

**Standard Terms & Conditions of Business
of S&Ü Hydraulik und Maschinenbau GmbH
Löwendorf 1, 37696 Marienmünster**

I. Scope of Application; Offer and Conclusion of Contract

- 1) These Standard Terms & Conditions of Business ("T&C") apply to all present and future business relations with merchants (within the meaning of section 14 of the German Civil Code [BGB]), legal entities, and special funds under public law.
- 2) Differing, conflicting or supplementary general terms of business do not become part of the contract, even with knowledge thereof, unless explicitly consented to in writing. These T&C apply, including without limitation, in those cases where we perform our contractual obligations unconditionally while being aware of the fact that differing terms exist on the part of our contractual counterpart (hereinafter referred to as "Customer").
- 3) All our offers are subject to change without notice and become binding only upon our written confirmation of order. The scope and type of the goods supplied is exclusively as specified in our offers and letters of confirmation. We reserve the right to make reasonable technical or other amendments. By placing the purchase order, Customer makes a firm commitment to purchase the goods ordered. We are entitled to accept the offer to contract that is incorporated in the purchase order within two weeks after having received such purchase order. The offer to contract is deemed accepted when we send an order confirmation to Customer, or at the latest upon delivery of the goods.
- 4) Making of the contract is conditional on correct and punctual deliveries by our own suppliers. This applies only if we have concluded a congruent covering transaction and, through no fault of our own, are not supplied by our own suppliers. Customer shall be promptly informed about such non-availability of performance. Any consideration already paid shall be promptly reimbursed, using the same payment method as was used for paying the consideration.
- 5) Any dimensions, weights, pictures, and/or drawings are only binding for execution of the order if confirmed by us in writing. We retain title to all and any pictures, drawings, sketches, and/or other documents at all times. The exploitation right lies solely with us. Any disclosure of pictures, drawings, sketches, and/or other documents to third parties requires our consent. They shall be returned upon request. Customer shall ensure that no third-party intellectual property rights are infringed by any execution drawings provided by Customer. We have no obligation towards Customer to check whether we infringe any third-party intellectual property rights by manufacturing the goods as specified in the execution drawings provided to us. If we are nevertheless liable to a third party for infringing intellectual property rights, Customer must release us from any third-party claims asserted against us. Shop drawings or individual part drawings are only delivered by us if this was agreed upon at the time of ordering and confirmed by us in writing. For the delivery of such drawings, a reasonable surcharge is payable.
- 6) If goods are manufactured to Customer's specifications, tooling costs shall be charged; however, such tooling costs may be amortized based on a special agreement. Such special tools remain our property. Furthermore, we reserve the right to charge a reasonable surcharge for goods manufactured to Customer's specifications.

II. Pricing and Delivery / Passage of Risk

1. All prices are net of the applicable statutory value added tax (currently 19%) and are ex works Marienmünster-Löwendorf and exclusive of packing, shipping costs and postage. Packaging is made at prices applicable at the date of the delivery.
2. Packaging will be charged at cost prices and is non-returnable. Insurance to cover transport damage is only taken out by us at Customer's express request and expense. The risk passes to Customer as soon as the goods are handed over for transportation. This also applies if "free delivery" was agreed and/or if transportation is carried out by us.

III Terms of Payment

1. Invoice amounts are due without deduction within 14 days of date of invoice. Upon expiry of such deadline, Customer is deemed in default of payment even without a separate reminder having been sent to Customer. While in default, or in case of a deferral of payment, Customer shall pay interest at 9 percentage points above the prevailing base rate on the amount owed. We reserve the right to assert claims for higher damages caused by default of payment. In the event of default of payment, we charge a lump-sum service fee in the amount of €5.00 for any reminders sent. This does not apply to the initial letter of reminder.
2. Customer is entitled to offset claims or exercise any right of retention only if and to the extent that Customer's claim has been finally determined by a court, is undisputed, has been acknowledged by us, or is ready for trial. Apart from that, counterclaims that give Customer the right to refuse performance within the meaning of section 320 of the BGB are also excluded from the prohibition to offset. Customer is entitled to exercise a right of retention only insofar as Customer's counterclaim is based on the same contractual relationship. If Customer is in default of payment, any deliveries still outstanding will be effected only against prepayment.
3. If we have agreed with Customer on partial payments or payment by instalments and if Customer is in default on more than two partial payments or instalments, the entire amount of Customer's outstanding debts becomes due and payable immediately.

IV Retention of Title

- 1) We retain title to all goods (hereinafter "Retained Goods") until all present or future claims we may have from the current business relationship are settled in full (secured claim). Customer is not entitled to either pledge Retained Goods or transfer Retained Goods by way of security. Customer shall notify us without delay of any seizure or any other third-party disposition made with respect to such goods. Assertion of retention of title and/or attachment of the goods by us do not constitute a rescission of contract for non-performance.
2. Without prejudice to the foregoing, Customer is entitled to resell Retained Goods in the ordinary course of business. Customer hereby assigns to us all claims against third parties, to the amount of the invoice value, which accrue to Customer from the resale. We hereby accept the assignment. Customer retains its right to collect the claims following such assignment. We reserve the right to collect the claim ourselves if Customer fails to fully meet its obligation of payment and defaults on payment.
3. We shall release Retained Goods and any objects or claims substituting the Retained Goods insofar as their value exceeds the amount of the secured claims by more than 50%. We are entitled to select the individual objects to be released at our own discretion.

V. Delivery Time

Delivery times are binding only if we have warranted in writing that such delivery times will be met. If such binding delivery time is not met, Customer shall fix a reasonable grace period. Such grace period having elapsed with no result, Customer is entitled to rescind the contract.

VI. Liability

- 1) Unless otherwise provided in these T&C (including the provisions following herein below), our liability in case of breach of contractual or non-contractual duties is based on the relevant legal provisions.
- 2) We are liable for damages – irrespective of their legal basis – in case of intent and gross negligence. In the event of slight negligence, we are liable, subject to any lesser extent of liability according to legal provisions (e.g. for diligence exercised in one's own affairs; immaterial breach), only for:
 - damage or loss caused by injury to life, body, or health,
 - damage or loss caused by material breach of an essential contractual obligation (i.e. an obligation the fulfilment of which is of the very essence for the proper performance of the contract and upon the fulfilment of which the party to the contract has regularly relied and may regularly rely); in this event, however, our liability is limited to compensation for the foreseeable damage that typically occurs. Furthermore, indirect damage and/or consequential damage resulting from defects in the goods are only subject to compensation to the extent such damage is typically predictable under conditions of intended use of the goods.
- 3) The limitation of liability under **VI. 1) and 2)** hereof also applies to the extent that Customer, instead of claiming damages in lieu of performance, demands reimbursement of expenditure incurred in vain.
- 4) The limitation of liability under **VI. 1) and 2)** hereof also applies to breach of duty by or to the advantage of persons for whose culpable conduct we are responsible under the terms of the law. The limitation of liability does not apply to cases where a defect was maliciously concealed by us, where we have given a warranty as to the nature and condition of the goods, where claims of Customer under the German Product Liability Act (*Produkthaftungsgesetz*) are concerned, or where claims are based on the goods being defective (see section **VII. Warranty** herein below).
- 5) If we provide general technical information, give advice or make a recommendation without being under a contractual obligation to do so, we are not obliged to compensate for any damage that arises due to Customer following such advice or recommendation; this applies without prejudice to any responsibility as may exist within a separate contractual relationship, under tort or under any other provision of law.
- 6) Customer is entitled to rescind or terminate the contract for any breach of duty other than a defect in the goods only if we are responsible for such breach. Customer's right to terminate the contract without cause (including without limitation pursuant to sections 648a, 649 of the BGB) is excluded. Save as provided herein, the statutory conditions and legal consequences apply.

VII. Warranty

- 1) Details concerning performance, dimensions, weights, and/or running costs that were provided in any specification valid at the time when the contract was concluded are part of the contract. Such data are deemed approximations only and serve as a reference for evaluating whether the contractual item is defective within the meaning of the provisions herein below.
- 2) In the event of a defect, we are entitled to subsequent performance which, at our option, may be carried out either by rectifying the defect or by supplying a new item that is free from defects. If subsequent performance is impossible or disproportionate, we are entitled to refuse it. In such case, a reasonable reduction in price is to be agreed.
- 3) We may refuse subsequent performance until Customer has fulfilled its payment obligations towards us to an extent corresponding to the defect-free part of our performance.
- 4) Customer shall check the delivered goods for defects immediately and shall notify us in writing of any visible defects within two (2) weeks from acceptance of the goods, and of any hidden defects within two (2) weeks from becoming aware of such defect; otherwise, the assertion of warranty claims based on a non-reported defect is excluded (under sections 377, 381 of the German Commercial Code [HGB]).
- 5) No liability is assumed for any damage caused by the following: inappropriate and/or improper use; incorrect assembly by Customer or a third party; natural wear and tear; incorrect or negligent handling; unsuitable operating supplies; chemical, electro-chemical or electric interferences (unless we are accountable for them); modifications or repair work carried out by Customer or third parties improperly and without our prior approval.
- 6) In the event of rescission of contract, the possibility of claiming damages on the grounds of the defect is excluded. If Customer demands compensation for damages, the amount thereof is limited to the difference between the price paid and the value of the goods. These limitations do not apply to cases under sections **VI. 1), 2), 3), 4) and under VII. 9)**.
- 7) We assume no liability for defects in the case of second-hand goods.
- 8) Customer's rights for defects become time-barred one (1) year from the statutory start of the limitation period. The above deadline does not apply to Customer's claims for damages arising from injury to life, body or health or from intentional or grossly negligent breach of duty by ourselves or our vicarious agents; such claims expire by limitation in accordance with the legal provisions.
- 9) However, if the goods are a building or an object that, according to its customary purpose, has been used for a building and has caused the building to be defective (building material), the limitation period, as provided for by the law, is five (5) years from delivery (section 438 (1) No. 2 of the BGB). Other special arrangements under the law (including without limitation section 438 para. 1 no. 1, para. 3, sections 444, 445(b) of the BGB) also remain unaffected.
- 10) A warranty or representation, whether in terms of a stricter liability or resulting from acceptance of a specific obligation to assume liability, is deemed to have been given only if the terms "warranty" or "representation" are expressly used.

VIII. Miscellaneous

- 1) The place of jurisdiction for all disputes arising out of and in connection with this contract is Höxter. The place of performance is Höxter. Notwithstanding the above, we are entitled in any case to take legal action against Customer also at Customer's general legal venue. Any overriding statutory provisions, including without limitation on exclusive competences, remain unaffected.
- 2) This contract is governed exclusively by German law excluding rules referring to other jurisdictions. The application of the uniform UN sales convention (CISG) is excluded.
- 3) Collateral agreements, modifications and amendments hereof must be made in writing unless otherwise provided in these T&C. This also applies to the cancellation of the requirement of written form.
- 4) Invalidity of one or more provisions of these T&C does not affect the validity of the remaining provisions.