

# General Terms and Conditions of Business and Delivery of the Company Hamm Hydraulik GmbH & Co. KG

## 1. General

- 1.1. These General Terms and Conditions (GTC), which the respective customer acknowledges upon conclusion of the contract, apply to all business relationships of the company Hamm Hydraulik GmbH & Co. KG (hereafter referred to as: Company HHydraulik), with the exception of rental services provided by the Company HHydraulik. The GTC apply in particular to contracts relating to the sale and/or delivery of movable goods.
- 1.2. The GTC shall only apply if the customer is an entrepreneur (Section 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.
- 1.3. Unless otherwise agreed, the GTC shall also apply to future contracts of the same type with the customer concerned, even if they are not expressly agreed again.
- 1.4. Alternative provisions, in particular the General Terms and Conditions of the customer, shall not become part of the contract, even if they are not expressly excluded. This shall also apply if services are performed without reservation in the knowledge of the customer's General Terms and Conditions.
- 1.5. Individual agreements made with the customer in individual cases (including collateral agreements, supplements and amendments) shall take precedence over these GTC. Subject to proof to the contrary, a written contract or written confirmation of the Company HHydraulik shall be decisive for the content of such agreements.

Furthermore, any deviating provisions in the offer or order confirmation letters of the Company HHydraulik shall take precedence over these GTC.
- 1.6. Legally relevant declarations and notifications of the parties with regard to the concluded contract (e.g. setting of a deadline, notice of defects, withdrawal or reduction) must be submitted in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Legal formal requirements and other evidence, particularly in the case of doubts concerning the legitimacy of the declarant, shall remain unaffected.

## 2. Conclusion of the Contract

- 2.1. All offers made by the Company HHydraulik are subject to confirmation and non-binding. This shall also apply if the Company HHydraulik has provided the customer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents.
- 2.2. Orders placed by the customer shall be considered to be a binding contractual offer. The contract shall not be deemed to have been concluded until acceptance of the order has been confirmed by us in writing.
- 2.3. Unless otherwise stated in the order, the Company HHydraulik is entitled to accept a contractual offer from the customer within 3 working days of receipt.

## 3. Delivery, Transfer of Risk, Dispatch

- 3.1. Delivery dates are non-binding unless otherwise agreed. The Company HHydraulik shall however endeavour to meet the specified delivery dates.
- 3.2. Delivery shall be made at the registered office of HHydraulik, which shall also be the place of performance for the delivery and any subsequent performance. At the customer's request and expense, the goods will be shipped to an alternative destination. In this case, the Company HHydraulik shall be entitled to determine the type of shipment (transport company, shipping route, packaging) itself. Furthermore, the Company HHydraulik shall be entitled to insure the shipment of the goods within the customary scope of trade and to charge the costs incurred for this to the customer.
- 3.3. The risk of accidental loss and accidental deterioration of the goods shall pass to the customer upon transfer to the customer. In the case of sale by dispatch, the risk of accidental loss and accidental deterioration of the goods, as well as the risk of delay, shall pass to the forwarding agent, carrier or any other person or body designated to carry out the shipment at the time of the delivery of the goods. If an acceptance test has been agreed, this

shall be decisive for the transfer of risk. In all other respects the statutory provisions of the law on contracts for goods and services shall also apply accordingly to any acceptance test that has been agreed. Transfer or acceptance shall be deemed to have taken place if the customer is in default of acceptance.

## 4. Prices and Terms of Payment

- 4.1. Unless otherwise agreed, the current prices of the Company HHydraulik at the time of the conclusion of the contract shall apply in each case. The prices are ex-warehouse net prices plus the applicable statutory taxes.
- 4.2. In the absence of a special agreement, payments are due within 30 days of invoicing and delivery or acceptance. The Company HHydraulik is entitled at any time - also within the framework of its current business relationships - to carry out a delivery or service in whole or in part in return for advance payment only. The Company HHydraulik shall declare a corresponding reservation at the time of order confirmation at the latest.

## 5. Retention of Title

- 5.1. Until full payment of all present and future claims of the Company HHydraulik that arise from the contract that has been concluded and/or any current business relationship (secured claims), the Company HHydraulik shall retain the title to the delivered goods. The goods which are subject to a retention of title may not be pledged to third parties nor transferred by way of security until the secured claims have been paid in full.
- 5.2. The customer shall immediately notify the Company HHydraulik in writing if an application for the opening of insolvency proceedings is filed or if the goods belonging to the Company HHydraulik are accessed by third parties (e.g. seizures).
- 5.3. The customer is obliged to treat the goods owned by the Company HHydraulik with care and to insure them at its own expense against water, fire, explosion and theft. Upon request, the customer shall provide proof of insurance.
- 5.4. If the customer acts contrary to the terms of the contract, in particular if the prices that are due are not paid, the Company HHydraulik shall be entitled to withdraw from the contract in accordance with the legal regulations and/or demand the return of the goods on the basis of the retention of title. The demand for the return of goods shall not be deemed to include a simultaneous declaration of withdrawal; instead, the Company HHydraulik shall only be entitled to demand the return of the goods and reserve the right of withdrawal. If the customer fails to pay the due purchase price, the Company HHydraulik shall only be entitled to assert the rights if it has unsuccessfully set the customer a reasonable deadline for payment beforehand or such a deadline may be dispensed with according to the legal regulations.
- 5.5. The customer is entitled to sell or process the delivered goods in the ordinary course of business until revoked in accordance with 5.5. c. The following shall apply in this case:

- a. The retention of title shall extend to the full value of the products that result from the processing, mixing or combination of the goods of the Company HHydraulik and the Company HHydraulik shall be deemed to be the manufacturer. If the property rights of third parties remain in force in the case of the processing, mixing or combination with goods of third parties, the Company HHydraulik shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply to the resulting product as to the goods which are delivered under retention of title.
- b. The claims against third parties arising from the re-sale of the goods or the product are hereby assigned as security by the customer to the Company HHydraulik in their entirety or to the level of any co-ownership share of the Company HHydraulik in accordance with the preceding paragraph. The Company HHydraulik hereby accepts the assignment. The obligations of the customer stated in 5.2. and 5.3. shall also apply with regard to the assigned claims.
- c. The customer shall remain authorised to collect the claim in addition to the Company HHydraulik. The Company HHy-

draulik undertakes not to collect the claim as long as and provided that the customer meets its payment obligations towards the Company HHydraulik, there is no inability to pay on the part of the customer and the Company HHydraulik has not asserted the retention of title by exercising a right according to 5.4. If this is the case, however, the Company HHydraulik may demand that the customer disclose the assigned claims and their debtors, provide all information required for collection, transfer the associated documents and inform the debtors (third parties) of the assignment. In this case, the Company HHydraulik shall also be entitled to revoke the customer's permission to further sell and process the goods which are subject to the retention of title.

d. If the realisable value of the securities exceeds the claims of the Company HHydraulik by more than 10%, securities shall be released at the customer's request at the discretion of the Company HHydraulik.

## **6. Liability for Defects, Duty to Submit Notice of Defects**

- 6.1 The statutory provisions shall apply to the customer's rights in the event of material defects and defects of title, unless otherwise specified.
- 6.2 The basis of the liability for defects of the Company HHydraulik are above all the quality agreements that have been entered into. Insofar as the properties have not been agreed, an assessment shall be carried out in accordance with the statutory provisions as to whether a defect exists or not. However, the Company HHydraulik shall assume no liability for public statements of the manufacturer or other third parties (e.g. advertising statements), to which the customer has not referred to as being decisive for itself.
- 6.3 In the case of a commercial transaction, the customer's claims for defects shall presuppose that the customer has fulfilled its statutory obligations to inspect and submit notice of defects (Sections 377, 381 of the German Civil Code (BGB)). If a defect becomes apparent during the delivery, inspection or at any later point in time, the Company HHydraulik shall be notified of this immediately in writing. If the customer fails to carry out the proper inspection and/or submit notification of defects, the liability of the Company HHydraulik for the defect which is not reported or not reported in time or in the appropriate manner shall be excluded in accordance with the statutory provisions.
- 6.4 After an agreed acceptance test of the goods by the customer has been carried out, the notification of defects that can be detected during the agreed type of acceptance shall be excluded.

## **7. Other Liability of the Company HHydraulik**

- 7.1. Unless otherwise stipulated by these General Terms and Conditions or the contract, the Company HHydraulik shall be liable for compensation only in the case of intent and gross negligence. This shall not apply
  - a. to claims for damages due to injury to life, body or health;
  - b. claims based on the Product Liability Act
  - c. or claims which are based on a breach of essential contractual obligations.Essential contractual obligations are those whose fulfilment is required to achieve the purpose of the contract.
- 7.2. In the case of a negligent breach of an essential contractual obligation, the liability of the Company HHydraulik shall be limited in terms of amount to the damage which is foreseeable and typical according to the nature of the transaction in question.
- 7.3. The liability limitations resulting from clauses 7.1. and 7.2. shall also apply in the case of breaches of duty by or for the benefit of persons whose fault is attributable to the Company HHydraulik in accordance with statutory provisions.

## **8. Statute of Limitations**

- 8.1 The general limitation period for claims arising from material defects and defects of title shall be one year and shall begin upon the delivery by the Company HHydraulik and, in the case of work performed by the Company HHydraulik, upon its acceptance.
- 8.2 In the case of a building or an object which has been used for a building according to its standard form of use and which has caused its defectiveness (building material), the limitation period shall be five years from the time of delivery or acceptance in accordance with the statutory regulations. Other special statutory limitation provisions (in particular, Section 438, Paragraph 1, Subpar-

agraph 1, Paragraph 3, Sections 444, 479 of the German Civil Code (BGB)) shall remain unaffected.

- 8.3 The above limitation periods as stipulated by the law on the sale of and/or on contracts for goods and services shall also apply to contractual and non-contractual claims for damages by the customer which are based on a defect in the goods, unless the application of the standard statutory limitation period (Sections 195, 199 of the German Civil Code (BGB)) would result in a shorter limitation period in the individual case. However, claims for damages asserted by the customer pursuant to Clause 7.1. a. and b. shall become statute-barred exclusively in accordance with the statutory limitation periods.

## **9. Assignment, Offset, Right of Retention**

- 9.1. Offsetting by the customer shall only be permissible on the basis of counterclaims which have been legally determined or explicitly recognised by the Company HHydraulik.
- 9.2. The assertion of rights of retention by the customer shall only be permitted if the counterclaim is based on this contract.
- 9.3. The customer may assign claims against the Company HHydraulik only with the written agreement of the latter.

## **10. Choice of Law, Place of Performance, Place of Jurisdiction,**

- 10.1. The legal relationship between the Company HHydraulik and the customer shall be exclusively governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.
- 10.2. The place of performance for services and payments is Essen (Germany).
- 10.3. If the customer is a merchant, a legal entity under public law or a special fund under public law, the place of jurisdiction shall be Essen (Germany). The above shall also apply if the customer does not have a general place of jurisdiction in Germany or moves its place of residence or habitual abode outside the Federal Republic of Germany after placing the order or if its habitual abode is unknown at the time the action is filed.

## **11. Final Provisions**

- 11.1. Insofar as provisions of these GTC or the contract are wholly or partially invalid, void or unenforceable or lose their legal validity or enforceability at a later time, this shall not affect the validity of the remaining provisions.
- 11.2. The above shall also apply if it becomes apparent that the GTC or the contract contain an omission. In place of the invalid, void, unenforceable provision, or in order to make up for the omission, an appropriate provision shall apply which, insofar as this is legally permissible, comes closest to what the contracting parties intended or would have intended according to the meaning and purpose of the contract if they had considered the point upon the conclusion of the contract or upon the subsequent inclusion of a provision
- 11.3. The GTC of the Fa. HHydraulik exist in a German Version and an English Version. In case of discrepancies between both versions, the German version shall prevail.

(correct as of February 2019)