



**SERVICE
ERSATZTEILE
AGGREGATE
HYDRAULISCHE ANLAGEN**

**Terms and Conditions of Delivery and Payment
(Issue 01/2012)**

I. General

1. Shipment and performance whatsoever shall be subject to these terms and conditions as well as any other separate contractual agreements which may have been made. The ordering party's deviating terms and conditions of purchasing shall not become an integral part of the contract even upon acceptance of the order. Unless otherwise agreed upon, a contract shall come into force upon written confirmation of the order by the supplier.
2. The supplier reserves property rights and copyrights concerning samples, cost estimates, drawings and similar information of physical and non-physical nature – even in electronic format this information must not be made accessible to third parties. The supplier undertakes to only disclose information and documents referred to by the ordering party as confidential to third parties subject to the ordering party's approval.
3. The parties to the contract mutually undertake to keep the entrepreneurial and technical details confidential. In particular, the parties undertake to refrain from disclosing information and documents referred to by the other party to the contract as confidential to third parties without the other party's consent and to promptly return such confidential information and documents at the other party's request and if the order is not placed.

II. Price and Payment

1. Unless otherwise agreed upon, the prices shall be ex works including loading at our factory, however, excluding packaging and unloading. The prices shall be plus value-added tax at the applicable statutory rate.
2. Unless otherwise agreed upon, our invoice shall be payable net within fourteen (14) days of receipt of invoice.
- 3.1 The customer shall only be entitled to refuse performance and/or shall only have a right retention if the claim is undisputed or if the right has been ascertained subject to a final and absolute judgement or if the user has violated material obligations under the contract.
- 3.2 Customers shall only be entitled to offset their claims against payables if these counterclaims have been ascertained subject to a final and absolute judgement, if these counterclaims are undisputed or ripe for judgement.
4. If the time allowed for payment is exceeded, amounts outstanding shall incur interest on arrears at rate of eight (8) percentage points above the rate of the main refinancing facility of the European Central Bank in force on the due date of payment.
5. If payment is effected by cheque, the payment obligation shall only be deemed to have been satisfied once our account has been credited with the corresponding amount.

III. Term of Delivery, Delays in Delivery

1. The term of delivery can be seen from the agreements between the parties to the contract. It shall be observed by the supplier subject to the provision that all technical and commercial issues have been clarified between the parties to the contract and that the ordering party has satisfied any of its obligations such as the provision of necessary certificates or licences issued by public authorities or effecting a down payment. If this is not the case, the term of delivery shall be extended correspondingly. This shall not apply if the supplier is responsible for the delay.
2. The term of delivery shall be observed by the supplier subject to the provision that the supplier itself is supplied with the right product in time by its sub-suppliers.
3. The term of delivery shall be deemed to have been observed if the delivered object has left the supplier's plant before expiry or if notice of shipment has been given. If delivery of the goods has to be taken by the customer, the date of acceptance shall be the decisive date except in case of justified refusal to take delivery. In case of unjustified refusal to take delivery, the date of notification of the readiness to take delivery shall be the decisive date.
4. If the goods cannot be shipped or if the customer refuses to take delivery of the delivered object for reasons for which the ordering party is responsible, the costs incurred as a result of the delay shall be invoiced to the ordering party one month after notification of the readiness for shipment and/or readiness for delivery-taking onwards.
5. If non-observance of the term of delivery is due to force majeure, industrial strike or any other events for which the supplier cannot be held responsible, the term of delivery shall be adequately extended. The supplier shall inform the ordering party of the beginning and the end of such events as soon as possible.
6. The ordering party can cancel the contract without notice if it becomes impossible for the supplier to perform the entire project before the passage of risks. The ordering party can also cancel the contract if performance of part of the delivery becomes impossible upon order placement or if the ordering party has a justified interest in refusing to take delivery of part performance. If this is not the case, the ordering party shall pay the contract price equivalent to the part performance already effected. This shall also apply in case of the supplier's inability to perform. Otherwise, Section VII.2 shall apply.

If it becomes impossible for the supplier to perform or if the supplier becomes incapable of performance during a delay by the customer in taking delivery or if the ordering party alone is responsible or the ordering party is mainly responsible for these circumstances, the ordering party is obliged to effect counter-performance.

IV. Passage of Risks, Delivery-Taking

1. Risk shall pass to the ordering party once the delivered objects has left the works even if part shipments are effected or the supplier has also assumed other services such as costs of shipment or delivery and installation. If delivery has to be taken, the date of delivery-taking shall be the decisive date for the passage of risks. Delivery must be taken promptly on the date of delivery-taking or upon notification of readiness for delivery-taking by the supplier at the latest. The ordering party must not refuse delivery-taking in case of existence of a defect which is not of the essence.
2. If there is a delay in shipment or delivery-taking due to circumstances for which the supplier cannot be held responsible, the risks shall pass to the ordering party on the day of notification of the customer of the readiness of the delivered objects for shipment and/or delivery-taking. The supplier undertakes to take out any insurance the ordering party may request at the ordering party's expense.
3. Delivery can be effected in part shipments to the extent this is deemed acceptable by the ordering party.



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V. Retention of Title

1. The supplier reserves title to the delivered object until receipt of all payments from the supply contract.
2. If the ordering party processes the goods together with other goods which do not belong to us, we reserve title to the new product on a pro rata basis, i. e. based on the value of the reserved goods relative to the other processed goods at the time of processing. The new product shall be considered to be a reserved good in terms of this clause; the ordering party shall acquire an expectant right to the reserved goods as well.
3. The ordering party shall only be entitled and authorised to resell the reserved goods subject to the provision that any claims to payment of the purchase price arising from resale shall be assigned to us in the amount of the invoice value of the goods supplied by us based on the clause above (par.1 and 2) and that the customer itself retains title to the reserved goods until payment of the purchase price by its customer in full. Title to the reserved goods shall pass to the customer's customer upon payment of the purchase price in full.
4. The ordering party shall not be entitled to other types of disposal. In particular, the customer shall not be entitled to pledge the delivered object as security or to transfer it by way of security. If the goods are pledged as security or seized or if they are disposed of in any other way by third parties, the customer shall promptly inform us.
5. The ordering party shall as of today assign its claims from resale of the reserved goods to us if the ordering party disposes of them before having acquired the title to the goods. It is of no importance in this respect whether the goods are sold by the ordering party to one or several customers, together with other goods not belonging to us, without or after combination with or installation in another object. The assigned claim shall secure our claim up to the respective value of the reserved goods sold to the ordering party.
6. We undertake as of today to release security in a corresponding amount if the value of all of our security added together exceeds the coverage limit of 130 % of the secured claim.
7. If the ordering party has not taken out insurance, we shall be entitled to take out insurance against damage caused by fire or water and other loss or damage concerning the delivered object at the ordering party's expense.
8. If the ordering party acts in violation of the contract, in particular if the ordering party is in delay with payment, the supplier shall be entitled to request return of the delivered objects after having sent the ordering party a reminder of its duties. The ordering party shall correspondingly be obliged to surrender the delivered object in this case.
9. Based on the retention of title, the supplier shall only request the delivered object to be returned if the supplier has cancelled the contract.
10. If a petition for commencement of insolvency proceedings was filed, the supplier shall be entitled to cancel the contract and to request immediate surrender of the delivered object.

VI. Guarantee

The supplier shall assume the following warranty for defects as to quality and defects in title, excluding any other claims, subject to Section VII – Liability:

Defects as to Quality

1. Any parts which turn out to be defective as a result of circumstance which has occurred before the passage of risks shall at the supplier's discretion either be reworked free of charge or replaces by new item free of charge. The customer shall notify the supplier promptly after having discovered such defects. Any parts which are replaced shall become the supplier's property.
2. The ordering party shall give the supplier sufficient time and opportunity to perform any rework which might be necessary or replace any parts which might have to be substituted upon agreement with the supplier. If this is not the case, the supplier shall be indemnified against liability for any consequences resulting therefrom. The ordering party shall only be entitled to rectify the defect itself or to have the defect eliminated by a third party to request compensation for any cost which might necessarily have been incurred in connection therewith in urgent cases – of which the supplier must promptly be notified – in which safety of the plant is involved or to avoid causing disproportionately high damage.
3. The supplier shall bear costs of a replacement including shipment cost as well as reasonable cost of removal and installation incurred by rework or substitute delivery if the customer's complaint has proves to be justified. If this can be requested equitably depending on the respective situation, the supplier shall, if applicable, also bear the costs of placing one of its fitters as well as assistants at the ordering party's disposal.
4. Within the framework of statutory provisions, the ordering party shall be entitled to cancel the contract if a reasonable period of grace granted to the supplier for rework or substitute delivery based on a defect as to quality – subject to exceptions specified by law – has lapsed without effects. If the defect is not of the essence, the ordering party shall only be entitled to request a reduction of the purchase price. Otherwise, the customer's right to request a reduction of the contract price shall be excluded.
5. In particular in the following cases, the supplier shall not assume any liability:
Unsuitable or improper use, faulty installation and/or commissioning by the ordering party or third parties, natural wear and tear, faulty or negligent treatment, improper maintenance, unsuitable supplies, defective construction work, unsuitable building estate, chemical, electronic or electronic influences – unless the supplier is responsible for such circumstances.
6. If improper rework has been performed by the ordering party or third party, the supplier shall not assume any liability for any consequences resulting therefrom. This shall also apply to any modifications of the delivered objects performed without the supplier's prior approval.

Defects in Title

7. If the use of the delivered objects results in a violation of industrial property rights or copyrights in Germany, the supplier shall at its expense generally obtain a right for further use on behalf of the ordering party or modify the delivered object in a manner which is reasonably acceptable to the ordering party in such a way that the property rights are no longer violated.

If this is not possible at economically reasonable conditions or within a reasonable time frame, the ordering party shall be entitled to cancel the contract. Subject to the abovementioned conditions, the supplier shall also be entitled to cancel the contract.

The supplier shall also indemnify the ordering party against undisputed claims asserted by the owner of such property right or claims asserted by the owners of such property rights which have been ascertained subject to a final and absolute judgement.

8. The obligations of the supplier mentioned in Section V1.7 shall be final subject to Section VII.2 in the event of violation of property rights or copyrights.

They shall only be binding

- if the ordering party has promptly notified the supplier of any violations of property rights or copyrights which may have been asserted;
- if the ordering party has reasonably supported the supplier in its efforts to defend against the asserted claims and/or has given the supplier an opportunity to modify the delivered object pursuant to Section IV.7,
- if the supplier reserves all measures of defence including out-of-court settlements;
- unless the defect in title is based on instructions by the ordering party; and
- unless the defect in title was caused by modifications to the delivered object by the ordering party without proper authority or by use of the delivered object by the ordering party in violation of the contract.

VII. Liability

1. If the delivered object cannot be used by the ordering party in conformity with the contract for reasons for which the supplier is responsible as a result of the omission of or faulty execution of proposals or consultations before or after conclusion of the contract or as a result of violation of other collateral contractual duties – such as, in particular, instructions for operation and maintenance of the delivered object, the provisions of Sections VI and VII.2 shall correspondingly apply, excluding any other claims of the ordering party.

2. The supplier shall only assume liability for any damage which was not caused to the delivered object itself –on whatever legal basis -

- in case of intent;
- in case of gross negligence by the owner/ executive bodies or executive staff;
- in case of a negligent personal injury, physical damage or damage to somebody's health;
- in case of defects in the delivered object to the extent liability is assumed for personal injury or defects as to quality in objects in private use under the Product Liability Act.

In case of negligent violation of material contractual obligations, the supplier shall also assume liability for gross negligence by non-executive staff and slight negligence. In the latter case, liability shall be limited to damage typical for such contracts as could reasonably have been foreseeable.

Other claims shall be excluded.

VII. Limitation of Actions

Any of the ordering party's claims – on whatever legal basis – shall become statute-barred after twelve (12) months. As far as intentional acts or acts with intention to deceive are concerned as well as with as view to claims under the Product Liability Act, the statutory periods shall apply. They shall also apply to defects in a building or for delivered objects which have been used for a building in conformity with normal use and have caused defects therein.

IX. Use of Software

If the scope of delivery comprises software, the ordering party shall be granted a non-exclusive right to use the supplied software including its documentation. It is delivered for use on the respective delivered object destined therefore. Use of the software on more than one system shall be prohibited.

The ordering party shall only reproduce, edit or translate the software or convert the software from the object code into the source code within the framework admissible by law (§§ 69 a. et. seq. Copy Right Act.) The ordering party undertakes to refrain from removing the manufacturer's indications such as the copyright notice in particular or to refrain from changing them without the supplier's express prior approval.

The supplier and/or the software supplier reserve any other rights to the software and the documentation including copies. The customer shall not be permitted to grant sub-licenses.

X. Governing Law, Place of Jurisdiction

1. Bochum shall be the place of performance and the place of jurisdiction. The supplier shall, however, be entitled to commence an action before the courts competent as the ordering party's headquarters.
2. The laws of the Federal Republic of Germany governing legal relationships between domestic parties shall exclusively govern the legal relationships between the supplier and the ordering party.