

		
	A3 Water Solutions GmbH Standard Terms and Conditions (T&Cs)	

A3 Water Solutions GmbH Standard Terms and Conditions (T&Cs)

Organised into the respective sections of "General Terms for Delivery", "General Terms for Installation Work" and "General Terms for Repair Work".

General Terms for Delivery

(Based on the terms for the delivery of machinery and spare parts as published by the German Mechanical Engineering Industry Association (VDMA).)

These terms apply as follows:

1. To a person acting in their professional capacity as a merchant or a self-employed individual when concluding a contract ("business person").
2. To legal entities under public law or a special fund under public law.

I. General

All deliveries and services are subject to these terms, and to any separately agreed contractual agreements. All terms of business of the client or a third party are declared to be null and void, even if the seller does not explicitly reject these terms on a case-by-case basis. Even if the seller references correspondence that contains or makes reference to the terms of business of the client or a third party, this does not constitute consent to the applicability of these terms on the part of the seller.

II. Quotation and contract conclusion

(1) All offers made by the seller are subject to confirmation and non-binding, except where offers are expressly marked as binding or include a specific acceptance deadline. The seller may accept purchase orders or orders within 14 days of receipt.

(2) A written contract of sale agreed in writing and supplemented by these general terms for delivery is the sole authority for all legal relationships between the seller and client. This contract sets out in writing and in full all agreements made between the parties to the contract concerning the subject matter of the contract. Verbal commitments made by the seller before concluding this contract are not legally binding. Verbal agreements made by the parties to the contract are replaced by the written contract except where this contract expressly states that these agreements are binding and continue to apply.

(3) Amendments and additions to the agreements made, including these General Terms for Delivery, are not valid unless made in writing. With the exception of executive directors or authorised company offices, the seller's employees are not entitled to make verbal agreements that differ to the written agreements and terms. The written form requirement can be satisfied by using telecommunication systems, particularly fax or email, as long as the copy of the signed agreement is hereby transferred.

(4) Details provided by the seller concerning the subject of the delivery or service (e.g. weights, dimensions, consumption values, load-bearing capacity, tolerances and technical data) as well as our representations thereof (e.g. drawings and figures) are approximations only, unless the fitness for the contractually envisioned purpose requires absolute precision. These details do not constitute guaranteed characteristics but are descriptions or identifiers of the delivery or service. Deviations typical in the industry and deviations reflecting legal requirements or technical improvements are permissible, as is the replacement of components by parts of equal value, insofar as these deviations and replacements do not impair fitness for the contractually envisioned purpose.

(5) The seller retains ownership of copyright to all quotations and cost estimates that they provide, and to all drawings, figures, calculations, brochures, catalogues, models, tools and other documents and materials as provided by the seller to the client. Without the express consent of the seller, the client may not share, disclose, use or reproduce these objects themselves or their content, nor permit a third party to engage in such actions with these objects. At the seller's request, the client shall return these objects in full to the seller and shall destroy any copies made if the client no longer requires the object in the course of ordinary business or if negotiations have not led to the conclusion of a contract. The storage of data made available electronically for the purpose of routine data backups is excepted from this requirement.

III. Price and payment

(1) Unless otherwise agreed, prices are ex works ("supplier's place of business") and include loading at the factory but exclude packaging and unloading. Prices exclude sales tax at the applicable statutory rate.

(2) Unless otherwise agreed, payment is to be made in full with no discount to the supplier's account following delivery of the goods.

(3) The buyer is entitled to retain payments or offset these with counter-claims only in cases where the buyer's counterclaims are uncontested or have been recognised as legally binding.

(4) Invoiced amounts must be paid within 30 days with no discount unless otherwise agreed in writing. The payment date is the date on which payment is received by the seller. Payment by cheque is not accepted unless agreed on a case-by-case basis. If the client does not pay by the due date, the outstanding amounts incur interest from the due date at 5% p.a.; this does not affect the seller's right to assert a higher rate of interest and other claims for compensation in the event of default.

(5) The seller is entitled to demand prepayment or the provision of a security before making or rendering pending deliveries or services if the seller learns of circumstances following the conclusion of the contract that are capable of significantly lowering the creditworthiness of the client, and as a result of which the payment of the seller's pending receivables by the client within the corresponding contractual relationship (including other individual orders that are governed by the same framework agreement) is endangered.

IV. Lead time, delayed deliveries

(1) Time periods and deadlines proposed by the seller for deliveries and services are always considered to be approximations unless a fixed period or a fixed deadline has been expressly confirmed or agreed.

(2) The lead time results from the agreements made by the parties to the contract. Adherence to this lead time on the part of the supplier is dependent on all commercial and technical questions being clarified between the parties to the contract, and the buyer fulfilling all of their contractual duties, such as producing the required official certificates or permits, or making any necessary advance payment. If this is not the case, the lead time is extended appropriately. This does not apply insofar as the supplier is responsible for the delay.

(3) Adherence to the lead time is dependent on the supplier's inbound deliveries being correct and timely. The supplier will provide information about likely delays as soon as possible.

(4) The lead time is considered met if the deliverable has left the supplier's factory or its readiness for dispatch has been notified before this time expires. If acceptance is required, then the acceptance date is authoritative – except in cases of justified refusal to accept – or alternatively the notification of acceptance readiness.

(5) If shipping or acceptance of the deliverable is delayed for reasons for which the buyer is responsible, then the costs resulting from this delay will be charged to the buyer from a date starting one month after notification of shipping or acceptance readiness.

(6) If non-compliance with the lead time can be attributed to force majeure, industrial action or other events lying outside the supplier's sphere of influence, then the lead time is extended appropriately. The supplier will inform the buyer about the start and the end of this state of affairs as soon as possible.

(7) The buyer can terminate the contract without notice if full performance ultimately becomes impossible for the supplier before the transfer of risk. The buyer may also terminate the contract if the performance of part of the delivery for a purchase order becomes impossible and the buyer has a legitimate interest in rejecting the partial delivery. If this is not the case, the buyer must pay the contract price due for the partial delivery. The same applies in the event of the supplier's inability to perform. Section VII.2 otherwise applies. If the impossibility or inability occurs during late acceptance or if the buyer is responsible wholly or overwhelmingly for these circumstances, then the buyer is still required to render payment.

(8) If, while taking into account the exceptions provided for by the law, the buyer offers the supplier a reasonable grace period for performance after the due date and this period expires, the buyer is entitled to terminate the contract according to the provisions of the law. If requested to by the supplier, the buyer shall state whether they wish to exercise this right of termination within an appropriate time frame. Other entitlements

		
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arising from late delivery are determined exclusively by section VII.2 of these terms.

V. Transfer of risk, acceptance

- (1) Risk is transferred to the buyer when the deliverable has left the factory – even if partial deliveries are made or the supplier has also agreed to perform other services, such as paying shipping costs or making delivery inclusive of setup/installation. If acceptance has been arranged, this is authoritative for the transfer of risk. Acceptance must be performed on the acceptance date or alternatively after the supplier has given notice of acceptance readiness. The buyer may not reject acceptance if a non-material defect is present.
- (2) If shipping or acceptance is delayed or prevented as a result of circumstances not ascribable to the supplier, then the risk transfers to the buyer on the date of notification of shipping or acceptance readiness. The supplier shall take out insurance policies at the buyer's expense if required to do so by the latter and these policies are available.
- (3) Partial shipments are permissible if acceptable for the buyer.
- (4) Storage costs after transfer of risk are borne by the client. If stored by the seller, storage costs are set at [0.25]% of the invoice amount of the deliverables to be stored, per full week of storage. The right to claim for and provide proof of higher or lower storage costs is reserved.
- (5) The shipment will be insured by the seller against theft, breakage, damage in transit, fire or water damage, or other insurable risks only at the client's express request and at the latter's cost.

VI. Retention of title

- (1) The supplier retains ownership of the deliverable until receipt of all payments – including payments owed for any ancillary services – arising from the delivery contract.
- (2) The buyer shall insure the deliverable at their own cost against theft, breakage, fire or water damage, and other risks.
- (3) The buyer shall not sell, pledge or assign the deliverable as collateral. In the event of distraint, confiscation or other third-party seizure orders, the buyer must inform the supplier of such events without undue delay.
- (4) In the event of the buyer's breach of contract, and especially if the buyer defaults, the supplier may take back the deliverable after issuing a payment reminder and the buyer shall surrender the deliverable accordingly.
- (5) Retention of title means that the supplier can demand the surrender of the deliverable only if the supplier has terminated the contract.
- (6) An application to open insolvency proceedings on the part of the buyer entitles the supplier to terminate the contract and demand the immediate return of the deliverable.

VII. Claims for defects

The warranty period is set at one year from delivery or from acceptance, where acceptance is required. This limit does not apply to the client's rights to claim compensation as a result of the loss of life, physical injury or impairment to health, or as a result of a wilful or grossly negligent neglect of duty on the part of the seller or the latter's vicarious agents – these claims lapse according to the provisions of the law.

The objects delivered must be inspected thoroughly following delivery to the client or to a third party appointed by the client. In terms of obvious defects or other defects that would be identifiable following an immediate and thorough inspection, these objects are considered to be accepted by the buyer if the seller does not receive a written notice of defects within seven working days following delivery. In terms of other defects, the deliverables are considered accepted by the buyer if the notice of defects is not received by the seller within seven working days after the point in time at which the defect was discovered; if the defect was identifiable for the client during normal use at an earlier time, however, this earlier time is authoritative for the start of the notice period. At the seller's request, a deliverable for which a notice of defects has been served must be sent back to the seller carriage paid. If the notice of defects is legitimate, the seller will reimburse the costs for the least expensive shipping method; this does not apply if the costs are increased because the deliverable is located at a place other than the place of intended use.

For quality defects and defects of title affecting the delivery, the supplier is liable while excluding other claims – subject to section VIII – as follows:

Quality defects

- (1) If parts should prove defective as a result of circumstances occurring before the transfer of risk, these parts are to be reworked or replaced

with non-defective parts at no cost, as the seller sees fit. The identification of such defects is to be reported to the supplier in writing without undue delay. Replaced parts become the property of the supplier.

- (2) To enable the supplier to undertake all such remediation work and substitute delivery as appears necessary, the buyer, after consultation with the seller, is to give the latter the necessary time and opportunity; otherwise, the supplier will not be held liable for the ensuing consequences. Only in urgent cases where operational safety is endangered or to guard against disproportionately large losses – whereby the supplier is to be informed immediately – is the buyer entitled to remedy the defect themselves or commission a third party to do so, and to demand compensation for the expenses necessary from the supplier.

- (3) Of the immediate costs resulting from the remediation work or substitute delivery, the seller – insofar as the defect notice is found to be legitimate – bears the costs of the replacement item, including shipping costs. The seller also bears the costs of dismantling and installation, as well as any costs necessary for providing the necessary fitters and ancillary staff, including travel costs, insofar as this does not create a disproportionate burden on the supplier. If the defect notice is found to be not legitimate, the buyer bears the aforementioned costs.

- (4) The buyer may exercise their right granted by the provisions of the law to terminate the contract if the supplier – while taking into account the exceptions provided for by the law – is unable to provide remediation or a substitute delivery as a result of a quality defect after being given two reasonable grace periods to do so. If only a negligible defect is present, the buyer may only exercise their right to reduce the contract price. Otherwise, the buyer is granted no right to reduce the contract price. Other entitlements are determined exclusively by section VII.2 of these terms.

- (5) In particular, liability is not accepted in the following cases: unsuitable or improper usage, incorrect installation or commissioning by the buyer or a third party, natural wear, incorrect or careless handling, failure to perform required maintenance, unsuitable operating equipment, defective construction work, unsuitable construction foundations, and chemical, electrochemical or electrical factors – insofar as no responsibility for these is borne by the supplier.

- (6) If the buyer or a third party performs substandard remediation work, the supplier is not liable for the ensuing consequences. The same applies to modifications made to the deliverable without the prior consent of the supplier.

- (7) If, in exceptional cases, the delivery of used objects is agreed with the client, no warranty is offered for quality defects as regards this delivery.

Defects of title

- (8) If the use of the deliverable leads to the infringement of industrial property rights or copyright within Germany, the supplier will, at the supplier's cost, ensure that the buyer has the basic right to further use of the deliverable or will modify the deliverable in a way that is acceptable to the buyer so that the property right infringement no longer exists. If this is not possible in an economically viable way and within a reasonable period of time, the buyer is entitled to terminate the contract. Under the conditions as stated, the supplier also has the right to terminate the contract. The supplier will also indemnify the buyer against uncontested claims or claims recognised as legally binding on the part of the property rights or copyright holder.

- (9) The obligations of the supplier stated in section VI.7 are, subject to the provisions of VII.2, exhaustive in the event of an infringement of property rights or copyright.

- They pertain only if
 - the buyer informs the supplier without delay of the assertion of property rights or copyright due to an infringement;
 - the buyer assists the supplier to an appropriate extent in mounting a defence against the asserted claims or enables the supplier to perform the modification measures stated in section VI.7;
 - the supplier may deploy any countermeasures, including settlement out of court, as the supplier sees fit;
 - the defective title does not stem from an instruction given by the buyer; and
 - the rights infringement was not created by the buyer independently modifying the deliverable or by using the deliverable in a manner that is in breach of the contract.

VIII. Supplier liability and disclaimer

- (1) The liability of the seller to provide compensation, on whatever legal basis, and in particular as a result of impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contractual

		
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negotiations and tortious acts is, in the event of a case of seller culpability, limited according to the provisions of this section.

(2) The seller is not liable in the event of ordinary negligence on the part of the seller's bodies, legal representatives, employees or other vicarious agents, insofar that the case does not involve a breach of material contractual obligations. Material contractual obligations are considered to be the seller's duty to deliver and install the deliverable in a timely manner, to ensure its freedom from defects of title and such quality defects that materially impair its functional capability or serviceability, as well as duties related to advice, protection and care that are intended to enable the client to use the deliverable in accordance with the contract or to protect the life and limb of the client's personnel, or to protect the client's property from suffering serious damage.

(3) Insofar as the seller is, in principle, liable to provide compensation according to paragraph 2, this liability is limited to the losses that the seller was able to foresee at contract conclusion as a possible consequence of a breach of contract or would have been able to do so by exercising customary care. In addition, indirect losses and consequential losses that result from defects in the deliverable are only eligible for compensation if such impairments to the intended use of the deliverable are typically to be expected.

(4) In the event of liability for ordinary negligence, the seller's duty to provide compensation for material damage and other resulting financial losses is limited per damage claim (according to the current coverage of the seller's product liability or third party insurance), even if the claim relates to an infringement of material contractual applications.

(5) The bodies, legal representatives, employees and other vicarious agents of the seller are entitled to the same limitations and exclusions to liability as are mentioned above.

(6) Insofar as the seller provides technical information or advice and this information or advice is not part of the scope of performance incumbent on the seller according to the contract, no liability is accepted for such advice and it is provided free of charge.

(7) The limitations detailed in this section do not apply to the seller's liability as a result of wilful behaviour, guaranteed product characteristics, or due to loss of life, physical injury or impairment to health, or resulting from the German Product Liability Act.

IX. Limitation

The limitation period for claims made by the buyer, regardless of the legal basis, is 12 months. The statutory periods apply to the rights to claim compensation according to section VII.2 a–d and f.

X. Software usage

Insofar as software is included in the scope of delivery, the buyer is granted a non-exclusive right to use the supplied software, including its documentation. The software is licensed to be used on the deliverable for which it is designed. Use of the software on more than one system is prohibited. The buyer may duplicate, rework or compile the software only within the scope as permitted by the law (German Copyright Act, section 69 a ff.). The buyer shall not remove manufacturer details – particularly copyright notices – or change such details without the prior explicit consent of the supplier. All other rights to the software and documentation, including copies thereof, are retained by the supplier or the software manufacturer. The buyer is not permitted to issue sub-licences. The buyer is not permitted to release source code under any circumstances.

XI. Applicable law, place of jurisdiction

The applicable law of the Federal Republic of Germany governing the legal relationships between domestic parties applies exclusively to all legal relationships between the supplier and the buyer. The place of jurisdiction is the court of jurisdiction for the supplier's registered place of business. However, the supplier is entitled to file a suit at the buyer's registered place of business.

General Terms for Installation

(Based on the terms for installation within Germany as published by the German Mechanical Engineering Industry Association (VDMA).)

These terms apply as follows:

- (1) To a person acting in their professional capacity as a merchant or a self-employed individual when concluding a contract (business person).
- (2) To legal entities under public law or a special fund under public law.

I. Scope

These Terms for Installation apply to installation work accepted by A3 Water Solutions GmbH ('installer') unless other agreements have been made on a case-by-case basis.

The buyer accepts these terms for installation and their enforcement without reservations by placing the order.

All terms of business of the client or a third party are declared to be null and void, even if the seller does not explicitly reject these terms on a case-by-case basis. Even if the seller references correspondence that contains or makes reference to the terms of business of the client or a third party, this does not constitute consent to the applicability of these terms on the part of the seller.

II. Installation price

- (1) Installation work is billed by the price list and the calculated time taken unless a fixed price has been expressly agreed.
- (2) The amounts agreed are understood to be exclusive of sales tax, which the installer must also be paid at the statutory rate.

Invoices are to be paid upon receipt without deduction unless otherwise agreed in writing. Work performed voluntarily that was not agreed with A3 Water Solutions GmbH may not be deducted from the invoice. The buyer is entitled to retain payments or offset these with counterclaims only in cases where the buyer's counterclaims are uncontested or have been recognised as legally binding.

III. Cooperation by the buyer

(1) The buyer must provide support to installation personnel while installation is being performed, at the buyer's own cost.

(2) The buyer must take the necessary and specific precautions to protect personnel and assets at the installation site. The buyer must also inform the installation supervisor about existing specific safety standards if these are relevant for the installation personnel. The buyer notifies the installation supervisor about breaches of such safety standards by installation personnel. In the event of serious breaches, the buyer may consult with the installation supervisor to dismiss the offender from the installation site.

The buyer for their part is responsible for compliance with applicable standards and regulations as specified by the law, regulatory bodies and professional associations, and must take measures to prevent accidents, and protect the personnel and assets of A3 Water Solutions GmbH.

IV. Technical assistance from the buyer

(1) The buyer shall provide technical assistance at their own cost, and as follows in particular:

- a) Provisioning of necessary and appropriate ancillary staff (bricklayers, carpenters, locksmiths and other skilled or unskilled tradespersons) in the numbers and for the time required for the installation; ancillary staff must follow the instructions of the installation supervisor. The installation supervisor accepts no liability for ancillary staff. If ancillary staff cause a defect or damage while following the installation supervisor's instructions, then section VII and section VIII apply.
- b) Execution of all excavation, construction, bedding and scaffolding work, including procurement of the necessary building materials.
- c) Provisioning of the necessary equipment and the tools (e.g. lifting gear), as well as the necessary general items and materials to be used on site (e.g. scaffolding timber, wedges, underlays, etc.).
- d) Provisioning of heating, lighting, energy and water, and their connections/ports.
- e) Provisioning of suitable, lockable rooms for storing the tools belonging to installation personnel.
- f) Transportation of installation parts to the installation site, protection of installation site and materials from all kinds of harmful external influences, site cleaning.
- g) Provisioning of suitable break rooms and workspaces for installation personnel, plus first aid facilities.
- h) Provisioning of materials and execution of other activities required for the calibration of the object to be installed and as necessary to complete a contractually envisaged test and evaluation.

(2) In providing technical assistance, the buyer must ensure that installation work can begin soon after the arrival of the installation personnel and can be performed without undue delays until acceptance by the buyer. If the installer requires special plans or instructions, these will be provided to the buyer well in advance of installation.

		
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(3) If the buyer does not fulfil these duties, the installer may set a grace period and may then decide – although is not obliged – to complete the activities required instead of the buyer and at the buyer's own cost. This does not affect the installer's entitlement to other statutory rights.

V. Installation deadline and delays

(1) The installation deadline is considered met if the installation is ready for acceptance by the buyer or, in the event of a contractually envisaged test, ready for testing, before this deadline expires.

(2) If installation is delayed by interventions related to industrial action, especially strike and lockouts, or the occurrence of events for which the installer is not responsible, then the installation deadline is extended appropriately insofar as such obstacles demonstrably have a significant influence on the completion of the installation work.

(3) If, while taking into account the exceptions provided for by the law, the buyer offers the installer two reasonable grace periods for performance after the due date and these periods expire, the buyer is entitled to terminate the contract according to the provisions of the law. If requested to by the installer, the buyer shall state whether they wish to exercise this right of termination within an appropriate time frame. Other entitlements as a result of delay are determined exclusively by section VIII.3 of these terms.

The duration of the work is substantially dependent on the circumstances at the installation site, the support provided by the buyer and – for repairs – the scope of repairs determined following dismantling work. Accordingly, if no fixed date is agreed, all details concerning the probable duration of work constitute non-binding deadlines for performance.

If a fixed period of time has been agreed for the execution of the work, the following applies: the start of this period is dependent on all commercial and technical questions having been clarified, and the buyer having fulfilled all of their contractual duties as are required before work commences (such as producing the required official certificates or permits, or making any necessary advance payment). If this is not the case, the deadline is extended appropriately.

VI. Acceptance

(1) The buyer shall perform acceptance of the installation work as soon as they have been notified of its completion and once any contractually agreed test of the installed object has taken place. If the installation work has not been performed as agreed in the contract, the installer shall remedy the defect. This does not apply if the defect is negligible in terms of the buyer's interests or is a result of circumstances for which the buyer is responsible. If a non-material defect is present, then the buyer cannot refuse acceptance.

(2) If acceptance is delayed through no fault of the installer, the installation work is deemed accepted two weeks after the notification of its completion.

(3) The installer's liability for visible defects ceases on acceptance, insofar as the buyer has not reserved the right to assert a claim for a specific defect.

VII. Claims for defects

(1) After acceptance of the installation work, the installer is liable for defects in the work, excluding all other claims of the buyer but without prejudice to (5) and section VIII, in that the installer must remedy the defects. The buyer must notify the installer of a discovered defect in writing and without delay.

(2) The installer is not liable if the defect is negligible in terms of the buyer's interests or results from circumstances for which the buyer is responsible.

(3) In the event of the buyer or a third party making inappropriate modifications or repairs to the installation work without the prior consent of the installer, the installer is not liable for the ensuing consequences. Only in urgent cases where operational safety is endangered or to guard against disproportionately large losses – whereby the installer is to be informed immediately – or when the installer, while allowing for the exceptions provided for by the law, is unable to remedy the defect after being given a reasonable grace period to do so, is the buyer entitled, according to the provisions of the law, to remedy the defect themselves or commission a third party to do so, and to demand compensation for the necessary costs from the installer.

(4) Of the immediate costs resulting from the defect remediation, the installer – insofar as the defect notice is found to be legitimate – bears the costs of the replacement item, including shipping costs. The installer also bears the costs of dismantling and installation, as well as any costs necessary for providing the necessary fitters and ancillary staff, including

travel costs, insofar as this does not create a disproportionate burden on the installer.

(5) If the installer – while allowing for the exceptions provided for by the law – is unable to remedy the defect after being given a reasonable grace period to do so, the buyer is entitled to reduce the purchase price according to the provisions of the law. The buyer may terminate the contract only if the installation work, despite the reduced purchase price, is demonstrably of no utility to the buyer. Other entitlements are determined exclusively by section VIII.3 of these terms.

VIII. Installer liability and disclaimer

(1) If an installation part supplied by the installer is damaged during installation and the installer is at fault, the installer shall choose between repairing the part and supplying a new part at the installer's own cost.

(2) If the installed object cannot be used by the buyer as envisaged by the contract and the installer is at fault, as a result of errors made or omissions concerning recommendations and advice given before or after contract completion, as well as other ancillary contractual duties – including in particular instructions for the operation and maintenance of the installed object – then the provisions of sections VII and VIII.1 and 3 apply, with the exclusion of further claims of the buyer.

(3) For losses not arising directly from the installation object itself, installer liability is limited to the following cases, regardless of the legal basis:

- a) Willful intent
- b) Gross negligence on the part of the company owner/bodies or directors
- c) Culpable injury to life, limb and health
- d) Defects the installer has maliciously concealed
- e) On the terms of a specific warranty
- f) Where the installer is liable for personal injury or damage to privately used property according to the German Product Liability Act. Other claims, including but not limited to claims for lost profits and consequential losses, are excluded.

IX. Limitation

The limitation period for claims made by the buyer, regardless of the legal basis, is 12 months. The statutory periods apply to the rights to claim compensation according to section VIII.3 a–d and f. If the installer performs the installation work on a structure and thereby causes this structure to become defective, the statutory periods also apply.

Insofar as the buyer acquires new rights relating to quality defects as a result of defect remediation work performed by A3 Water Solutions GmbH, all claims based on these rights lapse no later than 6 months following defect remediation, and these claims are limited solely to defects arising directly in conjunction with the defect remediation.

X. Compensation by the buyer

If the equipment or tools supplied by the installer to the installation site become damaged or are lost through no fault of the installer, the buyer shall compensate the installer for these losses or damage. This does not apply to damage that can be attributed to normal wear and tear.

XI. Applicable law, place of jurisdiction

(1) The applicable law of the Federal Republic of Germany governing the legal relationships between domestic parties applies exclusively to all legal relationships between the installer and the buyer.

(2) The place of jurisdiction is the court of jurisdiction for the installer's registered place of business. However, the installer is entitled to file a suit at the buyer's registered place of business.

General Terms for Repairs

(Based on the terms for repairs to machinery and plant within Germany as published by the German Mechanical Engineering Industry Association (VDMA).)

These terms apply as follows:

- (1) To a person acting in their professional capacity as a merchant or a self-employed individual when concluding a contract (business person).
- (2) To legal entities under public law or a special fund under public law.

I. Contract conclusion, general

(1) If an uncontested written order confirmation exists, this is authoritative for the content of the contract and the scope of the repair work.

		
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(2) If the object to be repaired is not supplied by the contractor, the customer must provide information about existing industrial property rights affecting the object; insofar as the contractor is not culpable, the customer indemnifies the contractor against any third-party claims based on industrial property rights.

All terms of business of the client or a third party are declared to be null and void, even if the seller does not explicitly reject these terms on a case-by-case basis. Even if the seller references correspondence that contains or makes reference to the terms of business of the client or a third party, this does not constitute consent to the applicability of these terms on the part of the seller.

II. Repairs that cannot be completed

(1) Work performed by the contractor that is required in order to submit a quotation as well as other documented effort (troubleshooting time = working time) will be billed to the customer if the repair cannot be performed by the contractor for reasons for which the contractor is not responsible, and in particular:

- The reported fault did not occur during inspection
 - Replacement parts cannot be procured
 - The customer was responsible for missing the agreed appointment
 - The contract was terminated during performance of the work
- (2) The object to be repaired only needs to be restored to its original state at the express request of the customer and in reimbursement of the costs, unless it is the case that the work performed was not necessary.

(3) In the event of a repair being impossible, the contractor is not liable for damage to the object to be repaired, the infringement of ancillary contractual duties or for damage not occurring on the object to be repaired itself, regardless of the legal basis on which the customer asserts a claim. However, the contractor is liable as a result of wilful intent, gross negligence on the part of the company owner/bodies or directors, and a culpable breach of material contractual obligations.

In the event of a culpable breach of material contractual obligations, the contractor is liable only for the reasonably foreseeable losses typical for the contract – except in cases of wilful intent and gross negligence on the part of the company owner/bodies or directors.

III. Costings, cost estimates

(1) Insofar as possible, the customer will be informed of the estimated repair price on contract conclusion; the customer may otherwise set cost limits.

If these costs do not cover the performance of the repair or if the contractor deems additional work to be necessary while performing the repair work, then the customer's consent must be obtained if the stated costs will be exceeded by more than 15%.

(2) If a quotation with binding pricing details is required before performance of the repair work, the customer must expressly request such a quotation. Unless otherwise agreed, a quotation of this kind is binding only if it is submitted in writing. The customer will be billed for such a quotation. Work required in order to prepare the quotation will not be billed to the customer insofar as this work can be utilised in the performance of the repair itself.

IV. Price and payment

(1) The contractor may request a reasonable advance payment on contract conclusion.

(2) In calculating the costs of the repair, the prices for parts used, materials and special items must be specified separately, as must the prices for hours worked and travel/transportation expenses. If the repair work is performed on the basis of a binding quotation, then a reference to this quotation is sufficient and only deviations from the scope of work agreed must be specified separately.

(3) The customer will also be billed for statutory sales tax at the current rate.

(4) Any correction to the invoice made by the contractor and any objection raised to the invoice by the customer must be made in writing no later than four weeks after invoice receipt.

(5) Payment is to be made in full following acceptance and the handover or transfer of the invoice, unless otherwise agreed in writing.

(6) The customer may not offset the invoice against a counterclaim unless the counterclaim is recognised by the contractor, is uncontested or has been recognised as legally binding by a court of law.

(7) Default interest is charged at five percentage points above the current base rate set by the German Bundesbank. This rate is to be raised or lowered if the contractor can prove the burden of a higher rate of interest or the client can prove the burden of a lower rate of interest.

V. Cooperation and technical assistance provided by the customer for repairs outside the contractor's facilities

(1) The customer must provide support to repair personnel while the repair is being performed, at the customer's own cost.

(2) The customer must take the necessary and specific precautions to protect personnel and assets at the repair site. The buyer must also inform the repair supervisor about existing specific safety standards if these are relevant for the repair personnel. The customer notifies the contractor about breaches of such safety standards by repair personnel. In the event of serious breaches, the customer may consult with the repair supervisor to dismiss the offender from the repair site.

(3) The customer shall provide technical assistance at their own cost, and as follows in particular:

- a) Provisioning of heating, lighting, power and water, and their necessary connections/ports.
- b) Provisioning of the necessary, dry and lockable rooms for storing the tools belonging to repair personnel.
- c) Protection of the repair site and materials from all kinds of harmful external influences, site cleaning.
- d) Provisioning of suitable break rooms and workspaces that are secured against theft (with heating, lighting, washing and sanitary facilities) for repair personnel, as well as first aid facilities.
- h) Provisioning of materials and execution of other activities required for the calibration of the object to be repaired and as necessary to complete a contractually envisaged test and evaluation.

(4) In providing technical assistance, the customer must ensure that repair work can begin soon after the arrival of the repair personnel and can be performed without undue delays until acceptance by the customer. If the contractor requires special plans or instructions, these will be provided to the customer well in advance of the repair.

(5) If the customer does not fulfil these duties, the contractor may set a grace period and may then decide – although is not obliged – to complete the activities required instead of the customer and at the customer's own cost. This does not affect the contractor's entitlement to other statutory rights.

VI. Transportation and insurance for repairs at the contractor's facilities

(1) If not otherwise agreed in writing or if the repair does not involve a warranty claim, the transportation of the object to be repaired to and from the contractor's facility as requested by the customer, and including any packing and loading, will be billed to the customer. Otherwise, the customer will deliver the object to be repaired to the contractor at the customer's cost and the customer will then collect the object from the contractor after the repair has been completed.

(2) The customer bears the risk of transportation.

(3) If requested by the customer, transportation to and from the contractor will be insured at the customer's cost against insurable transportation risks such as theft, breakage and fire.

(4) If the customer is responsible for a delay in handing over the repaired object, the contractor may bill the customer for storage at the former's facility. The repaired object may also be stored elsewhere, as the contractor sees fit. The costs and risks of storage are borne by the customer.

		
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VII. Repair deadline and delays to repairs

- (1) Details given concerning repair deadlines are based on estimates and are therefore not binding.
- (2) The customer may only request the agreement of a binding repair deadline – which must be explicitly agreed as binding – once the precise scope of repair work is known. Compliance with repair deadlines and periods is conditional on the timely receipt of all information and documentation to be supplied by the client, such as any necessary permits, approvals and clarifications, as well as the timely fulfilment of the client's duties of cooperation.
- (3) The binding repair deadline is considered met if the repaired object is ready for handover to the customer or, in the event of a contractually envisaged test, ready for testing, before this deadline expires.
- (4) If additional or supplementary orders are subsequently placed or if additional repair work becomes necessary, then the agreed repair deadline is extended accordingly.
- (5) If the repair work is delayed by interventions related to industrial action, especially strike and lockouts, or the occurrence of events for which the contractor is not responsible, then the repair deadline is extended appropriately insofar as such obstacles demonstrably have a significant influence on the completion of the repair work.
- (6) If, while taking into account the exceptions provided for by the law, the customer offers the contractor a reasonable grace period for performance after the due date and this period expires, the customer is entitled to terminate the contract according to the provisions of the law. If requested to by the contractor, the customer shall state whether they wish to exercise this right of termination within an appropriate time frame. Other entitlements as a result of delay are determined exclusively by section XI. 3 of these terms.

VIII. Acceptance

- (1) The customer shall perform acceptance of the repair work as soon as they have been notified of its completion and once any contractually agreed test of the repaired object has taken place. If the repair work has not been performed as agreed in the contract, the contractor shall remedy the defect. This does not apply if the defect is negligible in terms of the customer's interests or results from circumstances for which the customer is responsible. If a non-material defect is present, then the customer cannot refuse acceptance.
- (2) If acceptance is delayed through no fault of the contractor, the repair work is deemed accepted two weeks after the notification of its completion.
- (3) The contractor's liability for visible defects ceases on acceptance, insofar as the customer has not reserved the right to assert a claim for a specific defect.

IX. Retention of title and extended right of pledge

- (1) The contractor retains ownership of all accessory or replacement parts and replacement units used until receipt of all payments from the repair contract. The parties may make further agreements concerning securities.
- (2) On account of the receivable owed from the repair contract, the contractor has a right of pledge to the customer's repair object that the former has taken possession of as a result of the contract. This right of pledge may also be asserted as a result of receivables from work, deliveries of replacement parts and other services performed earlier, insofar as these are related to the object be repaired. The right of pledge applies to other claims from the business relationship only if these are uncontested or legally enforceable.

X. Claims for defects

- (1) After acceptance of the repair work, the contractor is liable for defects in the work, excluding all other claims of the customer but without prejudice to (5) and section XI, in that the contractor must remedy the defects. The customer must notify the contractor of a discovered defect in writing and without delay.
- (2) The contractor is not liable if the defect is negligible in terms of the customer's interests or results from circumstances for which the customer is responsible. This applies in particular to the parts provisioned by the customer.
- (3) In the event of the customer or a third party making inappropriate modifications or repairs to the work without the prior consent of the contractor, the contractor is not liable for the ensuing consequences. Only in urgent cases where operational safety is endangered or to guard against disproportionately large losses – whereby the contractor is to be informed immediately – or when the contractor, while allowing for the exceptions provided for by the law, is unable to remedy the defect after

- being given two reasonable grace periods to do so, is the customer entitled, according to the provisions of the law, to remedy the defect themselves or commission a third party to do so, and to demand compensation for the necessary costs from the contractor.
 - (4) Of the immediate costs resulting from the defect remediation, the contractor – insofar as the defect notice is found to be legitimate – bears the costs of the replacement item, including shipping costs. The contractor also bears the costs of dismantling and installation, as well as any costs necessary for providing the necessary fitters and ancillary staff, including travel costs, insofar as this does not create a disproportionate burden on the contractor.
 - (5) If the contractor – while allowing for the exceptions provided for by the law – is unable to remedy the defect after being given a reasonable grace period to do so, the customer is entitled to reduce the purchase price according to the provisions of the law. The customer may terminate the contract only if the repair work, despite the reduced purchase price, is demonstrably of no utility to the customer.
- Other entitlements are determined exclusively by section XI. 3 of these terms.

XI. Contractor liability and disclaimer

- (1) If a part of the object to be repaired is damaged and the contractor is at fault, the contractor shall choose between repairing the part and supplying a new part at the contractor's own cost. The liability to provide a replacement is limited to the contractually agreed repair price. Section XI.3 otherwise applies.
- (2) If the repaired object cannot be used by the customer as envisaged by the contract and the contractor is at fault, as a result of errors made or omissions concerning recommendations and advice given before or after contract completion, as well as other ancillary contractual duties – including in particular instructions for the operation and maintenance of the installed object – then the provisions of sections X and XI.1 and 3 apply, with the exclusion of further claims of the customer.
- (3) For losses not arising directly from the repaired object itself, contractor liability is limited to the following cases, regardless of the legal basis:
 - a) Wilful intent
 - b) Gross negligence on the part of the company owner/bodies or directors
 - c) Culpable injury to life, limb and health
 - d) Defects the contractor has maliciously concealed
 - e) On the terms of a specific warranty
 - f) Where the contractor is liable for personal injury or damage to privately used property according to the German Product Liability Act.
Other claims, including but not limited to claims for lost profits and consequential losses, are excluded.

XII. Limitation

The limitation period for claims made by the customer, regardless of the legal basis, is 12 months. The statutory periods apply to the rights to claim compensation according to section XI.3 a–d and f.

XIII. Compensation by the customer

If, during repair work performed outside the contractor's facility, the equipment or tools supplied by the contractor to the repair site become damaged or are lost through no fault of the contractor, the customer shall compensate the contractor for these losses or damage. This does not apply to damage that can be attributed to normal wear and tear.

XIV. Applicable law and place of jurisdiction

- (1) The applicable law of the Federal Republic of Germany governing the legal relationships between domestic parties applies exclusively to all legal relationships between the contractor and the customer.
- (2) The place of jurisdiction is the court of jurisdiction for the contractor's registered place of business. However, the contractor is entitled to file a suit at the customer's registered place of business.
