

# GENERAL TERMS AND CONDITIONS FOR DELIVERY OF HPC-HYDRAULICS B.V.

## 1.0 Supply agreement

1.1 The provisions of these Standard Terms and Conditions of Sale extend to standard contract conditions which are used in a contract with entrepreneurs, public law entities or public law entities with special public funds only.

1.2 Our quotations are subject to change without notice. The conclusion of a supply agreement is subject to our acknowledgement of order.

1.3 Our Standard Terms and Conditions of Sale constitute an integral part of each supply agreement. Alterations and supplements to the supply agreement require our written acknowledgement in order to be legally valid.

1.4 These Standard Terms and Conditions for Sale shall exclusively apply, save as the varied by express agreement accepted in writing by both parties. The offer, order acknowledgement, order acceptance of sale of any products covered herein is conditioned upon the terms contained in this instrument. Any conditional or different terms proposed by the buyer are objected to and will not be binding upon us unless assented in writing. These conditions shall govern any future individual contract of sale to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the buyer.

1.5 The quantity, quality and description of and any specification for the goods shall be those set out in our quotation (if accepted by the buyer) or the buyer's order (if accepted by us). The buyer shall be responsible for insuring the accuracy of the terms of any order submitted by the buyer, any for giving us any necessary information relating to the goods within a sufficient time to enable us to perform the contract in accordance with its terms.

## 2.0 Prices

2.1 Our prices are for deliveries ex works or warehouse, excluding packaging. Packaging will be charged for at cost price, and will not be taken back. Where we agree to deliver the goods otherwise than at the seller's premises, the buyer shall be liable to pay our charges for transport, packaging and insurance.

2.2 All prices are stated in EURO exclusive of VAT and other governmental levies.

2.3 We reserve the right, by giving notice to the buyer at any time before delivery, to increase the price of the goods to reflect increase in the costs to us which is due to any factor beyond the control of us (such as foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of materials or other costs of manufacture) or any change in delivery dates.

## 2.4 Delivery and transfer of risk

2.4.1 We make every effort to adhere to agreed delivery deadlines. Unless otherwise specifically agreed with the Buyer, details on date and/or time of delivery are based on the departure of the ordered goods from our works and are in all cases subject to confirmation. Partial deliveries shall be permissible.

2.4.2 To the extent that they have an impact on the production and delivery of the delivery item, acts of God, industrial disputes and other occurrences for which we can be held liable shall entitle us to extend the delivery deadline appropriately. This shall also apply in the event that there are material occurrences late in the day at a point in time at which the goods are delivered.

2.4.3 A delay and/or the buyer's business damage due to a delay in delivery for which we can be held liable, are not borne according to the applicable Statutory Law. In the event that the delay in delivery results from the breach of a non-assumed contractual obligation, the buyer shall be entitled to demand a lump sum compensation which shall not exceed a maximum of 10 per cent of the delivery value of the delayed deliveries.

2.4.4 In the event that we are in default, the Buyer shall, instead of exercising the claim to which he is entitled in accordance with Section 2.4.3 of these General Terms and Conditions of Sale, be entitled to order other items, the supply agreement order earlier at a reasonable price premium.

2.4.5 The risk shall be transferred to the Buyer at latest on completion of the delivery, even if partial deliveries are being ordered. We have undertaken to provide other performance such as, for example, delivery into containers, or delivery to a depot/shipping point.

## 2.5 Delivery

2.5.1 Delivery shall be made within 30 days of the date of invoice and without any deduction of any kind to a payment centre to be specified by our company. Such payments shall not involve any costs or fees for our

account, the date of receipt of payment shall be decisive. We shall grant a cash discount of 2 per cent on payments received within 14 days of the date of invoice. Said cash discount will not however be granted if the Buyer is in arrears in respect of other payments nor in the event of discounting of bills. No cash discount can be granted on payments for services.

4.2 If the buyer fails to make any payment on the due date then, without prejudice to any other rights or remedy available to us, we shall at our discretion be entitled to:

- cancel the contract or suspend any further deliveries to the purchaser; or

- charge the buyer interest on the amount unpaid, at the rate of 7 per cent per annum above European Central Bank reference rate from then being valid, until payment in full is made. The buyer shall be entitled to prove that the delay of payment caused no or little damage only.

## 4.3 Payment shall be effected by bank payment

transaction only. The discounting of bills or cheques shall require our consent. No cheque or bill of exchange will be considered as fulfilment of the payment obligation. International deliveries shall be subject to the irrevocable/confirmed opening of a letter of credit by the buyer's bank (or any bank acceptable to us). In this individual case it is assumed that any letter of credit will be issued in accordance with the uniform customs and practice for documentary credits, 1993 revision, ICC publication no. 500.

4.5 We shall be entitled to demand advance payment or the furnishing of collateral in respect of all transactions currently in progress in the event that the buyer's ability to pay should diminish after conclusion of contract or if it should subsequently come to our attention that there are doubts as to the Buyer's liquidity. If the buyer is in arrears then any and all payments he owes to us - including those which have been deferred - shall become immediately payable. Other legal claims over and beyond this shall remain unaffected.

4.6 The buyer may only withhold payments or offset against any counterclaims if such counterclaims have been legally established or we have not disputed them.

## 5.0 Reservation of ownership

5.1 We reserve the ownership of any and all goods we deliver until they have been paid for in full; in this respect all deliveries shall be regarded as one interlinked delivery transaction.

5.2 Before having paid for it in full, the buyer may neither pledge nor assign the delivery item as security. The buyer shall inform us in writing without delay in the event of seizure or any other such action on the part of third parties. If the Buyer fails to do so in due time you will be held liable for any damages caused.

5.3 The buyer shall be entitled to resell the delivery item within the framework of proper business activity. The buyer herewith and now assigns to us all receivables to the amount of the invoice value of the reserved goods which arise to him vis-a-vis the purchaser or third parties. Even after such assignment the buyer shall remain authorised to collect such receivables provided he acts in accordance with the contract and is not subject to insolvency. Our entitlement to collect such receivables ourselves shall remain unaffected. We undertake to refrain from collecting such receivables provided that the buyer meets his payment obligations to us in due form and in not subject to insolvency. If this is not the case we may then demand that the buyer discloses to us the assigned claims and the related debtors provides us with all details to enable collection, hands over the relevant documentation and notifies the debtors of this assignment.

5.4 If reserved goods are processed or altered, even together with other items that do not belong to us, then we shall be entitled to co-ownership of the new item according to the proportion of the invoice value of the reserved item to that of the new item at the time of such processing or alteration. The buyer shall store the items of which we have no ownership at no cost to ourselves.

5.5 If the value of the collateral provided for us should in total exceed the claims for which the collateral has been provided by more than 20 per cent then we shall be obliged to release collateral to such extent if requested to do so by the buyer. It is our decision to release those parts of the collateral suitable for us.

## 5.6 Warranty for defects

To the exclusion of any further claims we shall be liable for defects in the supplied items as follows:

6.1 The warranty period for original HPC parts is 24 months as from manufacture (according to type plate). The right of removal of faults yielded to the Buyer is primary

to the right of correction (in other words subsequent improvement or delivery of a substitute). We have the choice between subsequent improvement or subsequent delivery. Parts we replace shall pass into our possession. Should the subsequent improvement or substitute delivery fail, the Buyer can demand reduction or can step back from the contract. The subsequent improvement has failed when and as long as the reasonable limit yielded to us to perform has elapsed.

6.2 We are liable according to the applicable Statutory Law as long as the Buyer demands restitution for damages which are based on an express guarantee promise, malice, intent or gross negligence, including an express guarantee promise malice, intent or gross negligence of our representatives or our vicarious agents. We are liable according to the applicable Statutory Law in the event the Buyer demands restitution for damages which are based on negligence, including negligence of our representatives or our vicarious agents, as long as the claim is based on a breach of an essential contractual obligation. As long as we are not deemed to have violated the contract intentionally, the liability is limited to the typically and predictable damages. As long as the requested preparation of damage is based on a negligent conduct with regards to the subsequent improvement the costs regarding the installation in de-installation is limited in its volume accordingly to the schedule of costs provided by the DAT/Schwacke-list. All other rights with regard to the repair of damage is excluded; we are especially not liable for damages which were produced on the delivered good with the exception that there is a damage of life, body or health.

6.3 Complaints about recognisable defects as well as those concerning incomplete or incorrect deliveries shall be asserted with full reasons in writing and in accordance with Commercial Code Complaints about hidden defects shall be asserted in the aforementioned form and in accordance with Commercial Code.

6.4 Our warranty does not apply to defects which are attributable to circumstances for which we cannot be held liable. Such circumstances include, for example, non-compliance with installation and/or operating instructions, maintenance errors, inappropriate or improper use, incorrect or negligent handling, normal wear and tear as well as improper interference with the delivery item on the part of the Buyer or third parties.

6.5 Parts complained about are to be submitted to us carefully packed and with closed connections.

6.6 Warranty claims in respect of a newly delivered part as defined in Section 6.1 are likewise subject to Sections 6.0 to 6.5.

## 7.0 Conditions of replacement

7.1 If an appliance is returned to us without any cost to ourselves, the Buyer may then obtain a replacement appliance within the framework of and subject to the respective conditions of our replacement scheme. Repairs to our appliances are not be carried out by ourselves.

7.2 Original replacement appliances are marked with a type plate. This generally plate have a RAP number. Original replacement appliances are subject to the same terms and conditions of delivery as applicable to the purchase of a new appliance.

## 8.0 Miscellaneous clauses

8.1 We reserve the right to improve or modify any of the products without prior notice, provided that such improvement or modification shall not effect the form and function of the product.

8.2 Any specification, sales literature, quotation etc. shall be strictly confidential and must not be made available to third parties.

## 9.0 Place of fulfillment, place of jurisdiction, applicable law

9.1 These terms and conditions are exclusively subject to the Dutch law, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and any conflict of law provisions that would require application of another choice of law.

9.2 Place of fulfillment shall be the headquarters of the invoicing party. In the case of any disputes arising from or in connection with the contractual relationship we shall - if the buyer is a businessman, a public law entity or a public law entity with special public funds - be entitled to submit to the court responsible for our headquarters (Almelo). We shall have the right to bring a claim before court of the buyer's principal place of business or at our discretion before any other court being competent according to any national or international law.