

# General Sale and Delivery Terms POWER-HYDRAULIK GmbH

## 1. General, scope

- 1.1 Our General Sale and Delivery Terms (GST) shall apply to the sale and/or delivery of movable goods, regardless of whether these are goods manufactured by us or purchased from Suppliers.
- 1.2 These GST shall apply to all – including future – business transactions with the Customer, provided that the Customer is a contractor in the sense of § 310 para. 1 BGB (German Civil Code), a legal entity under public law or a special fund under public law, unless otherwise agreed in individual contracts. These GST shall apply exclusively; we shall recognize any terms and conditions of the Customer which conflict with or deviate from our GST only if we have expressly agreed to them in writing. Our GST shall also apply if we carry out the delivery without reservation in the knowledge of conflicting or deviating conditions of the Customer. Individual agreements made in individual cases shall have priority in any case, whereby the content of such agreements shall be governed by our written confirmation or (if available) a written contract, subject to proof to the contrary.
- 1.3 References to the applicability of statutory provisions shall only serve the purpose of clarification. The statutory provisions shall also apply without clarification insofar as they are not directly amended or expressly excluded in these GST.

## 2. Offer, conclusion of the contract, cancellations

- 2.1 Our offers shall always be non-binding, unless they are expressly designated as binding.
- 2.2 The ordering of goods by the Customer shall be considered a binding offer of contract. We are entitled to accept the offer within 5 working days from receipt by us by way of written order confirmation or by way of delivery. Subsequent changes and additions require our written confirmation.
- 2.3 The cancellation of an order requires our consent. If we take back the goods, the inspection and restocking costs incurred shall be deducted if a credit note is issued. Customer-specific custom designs cannot be taken back. The return of the goods shall be at the expense and risk of the Customer.

## 3. Prices and payment terms

- 3.1 Unless otherwise agreed, our prices are in Euro and exclude the costs for packaging and transport as well as other additional costs and the value added tax applicable on the day of invoicing. Our invoices are payable within 10 days with 2% discount and within 30 days net, unless otherwise agreed.
- 3.2 We reserve the right to charge a processing fee (small quantity surcharge) for processing small orders (below a minimum delivery value per shipment). The currently applicable values are available on our website.
- 3.3 We reserve the right to make price adjustments if, after conclusion of the contract, there is a significant change in wage costs, material prices, energy costs and/or other costs on which our price calculation is based. We will provide evidence of these costs to the Customer upon request.
- 3.4 The Customer may only offset against undisputed or legally established claims. He shall only be entitled to exercise a right of retention if his counterclaim is based on the same contractual relationship.
- 3.5 The legal regulations concerning the consequences of default of payment shall apply.

## 4. Delivery lead time, default of delivery, default of acceptance

- 4.1 The beginning of the delivery lead time stated by us presupposes the clarification of all commercial and technical questions.
- 4.2 Compliance with our obligation to delivery further requires the timely and proper fulfillment of the obligations of the Customer. We reserve the right to object to unfulfilled contracts.
- 4.3 We shall not be liable in the event that we are not or not timely supplied by our Suppliers. In the event that we are unable to comply with binding delivery lead times for reasons for which we are not responsible, we shall inform the Customer of this immediately and at the same time inform him of the new expected delivery date. The non-availability of the goods within the new delivery period shall entitle us to withdraw from the contract in part or in full; we shall reimburse any consideration already provided by the Customer without delay.
- 4.4 The statutory provisions shall apply to the occurrence of our delay in delivery, but in any case it shall require a reminder from the Customer.
- 4.5 If the Customer does not accept the subject of the contract in due time, we are entitled to demand immediate acceptance and payment or to set a reasonable period of grace. After expiry of this period, we may dispose of the subject matter of the contract elsewhere and supply the Customer with a reasonably extended period of time. This shall not affect our right to withdraw from the contract and/or to claim damages for non-performance if the legal requirements are met.
- 4.6 Insofar as the prerequisites of the above Clause 4.5 are met, the risk of accidental loss or accidental deterioration of the purchased object shall pass to the Customer at the point in time at which the Customer is in default of acceptance.

## 5. Transfer of risk, transport, transport insurance

- 5.1 The risk of destruction, loss or damage to the goods shall pass to the Customer upon dispatch or handover to the carrier or, in the event of collection of the goods by the Customer, upon their being made available to the Customer.
- 5.2 Unless otherwise contractually agreed, we shall be free to choose the shipping route.
- 5.3 The Customer shall provide for transport insurance.

## 6. Samples

- 6.1 We only supply samples against payment. We shall issue a credit note upon return. Samples shall be returned within the agreed period. We reserve the right to demand appropriate compensation in the event of heavy wear and tear, which we shall offset within the framework of the credit note. The return of the samples shall always be at the expense and risk of the Customer.

## 7. Retention of title

- 7.1 The delivered goods shall remain our property until the purchase price including all ancillary claims has been paid in full and until all our other claims arising from the business relationship have been settled. Until then, the Customer shall not be entitled to pledge the goods to third parties or to assign them as security. The Customer shall store the reserved goods for us free of charge.
- 7.2 If the reserved goods are processed, combined or mixed with other goods by the Customer, we shall acquire co-ownership of the new item in the ratio of the invoice value of the reserved goods to the aggregate value of the goods. The rights of co-ownership resulting therefrom shall be deemed to be reserved goods in the sense of Clause 7.1.
- 7.3 The Customer is entitled to sell the reserved goods in the ordinary course of sale, provided he is not in default of payment of our claims. If, after conclusion of the contract and delivery of the goods in our ownership, we become aware of circumstances which are likely to reduce the creditworthiness of the Customer, we shall be entitled to prohibit the resale of the reserved goods.
- 7.4 At this point in time, the Customer assigns to us all claims against third parties arising from the resale of the reserved goods. We accept the assignment. If the reserved goods are sold after processing, combining or mixing, the assignment of the claim from the resale shall only apply up to the amount of the value of the reserved goods invoiced to the Buyer by the Customer. This shall also apply if the reserved goods are resold together with other goods which also do not belong to the Customer.
- 7.5 The Customer shall also be authorized to collect the claim after the assignment of the claim. We shall have the right to restrict the direct debit authorization due to a justified interest and revoke it for good cause, in particular in the event of default of payment. We shall have the right to demand that the Customer informs us of the claims assigned to him and their debtors, provides us with all the information necessary for collection, hands over to us the relevant documents and discloses the assignment to his debtor. The direct debit authorization shall also expire without express revocation if the Customer ceases payments, if insolvency proceedings are opened against his assets, if he otherwise suffers a deterioration of assets or in the event of lack of performance on the part of the Customer.
- 7.6 In the event of conduct on the part of the Customer in breach of contract, in particular default of payment or reasonable doubt as to the creditworthiness of the Customer, we shall be entitled to take back the reserved goods or demand that the Customer surrender them or, if necessary, demand the assignment of the Customer's claims for return against third parties. The Customer hereby declares his agreement that the persons commissioned by us to collect the reserved goods shall have the right to, for this purpose, enter or drive onto the property or building on or in which the reserved goods are located in order to take possession of the reserved goods.
- 7.7 The Customer shall indemnify us against any confiscation. We shall be notified immediately of any compulsory enforcement or other measures by third parties that affect our property rights. The Customer shall bear the costs of the measures taken to remedy the interventions of third parties, in particular those for any intervention processes.
- 7.8 We undertake to release the securities to which we are entitled in accordance with the above provisions at the request of the Customer to the extent that their realizable value exceeds the claims to be secured by more than 20%; the choice of the securities to be released shall be at our discretion.

## 8. Claims for defects

- 8.1 The statutory provisions shall apply to the rights of the Customer in the event of material defects and defects of title (including incorrect and short delivery and improper assembly), unless otherwise provided for below. The special statutory provisions for final delivery of goods to a consumer shall remain unaffected in any case, even if the consumer has processed the goods further (supplier recourse according to §§ 478 BGB). Claims from supplier recourse are excluded if the Customer or another company has further processed the defective goods, for example by incorporating them into another product.
- 8.2 Claims for defects of the Customer presuppose that the Customer has fulfilled his obligation to inspect the goods and make a complaint in accordance with § 377 HGB. In any case, defects shall be reported to us in writing within 3 working days of delivery (if they are obvious defects) or of discovery (if the defect was not recognizable on inspection). In the absence of proper inspection and/or notification of defects by the Customer, we shall not be liable for the defect not notified or not notified in time or not properly notified in accordance with the statutory provisions.

- 8.3 In the event of rectification of defects, we are obliged to bear the costs of transport, travel, labor and material, provided that these are not increased by the fact that the goods have been taken to a place other than the place of performance. If the rectification or replacement delivery is not carried out within a reasonable period of time – taking into account our modes of delivery – or if the rectification and/or replacement delivery fails, the Customer shall be entitled to a reduction of the remuneration (abatement) or (in case of a not insignificant defect) withdraw from the contract. In case of subsequent delivery, we are only obliged to remove the delivered defective item and install the defect-free item if the installation was included in the order originally placed with us.
- 8.4 The Customer is obliged to hand over the goods which have been notified as defective for inspection purposes and to allow us the time necessary for subsequent performance.
- 8.5 In the event that the demand for the removal of defects proves to be unjustified, we shall be entitled to claim reimbursement from the Customer for the costs incurred due to his unjustified demand, unless the Customer was not aware of the absence of defects. Warranty claims under this Clause 8 shall become time-barred 12 months after the transfer of risk.

#### **9. Other liabilities**

- 9.1 Our liability in the event of a breach of contractual or non-contractual obligations shall be governed by the statutory provisions, unless otherwise stated in these terms.
- 9.2 Claims for damages on the part of the Customer only exist insofar as they are based on intentional or grossly negligent breach of duty, regardless of the legal grounds; we are liable for slight negligence, subject to a milder liability standard according to legal regulations, only in case of
- personal injury,
  - fraudulently concealed defects,
  - the assumption of a guarantee of quality or
  - a not insignificant breach of a main contractual obligation (in this case limited to the foreseeable, typical damage to be expected).
- 9.3 With the exception of our liability for personal injury, our mandatory liability under the Product Liability Act, liability for intent and gross negligence and liability for a fraudulently concealed defect or for a guarantee of quality, the scope and amount of our liability is limited to the insured sums of our business liability insurance or product liability insurance in the amount of EUR 7,500,000.00 or EUR 2,000,000.00 per damage event. We are prepared to allow the Customer to read our insurance policy on request.
- 9.4 Any further liability for damages than that provided for above is excluded, irrespective of the legal nature of the claim asserted.
- 9.5 The provisions of this Clause 9 shall also apply to the detriment and benefit of persons whose culpability we are responsible for according to the statutory provisions.

#### **10. Confidentiality, property rights and copyright**

- 10.1. We reserve the property rights and copyrights to illustrations, drawings, calculations and other documents. Any transfer to third parties shall only be permitted with our express written consent.

#### **11. Place of performance, place of jurisdiction, governing law and general provisions**

- 11.1 The place of performance for the obligations of both contracting parties and the place of jurisdiction shall be our registered office. We shall also be entitled to sue the Customer at our discretion at his general place of jurisdiction or at a special legal venue, if applicable. Priority statutory provisions shall remain unaffected.
- 11.2 These GST and the contractual relations between us and the Customer shall exclusively be governed by German law, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
- 11.3 Should individual provisions of these GST be or become invalid, this shall not affect the validity of the remaining provisions. The contracting parties shall be obliged to replace the invalid provision with a provision equivalent to the invalid provision in terms of its economic success.