before it expires. If acceptance is to take place, the agreed acceptance date or alternatively the notice of readiness for dispatch shall be decisive except in the case of justified refusal of acceptance.
3. If dispatch or acceptance of the delivery item is delayed for reasons for which the

customer is responsible, it shall be charged for the costs arising as a result of the delay or at least 1% of the invoice amount for each month of the delay. The customer shall remain entitled to prove that Aqseptence has not incurred any losses at all as a result of the delay or has incurred losses that are significantly lower than the flat-rate charge incurred. The assertion of claims exceeding the flat-rate charge for losses caused by delay is excluded. This shall not apply in the case of willful intent or gross negligence on the part of Aqseptence.

4. The delivery period shall be extended appropriately if noncompliance with the delivery period is due to force majeure, labor disputes or other events beyond the control of Aqseptence. Aqseptence shall notify the customer as soon as possible of the beginning and end of such circumstances.
5. The customer may withdraw from the contract if performance in its entirety becomes finally and conclusively impossible for Aqseptence prior to the transfer of risk. The customer may furthermore withdraw from the contract if execution of part of the delivery of an order becomes impossible and it has a justified interest in refusing the partial delivery. If this is not the case the customer must pay the contract price attributable to the partial delivery. The same shall apply in the case of inability on the part of Aqseptence. Section VII (2) shall apply in other respects.

If impossibility or inability occurs during a delay in acceptance or the customer is solely responsible for such circumstances it shall remain obligated to provide consideration.

6. If Aqseptence falls behind and the customer incurs a loss as a result it is entitled to claim compensation for delay. This shall amount to 0.5% for each full calendar week of the delay but altogether not more than 5% of the value of the part of the overall performance that cannot be used on time or in conformity with the contract on account of the delay. Aqseptence reserves the right to prove that the customer has not incurred any losses at all or has only incurred losses that are significantly lower than the above flat-rate charge.

If in the event of a delay by Aqseptence the customer grants a reasonable grace period for performance taking account of the statutory exceptions and such grace period is not observed the customer is entitled to withdraw in accordance with statutory provisions. It is not necessary to set a grace period if the customer's interest in performance of the contract has ceased on account of the delay. The same shall apply if Aqseptence unfoundedly refuses performance finally and earnestly. The customer undertakes to state at the request of Aqseptence and within a reasonable time period whether it intends to make use of its right to withdraw.

V. Reservation of Title

1. Aqseptence shall reserve title to the delivery item until full and unconditional payment of the receivables outstanding under the purchase and supply contract.
2. The customer may neither sell, pledge nor assign the delivery item by way of security. It shall inform Aqseptence without delay in the event of attachment, confiscation or other dispositions by third parties.
3. If the customer acts in breach of the contract, particularly with regard to delayed payment, Aqseptence is entitled to require the customer to surrender the delivery item.
4. If the delivered goods are processed, combined or mixed with other items the customer shall assign joint ownership of the other items to Aqseptence on a pro rata basis to the extent that such other items are owned by the customer.
5. In derogation of V (2) the customer is entitled to resell the delivery item in the ordinary course of business before transfer of ownership and shall in such case assign all claims arising therefrom to Aqseptence. At all times the customer is required to provide Aqseptence with comprehensive information regarding the claims against third parties arising from reselling. Aqseptence may notify the debtors of such assignment.

Assertion of reservation of title or attachment of the delivery item shall not constitute withdrawal from the contract on the part of Aqseptence.

6. A request to open insolvency proceedings against the assets of the customer shall entitle Aqseptence to withdraw from the contract and to require the immediate return of the delivery item.

VI. Warranty

To the exclusion of further claims subject to the provisions of section VII Aqseptence shall have the following liability for material defects and defects of title in the delivery:

Material Defects

1. Parts that prove to be defective due to circumstances existing before the transfer of risk shall be repaired or resupplied at the option of Aqseptence. Aqseptence must be

Terms and Conditions of Sale and Delivery (02/2018) Aqseptence Group GmbH

informed in writing without delay upon discovery of such defects. Replaced parts shall become the property of Aqseptence.

2. Following consultation with Aqseptence the customer shall grant the time and opportunity required to perform all repairs and replacement deliveries Aqseptence deems necessary; Aqseptence shall otherwise be released from liability for the consequences arising as a result. The customer shall have the right to remove the defect itself or have it removed by third parties and request compensation from Aqseptence for the necessary expenses only in urgent cases where operational safety is jeopardized or in order to avert disproportionately extensive damage, in which case Aqseptence must be informed immediately.
3. Of the costs arising from the repair or replacement delivery Aqseptence shall bear the costs of the replacement part, including dispatch, provided that the complaint proves to be justified. Aqseptence shall only bear the costs of installation and removal, including the costs of providing any necessary fitters and assistants, and of taking over a fitter on-site to the extent that these are owed under the contract and reasonable. In particular, they shall no longer be deemed reasonable if the assembly work takes place outside the Federal Republic of Germany.
4. In accordance with statutory provisions the customer has a right to withdraw from the contract if, taking account of the statutory exceptions, Aqseptence allows a reasonable grace period it has been set for the repair or replacement delivery on account of a material defect to lapse without the desired result. If a defect is only minor the customer shall have only a right to reduction of the contract price. The right to reduction of the contract price shall otherwise remain excluded.
5. No warranty is given in the following cases in particular: unsuitable or improper use, faulty installation or commissioning by the customer or third parties, natural wear and tear, faulty or negligent treatment, incorrect maintenance, unsuitable equipment, defective construction work, unsuitable foundations, chemical, electrochemical or electrical influences – provided that Aqseptence is not responsible for them.
6. If the customer or a third party performs repairs incorrectly, Aqseptence shall not be liable for the consequences arising as a result.
The same shall apply to any modifications to the delivery item made without the prior agreement of Aqseptence.

Defects in Title

7. If use of the delivery item leads to infringement of industrial property rights or copyrights within Germany, Aqseptence shall at its expense procure the right of further use for the customer or modify the delivery item in such a way that industrial property rights are no longer infringed. The customer is entitled to withdraw from the contract if this is not possible under economically reasonable conditions in a manner that is acceptable to the customer or within a reasonable time period. Under the stated conditions Aqseptence is also entitled to withdraw from the contract. Aqseptence shall furthermore indemnify the customer against any claims of the industrial property right holders concerned that are uncontested or recognized by declaratory judgment.
8. The obligations of Aqseptence specified in section VI (7) relating to infringement of industrial property rights or copyrights shall be conclusive subject to the provisions of section VII (2).

They shall only apply if:

- the customer informs Aqseptence without delay of any assertion of industrial property right or copyright infringements,
- the customer provides a reasonable degree of support to Aqseptence in defending the claims asserted and/or enables Aqseptence to carry out the modification measures under section VI (7),
- Aqseptence reserves the right to take all defensive measures, including out-of-court settlements,
- the delivery item was not produced or modified on the instructions of the customer, and
- the infringement of rights was not caused by the customer having modified the delivery item without authorization or having used it in a manner not in conformity with the contract.

VII. Liability

1. The provisions of sections VI and VII (2) shall apply, to the exclusion of any further claims of the customer, if due to the fault of Aqseptence the customer cannot use the delivered item in conformity with the contract on account of nonperformance or faulty execution of proposals and consultations occurring before or after conclusion of the contract and breach of other ancillary contractual obligations, particularly instructions for use and maintenance of the delivery item.
2. In the case of damage not occurring to the delivery item itself, Aqseptence shall be liable, on whatever legal grounds, only

- in the case of willful intent,
- in the case of gross negligence on the part of the owner/bodies or executive employees,
- in the case of culpable injury to life, body or health,
- in the case of defects that were fraudulently concealed or the absence of which was guaranteed,
- as part of a promise of guarantee, and
- in the case of defects in the delivery item where there is liability under product liability law for personal injury or damage to privately used property.

In the case of culpable breach of material contractual obligations Aqseptence shall also be liable in the case of gross negligence on the part of nonexecutive employees and in the case of slight negligence, albeit limited to loss which is reasonably foreseeable in connection with contracts of this type. Any further claims are excluded.

VIII. Limitation Period

Unless Aqseptence acts with willful intent or maliciously or claims are asserted due to injury to life, health or bodily injury to a person, claims of the customer – on whatever legal grounds – shall become statute-barred within one year. This shall exclude claims of the customer under sections 478, 479, 438 (1) no. 2, 634a (1) no. 2 of the German Civil Code (BGB) and under the German Product Liability Act (ProdHaftG).

IX. Use of Software

To the extent that the scope of delivery includes software, the customer shall be granted a nontransferable, nonexclusive right to use the software supplied, including its documentation. It shall be provided exclusively for use on the delivery item for which it is intended. Use of the software on more than one system or by third parties who do not themselves have a license to use the software or forwarding it to such parties is prohibited. The customer may only reproduce, revise or translate the software or convert it from the object code into the source code to the extent legally permitted (section 96 a et seq. of the German Act on Copyright and Related Rights (UrhG)). The customer undertakes in particular not to remove copyright notices or alter them without the prior written agreement of Aqseptence.

All other rights to the software and documentation, including copies, shall remain with Aqseptence and/or the software supplier. The granting of sublicenses is not permitted.

X. Applicable Law, Place of Jurisdiction

All legal relationships between Aqseptence and the customer shall be governed exclusively by the law of the Federal Republic of Germany applicable to legal relationships between domestic parties to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

The place of jurisdiction shall be Wiesbaden. Aqseptence is nevertheless entitled to file actions at the head office of the customer.

In its contractual relationships with consumers Aqseptence is neither prepared nor required to participate in dispute resolution proceedings before a consumer arbitration board.